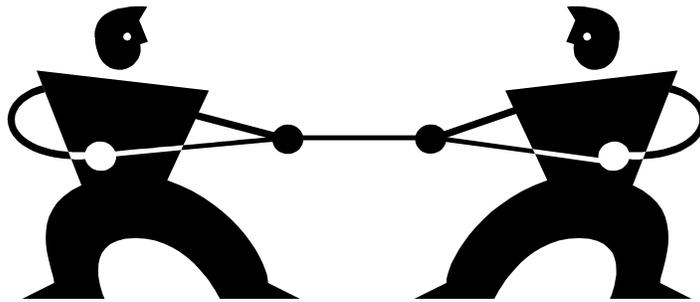


# ETHICS AND CONFLICTS OF INTEREST

*A Guide for Municipal Officials*



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# ETHICS AND CONFLICT OF INTEREST

## *A Guide for Municipal Officials*

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# Section 1

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## Introduction

In 1976, the Rhode Island General Assembly enacted the state's first Code of Ethics and created the Conflict of Interest Commission. The Conflict of Interest Commission was replaced in 1986-1987 when the Rhode Island voters adopted a constitutional amendment mandating that the General Assembly "establish an independent, non-partisan ethics commission" (R.I. Const. art. III, sec. 8).

The Rhode Island Ethics Commission is empowered by the State Constitution to adopt, enforce and administer the Code of Ethics. The Ethics Commission is granted additional powers to issue advisory opinions to public officials and employees and to offer educational programs by legislation enacted by the General Assembly. Commissioner appointments, quorum requirements and defining the administrative powers of the Ethics Commission are also governed by statute.

The Commission is comprised of nine members appointed by the Governor. Four of the appointees are directly appointed by the Governor; five are appointed by the Governor from a list of nominees submitted by the majority and minority leaders of the House and Senate and by the Speaker of the House. Each member may serve no more than one full five-year term.

The Rhode Island Code of Ethics governs the activities of appointed and elected official and public employees in state and municipal government. The Rhode Island Constitution requires that public officials and employees "adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety and not use their position for private gain or advantage." (R.I. Const. art III, sec. 7). The Code of Ethics is enforced through investigations, adjudication and administrative trials and hearings. The Commission's enforcement powers include civil penalties and the power to remove an official from office.

The Commission assists public officials and employees in their efforts to understand and abide by the Code of Ethics. Advisory opinions can be issued at the request of any person covered by the Rhode Island Code of Ethics and aids in responding to specific questions about the Code posed by public servants facing potential conflicts of interest. The Commission has educational powers and is empowered to establish and implement educational program for the purpose of educating public officials, public employees and the general public in the area of ethics. The program may include seminars and workshops and published brochures and booklets that explain the Code of Ethics and the procedures of the Ethics Commission. Additionally, the Ethics Commission oversees the financial disclosure program which requires all state elected officials, all state appointed officials, all state appointed officials and employees who hold a major decision making position in a state agency, all municipal elected officials and members of certain state or municipal agencies to file statements annually.

The Rhode Island Ethics Commission Offices are located at 40 Fountain Street Providence, Rhode Island 02903. They can be reached by Phone at 401-222-3790 or by Fax at 401-222-3382. Their office hours are Monday-Friday 8:30 a.m. - 4:30 p.m. You may also reach them by email at: [ethics@ethics.state.ri.us](mailto:ethics@ethics.state.ri.us).

## What is a Conflict of Interest?

Conflicts of Interest are prohibited under the Rhode Island Code of Ethics. A conflict of interest arises when a public official or employee develops a private interest of any nature which is in substantial conflict with the proper execution of his or her duties or employment. A public official or employee has an obligation to perform his/her duties in an objective and impartial way and may not take any official action or participate in any official activities that may be expected to effect his/her own financial stake or that of his/her families, business associates or any business by which the person is employed or which the person represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his or her official activity.

When an individual subject to the Code of Ethics encounters a conflict of interest, public officials and employees are required to disclose the nature of the conflict. This is accomplished by preparing a sworn, written statement describing the matter requiring action and the nature of the conflict. This statement is then delivered to the Ethics Commission. In addition, to preparing the statement the public official or employee is required to disqualify themselves, which in turn excuses the member from participating in votes, deliberations or any other action on the matter on which a potential conflict exists.

In the event a conflict of interest is identified and the public official or employee does not recuse him/herself from the official action a complaint may be filed with the Ethics Commission by any person. The complaint must be in writing under oath and must include the name of the person alleged to have committed the violation, additionally the complaint must include in detail the specific act or acts complained of. Within seventy-two hours of filing the complaint, the Commission will serve a copy of the complaint upon the person alleged to have violated the code. Also included with the complaint are the Rhode Island Code of Ethics and Commission regulations.

Upon filing and serving a complaint, the Commission determines whether the complaint falls within its jurisdiction and properly alleges a violation of the law. [See R.I. General Laws §42-35] The Commission makes this determination in a closed session and either initiates an investigation or dismisses the complaint. At this point in the proceeding, the decision to investigate does not address the validity of the complaint, it addresses whether or not the allegations properly fall under the provisions of the Code of Ethics.

Once it is determined that a valid complaint has been filed, the commission is empowered to adjudicate the merits of the alleged violation. The Commission may issue subpoenas to compel the production of evidence or the attendance of witnesses.

The Rhode Island Code of Ethics can be found within the Rhode Island General Assembly's website, [www.rilin.state.ri.us](http://www.rilin.state.ri.us). Upon accessing the General Assembly's website, locate the tab on the left "General Assembly Legislative Information" and click on it. Once that brings you to the next page locate the tab that reads "The State of Rhode Island General Laws" and click on it. Then find Title 36- "Public Officers and Employees" which will then take you to the Index of Chapter 36 and you will click on Chapter 36-14 "Code of Ethics." The Rhode Island Code of Ethics can also be found on the Ethics Commission website, [www.ethics.ri.gov](http://www.ethics.ri.gov).

# **Section 2**

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## **RHODE ISLAND GENERAL LAWS, § 36-14-1 et seq.,**

**R.I. Gen. Laws § 36-14-1 Declaration of Policy.** –It is the policy of the state of Rhode Island that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety, and not use their position for private gain or advantage.

**R.I. Gen. Laws § 36-14-2 Definitions.** – As used in this chapter:

(1) "Any person within his or her family" means a spouse and any dependent children of any public official or public employee as well as a person who is related to any public official or public employee, whether by blood, adoption or marriage, as any of the following: father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother or half-sister.

(2) "Business" means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust or any other entity recognized in law through which business for profit or not for profit is conducted;

(3) "Business associate" means a person joined together with another person to achieve a common financial objective;

(4) "Employees of state and local government, of boards, commissions and agencies" means any full-time or part-time employees in the classified, non-classified and unclassified service of the state or of any city or town within the state, any individuals serving in any appointed state or municipal position, and any employees of any public or quasi-public state or municipal board, commission or corporation;

(5) "Governmental function" means any action that is public in nature and is performed for the common good of all the people;

(6) "Open and public process" means the open solicitation for bids or proposals from the general public by public announcement or public advertising followed by a public disclosure of all bids or proposals considered and contracts awarded;

(7) "Person" means an individual or a business entity;

(8)(i) "State agency" means any department, division, agency, commission, board, office, bureau, authority, or quasi-public authority within Rhode Island, either branch of the Rhode Island general assembly, or any agency or committee thereof, the judiciary, or any other agency that is in any branch of Rhode Island state government and which exercises governmental functions other than in an advisory nature;

(ii) "Municipal agency" means any department, division, agency, commission, board, office, bureau, authority quasi-public authority, or school, fire or water district within Rhode Island, other than a state agency and any other agency that is in any branch of municipal government and exercises governmental functions other than in an advisory nature;

(9) "State or municipal appointed official" means any officer or member of a state or municipal agency as defined herein who is appointed for a term of office specified by the constitution or a statute of this state or a charter or ordinance of any city or town or who is appointed by or through the governing body or highest official of state or municipal government;

(10) "State or municipal elected official" means any person holding any elective public office pursuant to a general or special election;

(11) A person's natural child, adopted child, or stepchild is his or her "dependent child" during a calendar year if the person provides over fifty percent (50%) of the child's support during the year;

(12) A person "represents" him or herself before a state or municipal agency if he or she participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his or her own favor;

(13) A person "represents" another person before a state or municipal agency if he or she is authorized by that other person to act, and does in fact act, as the other person's attorney at law or his or her attorney in fact in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in favor of that other person;

(14) "Major decision-making position" means the executive or administrative head or heads of a state agency, whether elected or appointed or serving as an employee and all members of the judiciary, both state and municipal. For state agencies, a "major decision-making position" shall include the positions of deputy director, executive director, assistant director and chief of staff.

**Regulation 36-14-2 (1).**

"State or municipal elected official" means any person duly elected to or holding any elective public office pursuant to a general or special election.

**Regulation 36-14-2001 (Additional Definitions).**

(15) Complainant: A person or persons who files a sworn statement with the Commission against a person subject to the statute containing allegations of prohibited activities.

(16) Respondent: A person against whom a complaint has been filed.

(17) Business subject to direct state or municipal regulation: A business which is directly regulated by a state or municipal agency as defined herein other than in a de minimus manner.

This includes a business funded with state or municipal funds or federal funds disbursed by a state or municipal agency. If a specific regulatory body exists to control or supervise the business, and such body regulates and monitors the business' activities, it is a business subject to direct regulation. Utilities, insurance companies and regulated financial institutions are included. A business is not directly regulated because it is subject to general laws, tax or health laws for example, applicable to all businesses or, the fact that a business requires a license to operate, or a professional license is obtained. Businesses regulated by professional boards and occupational boards are excluded.

(18) Cash value interest: Cash value interest is an ownership interest or a financial interest in the nature of an investment such as bonds, notes, debentures, mortgages and similar business investment interests. Deposits in any financial institution, savings and checking accounts, shares in a credit union or a cooperative bank, life insurance policies and annuities are not included.

(19) Doing business: Engaging in a financial transaction, about which the public official has actual or constructive knowledge, which transaction constitutes a loan, purchase, sale or other type of transfer or exchange of money, goods, other property, or services for value. Doing business does not include the retail purchase of consumer goods bought primarily for personal, family or household purposes, and financial transactions of a personal nature, such as personal loans and individual insurance transactions.

(20) Income: Any money or thing of value received or to be received as a claim on future services whether in form of a fee, salary, expenses, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense that constitutes income under the Federal Internal Revenue Code.

(21) Ownership interest: An interest in stock, assets, net profits, or losses of a business. The value of an ownership interest is determined at its highest fair market value in the calendar year.

(22) Persons within the third degree of consanguinity: Persons within the third degree of consanguinity include any of the following relations: Brothers, sisters, parents, sons, daughters, grandparents, great grandparents, grandchildren. great grand- children, uncles, aunts, brothers and sisters-in- law, mothers and fathers-in-law, nieces and nephews, grandsons and granddaughters-in-law, and sons and daughters-in-law.

(23) State or municipal agency: Shall also include any group of persons, or corporations, organization, or other entity, however created, which:

(a) exercises governmental functions other than in an advisory nature, and expends public funds in excess of \$10,000 yearly, or;

(b) those entities whose directors or other governing members are appointed by or through the governing body or highest official of state or municipal government.

(24) Political party officials: Elected or appointed officers in a state, county, town or city political party organization are not elected or appointed officials subject to this act.

**Regulation 36-14-2002 Additional Definitions (see R.I. Gen. Laws 36-14-2).**

(1) "State or municipal elected official" means any person holding any elective public office pursuant to a general or special election;

(2) "State or municipal appointed official" means any officer or member of a state or municipal agency as defined herein who is appointed to an office specified by the constitution or a statute of this state or a charter or ordinance of any city or town or who is appointed by, through or with the advice and consent of a governing body, or any court, in state or municipal government, or highest official of state or municipal government;

(3) "Employees of state and local government, of boards, Commissions and agencies" means:

(a) any individual receiving a salary from a state or municipal agency, whether elected or not, on a full-time or part-time basis;

(b) any individual in the classified, non-classified and unclassified service of the judicial, executive and legislative branches of state government;

(c) any individual in the classified, non-classified and unclassified service of any municipality within the state;

(d) any individual receiving a salary from any public or quasi-public state or municipal board, commission, corporation, or other public or quasi-public agency however named; and,

(e) any state or municipal appointed official who receives a salary or stipend for their appointed service.

(4) (a) "State agency" means any department, division, agency, commission, board, office, bureau, authority, corporation or subsidiary, or quasi-public authority within the executive branch of the state government of Rhode Island, either branch of the Rhode Island general assembly, or any agency or committee thereof, the judiciary, or any other department, division, agency, commission, board, office, bureau, authority, corporation or subsidiary, or quasi-public authority that is in any branch of the Rhode Island state government and which exercises governmental functions other than in a purely advisory nature;

(b) "Municipal agency" means any department, division, agency, commission, board, office, bureau, authority, corporation or subsidiary, quasi-public authority, or school, fire or water district within Rhode Island, other than a state agency, and whether comprised of officials and employees from a single or multiple municipalities, and any other agency that is in any branch of municipal government and which exercises governmental functions other than in a purely advisory nature.

**R.I. Gen. Laws § 36-14-4 Persons subject to the Code of Ethics.** – The following persons shall be subject to the provisions of the Rhode Island Code of Ethics in government:

(1) State and municipal elected officials;

(2) State and municipal appointed officials; and

(3) Employees of state and local government, of boards, Commissions, and agencies.

**R.I. Gen. Laws § 36-14-5 Prohibited Activities.**(a) No person subject to this Code of Ethics 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 duties or employment in the public interest and of his or her responsibilities as prescribed in the laws of this state, as defined in section 36-14-7.

(b) No person subject to this Code of Ethics shall accept other employment which will either impair his or her independence of judgment as to his or her official duties or employment or require him or her, 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.

(c) No person subject to this Code of Ethics shall willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him or her in the course of and by reason of his or her official duties or employment or use any such information for the purpose of pecuniary gain.

(d) No person subject to this Code of Ethics shall use in any way his or her public office or confidential information received through his or her holding any public office to obtain financial gain, other than that provided by law, for him or herself or any person within his or her family, any business associate, or any business by which the person is employed or which the person represents.

(e) No person subject to this Code of Ethics shall:

(1) Represent him or her self before any state or municipal agency of which he or she is a member or by which he or she is employed. In cases of hardship the Ethics Commission may permit such representation upon application by the official and provided that he or she shall first:

(i) Advise the state or municipal agency in writing of the existence and the nature of his or her interest in the matter at issue, and

(ii) Recuse him or herself from voting on or otherwise participating in the agency's consideration and disposition of the matter at issue, and

(iii) Follow any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter.

(2) Represent any other person before any state or municipal agency of which he or she is a member or by which he or she is employed.

(3) Act as an expert witness before any state or municipal agency of which he or she is a member or by which he or she is employed with respect to any matter the agency's

disposition of which will or can reasonably be expected to directly result in an economic benefit or detriment to him, or herself, or any person within his or her family or any business associate of the person or any business by which the person is employed or which the person represents.

(4) Shall engage in any of the activities prohibited by subsection (e)(1), (e)(2) or (e)(3) of this section for a period of one year after he or she has officially severed his or her position with said state or municipal agency; provided, however, that this prohibition shall not pertain to a matter of public record in a court of law.

(f) No business associate of any person subject to this Code of Ethics shall represent him or herself or any other person or act as an expert witness before the state or municipal agency of which the person is a member or by which the person is employed unless:

(1) He or she shall first advise the state or municipal agency of the nature of his or her business relationship with the said person subject to this Code of Ethics; and

(2) The said person subject to this Code of Ethics shall recuse him or herself from voting on or otherwise participating in the said agency's consideration and disposition of the matter at issue.

(g) No person subject to this Code of Ethics or spouse (if not estranged) or dependent child or business associate of the person or any business by which the person is employed or which the person represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action, or judgment of the person would be influenced thereby.

(h) No person subject to this Code of Ethics and or any person within his or her family or business associate of the person or any business entity in which the person or any person within his or her family or business associate of the person has a ten percent (10%) or greater equity interest or five thousand dollars (\$5,000) or greater cash value interest, shall enter into any contract with any state or municipal agency unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded; provided, however, that contracts for professional services which have been customarily awarded without competitive bidding shall not be subject to competitive bidding if awarded through a process of public notice and disclosure of financial details.

(i) No person shall give or offer to any person covered by this Code of Ethics, or to any candidate for public office, or to any person within his or her family or business associate of any such person, or to any business by which said person is employed or which the person represents, any gift, loan, political contribution, reward or promise of future employment based on any understanding or expectation that the vote, official action or judgment of said person would be influenced thereby.

(j) No person shall use for any commercial purpose information copied from any statements required by this chapter or from lists compiled from such statements.

(k) No person shall knowingly and willfully make a false or frivolous complaint under this chapter.

(l) No candidate for public office or any person within his or her family or business associate of the candidate or any business by which the candidate is employed or which the candidate represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action or judgment of the candidate would be influenced thereby.

(m) No person subject to this Code of Ethics, shall, either directly, or indirectly, through any government agency, or through a business associate, or through any other person, threaten or intimidate any complainant or witness or any family member of any complainant or witness in any proceeding before the state Ethics Commission.

(1) In addition to any rights a complainant or witness may have under the Rhode Island Whistleblower Act, chapter 50 of title 28 or under any other statute, a complainant or witness may bring a civil action in superior court for appropriate injunctive relief, or actual damages, or both and attorney's fees within three (3) years after the occurrence of the alleged violation of section (m) above.

(2) The initiation of litigation by a complainant or witness pursuant to section (m)(1) shall not constitute a violation of any confidentiality provisions of this chapter.

(n)(1) No state elected official, while holding state office and for a period of one (1) year after leaving state office, shall seek or accept employment with any other state agency, as defined in section 36-14-2(4), other than employment which was held at the time of the official's election or at the time of enactment of this subsection, except as provided herein.

(2) Nothing contained herein shall prohibit any general officer or the general assembly from appointing any state elected official to a senior policy-making, discretionary, or confidential position on the general officer's or the general assembly's staff, and in the case of the governor, to a position as a department director; nor shall the provisions herein prohibit any state elected official from seeking or accepting a senior policy-making, discretionary, or confidential position on any general officer's or the general assembly's staff, or from seeking or accepting appointment as a department director by the governor.

(3) Nothing contained herein shall prohibit a state elected official from seeking or being elected for any other constitutional office.

(4) Nothing contained herein shall prohibit the Rhode Island Ethics Commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

(o)(1) No person holding a senior policy-making, discretionary, or confidential position on the staff of any state elected official or the general assembly shall seek or accept any other employment by any state agency as defined in section 36-14-2(4), while serving as such policy-making, discretionary, or confidential staff member and for a period of one (1)

year after leaving such state employment as a member of the state elected official's of the general assembly's senior policy-making, discretionary, or confidential staff.

(2) Notwithstanding the foregoing, a person holding a senior policy-making, discretionary, or confidential staff position who has a minimum of five (5) years of uninterrupted state service shall be exempt from the provisions of this section. "State service" as used herein means service in the classified, unclassified and nonclassified services of the state, but shall not include service in any state elective office.

(3) Nothing contained herein shall prohibit any general officer or the general assembly from appointing any such senior policy-making, discretionary, or confidential member of the staff of any state elected official or the general assembly to any other senior policy-making, discretionary, or confidential position on any general officer's or the general assembly's staff, and in the case of the governor, to a position as a department director; nor shall the provisions hereof prohibit any senior policy-making, discretionary, or confidential member of the staff of any state elected official or the general assembly from seeking or accepting any other senior policy-making, discretionary, or confidential position on any general officer's or the general assembly's staff, or from seeking or accepting appointment as a department director by the governor.

(4) Nothing contained herein shall prohibit a person holding such a senior policy-making, discretionary, or confidential staff position from seeking or being elected for any constitutional office.

(5) Nothing contained herein shall prohibit the Rhode Island Ethics Commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

#### **Regulation 36-14-5001 Access to Commission records.**

(1) All Commission records, other than those listed within R.I. Gen. Laws § 38-2-2(d) (Access to Public Records) and those relating to investigations of Complaints, shall be open to public inspection at reasonable times. Those persons wishing to shall be entitled to review said information during normal Commission hours, and upon prior notice and request. Copies of such public material shall be available to all persons subject to the payment of costs as provided for in R.I. Gen. Laws § 38-2-4.

(2) This amendment shall take effect December 18, 1991, and shall relate to any complaint filed with the Commission on or after December 18, 1991.

#### **Regulation 36-14-5002 Additional circumstances warranting recusal.**

A person subject to this Code of Ethics must also recuse himself from participation and notify, in writing, his [or her] board/agency of an interest when any of the following circumstances arises:

1. His or her spouse (if not estranged) or dependent child appears before his or her board/agency.

2. His or her business associate, spouse (if not estranged) or dependent child authorizes another person to act as attorney-at-law or attorney-in-fact and that authorized individual appears before his or her board/agency representing his or her business associate, spouse (if not estranged) or dependent child.

3. His or her employer, or the interests of his or her employer appear before his or her board/agency.

#### **Regulation 36-14-5003 Limitations on recusal.**

The notice and recusal provisions of sections 36-14-5 (e)(l) and 36-14-5(f) shall not be interpreted so as to permit a person subject to this chapter to make use of such provisions on a regular basis. If such actions occur with such frequency as to give the appearance of impropriety, the person subject to this chapter may be deemed to have violated the provisions of this chapter, unless such actions are necessitated by circumstances beyond the control of such person and are the only legal course of action available to such person in order to protect a vested property interest.

#### **Regulation 36-14-5005 Nepotism.**

The prohibitions contained herein which relate to the spouse or dependent child of a person subject to this Code of Ethics, except as to that activity described in Section 5(h), shall also pertain to any of the following relatives of such person, whether by blood, marriage or adoption: Parents, grandparents, adult children, siblings, grandchildren, uncles, aunts, nieces, nephews and first cousins.

#### **Regulation 36-14-5006 Employment From own Board.**

No elected or appointed official may accept any appointment or election by the body of which he or she is or was a member, to any position which carries with it any financial benefit or remuneration, until the expiration of one (1) year after termination of his or her membership in or on such body, unless the Ethics Commission shall give its approval for such appointment or election, and, further provided, that such approval shall not be granted unless the Ethics Commission is satisfied that denial of such employment or position would create a substantial hardship for the body, board, or municipality.

#### **Regulation 36-14-5007 Prohibition on State Employment.**

No member of the General Assembly shall seek or accept state employment as an employee or consultant, not held at the time of the member's election, while serving in the General Assembly and for a period of one (1) year after leaving legislative office.

#### **Regulation 36-14-5008 Acting as Agent or Attorney for Other than State or Municipality.**

(a) No state appointed or elected official or employee, who exercises fiscal or jurisdictional control over any state agency, board, Commission or governmental entity, shall act, for compensation, as an agent or attorney before such agency, board, Commission or

governmental entity for any person or organization in any particular matter in which the state has an interest or is a party, unless:

(1) such representation is in the proper discharge of official duties; or

(2) such official or employee is acting as a representative of a duly certified bargaining unit of state or municipal employees; or

(3) such appearance is before a state court of public record; or

(4) the particular matter before the state agency requires only ministerial acts, duties, or functions involving neither adversarial hearings nor the authority of the agency to exercise discretion or render decisions.

(b) No municipal appointed or elected official or employee, who exercises fiscal or jurisdictional control over any municipal agency, board, Commission or governmental entity, shall act, for compensation, as an agent or attorney before such agency, board, Commission or governmental entity for any person or organization in any particular matter in which the municipality has an interest or is a party, unless:

(1) such representation is in the proper discharge of official duties; or

(2) such official or employee is acting as a representative of a duly certified bargaining unit of state or municipal employees, or

(3) such appearance is before a state court of public record; or

(4) the particular matter before the municipal agency requires only ministerial acts, duties or functions involving neither adversarial hearings nor the authority of the agency to exercise discretion or render decisions.

(c) For purposes of this Regulation, "fiscal control" shall include, but is not necessarily limited to, authority to approve or allocate funds or benefits for the applicable state or municipal entity.

(d) For purposes of this Regulation, "jurisdictional control" shall include, but is not necessarily limited to, appointing authority, appellate review, or other substantive control in connection with the operation of the applicable state or municipal entity.

**Regulation 36-14-5009 Prohibited Activities - Gifts. (effective April 12, 2005)**

(a) No person subject to the Code of Ethics, either directly or as the beneficiary of a gift or other thing of value given to a spouse or dependent child, shall accept or receive any gift of cash, forbearance or forgiveness of indebtedness from an interested person, as defined herein, without the interested person receiving lawful consideration of equal or greater value in return.

(b) No person subject to the Code of Ethics, either directly or as the beneficiary of a gift or other thing of value given to a spouse or dependent child, shall accept or receive any gift(s) or other thing(s) having either a fair market value or actual cost greater than twenty-five dollars (\$25), but in no case having an aggregate fair market value or aggregate actual cost greater than seventy-five dollars (\$75) in any calendar year including, but not limited to, gifts, loans, rewards, promises of future employment, favors or services, gratuities or special discounts, from a single interested person, as defined herein, without the interested person receiving lawful consideration of equal or greater value in return.

(1) For purposes of this regulation a "single interested person" shall include all employees or representatives of an individual, business, organization or entity.

(2) The prohibitions in this section do not apply if the gift or other thing of value is:

(a) a campaign contribution as defined by the laws of the state;

(b) services to assist an official or employee in the performance of official duties and responsibilities, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents; or,

(c) a plaque or other similar item given in recognition of individual or professional services in a field of specialty or to a charitable cause;

(c) "Interested person," for purposes of this section, means a person or a representative of a person or business that has a direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or to participate in the making of, as part of his or her official duties.

(d) The prohibitions in this section do not apply if the gift or thing of economic value is given:

(1) because of the recipient's membership in a group, a majority of whose members are not persons subject to the Code of Ethics, and an equivalent gift is given or offered to other members of the group; or,

(2) by an interested person who is a person within the family of the recipient, unless the gift is given on behalf of someone who is not a member of said family.

(e) For purposes of this regulation, a gift or other thing of value is considered received when it comes into the possession or control of the person subject to the Code of Ethics, or his or her spouse or dependent child, and is a gift or other thing of value subject to the requirements of this regulation unless it is immediately returned to the interested person or given to a bona fide charitable organization without benefit accruing to the person subject to the Code of Ethics.

(f) Gifts received from interested persons prior to the effective date of the amendment to this regulation in 2005 shall continue to be subject to the reporting requirements in effect on the date that the gift was received. Accordingly, for gifts received prior to the effective date of the 2005 amendments to this regulation, it is the obligation of any person subject to the Code of Ethics to keep and maintain a record of any gift or other thing of value, as defined herein,

received from an interested person and if, during any calendar year, the aggregate amount of gifts received from interested person is \$100 or greater, shall file with the Ethics Commission, on or before January 31 of the succeeding year, a list of all gifts received from interested persons during the preceding calendar year, including:

- (1) the date the gift or other thing of value was received;
  - (2) a description of the gift or other thing of value;
  - (3) the fair market value of the gift or other thing of value;
  - (4) the name, address and employer of the interested person who provided the gift or other thing of value; and,
  - (5) the name of any organization represented by the interested person or on whose behalf the interested person was acting in providing the gift or other thing of value.
- (g) The failure of any person subject to the Code of Ethics to file the disclosure required in section (e), above, shall constitute a violation of the Code of Ethics subject to penalty.

#### **Regulation 36-14-5010 Prohibited Activities - Honoraria.**

No person subject to the Code of Ethics shall accept an honorarium, fee or reward or other compensation for any activity which may be considered part of or directly relates to said person's official duties and responsibilities unless (1) the source of the honorarium, fee, reward or other compensation is an individual or entity for which the official or employee is not vested with decision making authority within his or her official duties and responsibilities; and (2) the official or employee, when engaging in or preparing for the activity, uses his or her own time and does not make improper use of state or municipal materials or resources.

#### **Regulation 36-14-5011 Prohibited Activities - Transactions with Subordinates.**

(a) No person subject to the Code of Ethics shall engage in a financial transaction, including participating in private employment or consulting, and giving or receiving loans or monetary contributions, including charitable contributions, with a subordinate or person or business for which, in the official's or employee's official duties and responsibilities, he or she exercises supervisory responsibilities, unless (1) the financial transaction is in the normal course of a regular commercial business or occupation, (2) the subordinate or person or business described above offers or initiates the financial transaction, or (3) 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.

(b) No person subject to the Code of Ethics shall solicit or request, directly or through a surrogate, political contributions, from a subordinate for whom, in the official's or employee's official duties and responsibilities, he or she exercises supervisory responsibilities. This does not prohibit or limit the First Amendment rights of a subordinate, as defined in this section, to make political contributions.

(c) For purposes of this regulation, “subordinate” means an employee, contractor, consultant, or appointed official of the official’s or employee’s agency.

**Regulation 36-14-5013 Prohibited Activities - Restrictions on activities relating to Public boards.**

(1) No member of the General Assembly, while serving as a member of a Public Board, shall:

(a) ask, demand, solicit, accept, receive or agree to receive any gift, loan, reward, promise of future employment, favor or service, forbearance or forgiveness of indebtedness, gratuity or special discount or other thing of economic value from any person, business or other entity having a financial interest, direct or indirect, in a contract or proposed contract in which the member has participated or intends to participate or vote, and in which the Public Board on which he or she serves, is an interested party. The Prohibition in this subsection shall apply during the term of any such Contract and for a period of 12 months thereafter.

(b) ask, demand, solicit, accept, receive or agree to receive any gift, loan, reward, promise of future employment, favor or service, forbearance or forgiveness of indebtedness, gratuity or special discount or other thing of economic value from any employee, or applicant for employment of that Public Board; or,

(c) while serving as an appointed member of an executive, public or quasi-public board, authority, corporation, commission or agency, and for a period of one (1) year after leaving that office, seek or accept employment, or act as an agent, attorney, professional service provider, professional consultant, or consultant for, any business or other entity which had a financial interest, direct or indirect, in any contract or proposed contract in which the Public Board was an interested party and which was in effect at any time during his or her service on the Public Board; and

(d) The prohibitions contained in section 5013(1) shall not apply to or prohibit political contributions.

(2) No member of the General Assembly, while serving on a Public Board shall:

(a) ask, demand, solicit, accept, receive or agree to receive any political contribution from any person, business or other entity ("Vendor") having a financial interest, direct or indirect, in a contract in which the member of the General Assembly has participated or voted as a member of said Public Board. This prohibition shall apply to any Vendor from which the member of the General Assembly has received any political contribution within 12 months prior to his or her participation or vote, and, in the event said member is otherwise permitted to participate or vote, he or she shall be prohibited from accepting any such political contribution from any Vendor after such participation or vote, during the term of the contract, and for a period of 12 months thereafter.

i. The prohibitions of Section 5013(2) shall also apply to political contributions through any Political Action Committee, or similar political funding entity, owned or controlled by such Vendor.

ii. A Vendor under Section 5013(2) shall include, but not be limited to, (a): individuals, (b):

partners, (c): managers and officers of a limited liability company, and members owning a five percent or greater interest in said limited liability company, (d): directors and officers of a corporation, and shareholders of a corporation owning a five percent or greater interest in said corporation; or

(b) directly or indirectly ask, demand, or solicit any political contribution from any employee, or applicant for employment of that Public Board.

(3) The restrictions and prohibitions of Section 5013 shall not apply to matters representing arms length, bona fide contracts for which due and fair consideration has been paid and received by the parties.

(4) For purposes of this regulation, "Public Board" means all public bodies within the executive branch of the state government and all state executive, public and quasi-public authorities, corporations, commissions, councils, or agencies, provided, however, that the foregoing definition shall not apply to any such entity which (i) functions solely in an advisory capacity, or (ii) exercises solely legislative functions.

(5) This regulation shall be effective upon filing.

**Regulation 36-14-5014 Prohibited Activities - Members of the General Assembly - Restrictions on activities relating to Public boards.**

(1) No member of the General Assembly shall serve as a member of a Public Board. No member of the General Assembly shall participate in the appointment, except through advice and consent as provided by law, of any other person to serve as a member of a Public Board.

(2) For purposes of this regulation, "Public Board" means all public bodies within the executive branch of state government, and all state executive, public and quasi-public boards, authorities, corporations, commissions, councils or agencies; provided, however, that the foregoing definition shall not apply to any such entity which (i) functions solely in an advisory capacity, or (ii) exercises solely legislative functions.

(3) The effective date of this regulation is July 1, 1999.

**R.I. Gen. Laws § 36-14-6 Statement of Conflict of Interest.** –Any person subject to this Code of Ethics who, in the discharge of his or her official duties, is or may be required to take an action, make a decision or refrain therefrom that will or can reasonably be expected to directly result in an economic benefit to said person, or spouse (if not estranged) or any dependent child of said person, or business associate or any business by which said person is employed or which said person represents, shall, before taking any such action or refraining therefrom:

(1) Prepare a written statement sworn to under the penalties for perjury describing the matter requiring action and the nature of the potential conflict; if he or she is a member of a legislative body and he or she does not request that he or she be excused from voting, deliberating or taking action on the matter, the statement shall state why, despite the potential conflict, he or she is able to vote and otherwise participate fairly, objectively and in the public interest; and

(2) Deliver a copy of the statement to the Commission, and:

(i) If he or she is a member of the general assembly or of any city or town legislative body he or she shall deliver a copy of the statement to the presiding officer of the body, who shall cause the statement to be recorded in the journal of the body and, upon request of the member, may excuse the member from votes, deliberations or any other action on the matter on which a potential conflict exists; or

(ii) If said person is not a legislator, his or her superior, if any, shall, if reasonably possible, assign the matter to another person who does not have a Conflict of Interest. If he or she has no immediate superior, he or she shall take such steps as the Commission shall prescribe through rules or regulations to remove himself or herself from influence over any action on the matter on which the Conflict of Interest exists.

**R.I. Gen. Laws § 36-14-7 Interest in conflict with discharge of duties.** –(a) A person subject to this Code of Ethics has an interest which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities as prescribed in the laws of this state, if he or she has reason to believe or expect that he or she or any person within his or her family or any business associate, or any business by which the person is employed or which the person represents will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity.

(b) A person subject to this Code of Ethics does not have an interest which is in substantial conflict with the proper discharge of his or her duties in the public interest and of his or her responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to him or her or any person within his or her family or any business associate, or any business by which the person is employed or which the person represents, as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group.

**Regulation 36-14-7003 Public forum exceptions.**

No violation of this Chapter or regulations shall result by virtue of any person publicly expressing his or her own viewpoints in a public forum on any matter of general public interest or on any matter which directly affects said individual or his or her spouse or dependent child.

**Regulation 36-14-8001 Public forum exceptions.**

The prohibitions contained in R.I. Gen. Laws § 36-14-8(f) and regulations thereto shall in no way be construed to limit or prevent any individual who is a member or employee of the Commission from publicly expressing his or her own viewpoints in a public forum on any matter of general public interest or on any matter which directly affects said individual or his or her spouse or dependent child, unless otherwise specifically prohibited by this chapter.

**Regulation 36-14-8002 Additional officers.**

There shall be a secretary elected in accordance with section 36-14-8(d) herein.

In the event of the absence of both the chairperson and the vice chairperson, the secretary shall preside. An assistant secretary pro tem shall act as secretary in the event of the secretary presiding at the meeting or in the event of the secretary's absence.

**Regulation 36-14-9001 Annual report requests.**

On or before the last Friday in December of each year, the Commission shall cause to be mailed, by first class mail, postage prepaid, an inquiry and roster from the then current records of the Commission to the clerk of each city and town and the state. Said inquiry shall include the definitions of those persons subject to the Code of Ethics (section 36-14-2 (1), (2), and (3)), and shall direct the clerk to furnish the title, names and address of those persons subject to the Code of Ethics for each town who do not appear on said roster, and to furnish said information for replacement of any additional persons subject to the code during the next succeeding twelve (12) month period.

**Regulation 36-14-12002 Time for Investigations .**

Pursuant to R.I. Gen. Laws § 36-14-12©, upon receipt of a written complaint alleging a violation of this chapter, the Commission shall within one hundred eighty (180) days of the receipt of the written complaint complete its investigation; provided, that the Commission may, for good cause shown, grant no more than two (2) extensions of sixty (60) days each, as follows:

(a) Requests to the Commission for extensions of sixty (60) days to complete investigations shall be submitted in writing to the full Commission by the Executive Director or his/her designee at least fifteen (15) days prior to the expiration of the initial one hundred eighty day (180) period or of an initial sixty (60) day extension, as the case may be.

(b) Requests to the Commission pursuant to subsection (a), above, shall be submitted ex parte to the Commission and determinations of good cause shown shall be made upon a review and consideration of the full record before the Commission at the time the request is made.

© All proceedings before the Commission relating to requests for extensions of time pursuant to subsections (a) and (b), above, shall be stenographically transcribed.

(d) Upon completion of the investigation of a complaint, and prior to proceedings by the Commission as to a finding of probable cause regarding allegations of the complaint, all records relating to any determination(s) of extensions for good cause shown, including any stenographic transcripts made pursuant to subsection ©, above, shall be available to the subject of a complaint and/or his/her counsel.

**R.I. Gen. Laws § 36-14-16 Financial statement to be filed.** –(a) On or before the last Friday in April of each year, the following officials and employees subject to this code of ethics shall file with the commission a financial statement complying with the requirements of this chapter:

(1) all state elected officials;

(2) all state appointed officials;

(3) all state appointed officials and employees who hold a major decision-making position in a state agency;

(4) all municipal elected officials ; and

(5) all municipal appointed officials whose official duties and responsibilities include exercising decision-making authority over the expenditure of more than fifty thousand dollars (\$50,000) in public funds in any fiscal or calendar year, and expressly including solicitors and assistant solicitors, police chiefs, fire chiefs, superintendents of schools, principals, superintendents and administrators of charter schools, board members of charter schools, principals, superintendents and administrators of state schools, board members of state schools, building inspectors, members of planning boards, zoning boards, licensing boards and tax appeal boards. This subsection shall also include all municipal appointed officials whose official duties and responsibilities include nominating, appointing or hiring any persons that will receive compensation of more than fifty thousand dollars (\$50,000) in public funds in any fiscal or calendar year.

(b) In the case of the appointment of state and municipal appointed officials on and after January 1, 1988, the appointee shall file the financial statement within thirty (30) days after the date of his or her appointment or the date he or she qualifies for the office; provided, however that in the case of the appointment of officials that require senate confirmation, the appointee shall file the financial statement with the appropriate senate committee prior to the institution of those confirmation proceedings.

(c) Within thirty (30) days after the filing deadline, every person who is a candidate for an office as an elected officer, except those candidates for moderator and clerk of a voting district of the cities and towns, shall file the financial statement as required by this chapter. The commission shall grant an extension for good cause shown of not more than fifteen (15) days, provided a request for the extension is received prior to the filing deadline for the financial statement.

(d) Except as otherwise provided in this chapter, at least thirty (30) days before the deadline date for the filing of a financial statement by each individual required to file, the commission shall mail to the individual a copy of the financial statement form. In the case of candidates other than those covered by subsection (f) of this section, the forms shall be mailed within ten (10) days after the filing deadline date. In the case of appointed officers covered by this section, the forms shall be mailed within seven (7) days after the date of the appointment.

(e) If a person has filed a financial statement as required by one subsection of this section covering the preceding calendar year, he or she is not required to file a financial statement as required by another subsection if, before the deadline for filing under the other subsection, he or she notifies the commission in writing that he or she has already filed a financial statement under the subsection specified.

(f) A person required to file a financial statement under subsection (a) of this section may request the commission to grant an extension of time of not more than sixty (60) days for filing the statement. The commission shall grant extension of not more than sixty (60) days if the request is received prior to the filing deadline or if a timely filing or request for extension is prevented because of physical or mental incapacity. Not more than one extension may be given to a person in one year except for good cause shown.

(g) The deadline for filing any statement required by this section is 5:00 p.m. of the last day designated in the pertinent subsection of this section for filing the statement. When the last day of filing falls on a Saturday or Sunday or an official state holiday, the deadline for filing is extended to 5:00 p.m. of the next day which is not a Saturday or Sunday or holiday. Any statement required by any provision of this section to be filed within a specified time period shall be deemed to be timely filed if it is placed in the United States post office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to the statement. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the statement may show by competent evidence that the actual date of posting was to the contrary.

**Regulation 36-14-16004 Continuing duty to file a financial statement after leaving office.**

When a public official who is required to file a financial disclosure statement leaves office, such official shall have a continuing duty to file a timely financial statement covering the last calendar year during any part of which the office was held, unless the official's tenure expired prior to the end of January in the particular year.

**R.I. Gen. Laws § 36-14-17 Content of financial statement.** --(a) The financial statement required herein shall be on a form prescribed by the Commission and shall include the account of the financial activity of the person required to file the statement by this chapter and the financial activity of his or her spouse (if not estranged) and any dependent children for the preceding calendar year.

(b) The account of financial activity referred to in subsection (a) of this section shall consist of:

(1) If he or she or any person enumerated in subsection (a) of this section or a business entity in which he or she or any person enumerated as aforesaid held a ten percent (10%) or greater equity interest or five thousand dollars (\$5,000) or greater cash value interest at any time during the calendar year for which the statement is required has done business with a state or municipal agency or a business which is subject to direct regulation greater than of a de minimus nature by a state or municipal agency, and if so, the date and nature of the business;

(2) A list of all sources of occupational income identified by employer, or if self-employed, by the nature of occupation or profession, and if income was received from a state or municipal agency, the name and address of such agency and the nature of the services rendered;

(3) A listing of all real property in which a financial interest was held; however, this section shall not apply to real property used exclusively as his or her principal residence;

(4) Identification of any person, business entity, or other organization from whom the person or his or her spouse (if not estranged) or any dependent child received a gift or contribution of money or property in excess of one hundred dollars (\$100) in value or a series of gifts or contributions of money or property, the total of which exceeds one hundred dollars (\$100) in value received from the same source, and a description of each gift or contributions, except those received from persons related to the person at any time within the third degree of consanguinity or affinity and campaign contributions which were reported as required by law;

(5) Identification of the source of all income received as beneficiary of a trust and identification of each asset, if known to the beneficiary, from which income was received by the beneficiary in excess of one thousand dollars (\$1,000);

(6) A list of all boards of directors of which the person is a member and the executive positions which he or she holds in any business entity, stating the name and address of each such business entity;

(7) The name and address of any business entity in which he or she or any person enumerated in subsection (a) of this section held a ten percent (10%) or greater equity interest or five thousand dollars (\$5,000) or greater cash value interest at any time during the calendar year for which the statement is required; and

(8)(i) Identification of any person, business entity, financial institution or other organization to whom the person was indebted at any time during the calendar year for which the statement is required in an amount in excess of one thousand dollars (\$1,000) other than

(A) Any person related to the person at any time within the third degree of consanguinity or affinity or

(B) Any transactions involving credit cards, or

(C) Any indebtedness to a financial institution, licensed and regulated by any state or by the United States, which is secured solely by a mortgage of record on real property used exclusively as the principal residence of the person required to file the statement.

(ii) This section does not require the reporting of the amount or amounts of indebtedness or the payment record of the loans.

(c) The financial statement shall be sworn to under oath.

### **Regulation 36-14-17001 Occupational income.**

The name and address of any employer from which the public official, his or her spouse or dependent child, (individually or collectively) received one thousand dollars (\$1,000) or more gross income must be listed. If self-employed, any occupation or profession from which the public official his or her spouse, or dependent child (individually or collectively) received one thousand dollars (\$1,000) or more gross income. If the employer is a state or municipal agency or if self-employed and services for in excess of two hundred and fifty dollars (\$250) were rendered to a state or municipal agency, the period of employment or dates services were rendered and the specific nature of the services must be listed.

### **Regulation 36-14-17002 Executive positions.**

The name and address of any business as defined in R.I. Gen. Laws § 36-14-2(5) which the public official, his or her spouse or dependent child is a director, officer, partner, trustee, or holds a supervisory management position must be listed.

### **Regulation 36-14-17003 Real estate interest.**

A financial interest in real estate shall include direct as well as indirect ownership through a trust or other entity, mortgages, options to buy, sell, or lease for a long term, and other interests in real estate, held individually or collectively by persons under section 36-14-17(a).

### **Regulation 36-14-17004 Trust income.**

Disclosure of income as beneficiary of a trust shall include identification of the particular trustee, and asset or assets which generated such income.

### **Regulation 36-14-17005 Business positions.**

Membership in a business entity necessitating disclosure shall include status as a member of a board of directors, officer, partner, trustee, or the holding of any other similar executive position in a business.

### **Regulation 36-14-17006 Doing business with a state or municipal agency.**

Transactions reportable under R.I. Gen. Laws § 36-14-17(b)(1) shall include any transaction or transactions which together exceed two hundred fifty dollars (\$250) at any time during the calendar year.

### **Regulation 36-14-17007 Business interest.**

Disclosure of business interest under section 36-14-17(b)(1) shall include an ownership interest of ten percent (10%) or greater, or a cash value interest amounting to five thousand dollars (\$5,000) or greater, individually or collectively relating to all persons under section 36-14-17(a), at any time during the calendar year.

**R.I. Gen. Laws § 36-14-18 Disclosure of regulated business interests.**—(a) Every person who is required to file a financial statement pursuant to this chapter and who has, acquires, or divests him or herself of ten percent (10%) or greater equity interest or five thousand dollars (\$5,000) or greater cash value interest in a business entity which is subject to direct regulation, greater than of a de minimus nature, by a state or municipal agency, or which does any business with a state or municipal agency, shall file with the Commission at the times specified by this chapter, an affidavit:

(1) Identifying him or herself and stating the capacity in which he serves or is about to serve which occasions the filing of the affidavit;

(2) Identifying the business entity (or each business entity);

(3) Identifying the regulatory agency or agencies;

(4) Stating the nature of his or her interest in the business entity;

(5) Describing the manner in which the business entity is subject to regulation;  
and

(6) Stating whether the interest is held, or was acquired or divested, and if acquired or divested, when.

(b) The nature of an interest in a business entity shall be described in specific language.

I Every state or municipal official to which this section applies who holds office on January 1, 1988, and, who has any interest required to be reported pursuant to this section, shall file the affidavit within ninety (90) days after January 1, 1988.

(d) If a state or municipal official to which this section applies, acquires or divests him or herself of an interest, required to be reported pursuant to this section, he or she shall file the affidavit within thirty (30) days after the date the interest was acquired or divested.

(e) In the case of appointments made after January 1, 1988, a state or municipal official who has any interest required to be reported pursuant to this section shall file the affidavit within thirty (30) days after the date of his or her appointment or the date he qualifies for the office.

**R.I. Gen. Laws § 36-14-19 Penalties.**—Any person who knowingly and willfully violates the provisions of this chapter shall, in addition to the civil penalties provided herein, be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) and/or imprisonment for no longer than one (1) year.

# **RHODE ISLAND ETHICS COMMISSION PROCEDURAL REGULATIONS**

## **Regulation 1000 - Preliminary Review of Information.**

The Executive Director or designee may review any information which indicates a possible violation of the Rhode Island Code of Ethics with the Commission in Executive Session and may thereupon conduct a preliminary investigation. The Executive Director or designee shall report to the Commission regarding such preliminary investigation.

## **Regulation 1001 - Filing of Complaint.**

(a) The Rhode Island Ethics Commission shall investigate allegations of violation of the Rhode Island Code of Ethics. The Commission may proceed to investigate allegations of violations by:

(1) accepting any information which indicates a possible violation of the Rhode Island Code of Ethics. The Executive Director or designee shall be responsible for the review and processing of such information in order to determine whether to conduct a preliminary investigation which may form the basis of a Commission Complaint, which the Commission may file on its own initiative.

(2) accepting the filing of a Complaint by any person, business, state or municipal agency, or any other public body, which alleges a violation of the Code of Ethics. Such Complaint should be signed under oath and should set forth the name of the person who has allegedly violated the Code of Ethics, and should state in detail the specific acts which form the basis of the Complaint. Any such Complaint filed with the Commission should be made on a form provided by the Commission at no cost to the Complainant.

(b) Any Complaint filed with the Commission and all documents in the Commission's official Complaint file relating to such Complaint shall be a public record, except as provided in subparagraph (c) of this Regulation.

(c) All documents or other material related to the investigation of the Complaint, including but not limited to records of counsel and investigators, and interviews of witnesses, whether written or recorded by other means, shall remain confidential, provided that nothing herein shall prohibit the Commission from granting access to the above-described investigative documents or materials to law enforcement agencies.

(d) Any person or entity which files such Complaint is not a party in interest to any action taken by the Commission. The people of the State of Rhode Island and the Respondent shall be the parties in interest. Notice by a Complainant that he or she wishes to withdraw a Complaint shall in no way affect the continuing jurisdiction of the Commission over the Complaint.

### **Regulation 1002 - Review of Complaint.**

(a) Any Complaint filed shall be reviewed as to form. If the Complaint is defective as to form, it shall be returned to the Complainant for correction. If it is not returned to the Commission by the Complainant within twenty (20) days of mailing by the Commission, the Complaint shall not be processed as filed.

(1) Notwithstanding subparagraph (a) of this Regulation, if the Executive Director or designee determines that the facts stated in a defective Complaint are sufficient to allege a violation of the Code of Ethics, the Executive Director or designee may initiate a preliminary investigation, regardless of any defects as to form, or the failure of the Complainant to re-file the Complaint.

(2) If the Complaint contains no defect as to form, it shall be reviewed by the Executive Director or designee to determine whether or not the Complaint alleges facts sufficient to constitute a knowing and willful violation of the Code of Ethics, who shall forward the Complaint to the Commission for review at an initial determination.

(b) Subsequent to receipt of a Complaint in proper form, within three (3) working days, the Complainant and Respondent shall be mailed a copy of the Complaint, Notification of Receipt of Complaint, and a copy of the Code of Ethics and any Regulations promulgated thereto.

### **Regulation 1003 - Initial Determination of Complaint.**

(a) If the Commission determines that the Complaint fails to allege facts sufficient to constitute a knowing and willful violation of the Code of Ethics, the Complaint shall be dismissed and the Respondent and Complainant shall be mailed a written notification of the dismissal within three (3) working days.

(b) If the Commission determines that the Complaint alleges facts sufficient to constitute a knowing and willful violation of the Code of Ethics, the Commission shall promptly investigate the allegations contained therein. The Respondent and Complainant shall also be sent any written notification regarding such initial determination by the Commission within three (3) working days.

### **Regulation 1004 - Investigation of Complaint.**

(a) Upon determining that the Complaint states facts sufficient to constitute a knowing and willful violation, the Commission shall have the power to investigate any and all alleged violations of the Code of Ethics. In furtherance of said investigation, the Commission shall have the power to:

(1) compel the attendance of witnesses and require the production of documentary evidence; and

(2) take oral or written evidence under oath or affirmation. Each Commissioner, the Executive Director or designee, and investigators shall have the authority and power to administer oaths and affirmations.

(b) Upon receipt of a written Complaint alleging a violation of the Code of Ethics, the Commission shall complete its investigation within one hundred eighty (180) days of receipt of the written Complaint, provided that the Commission may grant no more two (2) extensions of sixty (60) days each, for good cause shown.

#### **Regulation 1005 - Filing a Response.**

The Respondent shall be mailed a copy of the Commission's Initial Determination that the Complaint properly alleges a knowing and willful violation of the Code of Ethics, which will be investigated by the Commission. The Respondent shall be further notified of the right to file a response under oath within twenty (20) days of the mailing date on forms provided by the Commission.

#### **Regulation 1006 - Finding of Probable Cause.**

(a) The Executive Director or designee shall submit a written report to the Commission summarizing the results of the investigation. The Executive Director or designee may make a recommendation as to the existence or non-existence of probable cause. A copy of this written report shall be sent to the Respondent and/or counsel no less than fourteen (14) days before the scheduled hearing regarding the existence of probable cause. A copy of any report, and written response thereto, so submitted shall be made public and a part of the official Commission Complaint file, upon the issuance by the Commission of either a Finding of Probable Cause or a Dismissal of the Complaint.

(b) The Commission shall permit the Respondent and/or counsel to submit a written statement and/or to appear for the purpose of presenting arguments and/or written evidence in response to the allegations against him or her. Any Complainant in the Complaint at issue may also attend the hearing regarding the existence of probable cause.

(c) The Commission shall consider the Complaint, any amendment thereto, the written report submitted by the Executive Director or designee, and recommendation, if any, and any response submitted by the Respondent and/or counsel, in addition to any arguments or statements made thereupon by the Executive Director or designee and the Respondent and/or counsel, in finding the existence of probable cause. The Commission shall conduct its hearing regarding probable cause in Executive Session as an investigative proceeding, pursuant to R.I. Gen. Laws § 42-46-5(a)(4).

(1) If the Commission finds that probable cause does not exist, the Complaint shall be dismissed with prejudice and the Respondent and the Complainant, if any, shall be sent a copy of the Dismissal of the Complaint within three (3) working days of such issuance. A Complaint dismissed for lack of probable cause shall not be entertained again by the Commission unless new facts are discovered which materially add to the Complaint.

(2) If the Commission finds that probable cause exists to support the allegations of the Complaint, its findings shall state in detail such violations complained of and the manner in which they occurred. A copy of the Finding shall be mailed to the Respondent and the Complainant, if any, within three (3) working days of such issuance. The Commission shall schedule an adjudicative hearing on the matter. The Finding of Probable Cause constitutes the official Commission Complaint upon which the hearing shall be held.

**Regulation 1007 - Amendment of the Complaint by the Commission.**

If the investigation reveals probable cause exists to believe that violations of the Code of Ethics have been committed, other than those contained in the Complaint, the Commission may amend the Complaint to include such other violations. Any amended Complaint shall be mailed to the Respondent and Complainant, if any, within three (3) working days of such issuance. The Respondent shall have twenty (20) days from the date such amended Complaint is mailed to file a response thereto. Any action by the Commission on such amendment shall be made part of the Commission's findings.

**Regulation 1008 - Discovery.**

(a) No discovery between the Executive Director or designee and the Respondent shall be permitted prior to the issuance of the Commission's Finding of Probable Cause, provided, however, that this limitation on discovery shall in no way limit the authority of the Commission or staff to conduct its investigation or to subpoena required documents or witnesses as reasonably necessary. No adjudicative hearing shall be scheduled until such time as the Executive Director or designee and the Respondent and/or counsel are afforded a reasonable opportunity to conduct discovery pursuant to this Regulation.

(b) The Respondent and/or Respondent's counsel and the Executive Director or designee may request discovery only in accordance with this Regulation.

(c) Within twenty (20) days after receiving a request, the party to whom the request is directed shall furnish the requesting party with:

(1) the names, addresses and official positions, if any, of all individuals who are known to have information which is relevant to the allegations contained in the Finding of Probable Cause;

(2) a copy of all documents which are known to be relevant to the allegations contained in the Finding of Probable Cause.

(d) The obligation to provide discovery as specified in this Regulation shall be a continuing duty to disclose, and, if subsequent to compliance with the obligation to provide discovery either the Executive Director or designee or the Respondent and/or counsel discovers additional material which is subject to disclosure or has been requested under this Regulation, such disclosure shall be promptly made as required herein.

(e) If at any time during the course of the proceedings the Commission finds that the Executive Director or designee, or the Respondent and/or counsel, has failed to comply with this Regulation, it may prohibit introduction into evidence of the material or the testimony which was not disclosed.

(f) Except as provided for in this Regulation, no other discovery shall be permitted, including interrogatories, depositions or any other discovery mechanism, unless allowed by the Commission upon good cause shown.

#### **Regulation 1009 - Subpoena.**

Subject to the provisions of Regulation 1008, a subpoena to compel the production of evidence or the attendance of witnesses regarding any matter pending before the Commission may be issued upon the filing of an affidavit by the Executive Director or designee, or by the Respondent and/or counsel, detailing the specific persons or documents to be subpoenaed and their relevance to the matter at issue. Any Commission member shall be authorized to issue a subpoena.

#### **Regulation 1010 - Taking of Oral or Written Evidence Under Oath.**

Any member of the Commission shall have the authority to take oral or written evidence and administer oaths in any matter pending before the Commission.

#### **Regulation 1011 - Informal Disposition.**

(a) At any time subsequent to a finding by the Commission that the Complaint, and any amendment thereto, states a knowing and willful violation of the Code of Ethics, the Executive Director or designee, with the concurrence of the Respondent and/or counsel, may seek an informal disposition through an agreed settlement, consent order, or other informal resolution of the pending Complaint.

(b) The Executive Director or designee may meet with the Respondent and/or counsel for an informal conference to seek such informal disposition. The informal conference shall not be transcribed or recorded and no statements made by any person at such conference shall be used as evidence in any subsequent proceeding.

(c) These Regulations shall in no way limit the resolution of any matter pursuant to R.I. Gen. Laws § 42-35-9(d), provided that any informal disposition of a pending Complaint shall be subject to the approval of the number of Commission members otherwise required to vote in the affirmative to find a violation of the Code of Ethics. For purposes of this Regulation, any hearing conducted by the Commission to review an informal disposition, prior to its approval and issuance, shall be treated as a proceeding in Executive Session, pursuant to R.I. Gen. Laws § 42-35-5(a)(4). The approved informal disposition of the Complaint shall become a public record.

(d) If the Complaint at issue has been filed by a Complainant, he or she shall be sent a copy of the proposed informal disposition and may attend the hearing scheduled to be held by the Commission to review said disposition.

**Regulation 1012 - Prehearing Motions.**

Unless good cause is shown, all prehearing motions shall be filed in writing no later than five (5) days prior to the date set for any hearing held pursuant to these Regulations. The motion shall be disposed of by order of the Commission with or without oral argument in the Commission's discretion. Nothing herein shall prevent or require the filing of a written objection to any such motion. All hearings conducted by the Commission related to any motion filed pursuant to this Regulation, subsequent to the issuance of a Finding of Probable Cause, shall be open to the public.

**Regulation 1013 - Continuances.**

Except in emergency cases or by agreement of counsel, any continuance shall be requested in writing stating the reasons therefore and received by the Commission at least two (2) days prior to the hearing. Oral arguments thereupon shall be within the discretion of the Commission, and the period of the continuance shall extend any time period in which the Commission may be otherwise required to act.

**Regulation 1014 - Scheduling of Hearings.**

Unless good cause is shown, the Respondent shall be given at least fifteen (15) days notice prior to any scheduled adjudicative hearing by the Commission. Failure by any counsel to appear must be documented on the record by proof of actual engagement in Superior or Federal Court or the Supreme Court of Rhode Island.

**Regulation 1015 - Hearing to Determine Violation of the Code of Ethics.**

(a) Adjudicative hearings shall be conducted consistent with these Regulations. The Chair of the Commission, or the Chair's designee, shall act as the presiding officer. All hearings conducted by the Commission subsequent to the issuance of a Finding of Probable Cause shall be open to the public, except for any hearing conducted by the Commission to review an informal disposition prior to its approval and issuance, pursuant to Regulation 1011. Any such hearing shall be treated as a proceeding in Executive Session, pursuant to R.I. Gen. Laws § 42-35-5(a)(4).

(b) The Executive Director or designee shall present the case against the Respondent.

(c) The Respondent may either represent himself or herself or appear through counsel.

(d) Unless waived by the Respondent, the presiding officer shall read aloud the Finding of Probable Cause. The Respondent shall then either admit or deny such Finding of Probable Cause.

(e) The Executive Director or designee may make an opening statement. The Respondent and/or counsel may next make an opening statement or delay such statement until the presentation of the Respondent's case.

(f) Oral evidence shall be taken only on oath or affirmation.

(g) The Executive Director or designee and the Respondent and/or counsel shall have the right to compel attendance of witnesses, to compel the production of documents, to examine witnesses and cross-examine opposing witnesses, to introduce exhibits and otherwise to present matters to the Commission relevant to the Complaint.

(h) Commission members may ask questions of each witness during the hearing.

(i) The Respondent and/or counsel may make a closing statement followed by the closing statement of the Executive Director or designee.

(j) A stenographic record shall be made of all evidentiary hearings conducted pursuant to this Regulation. If the Respondent desires a copy of the stenographic record, he or she must make arrangements with the stenographer and bear all costs. The original stenographic record shall be filed with the Commission.

#### **Regulation 1016 - Rules of Evidence; Standard of Proof.**

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in administrative proceedings shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under strict rules of evidence may be admitted, if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and generally admissible in administrative proceedings.

(b) The Commission shall give effect to the rules of privilege recognized by law. Objections to the introduction of evidence may be made and shall be noted on the record and the Commission may permit offers of proof to be made. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(c) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy to the original.

(d) Notice may be taken of judicially cognizable facts. The civil standard of proof, preponderance of the evidence, shall apply.

### **Regulation 1017 - Issuance of Decision.**

(a) At the conclusion of all evidentiary hearings concerning the alleged violation, the Commission shall immediately begin deliberations on the evidence in Executive Session and proceed to determine whether there has been a knowing and willful violation of the Code of Ethics.

(b) Legal Counsel to the Commission may not participate in the deliberations of the Commission. Counsel shall respond to questions of law posed by Commission members.

(c) In order for the Commission to issue a decision that there has been a knowing and willful violation of the Code of Ethics, it shall be necessary that a majority of members who have attended all hearings, but in no case fewer than three (3) members of the Commission, shall vote in the affirmative to so find.

(d) The written decision shall contain findings of fact and conclusions of law, and shall be reviewed by all members participating in the deliberations. The decision is rendered on the date on which the presiding officer affixes his signature.

### **Regulation 1018 - Quorum Requirement.**

For any action of the Commission to be taken by the Commission, there shall be a quorum of five (5) members present. For every two members who recuse themselves from participation in a particular hearing, the number required for quorum shall be reduced by one (1).

### **Regulation 1019 - Continuance for Commissioner Unavailability.**

If the quorum requirements set forth in Regulation 1017 are not satisfied at any scheduled proceeding of the Commission, said proceeding shall automatically be continued to the next available hearing date when a sufficient number of Commission members will be present.

### **Regulation 1020 - Enforcement.**

The Commission, upon a finding that there has been such a violation of the Code of Ethics, shall issue an order that may:

(a) require such violator to cease and desist such violation of the provisions of the Code of Ethics; and/or

(b) require such violator to file any report, statement, or other information as required by the Code of Ethics; and/or

(c) require such violator to pay a civil penalty of not more than twenty-five thousand dollars (\$25,000.00) for each such violation of the Code of Ethics and the pecuniary value of any unjust enrichment realized by the violator as the result of his or her violation of the Code of Ethics; and/or

(d) remove such violator from office who is not subject to impeachment, provided that such removal may only occur upon the affirmative vote of two-thirds (2/3) of those members of the Commission participating in the issuance of the decision and order, and further, that such removal shall be conditioned upon a finding by the Commission that the conduct of the violator was a knowing, willful, wanton and reckless violation of the prohibited activities provisions of the Code of Ethics;

(e) refer the entire record of its proceedings to the Attorney General, or any appropriate law enforcement agency. Such referral shall not affect any continuing jurisdiction of the Commission over the matter.

#### **Regulation 1021 - Request for New Hearing or Modification of Decision.**

(a) A request for a new hearing or modification of a decision of the Commission may only be made by the Executive Director or designee or the Respondent and/or counsel within fourteen (14) days of the date on which the decision is mailed.

(b) Such request shall be in writing and shall state the reasons for the requested new hearing or modification of the decision. Any such request shall be handled as a priority matter by the Commission. No oral arguments shall be heard unless requested by the Commission.

(c) In order for the Commission to order a new hearing or modification of the decision, it shall be necessary that a majority of the members who attended all hearings, but in no case fewer than three (3) of said members, shall so vote.

(d) The Respondent, and Complainant, if any, shall be notified of the Commission's action regarding the request for a new hearing or modification of the decision.

(e) If a new hearing is granted, the Respondent, and Complainant, if any, shall be notified of the new hearing date. If the request is denied, appeal may be taken pursuant to R.I. Gen. Laws § 42-35-15.

#### **Regulation 1022 - Judicial Review.**

Any final decision of the Commission may be subject to judicial review pursuant to R.I. Gen. Laws § 42-35-15.

#### **Regulation 1023 - Procedure for Complaints Relating to Financial Disclosure.**

Complaints which solely relate to alleged violations of the Code of Ethics regarding either delinquent or deficient financial disclosure statements, shall be processed pursuant to the procedures set forth in this Regulation, unless otherwise determined by the Commission.

(a) The Commission shall adopt, by a majority vote, a schedule of fines and penalties to which a Respondent shall be subject if he or she consents to the entry of a finding of a violation for failure to file a financial disclosure statement which complies with the requirements of the Code of Ethics, in violation thereof. Such schedule shall not apply to any adjudicative hearing as described in subparagraph (e) of this Regulation.

(b) Whenever records of the Commission reveal that a person required to file a financial disclosure statement has not complied with the requirements of the Code of Ethics, the Executive Director or designee may file a Complaint against said person, accompanied by an affidavit specifying the basis upon which the Respondent is required to file such statement, and setting forth in detail any non-compliance.

(c) Upon the filing of any Complaint described above in Regulation 1021(b), a copy of the Complaint and copies of all documents supporting such Complaint shall be mailed to the Respondent by certified mail, along with a copy of the Code of Ethics, Commission Regulations, waiver of right to appear, stipulation and agreement, and the schedule of fines and penalties adopted pursuant to this Regulation.

(d) If the Respondent agrees to the waiver of his or [her] right to appear and pays the appropriate fine as determined by the above-described schedule, and properly files any delinquent or deficient financial disclosure statement, and stipulation and agreement, no hearing on the matter will be required.

(e) If the Respondent contests the Complaint described above in Regulation 1021(b), the Commission shall conduct a proceeding regarding probable cause, pursuant to Regulation 1005, and, should a Finding of Probable Cause issue, the Commission shall conduct a hearing thereupon, pursuant to Regulation 1014.

#### **Regulation 1024 - Advisory Opinions.**

(a) A person subject to the Code of Ethics may request an advisory opinion relative to the provisions of the Code which may affect him or her. An entity subject to the Code may request an advisory opinion relative to the provisions of the Code which may affect all members of the entity, or a majority thereof. The request shall be in writing, include a complete statement of the facts, disclose the reasons for requesting the opinion and state any time period for Commission action which may be significant. The request shall be signed by the person requesting the opinion or by his or her representative.

(b) Upon receipt of the request for an advisory opinion, the Commission shall acknowledge the request and the right to submit supporting data.

- (c) The Commission shall notify the person or entity requesting the opinion of the date the Commission intends to consider the request. All requests for advisory opinions shall be considered by the Commission in Open Session.
- (d) The Commission, in its discretion, may invite the person or entity requesting an opinion, counsel, or any other interested person, to make a written or oral presentation.
- (e) Any advisory opinion rendered by the Commission regarding provisions of the Code of Ethics must be approved, prior to issuance, by a majority of the members of the Commission.
- (f) Any advisory opinion rendered by the Commission, until amended or revoked by a majority of the Commission, shall be binding on the Commission in any subsequent proceeding concerning the person or entity who requested the opinion and who acted in reliance on it in good faith, unless material facts were omitted or misstated in the request for the opinion.
- (g) Advisory opinions are based upon the representations made by, or on behalf of the person or entity requesting the opinion, and are not the result of adversary or investigative proceedings.
- (h) The Commission may issue general advisory opinions and emergency advisory opinions in such form and under such circumstances as the Commission shall deem appropriate.

**Regulation 1025 - Declaratory Ruling by Commission.**

Any interested person may petition the Commission for a declaratory ruling as to the applicability of any provision of the Code of Ethics or of any regulation or order of the Commission. The Commission shall promptly respond to each such petition. Any ruling disposing of petitions shall have the same status as Commission orders in contested cases.

**Regulation 1026 - Petition for Adoption of Regulations.**

- (a) Any interested person may petition the Commission for the promulgation, amendment, repeal or adoption of any regulation. The petition shall be signed by the petitioner and shall state the specific reasons for the request. The Commission shall thereafter acknowledge receipt of the petition and advise the petitioner of the right to submit supporting data.
- (b) Within thirty (30) days of receipt of the petition, the Commission shall either deny the petition in writing (stating its reasons for the denial) or initiate rule-making procedures in accordance with R.I. Gen. Laws § 42-35-3.
- (c) The Commission shall notify the petitioner of the date the Commission intends to consider the petition and may, at its discretion, invite the petitioner or other interested parties to make oral or written presentation.

**Regulation 1027 - Adoption of Commission Policy and General Commission Advisory Opinions.**

Final adoption of any policy or general Commission advisory opinion shall require an affirmative vote at two separate meetings of the Commission. The initial vote may occur at any public meeting of the Commission. The second or final vote shall only be taken after the proposed policy or general advisory opinion has been incorporated by specific reference on a public meeting notice relating to an open and public meeting of the Commission, thereby providing an opportunity for public comment on any proposed policy or general advisory opinion. Specifically excluded from these policies are any proposed regulations which are subject to promulgation pursuant to R.I. Gen. Laws § 42-35-3.

**Regulation 1028 - Commission Records.**

(a) All Commission records, other than those referenced in R.I. Gen. Laws § 38-2-2(d) (Access to Public Records) and those relating to the investigations of complaints, shall be open to public inspection at reasonable times. Such records shall include, but are not limited to, pending Complaints and advisory opinion requests.

(b) Any person wishing to review Commission records shall be entitled to examine said information during Commission business hours and upon reasonable notice and request. Copies of such public material shall be available to all persons, subject to the payment of costs as provided in R.I. Gen. Laws § 38-2-4, except those costs required to be paid by the Respondent in Regulation 1015(j).

**Regulation 1029 - Information Voluntarily Supplied.**

(a) A public official or employee who is not required to file a financial disclosure statement pursuant to the Code of Ethics may voluntarily choose to file such statement, or any other document otherwise required, with the Commission. The Commission shall accept such documents which shall be treated in the same manner as documents received from persons required to submit them.

(b) A person subject to the Code of Ethics may choose to submit information in excess of that which is required under the Code. Such information shall be treated in the same manner as information required to be filed. The Commission will not, however, accept any document in lieu of appropriately completed forms.

## Financial Disclosure

Pursuant to Rhode Island General Law §36-14-16, each year a financial disclosure statement must be filed by any state and municipal elected officials, state appointed officials, certain state employees and state appointees holding major decision-making positions, certain enumerated municipal appointees and municipal appointees who exercise decision-making authority over the expenditure of more than fifty thousand dollars (\$50,000) in public funds in a year. The Code of Ethics requires that a Financial Disclosure Statement be filed on or before the last Friday in April each year, or within thirty (30) days of appointment to a public position or declaration as a candidate in an election. Within thirty (30) days after the filing deadline, every person who is a candidate for an office as an elected officer shall file the financial statement required by §36-14-16, the Commission shall grant one fifteen (15) day extension for good cause, if the request for an extension is received prior to the filing deadline for the financial statement. All officials must continue to file financial disclosure statements until they have been out of office for one full calendar year.

Officials are required to disclose sources of income and assets, including those of a spouse and any dependent children but are not required to reveal net worth. Officials must also disclose whether they, a spouse or dependent child hold interest in any business regulated by Rhode Island government or in any enterprise which engages in business transactions with the government. The purpose of requiring financial disclosure is to help insure that those people who are acting in the public interest do not use their public positions to further their private financial interests. The Financial Disclosure Statement also acts as insurance that there are no conflicts between an official's financial interest and his or her public office and therefore must be filed whether or not an individual is paid for his or her services.

There are penalties assessed if an individual fails to comply with the ethic provisions governing financial disclosure by public officials. If an official is found to have knowingly and willfully violated the Code of Ethics, the Commission may impose a civil penalty of up to \$25,000.00.

Financial disclosure forms are available at no charge at the Ethics Commission offices and a sample form is available on the Commission's website. Each question on the form must be answered; if the form is not complete it will be returned. The public official must sign and swear to the completed financial statement before a notary. Financial disclosure forms and instructions are mailed to new appointees and candidates once the Ethics Commission receives official notice of their appointment or eligibility and thereafter are mailed on an annual basis.

All commission records other than those listed within R.I. Gen. Laws §38-2-2(d) and those relating to investigations of complaints, shall be open to public inspection at reasonable times upon prior notice and request. Copies can be made and are available for a fee.

## How to Give Notice and Recuse Under the Rhode Island Code of Ethics

Any person subject to the Code of Ethics who in the discharge of his or her official duties, is or may be required to take an action, make a decision, or refrain therefrom that will or can reasonably be expected to directly result in an economic benefit to the person, or spouse, dependent child, or business associate shall before taking any action file a statement of conflict of interest or recusal form. The conflict need not be certain to occur, but the probability must be greater than "conceivably." [See R.I. Gen Laws, §36-14-6, Regulations 36-14-5002, 36-14-5005, 36-14-6001 and 36-14-6002]

Recusal, under the Code of Ethics, refers to a public official or employee declining to participate in a matter because of a potential conflict of interest under the Code of Ethics. If there appears as if there may be a potential conflict of interest, public officials may abstain from voting on the matter, which is not the same as recusing. Recusal means that the individual does not participate in deliberations or debates, the making of recommendations, giving of advice, consideration of findings or in any other way assuming responsibility for or participating in any aspect of the work or decision making relating to the matter where there are potential conflicts of interest.

Under the Code of Ethics, an individual has two options when faced with a potential conflict of interest problem. The first option is to recuse from participation and file a recusal form as soon as he or she has reason to believe that he or she has a conflict of interest. If the matter does not warrant such a measure, a public official may still provide a notice of the potential conflict with an explanation, including specific reasoning as to why he or she believes that they are able to participate fairly, objectively and in the public interest regarding the matter.

The Ethics Commission provides a form that an individual may fill out called the Statement of Conflict of Interest. The form requires basic information such as name, position and agency, description of the nature of the conflict and signature under penalty of perjury. The original form is then presented to the presiding officer, appointing authority, director or immediate supervisor. Additionally, a copy is to be sent to the Rhode Island Ethics Commission and kept on file to verify the official's public disclosure and recusal.

## **Public Officials and Employees Considering Private Employment**

When contemplating a second job, public officials and employees should pay careful consideration to whether or not their additional employment may cause conflicts of interest. A key consideration in determining a conflict of interest is whether the private employment overlaps with or is directly comparable to the official responsibilities of the government employee or official.

The first step before taking a second job is to discuss the issue with a Supervisor and determine the department's policy on securing private employment. If it is determined that private employment is allowed, individuals should elect not to participate as a public employee or official in matters concerning private employers. Additionally, individuals should not use public resources or time to perform functions associated with private employment. As a private employee if an issue becomes unclear or confusing, call the Ethics Commission for additional information.

## Procedural Requirements Regarding Complaints and Enforcement

Any person may submit a complaint on forms provided by the Rhode Island Ethics Commission. Specifically, the complaint must name the alleged violator, identify the respondent's public office and provide in detail the specific acts which allegedly violate the Code.

The Ethics Commission shall investigate allegations of a suspected violation. The Executive Director or his/her designee shall be responsible for reviewing and processing the information pertaining to the violation, in order to determine whether to conduct a preliminary investigation which may form the basis of a Commission Complaint.

According to the procedural regulations, any complaint filed with the Commission will be reviewed as to form. If it is found the complaint is deficient, it will be returned to the complainant for correction. Once the complaint meets the procedural form requirements, it will be reviewed by the Executive Director or designee to determine if the complaint has facts sufficient to constitute a knowing and willful violation of the Code, it is then forwarded to the Commission for review at an initial determination. Additionally, within three (3) working upon receipt of a proper formed complaint a copy will be mailed to the Complainant and Respondent.

After the Commission is satisfied that the complaint states facts sufficient to constitute a knowing and willful violation, the Commission will investigate any and all alleged violations of the Code and has the power to call witnesses and compel the production of documentary evidence. The Commission must complete their investigation within one hundred eighty (180) days of receipt of the written Complaint.

Under the procedural regulations, the Executive Director or designee shall submit a written report to the Commission summarizing the results of the investigation. A copy of this report is then mailed to the respondent no less than fourteen (14) days before the scheduled probable cause hearing. Upon receipt of the report, the respondent has an opportunity to appear in person or respond in writing to the allegations. The Commission will then conduct its hearing considering all the information collected. They will then conduct a vote to (a) dismiss the complaint for lack of evidence; (b) continue the investigation; or (c) find that probable cause exists to support the allegations.

If the Commission votes and finds that there is probable cause to support the allegations, an adjudicative hearing is scheduled. The prosecutor and respondent may present evidence and examine and cross examine witnesses at the adjudicative hearing. Commissioners may also question witnesses. The rules of evidence are followed, discovery may be conducted and the principles of due process govern all procedures. All hearings conducted by the Commission subsequent to the issuance of a finding of probable cause are open to the public except for any hearing conducted by the Commission to review an informal disposition prior to its approval and issuance.

At the conclusion of all evidentiary hearings, the Commission will begin deliberations on the evidence and proceed to reach a decision as to whether there was a knowing and willful violation of the Code of Ethics. Upon finding that there has been a violation of the Code, the Commission may: (a) issue a cease and desist order; (b) require the respondent to file any statement mandated by the Code; (c) impose a civil fine and the return of any unjust

enrichment, (d) removal from any office or (e) referral of the record to the Attorney General or any appropriate law enforcement agency.

All final orders of the Commission are subject to review by the Superior and Supreme Courts of Rhode Island pursuant to the Administrative Procedures Act.

## How to Request an Advisory Opinion

Advisory opinions are interpretations of the Rhode Island Code of Ethics and are issued by the Commission concerning matters of a general nature and can be used as guidance for public officials and employees. Requests for advice from the Ethics Commission can be made by elected or appointed public officials of State or local government or by public employees of state or local government. Furthermore, individuals who feel as if they may be facing a potential conflict should request an advisory opinion before they take any official action.

Before seeking a formal advisory opinion, it is recommended that you first call the Ethics Commission to speak with a staff member. In many cases, an issue can be clarified and resolved over the telephone. If formal advice is then required, the staff member will assist you in requesting an opinion.

The proper procedure for requesting an advisory opinion is to write a letter to the Commission. The letter should contain a complete statement of the facts. Additionally, it should include your name and official position; the name, jurisdiction and powers of your agency, commission or office; the nature of the potential conflict; a summary of relevant facts and any time constraints.

A letter confirming receipt of a request for an advisory opinion will be sent by the Commission and a scheduled hearing date. All hearings involving advisory opinions are open to the public. Approximately one week before the hearing a draft recommendations prepared by a staff attorney will be distributed. At the hearing, the Commission will consider the draft recommendation, in addition to comments and concerns submitted by the requesting party.

Any advisory opinion rendered by the Commission is adopted by a vote of at least five (5) of the nine (9) members and the opinion and the written request become public records.

Lastly, all advisory opinions are binding on the Commission. Therefore, if individuals in good faith abide by the opinion they can not be held in violation of the Code in any subsequent proceeding concerning that particular action.

# Section 3

## FORMS

<b>Financial Disclosure Instructions and Sample Form</b>	3-1 thru 3-8
<b>Recusal Instructions and Conflict of Interest Form</b>	3-9 thru 3-10
<b>Gift Disclosure</b>	3-11

**STATE OF RHODE ISLAND****RHODE ISLAND ETHICS COMMISSION**

40 Fountain Street  
 Providence, RI 02903  
 (401) 222-3790 (Voice/TT)  
 Rhode Island Relay  
 (800) RI5-5555

**2000 YEARLY FINANCIAL STATEMENT**Instruction Sheet**WHO MUST FILE AND WHEN****Present and Former Public Officials**

A financial statement must be filed by April 27, 2001 by every elected or appointed official holding a position in state, city or town government for any part of the calendar year 2000. An elected official is a person elected to a post in state or local government by public election. An appointed official is a person holding a post in state or local government to which he or she was appointed by the Governor, the General Assembly or the Highest Official or Legislative Body of a local government, OR for a term of office as specified by the Rhode Island Constitution, a Statute, a Charter or Ordinance. If you are uncertain whether you should file, submit a letter to the Commission by April 27, 2001 describing your position and requesting an advisory opinion and an extension.

A financial statement must be filed yearly so long as you hold an elected or appointed post. All but questions 14 and 15 refer to the calendar year 2000. If both you and your spouse are public officials you must file separate statements. For purposes of this statement, the term .family member. when used means you, your spouse, or any dependent child.

**Appointees**

A person who becomes an appointed official during 2001 is required by statute to file a financial statement covering calendar year 2000 within 30 days of the date of appointment or qualification whichever is later.

**Candidates**

A candidate for elective public office in 2001 must file a financial statement covering calendar year 2000 within 30 days of the filing deadline for the office the candidate seeks or the date the candidate's name is submitted to the state or local elections board, whichever date is earlier.

**ACCESS FOR PERSONS WITH DISABILITIES**

Instructions and financial disclosure forms are available in large print and in Braille. The Commission will make reasonable accommodations to furnish other appropriate auxiliary aids and services when necessary to afford an individual with a disability with an equal opportunity to comply with financial disclosure requirements. To request a reasonable accommodation, contact the Ethics Commission's ADA Coordinator.

**EXTENSIONS**

One extension of up to 60 days shall be granted to any person (other than a candidate) required to file if a written request thereof is received by the Commission by the date on which the financial statement is required to be filed.

Candidates for public elective office shall be granted one 15 day extension if good cause is shown and provided the written request is received by the Commission by the date on which the financial statement is required to be filed.

**THE FOLLOWING INSTRUCTIONS ARE FOR QUESTIONS NUMBERED 1 THROUGH 16**

1. Fill in your full name.
2. Fill in your home address. If you have a separate mailing address that should be used, please provide it also.
3. State your public office and indicate whether the office is a part of state, city or town government. Some examples are:

District Court Judge - State  
Representative, State District #  
Councilperson, Pawtucket  
Zoning Board, Bristol

Probate Court Judge, Warren  
Tax Assessor, Smithfield  
School Committee, Charlestown  
Board of Accountancy, State

If the government unit is regional, give full name of unit.

For example: Blackstone Valley Sewer District Commission

Specify if you are elected and/or appointed to the office you hold, the year in which you were elected and/or appointed, and the year of resignation from office or termination of office, if applicable.

4. If you are a candidate for elective public office in 2001, or were a candidate in calendar year 2000, designate the office and the governmental unit. If no Declaration of Candidacy has been made by you at the present time, do not answer .none of .not applicable.

5. List all the family members who resided in your home in calendar year 2000 and any other children for whom you provided more than 50% support in calendar year 2000.

6. List only the name of the employer from who you, your spouse, or child received individually \$1,000 gross income, or more. If self-employed, list any occupation from which you or your spouse or child received gross income of \$1,000 or more. If you, your spouse, or dependent child were employed by a state or municipal agency, list the dates of employment and the job title or description of service rendered. If self-employed, list the date and nature of the services which were rendered by you, your spouse, or dependent child to a state or municipal agency where the amount of the fee or charge exceeded \$250.00. Do not list dollar amounts.

7. List all real estate other than your principal residence in which you, your spouse, or dependent child had a financial interest, no matter where it is located. If no address is available note the description used for local property tax purposes. Financial interest includes indirect interest as well as direct interest and includes mortgages, options, trusts etc., real estate held by a corporation in which you have a financial interest, unless the corporation's principal business is real estate, should not be reported in this answer, but your financial interest in such corporation may have to be reported elsewhere. Do not list dollar amounts.

8. List the name of the trust, and name and address of the trustee of any trust from which you, your spouse, or dependent child individually received an amount in excess of \$1,000.00 Do not list dollar amounts. If the assets which generate the income are known, list the assets. If unknown, please state.

Example:

Asset: Common Stock Vista Corporation

9. If you, your spouse or dependent child hold a position as director, officer, partner, trustee, or management position, identify the position and state the business address. Business includes a non-profit organization of any type as well as profit-making organization.

10. Identify any person, business entity, or other organization from whom you, your spouse or dependent child received a gift or contribution of money or property in excess of \$100.00 in value and a description of each gift or contribution. Gifts or contributions from relatives need not be listed. For purposes of this question, a relative is a parent, child, grandchild, stepchild, brother, sister, grandparent, stepparent, great grandparent, uncle or aunt, a first cousin, or the spouse of any of these. Bona fide educational scholarships are also excluded. Any individual who has received a campaign contributions as defined in the Campaign Contributions and Expenditures Reporting Act, and has complied with said Act, need not report the contributions on this statement.

11. List any sole proprietorship, firm, corporation, or other business entity in which a 10% ownership interest individually or collectively is held. If the ownership interest does not exceed 10% but exceeds \$5,000.00, the business must be listed. If a \$5,000.00 or greater investment interest exists in any business, the business must be listed. An ownership interest includes stock, interest in net profits or losses, assets, creditor's interest in an insolvent business and others. An investment interest includes bonds, notes, debentures, mortgages, and non-ownership financial interests. Value is determined at the highest amount for the calendar year. **(Do not list savings and checking accounts, deposits to financial institutions, shares of a credit union or cooperative bank, life insurance policies and annuities, or bonds of any government or governmental subdivision or money market funds. Do not list dollar amounts or numbers of shares. Addresses of corporations whose stock is publicly traded need not be listed.)**

Example:

Name	Name and Address of Business
John Doe	ABC Corporation 10 Dorrance Street Providence, R.I.
Jane Doe	General Motors

12. This section should be completed only if a business listed in #11 did business in calendar year 2000 with a state or municipal agency which employs the public official or of which he or she is a member, or over which the public official exercises direct or legislative control otherwise, please answer .none. or .not applicable.. A state or municipal agency is any branch of state or local government. Generally, if an entity is a division of state or local government, or funded by a state or locality, or can commit state or local funds, or deal with state or local property, it is a state or municipal agency.

A public official exercises legislative control when the official has the power to vote on laws affecting the agency.

A public official exercises direct control when, although not a member or employee of the agency, the official can control or influence agency decisions through his or her official duties.

Transactions exceeding a total of \$250.00 must be reported. Even if each individual transaction is less than that amount, each must be reported if the total is more than \$250.00. Since a public official can have an ownership interest or investment interest in a large corporation and not have knowledge or access to knowledge about its business dealings, only business which the public official knows about or should know about must be reported.

Questions 12 and 13 should be answered by those individuals holding a 10% ownership in a business, or where a \$5,000.00 interest represents a significant part of the investment in a business. When the business entity is a multi-state corporation or when legislative, or direct control is exercised over a number of agencies, it may be impossible for an official to obtain this information.

In such case the official, unless he/she has knowledge concerning a transaction may answer "unknown". **Do not list dollar amounts.**

Example:	Date, Name of Agency and
Name and Address of Business	Nature of Transaction
ABC Corporation 10 Dorrance Street Providence, R.I.	July 1, 2000 . Contract to sell lengths of steel pipe to R.I. Department of Transportation

13. Instruction #12 applies as well to this question. The difference is that rather than list business done with an agency, information is sought about business which is directly regulated by your agency. Direct regulation refers to a type of business controlled by an agency on a continuing basis. Utilities, banks, racetracks, are examples. A business which simply requires a license is not regulated, barbers, liquor stores, etc. Personal business such as a personal loan from a bank, or retail purchases of consumer goods should not be listed. If uncertain as to the nature of regulation, please state. **Do not list dollar amounts.**

14. Question # 14 seeks information on the acquisition and/or divestiture of ownership or investment in regulated business. Note that the period of time is between January 1, 2001 and the date this statement is filed. Instructions # 12 and # 13 regarding knowledge apply to this section:

Example:

Name and address Of Business	Description of Interest (Not amount) and Date Acquired and/or Divested	Name of Regulating Agency
ABC Corporation 10 Dorrance Street Providence, R.I.	Common Stock: Acquired 1/18/00 Divested 4/1/00	By Public Utilities Commission (Control of Rates)

15. This question is similar to #12 except it seeks information about acquisition and/or divestiture of a business between January 1, 2001, and the date the statement is filed. If you, your spouse or a dependent child acquired or divested a financial interest in a business as described in #11 between January 1, 2001, and the date the statement is filed, which is doing business in excess of \$250.00 with a state or municipal agency of which the public official is a member, employee or the official exercises direct or legislative control over the agency, this question should be answered. Instructions #12 and #13 regarding knowledge apply. **Do not list dollar amounts.**

16. List the names and addresses of any person or business entity or other organization to whom you, your spouse or dependent child owes more than \$1,000.00, EXCEPT: DO NOT LIST:

- (i) persons who are related within the third degree of consanguinity to the person who owes the money . this includes any of the following relations: brother, sister, parent, child, grandparent, grandchild, in-laws in those categories, great-grandparent, great-grandchild, uncle, aunt, niece, nephew.
- (ii) any financial institution regulated by any state or by the United States if the indebtedness is secured solely by a mortgage on real property used exclusively as your principal residence.
- (iii) any indebtedness which arose from any transaction(s) involving credit cards.

THE PUBLIC OFFICIAL SHALL SIGN AND SWEAR TO THE COMPLETED FINANCIAL STATEMENT BEFORE A NOTARY PUBLIC OR OTHER PERSON AUTHORIZED TO ADMINISTER OATHS. IN ADDITION, MARRIED COUPLES, BOTH OF WHOM ARE REQUIRED TO FILE, MUST FILE SEPARATE STATEMENTS.

**PLEASE NOTE:** The Rhode Island Code of Ethics Law and Regulations do not require the submission of a copy of your income tax return. Therefore, please do not attach it to your statement.



# Rhode Island Ethics Commission

## 2000 YEARLY FINANCIAL STATEMENT



ALL QUESTIONS REFER TO CALENDAR YEAR JANUARY 1, 2000 THROUGH DECEMBER 31, 2000 UNLESS OTHERWISE SPECIFIED.

Please answer all questions and where your answer is "none" or "not applicable" so state. **ANSWERS SHOULD BE PRINTED OR TYPED**, and additional sheets may be used if more space is needed. For clarification of any question, read instruction sheet.

**Note:** The failure to file a Yearly Financial Statement by a state or municipal elected or appointed official is a violation of the law and may subject the official to penalties, including fines. If you received a 2000 Yearly Financial Statement in the mail but believe you were not a state or municipal elected or appointed official in 2000 or 2001 you should contact the Ethics Commission (See Instruction Sheet for contact information).

1. \_\_\_\_\_  
NAME OF OFFICIAL (LAST) (FIRST) (INITIAL)

2. \_\_\_\_\_  
HOME ADDRESS (STREET) (CITY/TOWN) (ZIP CODE)

\_\_\_\_\_  
MAILING ADDRESS (If different from home address)

3. List Public Office(s) you hold and governmental unit:

\_\_\_\_\_  
(PUBLIC OFFICE) (MUNICIPALITY, STATE OR REGIONAL)

\_\_\_\_\_  
(PUBLIC OFFICE) (MUNICIPALITY, STATE OR REGIONAL)

I was elected in \_\_\_\_\_. I was appointed in \_\_\_\_\_.  
(year) (year)

If you no longer hold office, state the year of termination or resignation \_\_\_\_\_.

4. List elected office(s) for which you were/are a candidate in the calendar year 2000 or 2001. (Read instruction #4)

5. List the following: NAME OF SPOUSE NAME(S) OF DEPENDENT CHILD OR CHILDREN

\_\_\_\_\_  
NAME OF SPOUSE NAME(S) OF DEPENDENT CHILD OR CHILDREN

6. List the names of any employer from which you, your spouse, or dependent child received \$1,000 or more gross income during calendar year 2000. If self-employed, list any occupation from which \$1,000 or more gross income was received. If employed by a state or municipal agency, or if self-employed and services were rendered to a state or municipal agency for an amount of income in excess of \$250.00, list the date and nature of services rendered. If the public office or employment listed in #3, above, provides you with an amount of gross income in excess of \$250.00 it must be listed here. **(Do Not List Amounts.)**

NAME OF FAMILY MEMBER EMPLOYED	NAME AND ADDRESS OF EMPLOYER OR OCCUPATION	DATES AND NATURE OF SERVICES RENDERED
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7. List the address or legal description of any real estate, other than your principal residence, in which you, your spouse, or dependent child had a financial interest.

NAMES	NATURE OF INTEREST	ADDRESS OR DESCRIPTION
-------	--------------------	------------------------

8. List name of any trust, name and address of the trustee of any trust, from which you, your spouse, or dependent child or children individually received \$1,000 or more gross income. List assets if known. **(Do Not List Amounts)**

NAME OF TRUST: \_\_\_\_\_

NAME OF TRUSTEE AND ADDRESS: \_\_\_\_\_

\_\_\_\_\_

NAME OF FAMILY MEMBER RECEIVING TRUST INCOME: \_\_\_\_\_

ASSETS: \_\_\_\_\_

9. List the name and address of any business, profit or non-profit, in which you, your spouse, or dependent child held a position as a director, officer, partner, trustee, or a management position.

NAME OF FAMILY	MEMBER NAME AND ADDRESS OF BUSINESS	POSITION
----------------	-------------------------------------	----------

10. List the name and address of any person, business entity, or other organization that made total gifts or total contributions in excess of \$100 in cash or property during calendar year 2000 to you, your spouse or dependent child. Certain gifts from relatives and certain campaign contributions are excluded. (See instruction #10)

NAME OF PERSON RECEIVING  
GIFT OR CONTRIBUTION

NAME AND ADDRESS OF PERSON OR ENTITY  
MAKING GIFT OR CONTRIBUTION

11. List the name and address of any business in which you, your spouse, or dependent child individually or collectively holds a 10% or greater ownership interest, or a \$5,000 or greater ownership or investment interest.

NAME OF FAMILY MEMBER

NAME AND ADDRESS OF BUSINESS

12. If any business listed in #11, above, did business in excess of a total of \$250 in calendar year 2000 with a state or municipal agency, AND you are a member or employee of the agency or exercise direct or legislative control over the agency, list the following:

NAME AND ADDRESS  
OF BUSINESS

NAME OF AGENCY

DATE AND NATURE  
OF TRANSACTION

13. If any business listed in #11, above, was a business entity subject to direct regulation by a state or municipal agency, and you are a member or employee of the agency or exercise direct or legislative control over the agency, list the following:

NAME AND ADDRESS OF BUSINESS

NAME OF REGULATING AGENCY

14. If you, your spouse, or dependent child individually or collectively acquired or divested a 10% ownership interest or a \$5,000 or greater ownership or investment interest in a business after January 1, 2001 and before the date you file this statement AND if said business was regulated by a state or municipal agency of which you are an employee or a member, or over which you exercise direct or legislative authority, list the following:

NAME AND ADDRESS OF BUSINESS

DESCRIPTION AND INTEREST (NOT AMOUNT)  
AND DATE ACQUIRED AND/OR DIVESTED

NAME OF REGULATING INDUSTRY

HOW REGULATED

15. If you, your spouse, or dependent child acquired or divested a 10% ownership interest or a \$5,000 or greater ownership or investment interest in a business after January 1, 2001 and before the date you file this statement, which did business in excess of \$250 with a state or municipal agency of which you are an employee or a member, or over which you exercise direct or legislative authority, list the following:

NAME AND ADDRESS  
OF BUSINESS

DESCRIPTION OF INTEREST  
DATE ACQUIRED AND/OR DIVESTED  
(DO NOT INCLUDE AMOUNT)

NAME OF STATE  
OR MUNICIPAL AGENCY

16. If you, your spouse or dependent child were indebted in an amount in excess of one thousand dollars (\$1,000.00) to any person, business entity or other organization other than (i) any person related to you, your spouse, or dependent child at any time within the third degree of consanguinity, or (ii) a financial institution regulated by any state or by the United States where such indebtedness is secured solely by a mortgage of record on real property used exclusively as your principal residence, or (iii) any indebtedness arising from transactions involving credit cards, please list the following:

NAME AND ADDRESS OF DEBTOR

NAME AND ADDRESS OF LENDER

I certify under penalty of perjury, that this Financial Statement is a complete and accurate response to the questions presented as to the financial information and interests during the year 2000 of myself, my spouse, and my dependent children. I acknowledge that I may request an advisory opinion from the Ethics Commission as to my conduct under the Code of Ethics. I understand that a copy of the Code of Ethics will be provided to me at no cost upon request by contacting the Ethics Commission.

\_\_\_\_\_  
SIGNATURE

State of Rhode Island  
County of \_\_\_\_\_

Subscribed and sworn to before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

**THIS STATEMENT WILL BE RETURNED IF IT IS NOT SIGNED AND NOTARIZED.**

## How to Give Notice and Recuse under the R.I. Code of Ethics

1. Write and sign a memo OR complete a form called the .Statement of Conflict of Interest.
  - A. Include your name
  - B. Include your office/position
  - C. Describe the nature of the potential conflict
  - D. Recuse (abstain from participation)
  - E. Sign the memo/form.
  
2.
  - A. If you are a public employee, present the original to your appointing authority, director or immediate superior. You may use a form provided by the Ethics Commission, one provided by your employer, or draft your statement as a memorandum. This statement should be kept on file.
  
  - B. If you serve on an elected or appointed body, present the original to the presiding officer during an official meeting. You may use the form provided by the Ethics Commission, one provided by your public body, or draft your statement as a memorandum. This statement should be kept on file.
  
3. Send a copy of the memo/form to the Ethics Commission. The Commission will keep the form on file to verify your public disclosure and your recusal.
  
4. For more information, see R.I. Gen. Laws § 36-14-6 or contact the Rhode Island Ethics Commission, 40 Fountain Street, Providence, R.I. 02903, (401) 222-3790.

**Statement of Conflict of Interest  
pursuant to R.I. Gen. Laws § 36-14-6**

I \_\_\_\_\_, holding the position of \_\_\_\_\_, hereby under oath depose and say:  
(job title or appointed/elected position and name of board/commission/agency/department)

1. A matter involving \_\_\_\_\_ is presently before \_\_\_\_\_.  
(name of board/commission/agency/department)

2. I have the following interest in the matter noted in paragraph 1 above:

3. [Please select one of the following]:

- ( ) A. In compliance with R.I. Gen. Laws § 36-14-6(1), I hereby recuse from participating in the discussion of or taking official action relating to said matter. (This does not prohibit participation as a member of the public in an open meeting, pursuant to Commission Regulation 7003.)
  
- ( ) B. In compliance with R.I. Gen. Laws § 36-14-6(1), I hereby state that despite the interest described above, I believe I am able to participate fairly, objectively and in the public interest regarding said matter for the following reasons:

Signed under the penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
Signature

**RHODE ISLAND ETHICS COMMISSION**

40 Fountain Street  
 Providence, RI 02903  
 (401) 222-3790 (Voice/TT)  
 (800) 752-8088  
 Fax: 222-3382

<b>GIFTS DISCLOSURE STATEMENT</b>
<i>(This report covers the period from January 1 through December 31 of the preceding year and is due on January 31 of the current year)</i>

NAME:	STATE POSITION:
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POSITION:	STATE TEL NO:
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STATE MAILING ADDRESS:
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1. DONOR NAME AND ORGANIZATION	2. DESCRIPTION OF GIFT	3. DATE REC'D	4. GIFT VALUE	5. AGGREGATE VALUE

CERTIFICATION: I hereby certify that the above is a true, correct and complete statement.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

# **Section 4**

## **SELECTED ADVISORY OPINIONS**

<b>2005 Advisory Opinions</b>	4-1 thru 4-14
<b>Table of Contents (Corresponding to Advisory Opinions Relating to City/Town Councilors)</b>	4-15
<b>Advisory Opinions Relating to City/Town Councilors</b>	4-16 thru 4-39

## Advisory Opinion No. 2005-1

Re: Vincent McAloon

### QUESTION PRESENTED

The petitioner, a recent appointee to the Town of New Shoreham Motor Vehicles for Hire Commission, a municipal appointed position, requests an advisory opinion regarding whether he may serve on the Commission while holding a taxi license.

### RESPONSE

It is the opinion of the Rhode Island Ethics Commission that the petitioner, a recent appointee to the Town of New Shoreham Motor Vehicles for Hire Commission, a municipal appointed position, may serve on the Commission while holding a taxi license. However, the Code of Ethics will require that the petitioner recuse himself from participating in certain matters that are likely to result in a personal, financial impact.

According to the petitioner, he is the owner of one of thirty-four licensed taxicabs on Block Island. Block Island taxicabs are regulated by the Town of New Shoreham Motor Vehicle for Hire Commission, a five-member board appointed by the Town Council. The Commission is unique in Rhode Island, as all taxis elsewhere in the state are regulated by the Rhode Island Public Utilities Commission. New Shoreham is exempt from PUC regulation pursuant to statute. See R.I. Gen. Laws § 39-14-23.

The petitioner represents that a Town ordinance requires that two of the five Commission members be active taxi licensees. The Commission drafts regulations, decides on fares, keeps a list of license applicants and investigates complaints. The petitioner further states that the Commission is enabled to convene hearings to investigate licensee misconduct and to impose sanctions which can be appealed to the Town Council. The petitioner asks whether, in light of the above representations, the Code of Ethics allows his service as a Commission member while holding a license.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest in substantial conflict with his official duties if he has reason to believe or expect that a “direct monetary gain” or a “direct monetary loss” will accrue, by virtue of the official’s activity, to himself, a family member, a business associate, or any business by which the official is employed or represents. R.I. Gen. Laws § 36-14-7(a). The Code further prohibits an official from using his public office or confidential information received through his holding public office to obtain financial gain, other than that provided by law, for himself or any person within his family, any business associate or any business by which he is employed or represents. R.I. Gen. Laws § 36-14-5(d).

A public official shall not accept employment that will impair his independence of judgment as to his official duties. R.I. Gen. Laws § 36-14-5(b).

Sections 5(a), 5(b) and 5(d) of the Code of Ethics do not create an absolute bar to the petitioner's membership on the New Shoreham Motor Vehicle for Hire Commission by virtue of his holding a taxicab license in the Town. Rather, those provisions require a matter by matter evaluation and determination as to whether substantial conflicts of interest exist with respect to carrying out the petitioner's official duties in the public interest. In order for a substantial conflict of interest to exist, there must be some evidence of a financial nexus between his public position and his private financial interests.

In A.O. 2004-38, the Commission stated that a member of the New Shoreham Board of License Commissioners who was employed by a liquor licensee was not generally prohibited from participating in liquor licensing matters. Rather, the petitioner was required to make a matter by matter evaluation and to recuse from participating in any liquor licensing matter that would financially impact his employer or his employer's direct competitors. This was based on a presumption that matters affecting the liquor license of those competing against the petitioner's employer would have a likely financial impact upon the employer. See also A.O. 2002-23 (CRMC member who is owner of Brown & Howard Wharf Marina on Newport Harbor may not participate in CRMC matters pertaining to Waites Wharf, a competitor within 1,500 feet of the petitioner's property); A.O. 2000-62 (concluding, *inter alia*, that Providence Tourism Council Deputy Director, also a minority stockholder in a Providence restaurant, may participate in matters involving the restaurant industry in Providence, or individual members of that industry, provided that such matters do not directly impact his restaurant and/or his personal financial interests); A.O. 99-9 (Narragansett Town Councilor who owns restaurant holding liquor license could not participate in matters directly affecting his business, and further advising that direct impact is presumed for any establishment within a close proximity to or otherwise in direct competition with his restaurant); A.O. 96-101 (Chief of Police for City of Pawtucket, who is also a part-owner of a Pawtucket establishment holding a Class B liquor license, must recuse on liquor enforcement activities affecting his own establishment and any of its direct competitors); A.O. 96-70 (requiring Newport City Councilor/Board of License Commissioner who owns a restaurant holding liquor license to recuse himself from zoning or licensing matters that concern competitors); A.O. 96-24 (recognizing that an Alternate Member of the Newport Zoning Board of Review who is part owner and operator of a hotel and landlord to a restaurant and dance club, may not participate in matters affecting other hotels or matters affecting restaurant, dance clubs, or bed and breakfasts that are located within 500 feet of the petitioner's businesses).

Following the reasoning of these prior advisory opinions, the petitioner is not prohibited from serving on the Motor Vehicle for Hire Commission. However, he is advised that he must recuse from participating in any Commission matters that are likely to result in a direct financial benefit or detriment to himself. Clearly, this would include any matters involving allegations of misconduct or imposition of sanctions against him. The

petitioner must also recuse from participating in Commission matters that, although directed at one of the petitioner's direct competitors, will likely result in a direct financial benefit to the petitioner.(1) The petitioner must follow the procedures for recusal outlined in R.I. Gen. Laws § 36-14-6. The petitioner may, however, participate in general matters that apply to the entire class of taxicab license holders that will financially impact the petitioner to no greater extent than any other similarly situated licensee. See R.I. Gen. Laws § 36-14-7(b). The petitioner is encouraged to seek further clarification on the application of the class exception as specific matters arise.

Code Citations:

36-14-5(a)  
36-14-5(b)  
36-14-5(d)  
36-14-6  
36-14-7(a)  
36-14-7(b)  
39-14-23

Related Advisory Opinions:

2004-38  
2004-13  
2002-30  
2002-23  
2001-57  
2000-62  
99-122  
99-9  
98-151  
96-70  
96-61  
96-24

Keywords:

Competitors  
Licensing

(1) Based on the facts and representations currently before the Ethics Commission, we are unable to opine on what types of actions by the petitioner's board against another licensee would result in a financial impact to the petitioner. The petitioner should proceed cautiously when his Commission takes up issues relating to competing, individual license holders and is encouraged to seek further advice from the Ethics Commission as needed.

## Advisory Opinion No. 2005-2

Re: Donna Walsh

### QUESTION PRESENTED:

The petitioner, a member of the Charlestown Town Council, a municipal elected position, who is a full-time teacher employed by the Chariho School District, a municipal employee position, requests an advisory opinion regarding whether she may participate in the Town Council's interim appointment to the Chariho School Committee.

### RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the petitioner, a member of the Charlestown Town Council, a municipal elected position, who is a full-time teacher employed by the Chariho School District, a municipal employee position, may participate in the Town Council's interim appointment to the Chariho School Committee.

The petitioner represents that she is employed as a full-time teacher by the Chariho School District. In addition to her teaching duties, for the past fourteen years the petitioner has also performed administrative and budgetary duties at the school as the sixth grade House Leader. As House Leader, the petitioner receives an additional stipend of 5% of her annual salary. For most of the past fourteen years, House Leaders were elected by the teachers themselves. Beginning last year, House Leaders were selected by the Chariho School Committee based upon the recommendations of the school Principal, the Assistant Superintendent and Superintendent. Through this process, the petitioner was last selected as a House Leader in June of 2004. If interested in the position for the next school year, the petitioner will be required to reapply and go through the selection process anew.

The petitioner was recently elected to the Charlestown Town Council. Charlestown is a member community of the Chariho School District. The petitioner explains that, normally, each member community of the School District holds elections to select its representatives to the eleven-member Chariho School Committee. On November 15, 2004, two members of the School Committee submitted their resignations upon being elected to the Charlestown Town Council. According to the petitioner, the procedures of the School District require that the Charlestown Town Council appoint interim School Committee members to complete the terms of the resigning members. The petitioner states that if the appointed, replacement members wish to serve another term of office, they must seek election. When the matter of the appointments first came before the Town Council, the petitioner recused out of an abundance of caution. The remaining four Council members voted to appoint one member, but deadlocked 2-2 on the other. The petitioner represents that, without her vote, the Council remains deadlocked. Given these representations, the petitioner asks whether she may participate in the Town Council's appointment of a replacement School Committee member.

The Code of Ethics prohibits persons subject to Code from soliciting or accepting any reward or promise of future employment based on any understanding that the vote, official action, or judgment of the person would be influenced thereby. R.I. Gen. Laws § 36-14-5(g). Here, the petitioner is already employed by the Chariho School District and has been a House Leader for the past fourteen years. There is no indication whatsoever that her continued employment as a teacher or House Leader is in any way dependent upon the subject appointment to the School Committee, nor is there any indication that she has solicited or accepted any reward or promise of future employment as a teacher or House Leader based upon her participation in the appointment. Furthermore, once the appointment is made the Town Council ceases to have any appointment authority over the replacement School Committee member, who becomes subject to the normal electoral process at the conclusion of the term being completed. For all of these reasons, and based upon the representations made to the Commission, the petitioner may participate in the Town Council's appointment of a replacement to the Chariho School Committee.

Code Citations:

36-14-5(g)

Keywords:

appointing authority  
dual public roles

## **Advisory Opinion No. 2005-3**

Re: Robert B. Holbrook

### **QUESTION PRESENTED:**

The petitioner, a Commissioner of the Rhode Island Public Utilities Commission, a state appointed position, and also a member of the Town of East Greenwich Planning Board, a municipal appointed position, requests an advisory opinion regarding whether his simultaneous service with these two, public entities creates a conflict of interest prohibited by the Code of Ethics.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Code of Ethics does not prohibit the petitioner's simultaneous service as a Commissioner of the Rhode Island Public Utilities Commission, a state appointed position, and as a member of the Town of East Greenwich Planning Board, a municipal appointed position.

The petitioner represents that he serves on the seven-person Planning Board for the Town of East Greenwich. According to the petitioner, the role of the Planning Board is to review development applications to ensure compliance with regulations designed to promote conformance to the Town's Comprehensive Community Plan and Zoning Ordinance. He states that as part of each application to the Planning Board the applicant must provide documentation from the Kent County Water Authority showing that there is an adequate water supply available. Without evidence of an adequate water supply, the Planning Board will generally not approve an application.

The petitioner also serves as a full-time, paid Commissioner on the Rhode Island Public Utilities Commission (RIPUC). According to the petitioner, the RIPUC is responsible for regulating public utilities including Kent County Water Authority. Specifically, the RIPUC has the authority to supervise, regulate and investigate Kent County Water Authority to ensure the existence of an adequate water supply. Should the RIPUC determine that a utility's plant or equipment is inadequate or insufficient, it may order that improvements or alterations be made.

The petitioner states the Kent County Water Authority appears to be facing challenges in its infrastructure and water supply such that further investigation by the RIPUC is likely. If the RIPUC determines that there is an insufficient water supply, then developers seeking relief from the East Greenwich Planning Board may be unable to obtain certification of adequate water supply from Kent County Water Authority. As an example, the petitioner sites to current, proposed construction at the former Rocky Hill Fairgrounds in East Greenwich for the construction of office buildings, a hotel, restaurants and 180 residential housing units that will require certification of adequate water supply.

The petitioner states that the Planning Board would likely deny an application for this development if Kent County Water Authority is unable to certify the water supply.

Based on these representations, the petitioner asks whether there exists a conflict of interest under the Code of Ethics for him to simultaneously serve on both the East Greenwich Planning Board and the Rhode Island Public Utilities Commission.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws §§ 36-14-5(a), 36-14-7(a). A public official will have an interest in substantial conflict with his official duties if it is reasonably foreseeable that a “direct monetary gain” or a “direct monetary loss” will accrue, by virtue of the public official’s activity, to the official, a family member, a business associate or employer. R.I. Gen. Laws § 36-14-7(a); Regulation 7001. R.I. Gen. Laws § 36-14-5(b) further provides that he may not accept other employment which would impair his independence of judgement or require him to disclose confidential information acquired in the course of his official duties. Additionally, the Code prohibits him from using his public position or confidential information received through his position to obtain financial gain, other than that provided by law, for himself, a family member, a business associate or employer. R.I. Gen. Laws § 36-14-5(d).

Sections 5(a) and 5(d) of the Code of Ethics do not create an absolute bar to simultaneous service as a member of the East Greenwich Planning Board and as a Commissioner of the Rhode Island Public Utilities Commission. Rather, those provisions require a matter by matter evaluation and determination as to whether substantial conflicts of interest exist with respect to carrying out an official’s duty in the public interest.

Here, the Commission concludes that simultaneous service in both positions would not present an inherent conflict of interest under the Code of Ethics. The petitioner's work at the RIPUC will have no financial impact on the East Greenwich Planning Board, and vice versa. The likelihood that RIPUC action relative to the Kent County Water Authority may impact the feasibility of applications before the East Greenwich Planning Board does not implicate the Code's conflict of interest provisions set forth in sections 5(a) and 5(d). While there is similarly no indication of a violation of the Code's section 5(b), which prohibits the acceptance of other employment which will either impair independence of judgment as to official duties or induce disclosure of confidential information, the petitioner is cautioned to remain mindful of this provision when he serves in each of his public roles.

The petitioner is advised that this opinion solely addresses whether the Code of Ethics prohibits him from simultaneously holding these public positions. This opinion does not, and cannot, address whether the town charter or ordinances of East Greenwich, or any other state or local statutes, rulings or policies prohibit such simultaneous service.

Code Citations:

36-14-5(a)  
36-14-5(b)  
36-14-5(d)  
36-14-7(a)  
Regulation 7001

Related Advisory Opinions:

2001-66  
2000-82  
2000-56  
2000-22  
99-149  
99-62  
98-104  
98-99  
98-59  
95-62  
95-38

Keywords:

Dual public roles  
Private employment

## **Advisory Opinion No. 2005-4**

Re: Henry L.P. Beckwith

### **QUESTION PRESENTED:**

The petitioner, a member of the North Kingstown Historic District Commission (“NKHDC”), a municipal appointed position, and also a member of a property oversight committee for the Episcopal Diocese of Rhode Island (“Diocese”) requests an advisory opinion as to whether he may participate and vote on an application made by the Town of North Kingstown to the NKHDC to replace and improve existing sidewalks, curbs and lighting in the Town, including an area that fronts property owned by the Diocese.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the petitioner, a member of the NKHDC, a municipal appointed position, may participate and vote on an application made by the Town to replace and improve existing sidewalks, curbs and lighting in the Town, including an area that fronts property owned by the Diocese.

The petitioner is a member of the NKHDC. He represents that in his private capacity he is a member of a property oversight committee for the Diocese. The petitioner advises that his membership on the property oversight committee is strictly voluntary, is not a paid position, and he has served on said committee since 1970. The petitioner further advises that the committee simply cares for property owned by the Diocese throughout the State of Rhode Island, which includes St. Paul’s Church and Meeting House in Wickford, Rhode Island. The petitioner informs that caring for the property, for example, would be to ensure that the grass was cut or if a tree were dying, the committee would hire a professional take care of the problem.

The petitioner advises that the Town has made an application to the NKHDC to replace sidewalks, curbs, and existing street lighting for the entire length and both sides of Main Street in Wickford Village (some 1700 feet in length). The Town is presenting the entire job as one application. Included within this application is property owned by the Diocese and described by the petitioner as a grassed walkway/park with a 30-foot frontage on the street. The sidewalk is made of cement and the curb is made of granite. There is one street light directly in the front of the property owned by the Diocese which will be replaced. Other than a new street light fixture, the sidewalk and curb will be replaced with similar cement and granite.

The petitioner informs that the property owned by the Diocese is in perfect condition and is not in need of the new repairs. Despite this fact, the Town intends to make the repairs because it involves the entire street. The petitioner further advises that the Diocese is not paying for the repairs, did not request the repairs, and has nothing to gain or lose from the repairs made to Main Street. The petitioner advises that neither he nor the Diocese will be affected in any way by the renovation project and will not voice an opinion one way or another to the NKHDC or the Town. Given all of these representations, the petitioner

asks whether he may participate in the NKHDC's review of the Town's application.

Under the Code of Ethics, the petitioner is prohibited from using his public position or confidential information received through his position to obtain financial gain, other than that provided by law, for himself, a business associate or a family member. See R.I. Gen. Laws § 36-14-5(d). The petitioner may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties and employment in the public interest. See R.I. Gen. Laws § 36-14-5(a). The petitioner will have an interest in substantial conflict with his official duties if he has reason to believe or expect that a "direct monetary gain" or a "direct monetary loss" will accrue, by virtue of his official activity, to himself, a family member, a business associate, an employer, or any business which he represents. See R.I. Gen. Laws § 36-14-7(a).

A "business associate" is defined as any individual or entity joined with a public official "to achieve a common financial objective." R.I. Gen. Laws § 36-14-2(3). Past advisory opinions have opined that public officials are business associates of entities for which they serve either as members of the Board of Directors or in other leadership positions that permit them to affect the financial objectives of the organization. See A.O. 2002-6 (advising that members of the Westerly Town council who hold leadership positions in the Chamber of Commerce are prohibited from participating in matters involving the Chamber of Commerce since they are business associates).

In the instant matter, based upon the representations made by the petitioner and information available to the Commission, the petitioner does not appear to be a business associate of the Diocese. Although he serves on a property oversight committee, he does not hold a leadership position which would "permit him to affect the financial objective of the organization." However, assuming *arguendo* that the petitioner was a business associate of the Diocese, the Code of Ethics would not prohibit him from participating and voting on the application at issue since there is no evidence that the petitioner or the Diocese will receive any financial gain or suffer a financial loss as a result of the petitioner's vote on the application. Indeed, the petitioner expressly represents that the Diocese does not have an opinion on the proposed renovations and will not gain or lose anything if the renovations are approved. Accordingly, the Code of Ethics does not prohibit the petitioner from participating and voting in the NKHDC's consideration of this matter.

Code Citations:

36-14-2(3)  
36-14-5(a)  
36-14-5(d)  
36-14-7(a)

Related Advisory Opinions:

2004-31

2004-15

2003-57

Keywords:

Business Associate

Voting

Benefit Accrued

## Advisory Opinion No. 2005-5

Re: Peter W. Corr

### QUESTION PRESENTED:

The petitioner, the Vice Chairman of the Tiverton Planning Board, a municipal appointed position, requests an advisory opinion as to whether he may participate and vote in the Planning Board's determination of a major land development request made by New England Development, given the fact that the petitioner and New England Development have an existing purchase option agreement concerning property owned by petitioner.

### RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the petitioner, the Vice Chairman of the Tiverton Planning Board, a municipal appointed position, may not participate or vote on the request filed by New England Development given his status as a business associate of New England Development.

The petitioner represents that he and his wife entered into a two (2) year purchase option agreement with New England Development ("NED") on July 23, 2003 whereby NED has the right to purchase the petitioner's property within a two (2) year period. The petitioner further represents that NED pays the petitioner \$500 per month to keep the purchase option open until the expiration date on July 23, 2005.

The petitioner describes his property as a three-quarter 3/4 acre parcel which is surrounded by a nineteen (19) acre parcel owned by a different party but also under agreement with NED. The petitioner advises that the nineteen (19) acre parcel borders a forty-four (44) acre lot which is the property that NED has filed a major land development request with the Planning Board. The petitioner also advises that he is an abutter to the project.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties or employment in the public interest. See R.I. Gen. Laws § 36-14-5(a). An official will have an interest in substantial conflict with his official duties if it is reasonably foreseeable that a "direct monetary gain" or a "direct monetary loss" will accrue, by reason of his official activity, to the official, a family member, a business associate, an employer or any business which the public official represents. See R.I. Gen. Laws § 36-14-7(a); Commission Regulation 36-14-6001. Furthermore, a public official may not use his or her public office to obtain financial gain, other than that provided by law, for himself or for any business associate. See R.I. Gen. Laws § 36-14-5(d). Additionally, a business associate of a person subject to the Code must advise the municipal agency of the nature of its relationship to said person and said person must recuse himself from participating or voting on the matter at issue. See R.I. Gen. Laws § 36-14-5(f). Applying these provisions, if NED is considered to be the petitioner's "business associate" under the Code, the petitioner would be prohibited from

participating in the Planning Board's consideration of NED's request.

The Code defines "business associate" as a "person joined together with another *person* to achieve a common financial objective[.]" R.I. Gen. Laws § 36-14-2(3) (emphasis added). The term "person" is defined in the Code as "an individual or business entity[.]" R.I. Gen. Laws § 36-14-2(7). In past advisory opinions, the Commission has held that the buyer and seller in a real estate transaction are considered "business associates" under the Code of Ethics. See A.O. 2002-56 (petitioner and The Nature Conservancy are considered business associates under the Code of Ethics based upon their present rights and obligations pursuant to a promissory note and two unexpired purchase options); A.O. 98-18 (opining that a Zoning Board member must recuse from participating and voting on a petition by the American Legion, Post No. 15 regarding the conveyance of a land parcel, given that the he is the intended purchaser of said parcel). In the instant matter, petitioner and NED are similarly joined to achieve a common financial objective, to wit, the agreement and payments between NED and the petitioner to keep the option to purchase the petitioner's property open for two (2) years or until July 23, 2005.

Even assuming, *arguendo*, that the petitioner and NED are not considered business associates, the petitioner would still be prohibited from participating or voting in any official business that involves NED based upon his status as an abutter to the property at issue. In past opinions, the commission has applied a rebuttable presumption that a property owner will be financially impacted by official action concerning *abutting* property. See A.O. 2002-16; A.O. 2001-19; A.O. 2001-4; A.O. 2000-90; A.O. 99-148; A.O. 99-99; A.O. 98-92; A.O. 98-66; A.O. 98-56; A.O. 98-35; A.O. 98-19; A.O. 97-76; A.O. 97-63. Applying the presumption, the Commission frequently has stated that a public official may not participate in decisions concerning abutting property absent some evidence that official action would not affect the financial interests of the public official. Here, it seems reasonably foreseeable, if not likely, that major development by NED would result in a financial impact to abutting landowners.

Consequently, the petitioner and NED are considered business associates under the Code of Ethics based upon their present rights and obligations pursuant to the purchase option that expires in 2005. Unless and until the option expires or is exercised, he and NED are considered active business associates. Moreover, the petitioner is considered an abutter to the property at issue. Accordingly, the petitioner is required to recuse from participation and vote in the Planning Board's consideration of NED's development requests. Notice of recusal should be filed with the Ethics Commission in accordance with R.I. Gen. Laws § 36-14-6.

Code Citations:

36-14-2(3)  
36-14-2(7)  
36-14-5(a)  
36-14-5(d)  
36-14-5(f)  
36-14-6

36-14-6001

36-14-7(a)

Related Advisory Opinions:

2002-63

2002-56

2002-30

2002-16

2001-19

2001-4

2000-90

99-148

99-99

98-92

98-66

98-56

98-35

98-19

98-18

97-76

97-63

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## Advisory Opinion No. 2001-10

Re: John Nardolillo, Jr.

### QUESTION PRESENTED

The petitioner, a Cranston City Councilor, a municipal elected position, whose private employment is as a police officer in the Town of Johnston, requests an advisory opinion as to whether he may participate and vote on matters involving the City of Cranston's police officers given that the union/bargaining agent for public safety officers in Cranston is the same as the union/bargaining agent for public safety officers in Johnston, albeit different locals, and that he is currently serving as the elected bargaining agent of his own union's local.

### RESPONSE

It is the opinion of the Rhode Island Ethics Commission that the petitioner, a Cranston City Councilor, a municipal elected position, may participate and vote on matters involving the City of Cranston's public safety officers during calendar year 2001 insofar as the terms of employment and compensation for those officers already is set for this year pursuant to contracts that were negotiated prior to the petitioner taking office as a member of the City Council. Also, the petitioner's term as the bargaining agent for his own local in the Town of Johnston extends only to the end of the 2001 calendar year. The petitioner has represented that he likely will not seek reelection as the bargaining agent for his own local at the end of his current term. Assuming that he does not seek reelection, the petitioner may participate and vote on matters involving the City of Cranston's public safety officers after his current term as bargaining agent ends without restriction as he will no longer be a business associate of the local that represents the officers in the City of Cranston.

The petitioner advises that he is a police officer in the Town of Johnston, having been so employed for approximately twenty years. In that employment he is a member of the International Brotherhood of Police Officers - Local 307. In addition, he recently won election as that local's bargaining agent. His term runs through December 31, 2001. Police officers in the City of Cranston also belong to the International Brotherhood of Police Officers. Their local is #301. As a member of the Cranston City Council it is likely that the petitioner will be faced with the prospect of participating and/or voting on matters involving Local #301, although during calendar year 2001 any votes would be dictated by an existing contractual agreement between the City and Local #301, without any discretionary authority on behalf of the City Council to alter the existing terms of the contract, which was negotiated and approved prior to the petitioner's election to the Council.

During calendar year 2001 the Cranston City Council and Local #301 are bound by the terms of an existing contract. Any actions by the petitioner, whether with respect to annual budgets or ratifications, that merely comport with the existing contractual terms,

do not fall within the prohibitions of the Code of Ethics. Conversely, were the petitioner to be faced with a situation where, as a member of the City Council, he could exercise discretionary authority as to Local #301 the Code of Ethics would require that he not participate. As an officer of Local #307 he is a business associate of its parent organization, the International Brotherhood of Police Officers, as well as of Local #301. The law prohibits him from participating in matters that would affect his business associates.

Once his terms as the bargaining agent for Local #307 expires, however, he will no longer be an officer of that local and, therefore, will cease to be a business associate of either the parent organization or of Local #301. As a result, once his term as the bargaining agent for Local #307 expires he may, without restriction, participate and vote on matters affecting Local #301 specifically and the public safety officers in the City of Cranston generally.

Code Citations:

36-14-5(a)  
36-14-5(d)  
36-14-6

Related Advisory Opinions:

99-4  
98-172  
98-162  
98-130  
98-32  
97-118  
97-65  
97-52  
96-96  
96-60  
95-54  
95-63  
95-64  
96-69  
95-70  
95-75  
95-23  
94-44  
94-29  
94-27  
92-53

Keywords:

Business Associate  
Contracts  
Negotiations  
Unions/bargaining unit

## **Advisory Opinion No. 2004-13**

Re: Michael J. Marcello

### **QUESTION PRESENTED:**

The petitioner, a Scituate Town Council member, a municipal elected position, requests an advisory opinion as to whether he may participate and vote in the Town Council's issuance of a Class C liquor license, given that he and his father are officers in a corporation which leases commercial property to the Countryside Restaurant, a Class BV liquor licensee within the Town.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the petitioner, a Scituate Town Council member, a municipal elected position, may participate and vote in the Town Council's issuance of a Class C liquor license, notwithstanding the fact that he and his father are officers in a corporation which leases commercial property to the Countryside Restaurant, a Class BV liquor license within the Town.

The petitioner advises that his father, Dominic F. Marcello, is the President of DJ Realty, Inc., a closely held Rhode Island corporation that owns a commercial piece of real estate located at 1115 Hartford Pike, Scituate. The petitioner is Vice President of said corporation. He represents that Michael and Robert Martino currently lease the property from DJ Realty and operate the Countryside Restaurant at that location. The Countryside Restaurant is a family establishment holding a Class BV liquor license, which permits it to serve alcoholic beverages with meals on the premises. The petitioner indicates that the Messrs. Martino pay DJ Realty a monthly rent for their lease of the property. He states that he does not hold any stock in or receive any monies from DJ Realty and that his father owns all such corporate stock.

The petitioner informs that Richard Lang previously submitted an application to the Scituate Town Council for issuance of a Class C liquor license relative to property he owns at 84 Hartford Pike. The petitioner further advises that DJ Realty's property is located approximately three miles from Mr. Lang's parcel. After some delay, the Council is scheduled to resume its consideration of the application. The petitioner seeks guidance as to whether he may participate and vote in the Council's consideration of Mr. Lang's application, given that DJ Realty's tenants operate a family restaurant which holds a Class BV liquor license within the municipality.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest in substantial conflict with his official duties if he has reason to believe or expect that a "direct monetary gain" or a "direct monetary loss" will accrue, by virtue of the official's activity, to himself, a family member, a business

associate, or any business by which the official is employed or represents. R.I. Gen. Laws § 36-14-7(a). The Code further prohibits an official from using his public office or confidential information received through his holding public office to obtain financial gain, other than that provided by law, for himself or any person within his family, any business associate or any business by which he is employed or represents. R.I. Gen. Laws § 36-14-5(d). A business associate is defined as “a person joined together with another person to achieve a common financial objective.” R.I. Gen. Laws § 36-14-2(3).

In previous advisory opinions, the Commission has concluded that the Code of Ethics does not prohibit members of city and town councils with interests in restaurants/liquor establishments from serving on city and town councils and, generally, from considering matters relating to the zoning or licensing of restaurants and bars. However, a public official would be required to recuse from participation when an issue came before the council involving a competing business that was in reasonably close proximity to the official’s own, or that otherwise directly impacted the business in which the official had an economic interest. See *e.g.*, A.O. 99-9 (opining that a Narragansett Town Councilor who owns a restaurant holding a liquor license could not participate in matters directly affecting his business, and further advising that a direct impact is presumed for any establishment within a close proximity to or otherwise in direct competition with his restaurant); A.O. 96-70 (requiring a Newport City Councilor/Board of License Commissioner who owns a restaurant holding a liquor license to recuse himself from zoning or licensing matters that concern competitors); See also A.O. 2000-62 (concluding, *inter alia*, that Providence Tourism Council Deputy Director, also a minority stockholder in a Providence restaurant, may participate in matters involving the restaurant industry in Providence, or individual members of that industry, provided that such matters do not directly impact his restaurant and/or his personal financial interests).

Pursuant to sections 5(a) and (d) of the Code, the petitioner may not take any official action as a Town Council member that likely would have a direct financial impact upon DJ Realty. This is based both upon his business association with that entity as its Vice President and his father’s financial interests as the President and sole stockholder of DJ Realty. Therefore, the Commission must determine whether it is reasonably foreseeable that the financial interests of DJ Realty would be impacted by the Town Council’s consideration of the subject application for a Class C liquor license. See R.I. Gen. Laws §§ 36-14-5(a) and 5(d); Commission Regulation 7001.

Based upon the petitioner’s representations, Mr. Lang’s parcel does not abut the commercial property owned by DJ Realty and is, in fact, located nearly three miles from said location. Further, the Class BV liquor license held by the Countryside Restaurant is clearly distinct from the Class C liquor license sought by Mr. Lang. A Class BV liquor license permits the service of alcoholic beverages with food on the premises. In contrast, Mr. Lang’s application seeks issuance of license that only would authorize the service of pre-packaged food prepared off the premises (*e.g.*, popcorn, pretzels & potato chips) with alcoholic beverages. Given the diverse nature of the two establishments and the respective fare each would be permitted to offer (family restaurant vs. saloon), the Commission concludes that it is not reasonably foreseeable that the Council’s consideration of Mr. Lang’s application would financially impact DJ Realty or its

financial interests. Accordingly, the Code of Ethics does not prohibit the petitioner's participation and vote in the Council's issuance of the Class C liquor license at issue.

Code Citations:

36-14-2(3)  
36-14-5(a)  
36-14-5(d)  
36-14-6  
36-14-7(a)  
36-14-7001

Related Advisory Opinions:

2002-30  
2001-57  
2000-62  
99-122  
99-9  
98-151  
96-70  
96-61  
96-24

Keywords:

Business Associate  
Competitors  
Family: Business interest  
Licensing

## Advisory Opinion No. 2004-27

Re: The Honorable Leo R. Blais

### QUESTION PRESENTED

The petitioner, a member of the Rhode Island Senate, a state elected position, requests an advisory opinion to determine what limitations are placed on his ability to participate and vote on legislation relating to healthcare and pharmacies, given that he is privately employed as a pharmacist and is the owner of the Pawtuxet Valley Prescription and Surgical Center.

### RESPONSE

It is the opinion of the Rhode Island Ethics Commission that the petitioner, a member of the Rhode Island Senate, a pharmacist and owner of the Pawtuxet Valley Prescription and Surgical Center, may participate and vote on legislation relating generally to healthcare and pharmacies in instances where neither the petitioner, nor the Center could reasonably expect to derive a direct monetary gain or suffer a direct monetary loss. In instances where such a financial impact is reasonably foreseeable, the petitioner may not participate and vote on legislation relating to healthcare and pharmacies unless a section 7(b) exception applies.

The petitioner informs that he is a state senator representing District 24, which includes Coventry, Scituate and Foster. The petitioner represents that he is a pharmacist in his private employment. The petitioner represents that he is the President and owner of the Pawtuxet Valley Prescription and Surgical Center (Center). On its website, the Center is described as “a multi-faceted, vertically integrated medical care, product, prescription and service provider.” The petitioner informs that the Center is comprised of an infusion care division, a durable medical equipment department and a retail pharmacy. Apothecare, a subset of the Center’s retail pharmacy, is a laboratory with compounding facilities capable of developing customized mixtures from all available pharmaceuticals and other chemicals. According to the petitioner, the Center’s clients include individuals, hospitals, nursing homes, hospice facilities, out-patient clinics, group homes and a variety of other medical service providers and institutions. In light of the petitioner’s private profession and business interests, he wants to know to what extent he may participate and vote on legislation relating generally to healthcare and pharmacies.

Under the Code of Ethics, no public official shall in any way use his public office or confidential information received through his holding any public office, to obtain financial gain, other than that provided by law, for himself, a family member, any business associate, an employer or any business which he represents. See R.I. Gen. Laws § 36-14-5(d). In addition, a public official may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties and employment in the public interest. See R.I. Gen. Laws § 36-14-5(a). A “substantial conflict” is present where a public official, a family member, a

business associate, an employer, or any business which the public official represents will derive a direct monetary gain or suffer a direct monetary loss by reason of the official's activity. See R.I. Gen. Laws § 36-14-7(a). The financial impact described in section 7(a) need not be certain to occur, but only "reasonably foreseeable." See Commission Regulation 7001. Section 7(b) outlines two exceptions to the substantial conflict rule: (1) where a public official, a family member, a business associate, an employer or any business which the public official represents would accrue a benefit or detriment as a member of a business, profession, occupation or group "to no greater extent than any other similarly situated member" and (2) where such person or business would accrue a benefit or detriment as a member of a "significant and definable" class or subgroup within the business, profession, occupation or group "to no greater extent than any other similarly situated member."

In determining whether a substantial conflict exists, the Commission must consider whether a public official, a family member, a business associate, an employer or any business which the public official represents, would derive a direct monetary gain or suffer a direct monetary loss by reason of the official's activity. See R.I. Gen. Laws § 36-14-5(a) and 7(a). If no substantial conflict exists, then the public official may participate in the matter at issue. See, e.g., A.O. 2002-5 (opining that the petitioner, a member of the State Senate and a part-time nurse at the Cranston Senior Center, could participate and vote on legislation relating to the City of Cranston's pension fund since he could not reasonably expect to be financially impacted by the legislation at issue); A.O. 96-71 (opining that the petitioner, a member of the State Senate and a private insurance agent, could participate and vote on legislation regulating the sale of insurance by banks since he could not reasonably expect to be financially impacted by the legislation at issue).

If a substantial conflict seems apparent, then the Commission must consider whether either of the two exceptions outlined in Section 7(b) apply. Would the official, his family member, business associate, employer or any business which he represents accrue a benefit or detriment as a member of a business, profession, occupation or group to no greater extent than any other similarly situated member? Under this exception, no substantial conflict exists where an entire industry is impacted equally. See, e.g., A.O. 98-40 (opining that the petitioner, a member of the State House of Representatives and the spouse of a dentist, could participate and vote on legislation relating to the practice of dentistry since the legislation at issue affects all dentists within Rhode Island to the same extent); A.O. 98-14 (opining that the petitioner, a member of the State House of Representatives and owner of a restaurant which serves alcohol, could vote on legislation relating to the legal alcohol limit since the legislation at issue affects all members of the restaurant, bar and hospitality industry to the same extent).

Whereas the first exception set forth in section 7(b) is absolute, the second exception is a qualified one and only applies where the proposed subgroup is "significant and definable." In determining whether a proposed subgroup is sufficiently "significant and definable," the Commission considers the totality of the circumstances, including, but not limited to: (1) the description of the class or subclass; (2) the size of the class; (3) the function or official action being contemplated by the public official; and (4) the nature and degree of foreseeable impact upon the class and its individual members as a result of

the official action. A.O. 2003-57; see, e.g., A.O. 97-75 (opining that an employee subgroup of 85 members within a single division of DEM was not sufficiently “significant and definable”); A.O. 97-65 (opining that an employee subgroup of 45 members of a single school system was not sufficiently “significant and definable”).

In the instant matter, the petitioner seeks guidance as to his ability to participate and vote on any and all legislation relating to healthcare and pharmacies that potentially could arise before the Senate. For illustrative purposes, the petitioner attached 18 Senate bills to his request for an advisory opinion. These various bills relate to healthcare, medical insurance, drug pricing and pharmacies. Given the spectrum of services provided by the Center and the numerous classes impacted by the proposed legislation, the Commission cannot issue a blanket statement regarding the effect such bills might have on the Center and/or the petitioner.

Before participating in the Senate’s consideration of any legislation relating to healthcare and/or pharmacies, the Commission advises the petitioner to consider whether a substantial conflict exists under sections 5(a) and 7(a) (i.e., whether the petitioner, his family member, business associate, employer or any business which he represents would derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity). If no substantial conflict exists, then the petitioner may participate in the Senate’s consideration of the subject legislation. If a substantial conflict seems likely, the petitioner must then consider whether either of the exceptions enumerated in section 7(b) apply. In order to qualify under the first exception, the legislation at issue must not impact the petitioner and/or the Center to any greater extent than any other such facility, facility owner or pharmacist within the health care industry. In the event the petitioner and/or the Center are deemed members of a subgroup within the health care industry, the respective subgroups must be sufficiently “significant and definable” in order to qualify under the second exception. If neither exception applies, then the petitioner must recuse from participation in the Senate’s consideration of the subject legislation in accordance with R.I. Gen. Laws § 34-14-6. Notice of recusal must be filed with the Ethics Commission and the Senate.

Code Citations:

36-14-5(a)  
36-14-5(b)  
36-14-5(d)  
36-14-6  
36-14-7(a)  
36-14-7(b)

Related Advisory Opinions:

2003-57  
2003-2  
2002-5  
99-63

98-84  
98-59  
98-40  
98-14  
97-21  
96-91  
96-71  
95-71  
95-54  
GCA 13

Keywords:

Class Exception  
Financial Interest  
Private Employment  
Business Interest

## Advisory Opinion No. 2002-27

Re: William J. Devanney D.D.S.

### QUESTION PRESENTED

The petitioner, an Exeter Town Councilor, a municipal elected position, requests an advisory opinion as to whether he may participate and vote on a proposed tax freeze ordinance, given that he would benefit from the proposal as a property owner aged 65 or over.

### RESPONSE

It is the opinion of the Rhode Island Ethics Commission that the petitioner, an Exeter Town Councilor, a municipal elected position, may participate and vote on a proposed tax freeze ordinance that would benefit property owners aged 65 and over, notwithstanding the fact that he is a property owner aged 65 or over. In accordance with Section 7(b) of the Code of Ethics, the petitioner would be affected by the proposal to no greater or lesser extent than the significant and definable class of all persons aged 65 or over who own property within the Town.

Under the Code of Ethics, the petitioner may not participate or vote in any matters in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties. See R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if he has reason to believe or expect that he, a business associate, or a business by which he is employed or represents will derive a direct monetary gain by reason of his official activity. See R.I. Gen. Laws § 36-14-7(a). However, he will not have an interest in substantial conflict with his public duties if any benefit accrues to him, his business associate, or any business by which he is employed or represents “as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or the significant and definable class of persons within the business, profession, occupation or group.” R.I. Gen. Laws § 36-14-7(b).

The petitioner advises that the Town of Exeter Town Council is considering a proposed tax freeze ordinance that would benefit property owners aged 65 and over. He represents that there are approximately 2,000 residential homes in the Town of Exeter, and that he is one of approximately 350 homeowners who would benefit from the tax freeze. For the purposes of this advisory opinion, the Commission assumes the accuracy of these representations.

The Commission has recently applied the 7(b) class exception to allow town councilors over the age of 65 to participate and vote on an elderly tax freeze ordinance. In Advisory Opinions 2002-10 and 2002-11, the Commission applied section 7(b) to determine that town councilors over age 65 could participate and vote on a proposed Town of East Greenwich tax freeze ordinance that would affect 660 out of 4,000 East Greenwich

homeowners. Prior to those advisory opinions, the Commission had applied the 7(b) class exception to other matters involving large groups, such as all members of a community, all hunters, all state pension recipients or all teachers within a school system. In the instant matter, a tax exemption that would affect all property owners aged 65 and over, here numbering approximately 350 persons, also falls within that exception. Compare A.O. 99-82 (declining to apply the class exception to a proposed elderly and disabled tax freeze ordinance where only 192 properties would be affected).

Therefore, the Commission concludes that the petitioner may participate and/or vote on the proposed tax freeze ordinance since he would be affected to no greater or lesser extent than all the other members of this significant and definable class. However, the petitioner must prepare and file a notice of recusal, indicating the reasons why, despite his interest, he is able to vote objectively, fairly, and in the public interest on the matter at issue. Notice of recusal should be filed both with the Ethics Commission and the Town of Exeter in accordance with R.I. Gen. Laws § 36-14-6.

Code Citations:

36-14-5(a)  
36-14-7(a)  
36-14-7(b)  
36-14-6

Related Advisory Opinions :

2002-11  
2002-10  
99-82  
98-51  
98-41  
98-40  
97-79  
96-66  
95-101  
95-35  
94-61  
93-65  
91-97

Keywords:

Class exception  
Property interest

## Advisory Opinion No.2004-2

Re: Ronald Driscoll

### QUESTION PRESENTED

The petitioner, a member of the Tiogue Fire District Council, a municipal elected position, requests an advisory opinion as to whether he may negotiate and enforce a collective bargaining agreement with members of the International Association of Firefighters (IAFF) Local 3514, and participate in personnel issues and discipline hearings regarding union district personnel, given that he is a member of a different IAFF Local by reason of his employment with the City of Warwick Fire Department.

### RESPONSE

It is the opinion of the Rhode Island Ethics Commission that the petitioner, a member of the Tiogue Fire District Council, a municipal elected position, may negotiate and enforce a collective bargaining agreement with members of the International Association of Firefighters (IAFF) Local 3514, and may participate in personnel issues and discipline hearings regarding union district personnel, notwithstanding his membership in a different IAFF Local by reason of his employment with the City of Warwick Fire Department.

The petitioner is a member of the Tiogue Fire District Council. He represents that the Board is responsible for, among other things, establishing and maintaining an annual budget for the district, setting a tax rate, purchase orders, negotiating a contract with district employees who are members of the IAFF Local 3514, discipline and personnel issues with paid employees and volunteer members.

The petitioner is employed by the City of Warwick Fire Department. As such, he is a member of the IAFF Local 2748.

Under the Code of Ethics, the petitioner may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties and employment in the public interest. R.I. Gen. Laws § 36-14-5(a). The petitioner will have an interest in substantial conflict with his official duties if he has reason to believe or expect that a "direct monetary gain" or a "direct monetary loss" will accrue, by virtue of his official activity, to himself, a family member, a business associate, an employer, or any business which he represents. R.I. Gen. Laws § 36-14-7(a). R.I. Gen. Laws § 36-14-5(d) prohibits the petitioner from using his public position or confidential information received through his position to obtain financial gain, other than that provided by law, for himself, a family member, business associate, or any business by which he is employed or represents.

The Commission previously has advised that public officials who are union members may participate in negotiations in their public capacity with that union, provided that it is a different local. A recent advisory opinion by the Commission is directly on point. In

A.O. 2003-74, the Commission opined that a member of the Tiogue Fire District Board could participate in negotiations with the IAFF Local 3514 as a member of the Board notwithstanding his membership in IAFF Local 1104 by reason of his employment with the West Warwick Fire Department, given that he is merely a member of the IAFF and not a business associate of that organization. See also A.O. 2003-18 (South Kingstown School Committee member may participate in negotiations with the NEA South Kingstown teachers union and NEA Educational Support Personnel union when she was a member of the University of Rhode Island Professional Staff Association (PSA), which is represented by the National Education Association (NEA), given that she is merely a member of the NEA and negotiations would be with a different local of the same umbrella organization); A.O. 2001-39 (finding that a South Kingstown School Committee member may participate in negotiations with the NEA/ESP when she was a member of the NEA/ACT since she was merely a member of the NEA and negotiations would be with a different local of the same umbrella organization.); A.O. 99-36 (concluding that a North Providence School Committee member may participate in negotiations since he is a member of the NEA in another district); and A.O. 96-92 (finding that a member of Rhode Island Laborers' Local 1215 who served as the Chairperson of the Westerly Housing Authority Board of Commissions could participate in the consideration of a contract with Rhode Island Laborers' Local 1217 notwithstanding the fact that he was a member of a different local of the same union since he was not a business associate of Local 1217).

Consistent with these past opinions, the Commission concludes that the petitioner may participate in negotiations and disciplinary matters with the IAFF Local 3514 as a member of the Tiogue Fire District Council. The Code of Ethics does not prohibit his participation in negotiations with a different local of the same umbrella organization given that he is merely a member of the IAFF and not a business associate of that organization. If in the future the petitioner should rise to any type of leadership position in the IAFF, or obtain a status beyond that of a mere member, then the petitioner should recuse from Fire District Council consideration of IAFF matters or seek further advice from the Commission.

Code Citations:

36-14-2(3)  
36-14-5(a)  
36-14-5(d)  
36-14-7(a)

Related Advisory Opinions:

2003-74  
2003-18  
2001-69  
2001-39  
2001-10

2000-77

99-36

96-92

Keywords:

Contracts

Negotiations

Unions/Bargaining Unit

## Advisory Opinion No. 2004-10

Re: Harvey E. Goulet, Jr.

### QUESTION PRESENTED:

The petitioner, a member of the Pawtucket Housing Authority Board of Commissioners and Administrative Assistant to the Mayor of Pawtucket, municipal appointed positions, requests an advisory opinion as to whether he may simultaneously serve in both positions.

### RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the petitioner's simultaneous service as a member of the Pawtucket Housing Authority Board of Commissioners and as Administrative Assistant to the Mayor of Pawtucket, does not, in and of itself, present a conflict of interest under the Code of Ethics.

The petitioner is the Vice Chairperson of the Pawtucket Housing Authority Board of Commissioners. He represents that the Board of Commissioners, whose members are selected by the Mayor of Pawtucket and approved by the City Council, manage the operations of the Pawtucket Housing Authority (the Authority). The petitioner informs that the Authority does not receive funding from the City and is governed by the United States Department of Housing and Urban Development (HUD) rules and regulations. The Authority implements and oversees programs of HUD which provide public and "section 8" housing to residents of Pawtucket. The Authority presently manages four elderly housing units and two family units. For property under its control, the Authority pays the City a fee in lieu of taxation pursuant to HUD guidelines. Commissioners receive compensation in the amount of \$100 per month. This amount is determined by the City Council.

Pursuant to City of Pawtucket Personnel Ordinance 4-104, the Mayor may appoint an administrative assistant to assist him in the functions of his office, and may delegate to his administrative assistant any ministerial duties pertaining to the office of the mayor, particularly in coordinating the functions of the various departments. Petitioner represents that he receives no compensation for this position. Petitioner also represents that his duties as Vice Chairperson of the Pawtucket Housing Authority Board of Commissioners and as Administrative Assistant to the Mayor of Pawtucket are separate and distinct.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest that is in substantial conflict with the proper discharge of his duties or employment in the public interest. See R.I. Gen. Laws § 36-14-5(a). An official will have an interest in substantial conflict with his official duties if he has a reason to believe or expect that a "direct monetary gain" or a "direct monetary loss" will accrue, by virtue of the public official's activity, to the official, a family member, a business associate, an employer, or any business which the public official represents.

See R.I. Gen. Laws § 36-14-7(a). Section 36-14-5(b) further provides that a public official may not accept other employment which would impair his independence of judgment or require him to disclose confidential information acquired in the course of his official duties.

Additionally, the Code of Ethics prohibits petitioner from using his public position or confidential information received through his position to obtain financial gain, other than that provided by law, for himself, a family member, a business associate or employer. See R.I. Gen. Laws § 36-14-5(d).

The aforementioned provisions of the Code of Ethics do not create an absolute bar to simultaneous service as Vice Chairperson of the Pawtucket Housing Authority Board of Commissioners and as Administrative Assistant to the Mayor of Pawtucket. Rather, those provisions require a matter by matter evaluation and determination as to whether substantial conflicts of interest exist with respect to carrying out an official's duties in the public interest.

Since the petitioner's duties as Vice Chairperson of the Pawtucket Housing Authority Board of Commissioners and as Administrative Assistant to the Mayor of Pawtucket are separate and distinct, there is no indication that serving in both capacities would impair the petitioner's independence of judgment as to his public responsibilities. Nor is there any indication that the simultaneous service, in and of itself, creates a substantial conflict with respect to carrying out duties in the public interest. Absent some direct financial nexus between the petitioner's actions as the Vice Chairperson of the Pawtucket Housing Authority Board of Commissioners and his actions as Administrative Assistant to the Pawtucket Mayor, no inherent conflict of interest would preclude such simultaneous service.

The petitioner is cautioned, however, that if any particular matter should arise in either of these positions that could financially benefit him, then petitioner must recuse from participation and vote on such matter pursuant to R.I. Gen. Laws § 34-14-6. Furthermore, as specific matters arise that raise potential conflicts of interest, the petitioner is urged to seek further and specific advice from the Ethics Commission. Finally, the petitioner is advised that this opinion solely addresses whether the Code of Ethics prohibits him from simultaneously holding these public positions. This opinion does not, and cannot, address whether the city charters or ordinances of Pawtucket, or any other statutes, rulings or policies prohibit such simultaneous service.

Code Citations:

36-14-5(a)  
36-14-5(b)  
36-14-5(d)  
36-14-6  
36-14-7(a)

Related Advisory Opinions:

2003-73

2003-46

2002-15

2002-1

2000-54

2000-34

99-110

Keywords:

Dual public roles

## Advisory Opinion No. 2004-21

Re: Brian Gartland

### QUESTION PRESENTED

The petitioner, a prospective nominee for the Nasonville Fire District Operating Committee, an elected position, requests an advisory opinion as to whether he may seek and/or hold that office given that his father is Chief of the Nasonville Fire Department.

### RESPONSE

It is the opinion of the Rhode Island Ethics Commission that the Code of Ethics does not prohibit the petitioner, a prospective nominee for the Nasonville Fire District Operating Committee, an elected position, from serving on the Operating Committee while his father simultaneously serves as Chief of the fire department in that district. However, the Code does require that the petitioner recuse from participating and voting in the Fire District's consideration of matters financially impacting his father.

The petitioner informs that members of the Operating Committee serve on a volunteer basis without compensation. The petitioner also advises that the Operating Committee manages the affairs and interests of the Nasonville Fire District. In 2001, the petitioner's father was elected Chief of the Volunteer Fire Department. While it is a volunteer position, the Chief does receive an annual stipend in the amount of \$1,200.00. According to the petitioner, the Chief is present at Operating Committee meetings to present his Report, which generally consists of fire and rescue calls for the previous month. In his Report, the Chief may also address budgetary issues concerning the Fire Department.

Under the Code of Ethics, the petitioner may not participate in any matter in which he has an interest, direct or indirect, financial or otherwise, which is in substantial conflict with the proper discharge of his duties and employment in the public interest. See R.I. Gen. Laws § 36-14-5(a). An official will have an interest in substantial conflict with his or her official duties if he has reason to believe or expect that a "direct monetary gain" or a "direct monetary loss" will accrue, by virtue of the public official's activity, to the official, a family member, a business associate, an employer or any business which the public official represents. See R.I. Gen. Laws § 36-14-7(a). Section 36-14-5(d) further prohibits an official from using his or her position or confidential information received through his or her position to obtain financial gain, other than that provided by law, for himself or any person within his family.

In an analogous opinion, A.O. 99-73, the Commission considered whether a member of the Nasonville Fire District Operating Committee, elected in 1998, could continue to serve in that capacity given that in 1999 her spouse had been elected Chief of the Nasonville Fire Department. The Commission stated that the fact that the Chief reports to the Operating Committee about Fire Department business, "does not, in and of itself, require recusal under the Code of Ethics." The Commission concluded that the Operating Committee member could continue to serve in that capacity as long as she recused from

any matter concerning her spouse's stipend or any other matter that could financially impact him. See also A.O. 2004-14 (opining that the petitioner, a member of the Tiogue Fire District Board, could continue to serve in that capacity despite the fact that her husband is employed by the Fire District as a firefighter).

According to the petitioner in the instant matter, the functions of the Nasonville Fire Chief and the Operating Committee have not changed substantially since 1999. Based upon the petitioner's representations and the Commission's review of past advisory opinions, the Commission concludes that the petitioner may serve as a member of the Operating Committee while his father simultaneously serves as Chief. If elected to serve on the Operating Committee, the petitioner could participate in matters affecting the Fire Department generally, but must not participate in matters financially impacting his father, including the discussion and vote on his father's stipend. In the latter case, we remind the petitioner to file a notice and recusal form with both the Operating Committee and the Ethics Commission in accordance with R.I. Gen. Laws § 36-14-6.

Code Citations:

36-14-5(a)  
36-14-5(d)  
36-14-6  
36-14-7(a)

Related Advisory Opinions:

2004-14  
2001-35  
2000-59  
99-73  
98-132  
97-115  
97-49  
GCA 1

Keywords:

Family: Public Employment  
Nepotism

## Advisory Opinion No. 98-88

Re: Paul F. Caranci

### QUESTION PRESENTED

The Petitioner, a North Providence Town Councilor, a municipal elected position, requests an advisory opinion as to whether he may vote on the Town budget given that one of its line items is the School Department's budget which includes a salary adjustment for his spouse as Clerk to the School Committee.

### RESPONSE

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a North Providence Town Councilor, a municipal elected position, may participate and vote to approve or reject the Town budget as a whole notwithstanding the fact that his spouse may be affected by his vote. The Town's School Department budget, which includes a salary adjustment for his spouse, is presented to the Town Council as a line item in the overall Town budget. The Petitioner had no involvement with the development of the School Department's budget and he has no ability to affect the Department's budget once it reaches the Council for a vote.

The Petitioner represents that his spouse is the Clerk of the Town's School Committee. The School Committee has proposed a salary increase for her that is consistent with a union negotiated salary adjustment for clerks, although his wife is not in the union. The Town Council did not participate in the salary negotiations with the union or otherwise have the ability to influence that process or the decision to extend the salary increase to his wife. In addition, the Petitioner represents that the School Department budget is level funded from last year. As a result, the Department's budget is presented to the Town Council as a single line item within the overall Town budget. The Council considers and votes to approve or reject the Town budget as a whole, but cannot add, cut or change lines or items within the School Department's budget.

In prior advisory opinions the Commission has concluded that town council members with family members in their town's school departments may vote on the town's overall budget even if by so doing they are voting on school department matters that affect members of their families. The Commission has reasoned that in circumstances such as those, voting on an overall town budget is sufficiently remote from specific items within a school department budget so as not to constitute a substantial conflict of interest. R.I. Gen. Laws § 36-14-5(a). The Commission further concludes that town council members may not vote on the overall town budget in such circumstances if they have the ability to affect the school's budget and the law requires recusal on any specific matters that may relate to a family member's employment. Therefore, the Petitioner may participate in the overall vote on the Town budget, but may not participate in the consideration of matters particular to his spouse or her employment. In the event such matters come before the Council, the Petitioner, in addition to recusing from participation, should file a recusal

statement with the Town Council and with the Ethics Commission pursuant to R.I. Gen. Laws § 36-14-6.

Code Citations:

36-14-5(a)  
36-14-6  
36-14-7(a)

Related Advisory Opinions:

92-4  
93-86  
94-62  
95-44

Keywords:

Budgets  
Family: Public employment

## Advisory Opinion No. 2004-4

Re: Anthony Marcella

### QUESTION PRESENTED:

The petitioner, a former Special Assistant to the House Majority Leader of the Rhode Island House of Representatives, a state employee position, requests an advisory opinion regarding application of the revolving door provisions of the Code of Ethics.

### RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the petitioner, a former Special Assistant to the House Majority Leader of the Rhode Island House of Representatives, a state employee position, is subject to the revolving door and post-employment restrictions with respect to any substantive involvement with the Rhode Island General Assembly.

The petitioner represents that he was employed as the Special Assistant to the House Majority Leader of the Rhode Island House of Representatives until January 9, 2004. In that capacity, he kept and organized the Majority Leader's calendar, scheduled appointments and acted as a liaison between House members and the Majority Leader on issues and activities. The petitioner represents that he did not have a policy-making, discretionary or confidential role in his employment, but that such role is filled by the Majority Leader's Chief of Staff.

The petitioner now wishes to provide consulting and lobbying services to private businesses. He represents that the majority of his lobbying and consulting work will be on the Federal level in Washington D.C. However, the petitioner may wish to interact with Rhode Island officials in his private employment. The petitioner represents that he will not interact with the Rhode Island House of Representatives for a period of one year from the severance of his position with the House Majority Leader, but wishes to interact with the Rhode Island Senate and with the Executive Branch and departments.

Under the Code of Ethics, a state employee may not represent himself or any other person before any state or municipal agency by which he is employed. R.I. Gen. Laws § 36-14-5(e)(1), (2). This prohibition applies not only during the period of employment, but is extended for a period of one year after he has officially severed his position with said state or municipal agency. R.I. Gen. Laws § 36-14-5(e)(4).

In an analogous advisory opinion, the Commission opined that the Code of Ethics did not prohibit the former Director of Legislative and Governmental Affairs in the Rhode Island Office of the Lieutenant Governor from engaging in lobbying of the General Assembly and state agencies other than the Office of the Lieutenant Governor. A.O. 2003-56. Similarly, in A.O. 2003-32, the Commission opined that the former Director of Administrative Records in the Rhode Island Office of the Secretary of State could lobby

the General Assembly and other state agencies in his private employment, provided that he did not lobby the Office of the Secretary of State, his former employer.

The revolving door and post-employment restrictions set out in the Code of Ethics prohibit a former state employee from appearing before a state agency by which he was employed for a period of one year after the termination of that employment. Provided that the petitioner refrains from appearing before or lobbying the Rhode Island General Assembly including the House of Representatives and Senate, for a period of one year after the date of his official severance from that position, the provisions of 5(e) would not prohibit his lobbying the Executive Branch or its departments.

Code Citations:

36-14-5(e)

Related Advisory Opinions:

2003-56

2003-32

2003-2

2003-28

2001-26

99-45

96-11

Keywords:

Revolving Door

Private Employment

Lobbying

# Section 5

## MODEL CODES

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# OPTIONS: Developing Ethics Ordinances

by  
*Michael Josephson and Jonathan Lurvey*

## **A Qualified “Yes” to Ethics Codes**

At the outset let us state our own bottom line: Despite their limitations, ethics codes should be an integral part of municipal government regulation. They are needed, and they are useful. In drafting such codes, however, the hazards and limitations of statutory standards of ethics should be considered.

- **Narrowness.** The current approach to ethics laws is far too narrow. Most rules focus on issues of financial conflict of interests a narrow part of the spectrum of ethical issues confronting persons in government.

- **Legislative Minimalism.** Referring to technical conflicts regulations as “ethics laws” invites people to think of these rules as standards of ethical propriety rather than as minimal definitions of misconduct. It also encourages a legalistic approach to ethics that induces people to use narrow technical rules as the moral criteria of conduct. This tends to create the attitude, “If it’s legal, it’s ethical.” Persons are not ethical, however, simply because they act lawfully. One can be dishonest, unprincipled, untrustworthy, unfair and uncaring without breaking the law.

- **Over-emphasis on Disclosure.** Ethics laws tend to rely too heavily on disclosure in a way that indirectly scans to endorse clearly inappropriate transactions so long as they are reported. Even worse, many politicians have no qualms about deliberately constructing transactions in ways that avoid even these minimal reporting requirements. In addition, reporting requirements add a substantial record-keeping burden to an already over-bureaucratized government.

- **Trivialization.** Ethics laws tend to trivialize ethics. Ethics is about right and wrong and how an honorable person should behave. But most of the so-called ethics rules reduce the concept to onerous financial disclosures and small and petty prohibitions. In many cases, the laws and regulations micro-manage decision making and preclude discretion. For example, federal employees are forbidden from accepting a free lunch or making personal phone calls from the office; one IRS official has interpreted ethics standards so rigidly that he won’t allow auditors to accept a cup of coffee or use the bathroom facilities of a taxpayer. These rules and interpretations trivialize ethics in a way that generates resistance and discredits the entire process.

- **Loopholes.** The legislative process tends to create patchwork statutes with unjustifiable exceptions, intentional ambiguities and gaping loopholes. Otto Von Bismarck once said, ‘Laws are like sausages; it is better not to see them being made.’ This is certainly true of ethics laws. Legislative politics has become so intense and so public that the process of legislation too often overshadows the substance. Almost invariably, ethics bills are the creatures of compromise, produced by reluctant, if not hostile, lawmakers acting in reaction to scandal-ignited and press-fueled public pressure. The self-interest of individual legislators invades the process and warps the good intentions of the legislation.

- **Subterfuges.** The prevailing attitude about ethics regulations tends to justify remorseless subterfuges and avoidance strategies, which ignore the spirit and undermine the effectiveness of the laws. Keep in mind that: 1) most public officials did not want more ethics laws and would not have

supported them in the absence of political expediency; 2) such laws often impose expensive, time-consuming and demeaning reporting requirements; 3) most laws focus on potentially corrupting conduct rather than concrete acts of corruption. Thus, many people in public life resent them as unnecessary and unfair and think it proper to evade them.

Regardless of these hazards, more and more cities are choosing to adopt ethics legislation. A December 1990 survey, *Municipal Ethics Legislation: The State of the Cities*, by Harriet McCullough reported that 64% (40 of 63) respondent cities reported that they have some form of municipal ethics legislation and a full 80% (51 of 63) were covered by ethics legislation when state ethics laws were included. Only 20% (12 of 63) of the cities which responded to the survey, which included the largest city in each state, reported no ethics laws.

As public disaffection with government at every level continues, we may expect ethics laws to further proliferate. It is the responsibility of those in government to insure that newly created codes are not just a political expediency to quiet public outcry; these codes should be meaningful and effective so future ethical dilemmas can be avoided,

## **The Goals and Structure of an Effective Code of Ethics**

Public servants should view their special ethical obligations in a positive way, not as oppressive or insulting regulations driven by cynicism, but as an expression of the nobler dimensions of government and politics. An ethics

code should inspire voluntary commitment to ethical principles, not simply coerce compliance. In many cases such codes oblige public servants to adhere to higher standards than existing laws and customs. In some cases, they identify duties directly conflicting with common practices and assumptions. Though they map out a difficult path, they are neither unrealistic nor impractical.

- The underlying goal is of course to assure that the public has confidence in the integrity of the legislative process and the legislators that exercise public power.

- **Statement Of Guiding Principles.** Standards of conduct and codes of ethics should evoke commitment to maintaining high ethical standards, not simply to avoid sanctions or criticism, but because it is the right thing to do: Aspiration language of such intent should be included as a statement of guiding principles and in guidelines and commentary. These statements should be emphasized and highlighted, not ignored as window dressing.

- **Overarching Principles: Good Faith and Non-partisanship.** The code should include the principle of good faith—that all standards and guidelines should be construed and implemented with sincerity, integrity and a good faith commitment to advance rather than evade or circumvent the evident or stated spirit and purpose of the rules and their underlying ethical principles. This principle appeals to the notion that unduly narrow or legalistic constructions of specific provisions, strained and insincere interpretation of facts and willful blindness to the real motives behind an act undermine the clear purpose of an ethics code and denigrate its spirit.

The code should also include the principle of non-partisanship—all actions, decisions and votes on matters relating to standards and guidelines should be made on their merits, objectively and without party, regional or ideological partisanship. Playing

politics with ethics issues creates two very significant harms. First, it undermines the effectiveness and moral authority of the ethical rules themselves. Second, the elevation of politics over ethics is invariably perceived by the public and the press in a way that dramatically increases public cynicism and disrespect for public office which are the attitudes that standards are designed to prevent.

- **Substantive Provisions.** The substantive provisions should include the five essential principles of public service ethics.

1. **Public Interest.** Treat office as a public trust, only using the power and resources of public office to advance public interest and not to attain personal benefit or pursue any other private interest incompatible with the public good.

2. **Objective Judgment.** Employ independent, objective judgment in performing duties, deciding all matters on the merits, free from avoidable conflicts of interest and both real and apparent improper influences.

3. **Accountability.** Assure that government is conducted openly, efficiency, equitably and honorably in a manner that permits the citizenry to make informed judgments and hold government officials accountable.

4. **Democratic Leadership.** Honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules.

5. **Respectability.** Safeguard public confidence in the integrity of government by being honest, fair, caring and respectful and by avoiding conduct creating the appearance of impropriety or which is otherwise unbecoming a public official.

- **Ethical Problem Areas,** Listed below are eight issues which are frequent ethical problem areas. While there may not always be consensus about the most ethical way to handle some of these issues, a code provides a normative standard which officials can use to guide their actions and which the public can use to guide their

judgment.

1. **Gifts and Gratuities,** Gifts and gratuities should be clearly and broadly defined. Their number should be reduced from what custom allows: an aggregate limit from a single source per year special limits for lobbyists and others with direct interest in legislative or administrative actions. The code should also define and limit travel paid by others including payment for spouse or companion.

2. **Honoraria**---Honoraria should be clearly defined and eliminated unless totally unrelated to legislative duties or the source has no business with the city.

3. **Use of Government Property and Personnel.** Personal or political use of property and personnel should be strictly prohibited.

4. **Outside Income.** Frequent and meaningful financial disclosure of income and investments of relevant officials. Procedures should be established to protect privacy if disclosures reveal no substantial conflict. A penalty should be imposed for bad faith delay or deliberately misleading disclosures. Income from sources with direct or recurrent interest in legislative and administrative actions should be banned. Income on contracts with the city or state should be banned or closely regulated.

5. **Revolving Door.** Limit employment for one year in any office in which one has been substantially involved.

6. **Nepotism.** Define and limit.

7. **Campaign funds.** Cities in particular face problems which state and federal governments do not. Because city government is constantly in session it is difficult to impose limits on year round fund-raising. Other measures, however, can be put in place: Forbid lobbyists and others with recurrent interest in legislative or administrative actions from playing major roles as campaign managers or fund-raisers: prevent use of campaign funds to enhance a candidate's personal lifestyle; limit campaign funds to uses that directly relate to acquiring or holding office; prevent transfer of funds to other campaigns for other candidates or giving of gifts to

campaign workers or others; limit sharply campaign fund surplus permitting only small carryover—excess money must be returned or donated to a nonpolitical charity; and ban post-election fundraising to retire debts.

8. Whistleblower Protection. Honesty is clearly an important ethical principle, and loyalty does not apply in regard to someone who is acting unethically or illegally.

Whistleblowers should not only be protected, there ought also to be a fair and meaningful source to which people can turn in order to bring corruption to light without fear of retribution. A telephone number may be useful in this regard, keeping in mind that all charges must be thoroughly and fairly investigated.

### Style and Format

The style and format of an ethics code is an essential part of its makeup. For example, a code that is incomprehensible or ambiguous invites people to manipulate it. Accordingly, nine helpful guidelines to drafting effective codes are listed below.

- **Be Specific.** Each major section should begin with a statement of general principles, followed by specific rules applying the principle to situations that are reasonably likely to arise. While the code should not purport to anticipate every situation in which the principle might apply, it should anticipate a sufficiently broad spectrum of situations to provide a basis of generalization and analogy as a means of resolving issues not explicitly discussed.

- **Be Comprehensive.** Ethics codes should cover the full range of ethical principles applicable to persons in government service. Additional principles appropriate to particular cities or office might be included, such as the need to be impartial and objective in determining citizens needs regardless of rancor *creed*,

- **Be Clear and Unambiguous.** All components of the code—general principles, specific rules, definitions standards and guidelines—should be

clear and unambiguous.

To accomplish this:

1. Use direct and simple language, defining any term or phrase the clear meaning of which is not self-evident to the average reader;
2. Carefully use terminology expressing whether the provision is mandatory and enforceable (e.g., “shall,” “must”) or simply aspirational or advisory;
3. Define terms clearly and precisely; and
4. Make liberal use of examples and illustrations to clarify the principle or rule.

- **Be Realistic.** Do not impose standards of conduct that are unrealistic either because they are too difficult to adhere to (e.g., absolutely no use of the phone for personal phone calls) or are inherently too difficult to interpret and apply (e.g., accept absolutely no gratuities of any sort, including a cup of coffee).

- **Include Senior Staff.** Most provisions should apply to senior staff as well as legislators and to all relevant local government employees. For example, an ethics code might require disclosure based on position and not necessarily on income.

- **Emphasize Civil Laws.** An ethics code should be concerned with primarily civil laws (except where true corruption of office is involved or existing criminal statutes exist) and internal standards of conduct. Include extensive commentary and guidelines stressing that a narrow legalistic approach to the rules is improper.

- **Provide for Education.** Perhaps even more important than a good ethics code is an understanding of the principles of ethics. The former is useless without the latter, while the latter can operate independently of the former; one does not need an ethics code in order to act ethically. Public officials, staff and lobbyists should be educated about the law, the principles of public service ethics and appearances of impropriety.

- **Assume that Code is Enforceable.** While sanctions are a last resort, and

perhaps the least efficient and effective means to regulate behavior, they are necessary and should be taken seriously if they are to work at all. Be certain that the provisions of the code are enforceable in terms of other regulations and Constitutional rights. In addition, be sure there is a mechanism for enforcement and the resources and will to enforce the code.

- **Establish a Credible Adjudication Process.** Assure that a credible process of receiving complaints, investigation charges and determining guilt or innocence will be in place to enforce the code. An independent ethics commission should be setup to this end.

1. **Composition.** The commission should consist of all public members (seven to nine); none should be involved in government or function as a lobbyist or any other position inconsistent with the neutral role. Each member should take a pledge of good faith and nonpartisanship in the application of rules.

2. **Powers.** One of the most important services which an ethics commission can render is that of advice: informal, nonbinding oral advice and staff letters, as well as formal binding advisory opinions. The commission can also serve to educate: it can publish ethics manuals, establish education advisor committees, conduct mandatory orientation programs for public officials, staff and lobbyists, and conduct regular refresher seminars. Only when the preventative measures of advice and education fail is it the role of the ethics commission to adjudicate. The commission should investigate, determine guilt or innocence (and may exonerate); and recommend sanctions,

### ENDNOTES

1 Harriet McCullough, *Al ur, ieipot Ethics Legislation: The State of the Cities*. December 1990, p. 1

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## ARTICLE 9-1: IMLA MODEL ORDINANCE ON ETHICS

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### **SECTION 9-101. Declaration of Policy.**

(a) Our government is a representative democracy. Those who are elected, appointed hired, volunteer or campaign to serve the public as representatives accept a public trust, which they share with those whom they elect, appoint, hire or otherwise enlist to help them serve the public. The public entrusts its power and resources to its servants to use only in the public interest. Public trust requires public servants to fulfill their public duties faithfully and honestly, and to subordinate any personal interest which conflicts with the public interest. Public trust also requires that government be conducted in an open manner, when appropriate, so that the official actions of public servants may be subject to public scrutiny and so that members of the public have access to information upon which decisions and policies affecting them are made but public trust also requires that government be conducted in a manner which respects the rights of its constituents to privacy and confidentiality. Public trust also requires that acts which are contrary to the public interest be defined and prohibited; that there be

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an orderly procedure for raising and addressing ethical questions; that ethical behavior be encouraged and suitably rewarded; and that unethical behavior be discouraged and suitably disciplined through a process which is fundamentally fair.

(b) It is the responsibility of each public servant to act in a manner which contributes to cultivating public trust in the integrity of government. Public trust in the integrity of government is cultivated when individual public servants act with integrity and when the public is aware that its servants act with integrity. Therefore, dedicated public servants not only act with integrity, but also choose to avoid even lawful activity when the appearance of impropriety would lessen the public's confidence in the integrity of its servants and its system. As a result, sometimes public servants sacrifice opportunities which would be open to them if they were not public servants.

(c) Most public servants strive to live by these standards most of the time, but because sometimes some do not, some formal policies are necessary. In adopting these formal policies, this community recognizes that:

(1) public servants are also members of society and, therefore, share the same general personal and economic interests in the decisions and policies of government as all members of the community do; and

(2) public servants retain their rights to publicly express their views on matters of general public interest, and to express their opinions on the effect of public actions on their personal or economic interests or rights; and

(3) it is sound public policy for standards of conduct for public servants to distinguish those minor and inconsequential conflicts unavoidable in a free society, and those which are personal, material and avoidable;

(4) public servants are entitled to engage in employment, professional or business activities, other

than official duties, in order to support themselves and their families and to maintain a continuity of professional or business activity, and are entitled to maintain investments; and

(5) in this community it is possible and reasonable to require public servants to engage in employment, professional or business activities and to maintain investments which do not impede or undermine the integrity of their service to the community.

(d) although this Ordinance is necessary to identify minimum standards below which a public servant's conduct cannot fall without the risk of penalty, it is understood that a healthy ethical environment for the provision of public service can not be achieved or maintained by mere adherence to minimum standards. Therefore, this Ordinance also requires that the community provide additional positive means of encouraging ethical behavior among its public servants. It is also understood that no external activity can replace the internal commitment which motivates those who act ethically. The principal policy which forms the foundation of this Ordinance is to encourage internal commitment by establishing and maintaining a work environment which supports integrity with pride and enthusiasm.

A work environment which supports integrity includes public servants who:

(1) recognize with gratitude that the primary reason they hold a public position is to serve the public; and

(2) recognize with pride that they hold their public position because the public trusts them; and

(3) recognize with sadness that the public's trust in government and in them is diminished when any public servant acts unethically; and

(4) recognize with hope that their public service is an opportunity to help restore public trust in their government: and

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(5) are fair and impartial, but also courteous and enthusiastic in serving the public and each other in the performance of their duties; and

(6) are adequately educated in the principles of ethics; and

(7) are motivated to pursue ethical ideals which always exceed minimum standards and often achieve the highest standards; and

(8) exemplify ethical conduct; and

(9) encourage ethical practices which protect, advance and promote the public interest; and

(10) in speaking about the conduct of those in public service, or in responding to others who speak about it, express approval of positive ethical principles and behavior, and refrain from unjustly disparaging or demeaning those who advocate ethical principles or practice ethical behavior; and

(11) recognize that the most effective way to eradicate unethical practices is to consistently act ethically themselves, and to consistently react appropriately with respect to the ethical decisions of those with whom they work; and

(12) exercise sound and independent judgment to act ethically in situations where others around them may be inclined to act unethically; and

(13) when they observe serious unethical practices, promptly disclose them to appropriate authorities, and encourage others to do the same; and

(14) make and implement decisions and policies through proper channels of the governmental organization; and

(15) insure that those for whose performance they are responsible are aware of minimum standards of

ethics below which their conduct cannot fall without the risk of disciplinary consequences; and

(16) when circumstances warrant, appropriately discipline those who are proven to have engaged in unethical behavior.

### **SECTION 9-102. Purposes of Ordinance.**

This ordinance is adopted:

(a) to state principles of ethics which are to be applied in public service; and

(b) to identify minimum standards of ethical conduct for public servants; and

(c) to require that public servants engage in ethical practices which always meet minimum standards; and

(d) to encourage public servants to pursue the highest ethical ideals which they can achieve; and

(e) to provide a process by which public servants may identify and resolve ethical issues; and

(f) to inform public servants and the public of the minimum standards to which public servants must adhere; and

(g) to promote public confidence in the integrity of public servants; and

(h) to encourage members of public office to seek public office or employment, to serve on public boards, to assist public servants as volunteers, and to take pride in participating in the governmental process; and

(i) to establish penalties, as appropriate, for public servants who violate the public trust; and

(j) to provide for a just and reasonable balance among the rights of all individuals who are directly affected by the operation of this Ordinance.

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### SECTION 9-103. Definitions.

For purposes of this Ordinance, the following terms, phrases, words and their derivatives shall have the meanings given herein, Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this Section. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meanings unless the context suggests otherwise. When a right or duty pertains to the holder of a specific position, such as the Mayor, City Manager or City Clerk, the same right or duty pertains to any designee to whom the holder of the position may lawfully delegate the right or duty.

(a) *Appointing authority* means the City Manager, Mayor, governing body, or any other person who appoints a person to a public position.

(b) *Associated*, when used with reference to a business or an organization. includes any business or organization in which a public servant or a public servant’s partner in interest is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least \_\_\_\_% [insert appropriate percentage] of the outstanding equity, or any business or organization in which a public servant or a partner in interest has a personal interest.

(c) *Benefit* means

(1) anything having a monetary value in excess of \$ \_\_\_\_\_ [e.g., \$50]; or

(2) anything, regardless of its monetary value, perceived or intended by either the one who offers it or the one to whom it is offered to be sufficient in value to influence a public servant in the performance or non-performance of an official action; or

(3) anything, regardless of its monetary value, which, under the circumstances, a reasonably prudent person in the position of the public servant to whom the thing is or may be offered, would recognize as being likely to be intended to influence the public servant in the performance or non-performance of an official action; and

(4) the term “benefit” includes, but is not limited to, a valuable act, advance, award, contract, compensation, contribution, deposit, emolument, employment, favor, fee, forbearance, fringe benefit, gift, gratuity, honorarium, loan, offer, payment, perquisite, privilege, promise, reward, remuneration, service, subscription, or the promise that any of these things will be conferred in the future.

(d) *Board* means, when used with the article “the,” as in any reference to “the Board,” the Board of Ethics established by the governing body of the City to operate under the provisions of this Ordinance, unless the context clearly indicates otherwise; used generically, “board” may mean any voting body.

(1) which is established to participate as a body in some manner in the conduct of the City government, including participation which is merely advisory, whether established by state law, city charter, ordinance, contract, executive action or any lawful means; and

(2) any part of whose membership is appointed by the Mayor or governing body acting on behalf of the City; but the term “board” does not include a board, commission or committee which is the governing body of a separate political subdivision of the State, or whose membership, after appointment, is not subject to any regulation by the governing body; nor does it include any City administrative agency, bureau, department, division or office which is administered by individuals rather than by a body.

(e) *Business* means an activity, association, commercial entity, corporation, enterprise, firm,

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franchise, holding company, joint stock company, organization, partnership, receivership, self-employed individual, sole proprietorship, trust or other legal entity established to earn or otherwise obtain money, whether for profit or non-profit, excluding a municipal corporation or governmental entity.

(f) *Business with which a public servant is associated* means a business in which any of the following applies:

(1) The public servant is an owner, partner, director, officer, employee or independent contractor in relation to the business: or

(2) A public servant's partner in interest is an owner, partner, director or officer: or

(3) The public servant or a partner in interest is a stockholder of close corporation stock which is worth at least \$ \_\_\_\_\_ [amount, e.g., \$1000] dollars at fair market value or which represents more than a \_\_\_\_\_ [number of percentage. e.g.5%] percent equity interest: or

(4) The public servant or a partner in interest is a stockholder of publicly traded stock which is worth at least \$ \_\_\_\_\_ [amount. e.g. \$25,000] at fair market value or which represents more than \_\_\_\_\_ [number of percentage. e.g., 10%] percent equity interest, other than publicly traded stock under a trading account if the public servant reports the name and address of the stockholder: or

(5) Any business, regardless of ownership or value, by whom or for whose benefit a decision maker is influenced to act in the hope or expectation of obtaining a personal benefit for the public servant or for a partner in interest of the public servant.

(g) *Candidate* means an individual who is a candidate for an elective city office, as defined in \_\_\_\_\_ [cite applicable statute, city charter or ordinance provision], or an applicant for city employment or for an appointive city position.

(h) *Child* means a son or daughter whether or not son or daughter is the biological offspring of the legal

parent or parents and whether or not the son or daughter is financially dependant on the parent or parents.

(i) *Confidential Information* means information which has been obtained in the course of holding public office, employment, an independent contract or otherwise acting as a public servant, and which information is not available to members of the public under the \_\_\_\_\_ [cite state freedom of information statute] or other law or regulation and which the public servant is not authorized to disclose, including:

1) any written information that could lawfully be excepted from disclosure pursuant to state law, unless the public servant disclosing it is authorized to do so by state law, or pursuant to some other pertinent law, policy or procedure; and

(2) any non-written information which, if it were written, could be excepted from disclosure under state law, unless the public servant disclosing it is authorized to do so by the state law, or pursuant to some other pertinent law, policy or procedure: and

(3) information which was obtained in the course of or by means of a record or oral report of a lawful executive or closed session, whether or not the disclosure of the information would violate state law, unless the public servant disclosing it is authorized by state law to do so, or unless the public servant disclosing it has been properly authorized to disclose it pursuant to an applicable law, policy or procedure; however, when such information is also available through channels which are open to the public, this provision does not prohibit public servants from disclosing the availability of those channels.

(j) *Compensation* means any benefit conferred upon or received by any person in return for services rendered or to be rendered.

(k) *Conflict of interest* means not only a personal interest, as defined in this Ordinance, but also a professional or non-pecuniary interest, such as arises when the City Attorney is precluded from representing one public servant because of the City

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Attorney's preexisting attorney-client relationship with another public servant.

(l) *Controlled or illegal substance* means any drug or other substance, the use of which is regulated by federal or state law, except that within the meaning of this Ordinance the term does not include any drug or substance which has been lawfully prescribed by an authorized person for the use of a public servant, and which is used by the public servant in accordance with the prescription.

(m) *Decision maker* means any public servant or group of public servants empowered to act in a discretionary manner on behalf of the City in any capacity whatsoever, including the making of recommendations, Decision maker includes, but is not limited to, any City agency, bureau, department, division, office, administrator or person who is charged with implementing and administering particular legislation or executive or administrative decisions, and, to the extent this Ordinance is applicable to them, any volunteer or independent contractor who is empowered to exercise any discretionary power which could influence a public servant in the performance or nonperformance of an official action. In this Ordinance, the term "decision maker" is used to represent any and every public servant who could take any discretionary action regarding a matter in which a public servant or a partner in interest has or may have a conflict of interest, or as a result of which a public servant might receive a personal benefit.

(n) *Decision making* means the exercise of any discretionary public power in any capacity whatsoever, including the making of recommendations, by any public servant whose action pertains to a matter in which a public servant or a public servant's partner in interest has or may have a conflict of interest, or as a result of which a public servant might receive a personal benefit.

(o) *Disclose* means, unless the context of this Ordinance indicates otherwise, to file, with the Board, or other appropriate authority and the City Clerk, a document, in a form required or authorized under this Ordinance, signed and sworn to by the

public servant who is required to file the document, which informs the public in accordance with the requirements of this Ordinance of a conflict of interest or a potential conflict of interest, and any other information pertinent to the purpose of filing the document, including the name and address of any person alleged to have a conflict of interest or a potential conflict of interest; or, when this Ordinance permits, the filing of an accurate copy of the official minutes of a governing body or board which informs the public of the required information. Unless this Ordinance or a law which supersedes it requires or permits another procedure, information shall be deemed disclosed if any public servant within a reasonable time before any official action is to be taken by the decision maker, files an affidavit with the City Clerk disclosing the nature and extent of the public servant's conflict of interest, and identifying the decision maker(s) who may act on the matter. For purposes of this provision "within a reasonable time" means within adequate time to allow the City Clerk, acting within the City's normal schedule and procedures for transmitting written documents, to forward the disclosure to the decision maker(s) before whom the matter is pending or may be brought, and within adequate time to allow the decision maker(s) to review the disclosure before taking any official action,

(p) *Employee* means a person other than 'an elected public officer, employed and paid a salary to work for the City, whether under civil service or not whether full-time, part-time, or on a contract basis, and including those officially selected but not yet serving; but does not include an independent contractor; and, for purposes of establishing ethical obligations under this Ordinance and for no other purpose, the term "employee" includes volunteers, notwithstanding the fact that they are unpaid.

(q) *Gift* means any benefit or thing or act of value which is conveyed to or performed for the benefit of a public servant or a partner in interest, including any advance, award, contract, contribution, deposit, employment, favor, forbearance, gift, gratuity, honorarium, loan, payment, service, subscription, or the promise that any of these things or acts of value will be conferred in the future, if

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such thing or act of value is conferred or performed without the lawful exchange of consideration which is at least equal in value to the thing or act conferred or performed.

(r) *Governing body* means the elected officials who comprise the legislative body of the City, as defined by \_\_\_\_\_ [cite applicable provision of city charter, state statute or other law].

(s) *Immediate family* means

(1) a public servant's spouse; and

(2) a public servant's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the public servant or from whom the public servant receives, directly or indirectly, more than one-half of his or her support; and

(3) a public servant's parents, parents-in-law, sisters, sisters-in-law, brothers, brothers-in-law, stepparents, stepbrothers or stepsisters; and

(4) an individual claimed by the public servant or the public servant's spouse as a dependent under the United States Internal Revenue Code.

(t) *Interest* means any personal benefit accruing to a public servant or the public servant's partner in interest, whether in the public servant's own name or the name of any person or business from which the public servant is entitled to receive any personal benefit, as a result of a matter which is or which is expected to become the subject of an official action by or with the City.

(u) *Loan* means a transfer of money, property or anything else of ascertainable monetary value in exchange for an obligation, conditional or not, to repay in whole or in part.

(v) *Matter* means, unless the context of this Ordinance indicates otherwise, any act, action, agenda item, allegation, application, amendment, auction, bill, business, case, charge, claim, consideration, contract, controversy, decree, deed, deliberation, discussion hearing, issue, lease, license, measure, offer, order,

ordinance, permit, personnel action, petition, policy, presentation, procedure, privilege, proceeding, project, proposal, proposition, purchase, recommendation regulation, rental, request, resolution, sale, subject, transaction, use, variance or other discretionary choice pending before a City decision maker when a public servant or a partner in interest has a personal interest in the outcome of the decision, or the decision may result in a personal benefit to a public servant or a partner in interest.

(w) *Ministerial action* means an action that a public servant performs in a given set of circumstances in a prescribed manner in obedience to the mandate of legal authority, without regard to the exercise of the public servant's own judgment as to the propriety of the action being taken.

(x) *Negotiating concerning prospective employ men* means one or more discussions between a public servant and a potential employer other than the City concerning the possibility of the public servant or a partner in interest considering or accepting employment with the employer, in which discussion(s) the public servant responds in a positive way.

(y) *Office* means any of the following:

(1) An elective position within the government of the City; or

(2) A City Attorney; or

(3) An appointive City position in which a public servant serves for a specified term, except a position limited to the exercise of ministerial functions or a position filled by an independent contractor or

(4) An appointive City position which is filled by the governing body or the executive or administrative head of the City, and in which the incumbent serves at the pleasure of the appointing authority, except a clerical position, a position limited to the exercise of ministerial functions or a position filled by an independent contractor.

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(z) *Officer* means any person elected or appointed to hold an office, as defined in [this Ordinance, or cite applicable provision of state law, city' charter, or other law].

(aa) *Official action* means any act, action, approval, decision, denial, directive, disapproval, inaction, order, performance, nonperformance, recommendation, vote, or other direct result of a public servant's exercise of discretionary authority in connection with the public servant's public position.

(bb) *Official duty* means any official action or ministerial action which a public servant is obligated or authorized to perform by virtue of being a public servant.

(cc) *Official records* means any minutes, papers, documents, completed forms, or other records maintained by a public agent for the purpose of fulfilling the disclosure requirements of this Ordinance.

(dd) *Organization* means, unless the context indicates otherwise, any non-profit business other than an individual or governmental agency.

(ee) *Partner in interest* means, when used in this Ordinance in connection with a public servant, as in the phrase "a public servant or a partner in interest" *any and all* of the following:

(1) a member of the public servant's immediate family; or

(2) a business with which the public servant or a member of the public servant's immediate family is associated; or

(3) any other person with whom the public servant or a member of his immediate family is in business, or is negotiating or has an agreement concerning future employment or the future conferring of any personal benefit, whether in the public servant's own name or the name of any business or person from whom the public servant is entitled, or expects to

become entitled, to receive any personal benefit, as a result of a contract or transaction which is, or which is expected to become, the subject of an official action by or with the City. The term partner in interest does not imply or require any form of legal partnership or formal agreement.

(4) When used in the phrase "a public servant *or a partner in interest*," the term "partner in interest" refers only to a partner in interest of the public servant to whom reference is being made, and not to any other person's partner in interest.

(ff) *Personal benefit* means any benefit which is offered or received, or perceived to be offered or received, primarily for the purpose of influencing the manner in which a public servant performs or refrains from performing an official action, so that an attempt is made to induce the public servant, or the public servant is induced, to act in favor of some interest other than the public interest on the basis of an expectation or hope that the public servant or a partner in interest of the public servant will obtain some private gain by acting against the public interest; *provided, however*, that the term "personal benefit" within the meaning of this Ordinance does not include any of the following, which, although they may benefit individual public servants, are deemed to be primarily public benefits rather than personal benefits:

(1) payment by the City of salaries, compensation or employee benefits; or payment by an employer or business other than the City of salaries, compensation, employee benefits or pursuant to a contract, when the payment is unrelated to a public servant's status as a public servant and is not made for the purpose of influencing, directly or indirectly, the vote, official action or decision of a public servant; or

(2) fees, expenses, or income, including those resulting from outside employment, which are permitted and reported in accordance with the policies of the City; or

(3) authorized reimbursement of actual and necessary expenses; or

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(4) admission, regardless of value, to events to which public servants are invited in their official, representative capacity as public servants; or

(5) campaign or political contributions which are made and reported in accordance with state law; or

(6) hospitality extended for a purpose unrelated to the official business of the City; or

(7) reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public event; or in connection with speaking engagements, teaching or rendering other public assistance to an organization or another governmental entity; this provision applies only if the City does not also pay the person for the same activity; or

(8) reasonable gratuities given by a group in appreciation for a public servant speaking or making any presentation before that group; or

(9) awards publicly presented in recognition of public service, acts of heroism or for solving crimes; or

(10) gifts or other tokens of recognition presented by representatives of governmental bodies or political subdivisions who are acting in their official capacities; or

(11) anything of value, regardless of the value when the thing of value is offered to the City, is accepted on behalf of the City, and is to remain the property of the City; or

(12) commercially reasonable loans made in the ordinary course of the lender's business in accordance with prevailing rates and terms, and which do not discriminate against or in favor of an individual who is a public servant because of such individual's status as a public servant; or

(13) complimentary copies of trade publications; or

(14) any unsolicited benefit conferred by any one person or business if the economic value totals less than \$ \_\_\_\_\_ [amount, e.g., \$50.00] per calendar year, and if there is no express or implied understanding or agreement that a vote, official action or decision of a public servant will be influenced; or

(15) reasonable compensation for a published work which *did not* involve the use of the City's time, equipment, facilities, supplies, staff or other resources, if the payment is arranged or paid by the publisher of the work; or

(16) reasonable compensation for a published work which *did* involve the use of the City's time, equipment, facilities, supplies, staff or other resources, if the payment of the compensation to the public servant is lawfully authorized by a representative of the City who is empowered to authorize such compensation; or

(17) anything of value, if the payment, gift or other transfer of value is unrelated to and does not arise from the recipient's holdings or having held a public position, and if the activity or occasion for which it is given does not involve the use of the City's time, equipment, facilities, supplies, staff or other resources in any manner or degree which is not available to the general public; or

(18) anything of value received as a devise, bequest or inheritance; or

(19) a gift received from a relative within the fifth degree of consanguinity, under the civil law computation method, to the public servant, or the spouse of such a relative; or

(20) a gift received from a spouse of a public servant, or a spouse's relative within the fifth degree of consanguinity to the spouse, under the civil law computation method

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(gg) *Personal interest* means a direct or indirect interest having value peculiar to a particular individual or group, whether the value is pecuniary or non-pecuniary, which value may accrue to such individual or group or result in such individual or group deriving or potentially deriving a personal benefit as a result of the approval or denial of any ordinance, resolution, order or other official action, or the performance or nonperformance thereof, by a public servant, and which interest is not shared by the general public; it is to be stressed that the phrase “personal interest of a public servant” includes not only the personal interest of the individual public servant, but also the interest of any partner in interest.

(hh) *Public servant* means any member of the governing body or of any City agency, board, commission, committee, or other voting body, and any agent, department head, employee, official, supervisor, volunteer, or other person, whether elected or appointed, or legally authorized by contract or in any other manner to act in any capacity under the authority of the City.

(ii) *Relative* means a person who is related to an official or employee as spouse or as any of the following, whether by marriage, blood or adoption: parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, brother-in-law or sister-in-law.

(jj) *Statement* when used in reference to the financial disclosure requirements established by this Ordinance, means the prescribed form(s) for fulfilling the financial disclosure requirements.

(kk) *Volunteer* means an individual who is permitted by the City, or by a person authorized to act on behalf of the City, to assist public servants in performing any kind of official duty or action, including actions which are clerical, menial or merely advisory, without any expectation of receiving compensation.

(ll) *Voting body* means the governing body and any other City authority, board, commission, committee, council or group, regardless of whether its function is legislative, administrative, quasi-administrative or quasi-judicial or any combination thereof, which, in order to take any official action, even if the action is merely advisory, must act, as a body on the basis of a vote of some or all of its members.

### **SECTION 9-104. 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.

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(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.

### **SECTION 9-105. Who is Covered.**

This Ordinance applies to all public servants, as the term is defined in this Ordinance, except that it shall not apply to a municipal judge when the judge is acting in a judicial capacity.

### **SECTION 9-106. Duties.**

(a) No public servant or former public servant shall divulge to any unauthorized person confidential information acquired in the course of holding his or her position in advance of the time prescribed by the governing body, administrators, or other applicable law for its release to the public.

(b) All public servants shall respond fully and truthfully to any inquiries by the City Attorney or the Board in connection with the investigation of an alleged or potential violation of this Ordinance. All public servants shall cooperate fully in any investigation by the City Attorney or the Board, and shall locate, compile and produce for them such information as they may request, unless the information requested is exempt from disclosure under other applicable law.

(c) All public servants have a general duty to report any ethical violations of this Ordinance of which they have knowledge. Any person may report a violation of this Ordinance to any City officer or employee, who shall forward the report to a public servant whose specified official duties include the receipt and further processing of such reports.

(d) Duty to Comply with Other Laws.

In addition to being a violation of other law's, it is also a violation of this Ordinance for any public servant to:

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(1) Be convicted of any felony or misdemeanor involving moral turpitude, whether or not the crime relates directly to the duties of the public servant's position in public service; or

(2) Be found guilty of violating any federal, state or city law prohibiting discrimination against any protected class; or

(3) Be found guilty of violating any federal, state or city laws prohibiting sexual harassment; or

(4) Be found guilty of violating any federal, state or city laws prohibiting retaliation against public servants who assert a lawful claim of any nature or otherwise engage in lawfully protected activity; or

(5) Be found guilty of violating any state laws governing lobbying activities conducted by the public servant; or

(6) Be found guilty of violating the City's policy prohibiting the possession or consumption by employees of alcohol or any controlled or illegal substance in any City facility, vehicle, or work site, including lunch periods and rest breaks; prohibiting public servants from driving or reporting to work performing work, or visiting a work site while under the influence of alcohol or any controlled or illegal substance; prohibiting public servants from engaging in the consumption, possession, sale, purchase or transfer of controlled substances; and imposing a duty to provide proof of lawful prescription; to advise a supervisor if the use of prescription drugs may affect a public servant's ability to perform public duties safely and efficiently; or

(7) Be found guilty of violating any state or city laws or policies regulating activity; or

(8) Be convicted of chronic violations of other general federal, state and local laws. Public servants have an ethical duty to abide by the general laws of the State and City, such as the laws governing parking, jaywalking, drunken driving, speeding and so forth. Chronic or excessive violations of state and city laws

may indicate disrespect for the law and may contribute to the erosion of public trust.

(i) If any person believes that a public servant has been convicted of chronic violations of public laws, and that those convictions contribute to the erosion of public trust, that person may file a written complaint with the Board, setting forth the facts upon which the complaint is based. The Board shall forward a copy of the complaint to the alleged offender and if the Board, in its discretion, decides to hear the complaint, it shall give the person notice and an opportunity to be heard. In the event the Board finds that the alleged offender is guilty of chronic violations of law and that the violations contribute to the erosion of public trust, the Board shall have no power other than to inform the offender of the Board's findings, and to order the offender to cease violating the laws for a specified period of time, explaining the circumstances under which any further violations will be deemed to constitute a violation of this Ordinance. Having received such notice, the offender shall violate this Ordinance if the offender violates the order of the Board.

(ii) In addition, the governing body, or City administrators acting with the authorization of the governing body, may adopt a policy more precisely describing this general duty of all public servants to comply with specified laws in order to help gain and retain respect for city government. The policy must inform public servants of the circumstances under which, and the procedures by means of which, violations of state and city laws will be deemed violations of the policy. The procedures adopted in connection with the policy must safeguard the Constitutional rights of the public servants who are subject to the policy, including the rights of notice and a hearing. If the City adopts a general policy, public servants have a duty to adhere to that policy. If they fail to do so, and thereafter, in accordance with the procedures established by the policy, are determined to have violated the policy, the violation of the policy by the public servants shall also constitute a violation of this provision of this Ordinance

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### **SECTION 9-107, Conflict of Interests and Personal Benefits Prohibited**

(a) Except as otherwise permitted under applicable federal, state and city laws and policies, including the City's procurement policies, no public servant shall have a personal interest in any official action. If a law or policy permits a public servant to have such an interest, in seeking the opportunity to further that interest, or in furthering the interest if the opportunity is obtained, the public servant who has the interest shall comply fully with all procedures required under the applicable laws or policies, and shall not, under any circumstances, gain or attempt to gain any advantage by virtue of being in a public position.

(b) No public servant shall accept or receive, directly or indirectly, from any person, including one whose identity is unknown to the public servant, any personal benefit under circumstances in which it can reasonably be inferred that the benefit is intended to influence the public servant in the performance or nonperformance of any official duty or as a reward for any official action of the public servant.

(c) No person, including any vendor, contractor, business, or board of the City, shall offer or give any personal benefit to any public servant or any partner-in-interest of the public servant.

(d) No public servant nor partner in interest of that public servant shall solicit from any person directly or indirectly, any personal benefit, regardless of value, or the promise of receiving a personal benefit in the future, for the public servant.

(e) No current or former public servant shall intentionally use or disclose information gained in the course of, or by reason of, his or her official position or activities in any way that could result in the receipt of any personal benefit for the public servant, for a partner in interest of that public servant, or for any other person, if the information is not public information or if the public servant has not been authorized to communicate it to the public. This provision shall not:

(1) prohibit the disclosure of any such information to incumbent public servants to whose duties the information may be pertinent; or

(2) prevent any public servant from reporting violations of this Ordinance or other illegal acts to the proper authorities; or

(3) prohibit the disclosure of any such information the disclosure of which is required by law.

### **SECTION 9-108. Complicity.**

No person shall, directly or indirectly, aid, abet, agree with, assist, encourage or solicit any public servant or a public servant's partner in interest to violate this Ordinance or to participate in any way in a violation of this Ordinance with or by another person.

### **SECTION 9-109. Deliberation and Vote Prohibited.**

Except as otherwise provided by law, no public servant shall, in such capacity, participate in the discussion, debate, deliberation or vote, or otherwise take part in the decision-making process on any agenda item before the governing body in which the public servant or a partner in interest has a conflict of interest.

### **SECTION 9-110. Duty to Leave Meeting.**

To avoid the appearance of impropriety, after any public servant or a partner in interest is determined to have a conflict of interest or a potential conflict of interest in any matter, and once all questions relating to the conflict of interest have been answered to the satisfaction of the decision maker, the public servant shall immediately leave the meeting room, except that if the matter is being considered at a public meeting, the public servant may remain in the area of the room occupied by the general public. If a public servant who has a conflict of interest in a

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matter is present as a member of a body which is to consider the matter, the public servant shall leave his or her regular seat as a member of the body, and not return to it until deliberation and action on the matter is completed.

Nothing herein shall require members of voting bodies to leave their seats while action is taken regarding any item contained on a "consent agenda" on which there is no deliberation, the public servant's conflict has been disclosed, and the public servant abstains from voting on the item.

### **SECTION 9-111. Public Contracts.**

(a) The City is prohibited from entering into any contract with a business in which a public servant or a public servant's partner in interest has a controlling interest involving services or property of a value in excess of \$ \_\_\_\_\_ [e.g., \$1,000].

(b) Any public servant who has or may have a personal interest in any contract shall disclose such interest prior to the first of any of the events set forth in (1), (2), (3), and (4) below:

- (1) The solicitation of a contract; or
- (2) The bidding of a contract; or
- (3) The negotiation of a contract; or

(4) The approval by the governing body of a contract.

(c) Any contract entered into in violation of this section may be voided by the City in an action commenced within \_\_\_\_\_ [number of years, e.g., three] years of the date on which the Board, or the department or officer acting for the City in regard to the allocation of funds from which such payment is derived, knew or should have known that a violation of this section occurred. This section does not affect the application of any state statute.

### (d) Mandatory Provision in Independent Contracts.

When the City contracts with any person to act on behalf of the City as an independent contractor, the contract shall include a provision which binds the independent contractor, as a condition of accepting the contract, to comply with the applicable provisions of this Ordinance. Any question about whether provisions are applicable, including the financial disclosure provisions, may be resolved by a written opinion of the City Attorney or by a decision of the Board. The governing body, if it deems it necessary or appropriate to do so, may adopt policies or guidelines to further define the circumstances under which certain provision will or will not apply to independent contractors.

### (e) Mandatory Provision in Volunteer Agreements.

Any person who serves as a volunteer on behalf of the City shares in receiving the public's trust, and shares in the responsibility to contribute to creating and maintaining an ethical working environment. Volunteers serve without the expectation of receiving any compensation from the City, and it is improper for any volunteer to seek any compensation from any person served by the volunteer. Volunteers, unless expressly authorized by a public servant empowered to grant such authorization, are prohibited from acting as volunteers in any matter in which they have or may have a personal interest or in connection with which they expect or hope to receive any personal benefit. Prior to serving as a volunteer, and as a condition of serving as a volunteer, each volunteer shall sign an agreement, prepared by or under the supervision of the City Attorney, which includes a provision which binds the volunteer to comply with the applicable provisions of this Ordinance. Any question about whether provisions are applicable, including the financial disclosure provisions, may be resolved by a written opinion of the City Attorney or by a decision of the Board. The governing body, if it deems it necessary or appropriate to do so, may adopt policies or guidelines to further define the circumstances under which certain provisions will or will not apply to volunteers.

**SECTION 9-112, Disclosure of Conflict of Interest or Potential Conflict of Interest.**

(a) A governing body member who has or may have, a conflict of interest in a matter which requires an official action by any decision maker, shall, before the matter is decided, disclose the conflict of interest or the potential or alleged conflict of interest; if the member of the governing body believes that no conflict of interest exists, or that despite any alleged or potential special interest, such governing body member is nevertheless able to vote and otherwise participate fairly, objectively and in a manner consistent with the public interest, then the member shall so state in the written disclosure. All questions relating to a special interest shall be resolved before the matter is decided, and if the matter comes before the governing body, before the governing body engages in any consideration of the merits of the matter.

(b) If any member of the Board has or may have a conflict of interest in any matter before the Board, such member shall not appear before the board, discuss, debate, deliberate about, act upon, vote upon or otherwise participate in or influence the decision-making process pertaining to the matter in which the member has a conflict of interest. All questions relating to a conflict of interest of any Board member shall be resolved before the Board engages in any consideration of the merits of any matter in which a special interest is involved.

(c) If the City Attorney or an Assistant City Attorney has or may have a conflict of interest in any matter before the Board, or if any attorney who is responsible for performing any functions on behalf of the Board is precluded from doing so because of a legal conflict of interest (such as that arising from the representation of a party whose legal position is averse to that of the Board) which cannot be resolved by the City Attorney's Office internally by screening or some other method, the Attorney shall disclose the personal interest, or the nature of the conflict, to the Board. If the Board determines that the Attorney has a personal interest in the matter or if the City Attorney determines that the City Attorney's Office cannot resolve the

conflict in a manner which will allow the City Attorney's Office to perform its duties properly in the matter, then the Board may engage the services of outside counsel upon terms and conditions approved by the governing body.

(d) Any public servant who has or may have a conflict of interest shall disclose it. After receiving a disclosure, the City Clerk shall:

(1) maintain a record of such disclosure which shall be open to the public; and

(2) promptly forward a copy of the disclosure to the decision maker which may act on the matter and

(3) promptly forward a copy of the disclosure to any person who is named in the disclosure as having or potentially having a conflict of interest; and

(4) promptly forward a copy of the disclosure to the Board and to the City Attorney.

(e) Any public servant who believes that any other public servant has a conflict of interest in any agenda item before a governmental body shall disclose such interest to the City Clerk, and the City Clerk shall forward copies of such disclosure to the person who is alleged to have a conflict of interest, the Board and the City Attorney.

(f) A public servant, in addition to disqualifying himself or herself from participation in any decision regarding the pecuniary or employment interest of a partner in interest, shall make known the existence of the relationship and the interest by filing, in writing, with the City Clerk an affidavit disclosing the relationship and the nature and extent of the conflict of interest involved.

**SECTION 9-113. Unauthorized Outside Employment.**

(a) The purposes of the policies governing unauthorized outside employment are:

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- (1) To prevent conflicts of interest; and
- (2) To prevent conflicts of loyalty; and
- (3) To prevent abuses regarding dual compensation, payment for work not done, or unlawful gifts of public funds; and
- (4) To prevent excessive loss of efficiency in the performance of public service.

### (b) Public Servants in General.

A public servant shall not accept any employment, nor enter into any contract, nor perform any service for compensation that results in a financial conflict of interest or a conflict of loyalties which would affect the performance of the public servant's official duties.

### (c) Employees.

(1) An employee of the City may be self employed or may take occasional or part-time jobs if, in the opinion of his or her department head, there is no conflict with working hours, the employee's efficiency in his or her City work, or other interests of the City.

(2) Before engaging in outside employment, employees shall have the written approval of their department heads

(3) Public servants who hold management level positions shall notify the City Manager prior to creating, contracting with, or being employed by any business other than the City. The \_\_\_\_\_ [City Manager or title of other position or board who is empowered to approve or deny such requests] shall provide written approval or disapproval of the notification within days \_\_ [or within a reasonable time]. Any request by the City Manager shall receive prior approval by the \_\_\_\_ [title of position or board who is empowered to approve or deny such requests].

(4) All requests for approval of outside employment shall state the type and place of employment, the hours of work and the employer's name and address.

(5) City employment shall remain the employee's first priority and if at any time the outside employment interferes with an employee's job requirements or performance for the City, the employee shall be required to modify the conditions of the outside employment or terminate either the outside employment or the City employment.

### (d) City Attorney and Assistants.

Neither the City Attorney nor any Assistant City Attorney shall engage in any unauthorized private practice of law for compensation during the period in which they hold office. To the extent they may be authorized to engage in the private practice of law, they shall comply with the state laws governing the professional conduct of lawyers, and any violation of those laws while they are acting as attorneys for the City shall also be deemed to be a violation of this Ordinance. After the date of the adoption of this Ordinance, the City shall impose adherence to this Ordinance, and specifically to this Provision, as a condition of employment of any City Attorney or Assistant City Attorney who is hired thereafter.

## **SECTION 9-114. Other Abuses or Misuses of Position.**

(a) No public servant shall hold any other office, elected or appointed, in any other governmental entity, when the duties of such office are incompatible with the proper discharge of the public servant's duties with the City. For purposes of this Ordinance, the holding of any office, elective or appointive, with any other governmental entity by any member of the governing body or of a board is hereby prohibited in any one of the following circumstances:

- (1) where one office is subordinate to the other;
- or
- (2) where one office carries the power of removal of the other; or

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(3) where the occupancy of both offices is prohibited by the City Charter or by other provisions of law.

(b) No public servant shall act, or create the appearance of acting, on behalf of the City by making any policy statement, or by promising to authorize or to prevent any future official action of any nature, when such public servant is not authorized to make such a statement.

(c) No public servant shall falsely represent his or her personal opinion to be the official position of the City, and no public servant shall falsely represent his or her personal opinion to be the official position of any board City administrators. This subsection shall not apply to statements of elected officials made in the course of fulfilling the responsibilities of their offices or in running for election to office, nor shall it apply to the professional opinions of City officers or employees rendered in the course of performing their duties, provided that such opinions are clearly identified as professional opinions.

(d) No public servants shall use or attempt to use their official positions improperly to unreasonably request, grant, or obtain in any manner any unlawful or unwarranted privileges, advantages, benefits or exemptions for themselves, or others, and no public servants shall use, or attempt to use, their positions to avoid the consequences of illegal acts for any person; nothing in this provision shall be construed to prohibit or discourage any public servant from performing any official duty or action zealously and enthusiastically.

(e) All public servants have a fiduciary duty to use City fiscal and human resources in a manner which advances the public interest, and to refrain from using City resources for their personal benefit; therefore, public servants are prohibited from using City resources in any manner which violates any applicable law or policy, and are expressly prohibited from using any City resource to obtain any personal benefit; accordingly, public servants shall act responsibly in the care and use of City resources, and shall not negligently or intentionally abuse, damage, lose, misappropriate, misplace, misuse, steal or waste any City resources, including, but not limited to: business cards, books,

computers, copy machines, electricity, equipment, facilities, fax lines, internet, inventory, money, official stationery, office space, personnel, postage, records, supplies, telephones, time, tools, typewriters, uniforms, vehicles.

(f) Public servants shall comply with any applicable City policies governing frequent flyer miles or other awards, premiums, prizes or gifts which come into their possession in the course of performing their duties.

(g) Except as otherwise provided by law, no public servant who is a member of a voting body which is empowered to vote on a matter in which the public servant or a public servant's partner in interest has an interest shall discuss, debate, deliberate, participate in, vote upon or act otherwise act upon, a matter relating to any business in which the public servant or a partner in interest has a conflict of interest.

(h) No public servant shall use his or her official authority or position to influence or interfere with or affect the results of any election, nor to solicit or receive contributions from City employees or in connection with any City election.

(i) No public servant shall suppress any public document, record, report or any other public information available to the general public because it might tend to unfavorably affect their private financial, personal, or political interest.

(j) No public servant shall participate by means of approval, deliberation, disapproval, recommendation or other means of exerting the public servant's influence in an official action to hire, promote, discipline, lay off or take any other personnel action regarding any employee or prospective employee who is a partner-in-interest of the public servant.

(k) Except as otherwise provided by law, no public servant who is a member of a board which is empowered to vote on the matter shall discuss, debate, publicly deliberate about, participate in, vote

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or otherwise act upon, any contract, the making of loans or grants of public funds, the granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation, supervision or profit-making activity relating to any business with which the public servant is associated, or any business with which any partner-in-interest of the public servant is associated.

(l) When a public servant, in the course of carrying out his or her duties, has been offered or is discussing future employment with a business that is presently dealing with the City concerning matters within the public servant's current official duties, that person should disclose such possible future employment to the \_\_\_\_\_ [title of position, e.g., Mayor, City Manager, City Attorney, etc.].

(m) No member of the governing body having a personal interest in a matter shall represent himself or herself or any other person before the governing body in connection with that matter, nor in connection with any matter in which a partner in interest has a personal interest, except in cases where a legal right to self-representation exists by virtue of a law other than this Ordinance.

(n) No member of a board having a conflict of interest shall represent himself or herself or any other person before that board in connection with that matter, nor in connection with any matter in which a member of his or her immediate family or a business with which he or she, or a member of his or her immediate family, is associated has a prohibited interest, except in cases where a legal right to self-representation exists by virtue of a law other than this Ordinance.

(o) No member of a board who is prohibited by this provision from representing himself or herself before that board shall represent himself or herself in the appeal of any decision of that board to any decision maker.

(p) No public servant shall represent a person for compensation, beyond the salary and other compensation or reimbursement to which the public servant is entitled for the performance of his or her official duties, before the governing body, a City board, department or employee, except:

(1) in a contested case which involves a party other than the City, and the interests represented by the public servant are the City's interests, are essentially the same as the City's interests, or are not averse to the City's interests; or

(2) in a matter that involves only ministerial action by a City department; or

(3) when the representation is by a public servant acting within the scope of his or her official duties; or

(4) when the representation is merely for the purpose of obtaining information on behalf of a person or business and the public servant receives no compensation for the representation beyond the salary and other compensation or reimbursement to which the public servant is entitled for the performance of his or her official duties.

### **SECTION 9-115. Candidates: Honesty in Applications for Positions.**

No person seeking to become a public official, employee, contractor, volunteer or appointee to any public position shall make any false statement, certificate, mark, rating or report in regard to any test, certification, appointment or investigation, or in any manner commit any fraud, conceal any wrongdoing or knowingly withhold information about wrongdoing in connection with employment or service with the City or in connection with a work-related contract or service of any City public servant.

### **SECTION 9-116. Financial Disclosure Statement: Filing.**

A financial disclosure statement shall be filed with the City Clerk by any individual who in \_\_\_\_\_ [month, e.g., January] of any year is a public servant who is required under this Ordinance to file a statement. The statement shall be filed with the City

Clerk no later than \_\_\_\_\_ [date, e.g., February 28] of that year, and shall be current as of \_\_\_\_\_ [date, e.g., December 31] of the preceding year.

**SECTION 9-117. Financial Disclosure Statement: Who Must File.**

(a) The City's Finance Director and the Personnel Director shall certify to the City Clerk a list, current as of the previous January 1, of the names and mailing addresses of the persons who are required to file a financial disclosure statement in the current year.

(b) For purposes of this Ordinance,, a list prepared by the Finance Director of each person or entity doing business with the City in an amount in excess of \$1,000 for the preceding year shall be determinative for purposes of reporting under this section. Income from, and financial investments in, policies of insurance, and deposits in accounts from commercial or savings banks ,savings and loan associations, or credit unions and the ownership of less than 5% of the outstanding shares of stock in a publicly held corporation shall not be considered to be a financial interest within the meaning of this Ordinance.

(c) Public servants holding the following positions as of \_\_\_\_\_ [date or month, e.g., January] of any year are required to file a financial disclosure statement: Any person holding an elective City office, all heads of departments, all division superintendents in the department of public works and their assistants, all full-time appointed exempt management City employees, those public servants whose responsibilities involve the sale or lease of real estate, receipt of monies, purchasing of supplies, issuing of permits or licenses, assessment of property, inspection of property, construction of public works, settlement of claims, preparation or awarding of contracts, retention of outside services, or performance of professional legal services for the City and any other public servants who may be designated by the \_\_\_\_\_ [title of position, e.g., City Council, Mayor, City Manager]; and

(d) Any public servant whose position is designated as requiring the filing of a financial disclosure statement, but who did not hold the position at the time the filing was required for the current year, shall file the required statement within 21 days following the date he or she first held the position. The statement shall be current as of the date the public servant first entered the new position, except that a public servant who has previously filed a current statement during that year is not required to file a new one merely by virtue of entering a new position; and

(e) Any candidate for appointment to a City board, a vacant elective position or other position designated as requiring the filing of a statement, shall file the statement within 21 days of being nominated unless the candidate has previously filed a statement which is current for that year. The information on the statement shall be current as of the date the candidate is nominated. Following the receipt of a candidate's statement, the Board shall forward copies of the statement to the appropriate appointing authority; and

(f) Any candidate for City elective office shall file a statement with the City Clerk no later than 4:30 p.m. on the 3rd day following the deadline for filing nomination papers for the office which the candidate seeks at the time of filing of nomination papers. The information on the statement shall be current as of December 31 of the year preceding the filing deadline. A copy shall be filed at the same time with the Board. If a candidate fails to file a statement within the required time, the candidate's name shall be omitted from the election ballot,

**SECTION 9-118. Financial Disclosure Statement: Form.**

Every financial disclosure statement which is required to be filed under this Ordinance shall be in the form prescribed by the Board. Information which is required shall be provided on the basis of the best knowledge, information and belief of the reporting public servant, and shall be typewritten or printed.

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The statement shall be verified, dated, and signed by the reporting public servant personally.

### **SECTION 9-119. Financial Disclosure Statement: Procedures.**

(a) A financial disclosure statement is considered filed when it is received by the City Clerk.

(b) The City Clerk shall, in writing, notify all persons required to file financial disclosure statements under this Ordinance. Notice shall be delivered by first class mail to the last known address appearing in city records.

(c) All financial disclosure statements shall be available for examination and duplication by the public in the office of the City Clerk during the regular business hours of the City, except as otherwise provided by law. Costs of duplicating the financial disclosure statement shall be paid by the person requesting the duplication.

### **SECTION 9-120. Financial Disclosure Statement: Commercial Use Prohibited.**

No person shall use for any commercial purpose information contained in or copied from financial disclosure statements filed under this Ordinance or from lists compiled from such statements.

### **SECTION 9-121. Financial Disclosure Statement: Contents.**

The statement shall contain the following information:

(a) Identity of Association with Business; Exceptions. The identity of every business with which the reporting public servant is associated and the nature of the association with the business, except that no identification need be made of:

(1) the City; or

(2) any business which is described in section 170-c of the Internal Revenue Code; or

(3) any organization which is organized and operated primarily to influence voting at an election including support for or opposition to an individual's present or future candidacy or to a present or future referendum; or

(4) any nonprofit organization which is formed exclusively for social purposes and any nonprofit community service organization; or

(5) a trust;

(i) An individual is the owner of a trust and the trust's assets and obligations if he or she is the creator of the trust and has the power to revoke the trust without obtaining the consent of all the beneficiaries of the trust;

(ii) An individual who is eligible to receive income or other beneficial use of the principal of a trust is the owner of a proportional share of the principal in the proportion that the individual's beneficial interest in the trust bears to the total beneficial interests vested in all beneficiaries of the trust. A vested beneficial interest in a trust includes a vested reverter interest.

(b) It is expressly required that the reporting public servant identify the name of each person or entity, whether incorporated or not, doing business with the City in an amount in excess of \$ \_\_\_\_\_ [e.g., \$1,000] during the preceding calendar year from which such disclosing party or a partner in interest has received any personal benefit having an aggregate value of \$ \_\_\_\_\_ [amount, e.g., \$1,000] or more during the preceding calendar year, including, but not limited to, campaign contributions where applicable.

(c) The name, address, and type of business in which the reporting public servant or a public servant's partner in interest was an officer, director, associate, partner, proprietor or employee, or served in any advisory capacity, and from which any income was derived during the preceding year.

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(d) The identity of every business or body politic in which the reporting public servant or a partner in interest of the public servant, severally or in the aggregate, owns, directly or indirectly, securities having a value of \$ \_\_\_\_\_ [amount, e.g., \$5,000] or more the identity of such securities and their approximate value, except that no identification need be made of a security or issuer of a security when it is issued by any business not doing business in \_\_\_\_\_ [name of state] or by any government or instrumentality or agency thereof, or an authority or public corporation created and regulated by an act of such government, other than the State of \_\_\_\_\_, its instrumentalities, agencies and political subdivisions, or authorities or public corporations created and regulated by an act of the \_\_\_\_\_ [name of state] legislature.

(e) The name of any creditor to whom the reporting public servant or a partner in interest of the public servant, severally or in the aggregate, owes \$ \_\_\_\_\_ [amount, e.g., \$5,000] or more and the approximate amount owed. Excluded from this subsection are debts on personal residences.

(f) The identity of any capital asset located within \_\_\_\_\_ [name of City] including the address or legal description of real property in which the reporting public servant or a partner in interest of the public servant holds an interest, other than the principal residence of the public servant or any partners in interest, and the nature of the interest held. This includes the identity of any financial interest in real property, and the address or legal description of the real property, located in other jurisdictions within which the City may own real estate or other public property, such as public utility improvements, including all forms of direct or indirect ownership, such as partnerships or trusts of which the corpus consists primarily of real property.

(g) The name of any unit of government, other than the City, which employed the reporting public servant during the preceding calendar year.

(h) The name of any person or business from whom the reporting public servant received during the preceding calendar year any personal benefits having an aggregate value in excess of \$ \_\_\_\_\_ [amount, e.g., \$500].

(i) The name and instrument of ownership in any entity conducting business in the City, in which the reporting public servant, or a partner in interest of the public servant had a financial interest during the preceding calendar year, except that ownership interests in publicly held corporations need not be disclosed.

(j) The identity of each payer from which the reporting public servant or a partner in interest of the public servant received \$ \_\_\_\_\_ [amount, e.g., \$1,000] or more in income for the preceding taxable year, except that if the reporting public servant identifies the general nature of the business in which he or she or any partner in interest is engaged, then no identification need be made of a decedent's estate or an individual, not acting as a representative of a business. In addition, no identification need be made of payers from which only dividends or interest, anything of pecuniary value reported under his Ordinance or political contributions reported under state law, were received.

(k) The name of, the nature of, and the case number or file number, if one exists, of any City action requested by any person who has applied to the City for any license or franchise, or any permit for annexation, zoning or rezoning of real estate during the preceding calendar year if the reporting public servant or a partner in interest has a financial interest in the property which would be affected by the City's action.

### **SECTION 9-122. Financial Disclosure Statement: Oath Required.**

All disclosure forms filed under this Ordinance shall be under oath.

**SECTION 9-123. Financial Disclosure Statement: Amendments.**

Every person who is required to file a disclosure statement shall amend the statement from time to time as necessary to ensure the continued accuracy thereof. Each such amendment shall be made within fifteen (15) days following any occurrence which causes the statement to be inaccurate.

**SECTION 9-124. Financial Disclosure Statement: Failure to File.**

(a) The City Clerk shall notify any public servant who fails to file a financial disclosure statement by the prescribed filing date of each year, by certified mail, of the failure to file by the specified date. The public servant shall file the required statement within [number, e.g., 20] working days after having received the notice, along with a late filing fee of \$ \_\_\_ [amount, e.g., \$20]. Failure to file the required statement within \_\_\_ [same number as in the previous sentence] working days after having received the notice shall constitute a violation of this Ordinance, unless an extension has been obtained in accordance with the provisions of this Section.

(b) Any public servant who becomes newly subject to the requirement to file a financial disclosure statement within thirty (30) days prior to the prescribed filing date of any year shall be notified at that time, or as soon as practicable thereafter, by the appointing authority of the obligation to file and shall be permitted to file the required statement without a penalty within \_\_\_ [number, e.g., 20] working days after having received the notice. If the public servant fails to file the required statement within \_\_\_ [same number as in the previous sentence] working days after having received the notice, the City Clerk shall notify the public servant by certified mail of the failure to file by the specified date. The public servant shall file the financial disclosure statement within \_\_\_ [number, e.g., 10] working days after having received the certified notice, along with a late filing fee of \$ \_\_\_ [amount, e.g., \$20]. Failure to file the financial disclosure statement within \_\_\_ [number, e.g., 10] working days after having received the certified notice shall constitute a violation

of this Ordinance, unless an extension has been obtained in accordance with the provisions of this Section.

**SECTION 9-125. Financial Disclosure Statement: Extension.**

A public servant who is required to file a financial disclosure statement may have one thirty-day filing extension by filing a notice with the City Clerk by the date on which the financial disclosure statement is due. Failure to file by the extended deadline shall constitute a violation of this ordinance.

**SECTION 9-126. Financial Disclosure Statement: Notice to Appointing Authority.**

The City Clerk, upon notifying the City Treasurer of the failure of an officer or employee to file a statement, shall also notify the appropriate appointing authority.

**SECTION 9-127. Post Employment Activities.**

No former public servant:

(a) during the 12 months following the date on which he or she ceases to be a public servant, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any decision maker in connection with any matter which might give rise to a judicial or quasi-judicial proceeding and which was under the public servant's responsibility as a public servant within 12 months prior to the date on which he or she ceased to be a public servant;

(b) may, for compensation, act on behalf of any party other than the City in connection with any matter in which the former public servant participated personally and substantially as a public servant and which might give rise to a judicial or quasi-judicial proceeding involving the City;

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(c) shall use or continue to use any former official City title, including use on business cards or stationary following termination of employment with the City, except that such use is not prohibited if the public servant indicates that the employment with the City was former to current employment.

### **SECTION 9-128. Board of Ethics.**

(a) There is created a Board of Ethics consisting of \_\_\_\_\_ [number] members who are residents of the City and shall serve without compensation unless the governing body provides otherwise. Members of the Board of Ethics shall not be elected officials, persons appointed to elective office, full-time appointed officials whether exempt or nonexempt, or City employees, nor shall they be currently serving on any other City board or commission.

(b) Members of the Board shall be residents of the City and shall hold no elected public office nor any other City office or employment.

(c) Board members shall be appointed by the governing body. An appointment to fill a vacancy shall be made by the appointing authority who appointed the member who formerly held the position which is vacant.

(d) The Board shall select its own presiding officer from among its members.

(e) Board members shall serve staggered terms of \_\_\_\_\_ [number] years. A member shall hold office until a member's successor is appointed.

(f) Persons serving as members of the Board on the effective date of this Ordinance shall continue as members until the expiration of their original terms.

(g) No person may serve more than \_\_\_\_ [number] consecutive terms as a member of the Board.

(h) The Board's deliberations and actions upon requests shall be in meetings \_\_\_\_\_ [*open or not open*, in accordance with local law and practice] to the public.

(i) The governing body shall provide such staff support for the Board as the governing body determines to be necessary for the Board to fulfill its duties. The City Attorney is designated to be the legal advisor for the Board, except that the City Attorney is not authorized to represent the Board in any legal action if doing so would create a conflict which would prevent the City Attorney from also representing the Mayor, the City Manager, or the governing body. The City Clerk shall serve as Recording Secretary to the Board and shall provide such administrative services to the Board as may be necessary. Neither the City Attorney nor the City Clerk shall be eligible for appointment as board members.

### **SECTION 9-129. Duties and Powers of the Board.**

(a) The Board shall, in addition to its other duties:

(1) adopt written rules governing its procedures and providing for the holding of regular and special meetings, which rules shall be subject to the approval of the governing body; a copy of the rules shall be filed with the City Clerk; and

2) administer oaths;

(3) conduct hearings as needed to hear and decide specific cases in which a violation of this Ordinance is alleged, whether such cases arise from a complaint or are brought on the Board's own motion; and

(4) no later than \_\_\_\_ [date] of each year, submit an annual report to the governing body concerning its action in the preceding year; the report shall contain

(i) a summary of its decisions and opinions, both open and confidential; the Board shall make any alterations in the summaries necessary to prevent disclosure of any confidential information pertaining to any individual or to any organization if

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the disclosure could lead to the disclosure of the identity of a person who is entitled to confidentiality; and

(ii) recommend any legislative or administrative actions regarding the City's policies and practices which the Board believes would or could enhance the ethical environment in which public servants work; and

(5) establish a process for systematically and regularly evaluating all significant aspects of the administration and implementation of this Ordinance, which shall include an annual review of the full scope of operations of the Board and its procedures, and which shall insure that the both the public and all public servants are provided a reasonable opportunity, and are encouraged, to participate in the process; and

(6) prescribe and make available forms for use under this Ordinance; and

(7) when it deems it appropriate, request the City Attorney for assistance in compelling the production of documents and witnesses to assist the Board in the conduct of any investigation; and

(8) when circumstances make it necessary to do so, retain outside legal counsel and other experts as needed after solicitation of recommendations from the City Attorney (unless the need to retain outside counsel is caused by a conflict involving the City Attorney's Office), and upon approval by the governing body of a contract for services approved as to form by the City Attorney; and

(9) serve as legal custodian of the Board's records, and accept, file, maintain and administer, in accordance with all applicable laws, any information related to the purposes of this Ordinance; and

(10) make financial disclosure statements filed with the Board available for public inspection and copying facilities available at a charge which is the minimum amount permitted under applicable law. All open opinions of the Board shall be filed with the City

Clerk and are open to public inspection. To the extent permitted by law, confidential opinions and any records obtained or filed in connection with requests for confidential opinions, whether the records are written, tape recorded, videotaped, or otherwise recorded shall be kept confidential; and confidential advisory opinions rendered shall be closed in whole to public inspection. Confidential opinions and summaries of them or open references to them shall be drafted in such a way as not to reveal confidential information; and

(11) compile and maintain an index to all financial disclosure statements currently on file with the Board to facilitate public access to such statements; and

(12) develop a plan for implementation of a program to educate public servants who are subject to this Ordinance and the public about their rights, duties and responsibilities hereunder; and

(13) within one year from the effective date of this Ordinance. submit to the governing body for its approval and promulgation, an ethics handbook for the use of all public servants and the public; the personnel department shall document that each City officer and employee receives a copy of the handbook and acknowledges receipt of the handbook in writing; and

(14) in coordination with the City Attorney and other appropriate City personnel, arrange for the conduct of an annual workshop, which shall serve as an orientation for new Board members and an opportunity for experienced members to explore specific issues in depth; attendance at this workshop shall be made a condition of service as a member of the Board, and, before taking office, Board members shall commit themselves to attend it; and

(b) and the Board may:

(1) conduct hearings as it determines necessary or appropriate

(i) to ascertain public opinions and to gather information from the general public,

employees, or others regarding any aspect of the City's ethics policies or practices; and

(ii) for any other purpose for which the Board is authorized to conduct hearings; and

(2) respond, as it deems appropriate, to requests for confidential advisory opinions; the Board may decline to render an opinion in response to any request for an advisory opinion;

(3) render and publish formal opinions on any matter within the scope of the Board's authority which it may deem appropriate; the Board may initiate opinions on its own motion or upon request; any formal opinion shall be in writing; and

(4) at the request of a person, the City Attorney may render an informal opinion with respect to the prospective conduct of such person. An informal opinion need not be written, and may be provided directly to the requestor of such opinion. Nothing in this Ordinance shall be construed to prohibit a request for an informal opinion by any public servant from the City Attorney regarding a potential conflict of interest. Neither a request for an informal opinion, nor the making of a statement concerning a potential conflict of interest made by a member of the governing body in the course of abstaining from voting or making a motion of self recusal, shall create a presumption or inference that a public servant actually has a personal interest in the matter about which the opinion was requested; if the City Attorney elects to render an informal opinion, the City Attorney shall, within a reasonable time, submit a written summary of the opinion to the Board for the Board's information; if the City Attorney declines to render an informal opinion, nothing shall preclude the person requesting the opinion from requesting the Board for an opinion; and

(5) prepare and publish special reports, technical studies, and recommendations to further the purposes of this Ordinance.

### **SECTION 9-130. Who May Request Board Action.**

(a) Any person may file a complaint with the Board, and any public servant, prospective public servant or former public servant, either personally or on behalf of an organization or governmental body, may request of the Board an ethics opinion, whether a formal opinion or a confidential advisory opinion, regarding the propriety of any matter or matters to which the person is or may become a party; and any decision maker, with the consent of a prospective appointee, may request of the Board an ethics opinion regarding the propriety of any matter to which the public servant, prospective public servant or former public servant is or may become a party.

(b) Any request for Board action shall be in writing, and shall be signed by the person making the request

### **SECTION 9-131. Limitations on Board's Power.**

The Board does not have the authority to reverse or otherwise modify a prior action of the Mayor, governing body, or an officer or employee of the City. If the Board finds a prior action of the Mayor, the governing body, officer or employee to have been ethically improper, the Board may advise the appropriate party or parties that the action should be reconsidered. Upon such advice by the Board, the action shall be reconsidered by the appropriate person or public body. If the Board determines an existing City contract to be ethically improper, after such determination and advice from the Board, the City may void or seek termination of the contract if legally permissible. The Board may refer a matter to the City Attorney for review and consideration for appropriate action. Upon completion of review and consideration, the City Attorney's Office shall report its findings to the Board.

**SECTION 9-132. Procedures for Hearing Complaints.**

(a) Any person may file a written complaint, signed and sworn, with, the City Clerk alleging a violation of this Ordinance.

(b) A complaint shall specify the provisions of this Ordinance alleged to have been violated and facts alleged to constitute the violation.

(c) Upon receipt of such a complaint, but in any event not later than three (3) working days after receipt, the City Clerk shall acknowledge receipt to the complainant(s), and forward the complaint simultaneously to the Board, the person who is complained against and the City Attorney.

(d) The City Attorney shall provide the Board with a preliminary written analysis of the complaint no later than thirty (30) days from the date the complaint is filed with the City Clerk.

(e) During any investigation and during any hearing which is conducted to determine whether a violation of this Ordinance has occurred:

(1) the person under investigation or the accused may be represented by counsel of his or her own choosing; and

(2) the accused or his or her representative, if any, shall have an opportunity to:

(i) challenge the sufficiency of any complaint which has been filed against him or her; and

(ii) examine all documents and records obtained or prepared by the Board in connection with the matter heard; and

(iii) bring witnesses; and

(iv) establish all pertinent facts and circumstances; and

(v) question or refute testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses; and

(vi) exercise, to the extent the Board, in its discretion, determines to be just and reasonable, any pretrial discovery procedure usually available in civil actions.

(f) The following principles shall apply to evidence in connection with hearings conducted by the Board:

(1) The Board shall not be bound to adhere to statutory Rules of Evidence, but shall be fundamentally fair in its administration of evidence; and

(2) During any hearing conducted by the Board to determine whether a violation of this Ordinance has occurred, all evidence including certified copies of records which the Board considers shall be fully offered and made a part of the record in the proceedings; and

(3) The accused or any other person under investigation shall be afforded adequate opportunity to rebut or offer countervailing evidence; and

(4) The Board shall inform the accused or his or her counsel of exculpatory evidence in its possession; and

(5) The standard of evidence in hearings conducted under this Ordinance shall be clear and convincing evidence admitted at the hearing.

(g) the Board, in addition to its other duties and powers, may:

(1) appoint a hearing officer to conduct hearings under this Ordinance; and

(2) with the approval of the governing body, retain outside legal counsel and other experts as needed with respect to hearings in accordance with its

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policies. The selection of a hearing officer and outside counsel and other experts and any contract for such persons shall be made after solicitation of recommendations from the City Attorney and upon approval by the governing body of a contract for services approved *as to form* by the City Attorney; and

(3) order testimony to be taken by deposition before any individual who is designated by the Board and, in such instances, to compel testimony and the production of evidence to the extent it is otherwise lawfully authorized to do so; and

(4) require any person to submit in writing such reports and answers to questions relevant to the proceedings conducted under this Ordinance as the Board may prescribe, such submission to be made within such period and under oath or otherwise as the Board may determine; and

(5) request and obtain from the Department of Revenue copies of state income tax returns and access to other appropriate information as permitted under state law regarding all persons who are the subject of such investigation.

(h) The person complained against shall have ten (10) days from the day after the City Clerk received the complaint to submit a written response to the complaint prior to the Board deciding whether to hold a hearing.

(i) If the complaint is dismissed, the complainant(s) shall have one opportunity within fifteen (15) days of the dismissal to amend the complaint and to re-file it with the Board.

(j) Any person whose name is mentioned or who is otherwise identified during a hearing being conducted by the Board and who, in the opinion of the Board, may be adversely affected thereby, may, upon request of the person or a representative of the person, or upon the request of any member of the Board, appear at the hearing to testify on his or her own behalf or have a representative appear to so testify, and the Board may permit any other person to appear and to testify at a hearing.

(k) Upon request of the accused, on its own motion, or upon request of the City Attorney, the Board shall

issue subpoenas to compel the attendance of necessary witnesses.

(l) At the next regular meeting, or within thirty (30) days, whichever is sooner, following receipt of the City Attorney's analysis, the Board shall review and consider the complaint and the City Attorney's analysis, and, if a hearing is to be held, shall set a date certain for the hearing to take place within thirty (30) days, unless the accused petitions for and the Board consents to a late date.

(m) As soon as practicable after giving due consideration to a complaint, or, if a hearing was held, after the hearing, the Board shall take any action or combination of actions which it deems appropriate and which it is lawfully empowered to take, including, but not limited to the following:

(2) dismiss the complaint based on any of the following grounds:

(i) the complaint does not allege facts sufficient to constitute a violation of this Ordinance; or

(ii) the Board has no jurisdiction over the matter; or

(iii) failure of the complainant to cooperate in the Board's review and consideration of the complaint; or

(iv) the complaint is defective in a manner which results in the Board being unable to make any sound determination; and

(3) determine that no violation of this Ordinance has occurred; or

(4) determine that the complaint alleges facts sufficient to constitute a violation of this Ordinance and that the Board will conduct a hearing, in which case the Board shall promptly send written notice of such determination to the accused and to the party who made the complaint; or

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(5) determine that further information must be obtained in order for the Board to determine whether the complaint alleges facts sufficient to constitute a violation of the Ordinance; and

(i) conduct its own investigation with respect to any alleged violation; or

(ii) request the City Attorney to investigate the complaint and report all findings back to the Board; or

(iii) schedule the complaint for further review and consideration at a future time certain, in which case the Board shall promptly send written notice of such determination to the accused and to the party who made the complaint; or

(iv) refer the complaint to any appropriate authorities for criminal investigation or prosecution; or

(v) refer the complaint along with the Board's findings and conclusions, to an appropriate administrative authority for disciplinary action or other suitable remedial action; the Board, although it has no independent administrative authority, may make any recommendation to any City administrator at any level of supervision, if the Board finds that the recommendation will advance the objectives of this Ordinance; whether to implement the recommendation may be decided by whatever decision maker is authorized under the circumstances; if it is determined that misconduct or malfeasance has occurred, the Board shall refer the matter to the City civil service commission, City Attorney or to the governing body, as circumstances warrant.

(6) After it has made its final determination, the Board shall issue its written findings of fact and conclusions, and may issue any additional reports, opinions and recommendations as it deems advisable under the circumstances. All such reports shall be in compliance with all state and city laws governing confidentiality, open government, and torts. All such

reports shall be reviewed by the City Attorney prior to their issuance.

### **SECTION 9-133. Those Subject to Removal Only by the Governing Body.**

(a) If findings relative to an elected or appointed official are filed by the Board with the governing body, the matter shall be referred to the appropriate standing committee of the governing body for a report, or the governing body may appoint a special committee and proceed in accordance with any other applicable state or local laws.

(b) The committee, in reporting the matter to the governing body, may recommend a dismissal of the charges, a reprimand, or a hearing before the governing body to determine whether removal from office is warranted under the applicable provisions of the state and local laws. Failure of an official to file the required financial disclosure statement may constitute grounds for removal from office.

(c) Any hearing by the governing body or by a special or standing committee as designated by the governing body, shall be conducted in accordance with the following provisions:

(1) The official must be given at least 20 days notice of the hearing date.

(2) The rules of evidence shall apply to the hearing. All evidence, including certified copies of records and documents which the governing body considers shall be fully offered and made part of the record in the case.

(3) Each party shall be afforded adequate opportunity to rebut or offer countervailing evidence, and to cross-examine witnesses.

(4) During the entire hearing conducted under the provisions of this Ordinance, the official or any person whose activities are under investigation shall be entitled to be represented by counsel of his or her choosing. The governing body shall immediately disclose and forward to the official or his or her counsel any evidence which it possesses that may tend to clear the official.

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(5) The official or his or her representative shall have an adequate opportunity to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses. Upon the request of the officer involved, the governing body shall subpoena named individuals to appear as witnesses at the hearing, if such action is necessary to compel their attendance.

(6) The governing body shall have the power to compel the attendance of witnesses and to issue subpoenas for books, records, documents or papers therein to be designated under the authority granted to it by state law.

(7) The governing body may request the state department of revenue for permission to have a designated public officer examine the income tax returns of the official whose conduct or activities are under consideration by the governing body. The examination of the official's income tax returns shall be in accordance with state law.

(d) Governing body action. The governing body shall make a determination in regard to the recommendation of the committee. Dismissal of the findings of the Board as referred to the governing body, or reprimand by the governing body shall be by a majority vote. Removal from office shall be in accordance with all applicable state and local laws

### **SECTION 9-134. Reimbursement of Legal Expenses.**

(a) City funds shall be used to reimburse individuals for reasonable legal expenses incurred in their successful defense of charges filed with the governing body by the Board. Legal fees incurred by the complainant(s), the Board, and the person complained against, in an amount determined reasonable by the Board, shall be paid by the unsuccessful party if the

Board determines such party's complaint or defense was groundless. The unsuccessful party shall not be liable for such fees if the Board determines that any reasonable or plausible grounds exist for the party's complaint or defense. Within the meaning of this provision, "groundless" means:

(1) without basis in fact; or

(2) frivolous; or

(3) not warranted by any law or reasonably arguable interpretation or theory of law.

### **SECTION 9-135. Ex Parte Communications.**

After a complaint has been filed and during the pendency of a complaint before the Board, no member of the Board may communicate directly or indirectly with any party or other person about any issue of fact or law regarding the complaint, except that:

(a) the members of the Board may obtain legal advice from the City Attorney and may discuss the complaint with their staff; and

(b) the members of the Board may discuss the complaint at a lawfully conducted meeting.

If any person attempts to communicate with a Board member regarding the pending complaint, the Board member shall report the substance of the communication to the Board on the public record at the next regular meeting of the Board.

### **SECTION 9-136. Confidentiality of Board Information.**

No member of the Board nor any public servant who has access to any confidential information related to the functions or activities of the Board shall divulge that information to any person who is not authorized to have it. The identity of a person who requests a confidential advisory ethics opinion is confidential, as is information describing or pertaining to any organization mentioned in the request for an

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opinion if the disclosure of the information could lead to the disclosure of the identity of the person requesting the confidential advisory opinion.

### **SECTION 9-137. Waiver of Confidentiality.**

A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of that person is deemed to have waived the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the Board in connection with the request for an advisory opinion.

### **SECTION 9-138. Statute of Limitations.**

No action may be taken on any complaint which is filed later than \_\_\_\_\_ [period of time, e.g., 6 months, 1 year, etc.] after a violation of this Ordinance is alleged to have occurred, and a complaint alleging a violation must be filed within six (6) months from the date the complainant(s) knew or should have known of the action alleged to be a violation.

### **SECTION 9-139. Misdemeanor.**

Violation by any person of any provision of this Ordinance shall be a misdemeanor.

### **SECTION 9-140. Penalties.**

Any violations of this Ordinance shall be punishable to the maximum extent permitted by law. Any disciplinary action shall be carried out in accordance with the provisions of this Ordinance, as well as any other laws, policies and procedures applicable to the position of the offender and the gravity of the offense. The Board is permitted to take any action which it is otherwise lawfully permitted to take, including, but not limited to, any one or combination of the following which the Board deems appropriate under the circumstances: public admonition; public reprimand;

suspension; demotion; forfeiture of or removal from office; termination from employment; a cease and desist order, which must be enforced by a court of competent jurisdiction; and a fine in the maximum amount permitted by law.

### **SECTION 9-141. Penalties Cumulative.**

The penalties prescribed in this Ordinance shall be cumulative and not exclusive of each other or of any other penalties which may be imposed pursuant to any other laws or policies.

### **SECTION 9-142. Liberal Construction of Ordinance.**

The provisions of this Ordinance are to be construed liberally, to the end that the public interest be fully protected, and shall be construed in a manner consistent with all applicable federal and state laws and applicable provisions of the City Charter. In the event of a conflict between any provision of this Ordinance and any applicable federal, state or City charter provision which does not expressly provide otherwise, the federal, state or City charter provision shall control. To the extent permitted by law, all ordinances, resolutions or rules, and parts of ordinances, resolutions or rules inconsistent with this Ordinance are hereby repealed.

### **SECTION 9-143 .Severability.**

If any provision of this Ordinance 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 now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such provision, the conflicting provision of this Ordinance shall be considered a separate, distinct and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of this Ordinance as a whole, or any part other than the part declared to be invalid.

**SECTION 9-144. Effective Date.**

This Ordinance shall be effective on the  
day of \_\_\_\_\_ [month], \_\_\_\_\_ [year).

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## ETHICS: EDITOR'S COMMENTARY

### I. Introduction and Acknowledgements

The IMLA Model Ordinance on Ethics revises and supersedes the NIMLO Model Ordinance on Code of Ethics that appears in the 1981 edition of the NIMLO Model Ordinance Service as Sections 1-701 through 1-710. IMLA wishes to specially thank David Caylor, former City Attorney of El Paso, Texas, and acknowledge his contribution for having drafted this IMLA Model Ordinance and its accompanying Editor's Commentary. Mr. Caylor is a Past Chair of the IMLA Ethics Section and can be contacted directly for further information pertaining to specific provisions of the IMLA Model Ordinance on Ethics at (616) 963-0602 (telephone) or (616) 963- 4143 (fax); or by e-mail at [DCaylor7@aol.com](mailto:DCaylor7@aol.com).

### II. The Difference Between Law and Ethics

An ethics ordinance, of course, deals with an aspect of a community's law, but before addressing the substance of the law, it might be helpful to consider generally where a law of ethics fits among the variety of other forces, in addition to the law, which motivate people to act ethically. Every community has a full store of tools available which could be used in cultivating ethics, and an ordinance is only one of them. It is beyond the scope of this commentary to discuss those tools, except to point out that the effectiveness of an ethics ordinance ultimately depends more on the extent to which those other tools are used than on the ordinance itself.

The term ordinance implies the existence of a whole code, which, however extensive it may be, does not necessarily contain ethics as an element. The term ethics implies the existence of a whole environment which *does* necessarily contain law as an element. Part of what it means to be described as an ethical person who is a member of a community is that the person generally adheres to the laws of the community. There can be exceptions which need not be discussed here.

What it means to be described as a law-abiding person, however, is not necessarily that the person adheres to the ethics of the community, even if it can be said that a community has its own particular ethics. In a community of law-abiding people, there can be a plurality of acceptable approaches to the practice of ethics. To the extent the community formally defines and agrees on acceptable minimum standards for the practice of ethics, and establishes penalties which may be imposed on those who fail to meet the standards, those formal standards become law, and are no longer "merely" ethics. A person remains law-abiding even if the person's guiding principle is: as long as I will not be punished under the law for doing or not doing something, whatever I do is alright. Will, however, a person remain ethical if the person's guiding principle is: as long as I will not be punished under the law for doing or not doing something, whatever I do is alright? If you would answer this question no, then you have perceived a difference between law and ethics. It is because of this difference that it is often said that a community cannot legislate ethics.

If a community cannot legislate ethics, why speak of an ethics ordinance? Is not that a little like speaking of an "attitude ordinance" or a "morale ordinance?" It does not take someone with an attitude to see that a community cannot *mandate* attitude. Someone with an attitude might say that those who hope to promote better attitudes better begin with better attitudes themselves before they begin to legislate my attitude.

A similar principle applies to promoting the practice of ethics. Undoubtedly every community which adopts an ethics ordinance would agree that it does it to promote the practice of ethics. However, there is a potential fallacy latent in the concept that the mere adoption of an ethics ordinance promotes the practice of ethics. The fallacy can be illustrated by a community posing itself a kind of riddle: "do we want an ethics ordinance, or do we want an 'ethics' environment?" At first sight it may appear that an

ethics ordinance is evidence of an ethical environment, and therefore the question appears improperly phrased as an either/or question. Expressed more precisely, the fallacy is that at first sight it appears that an ethics ordinance is an ethical environment. What appears at first sight, however, is not necessarily true; it may be either true or false. To determine whether it is true, one must move beyond first sight to insight, or end sight. On one hand, an old ethics ordinance could be evidence of an ethical environment, that is, of a vibrant, proactive community which honors its values and has taken steps to protect and advance them. On the other hand, an old ethics ordinance could be a stone-cold fossil lying dormant in the stratified pages of a dust-covered tome. A long-standing ordinance may be a long-practiced ordinance or a long-forgotten one. A newly adopted ordinance may be a long-remembered ordinance or a soon-forgotten one. It is the ethical environment which makes the difference, and an ethical environment is the difference between law and ethics.

“Do we want an ethics ordinance, or do we want an ‘ethics’ environment?” The possible answers to the riddle are:

- We want an ethics ordinance; or
- We want an ‘ethics’ environment; or
- We want both; or
- We want neither.

Which answer is best? If there is a community which would answer “we want neither” (which would be a remarkably honest answer from a community which does not want an ethical environment), one would assume that it is not a community which would consider adopting an ethics ordinance. Furthermore, one might consider it safe to assume that a community which is considering adopting an ethics ordinance would not answer “we want neither,” based on the reasoning that a community would not consider adopting an ethics ordinance unless it wanted to promote the practice of ethics. In many cases the assumptions would be true, but not in all cases. In some cases the only reason a community’s leaders consider adopting an ethics ordinance is because the local media are demanding it, or because the leaders want to

distance themselves from some unseemly scandal, and not because they want to promote the practice of ethics. What they want to promote is the appearance of ethics. They will vote in favor of an ordinance, but the ordinance is not really what they want; they want to be perceived as being ethical. Speaking literally, even in this case it would probably be “safe to assume that a community which is considering adopting an ethics ordinance would not *answer* ‘we want neither,’ ” since the community leaders would not be expected to answer truthfully that they want neither an ethics ordinance nor an ethical environment. Anyone who would be honest enough to stand up and say “I don’t want to be honest, I just want you to think I am honest” would probably be too honest to want to stand up and say it.

In most cases, though, a community which is considering adopting an ethics ordinance wants an ethical environment, and that part of the answer is easy. The unanswered part of the question is whether they also want an ethics ordinance. They know they cannot legislate ethics, so they ask what contribution an ethics ordinance can make to creating an ethical environment.

Can a community have an ethical environment without having an ethics ordinance? Yes, thousands of communities do. Every community already has laws which define and punish conduct which falls below the community’s minimum standards. Many communities, without reference to government, promote the practice of ethics in a multitude of ways which do not involve law or politics. For the most part, people bring ethics to government; it is not government which brings ethics to people.

Governmental units, however, also promote the practice of ethics in a multitude of ways which do not involve law. An ethical environment can exist in a community which has no ethics ordinance, and an ethics ordinance can exist in an environment which has no ethics, but an ethical environment cannot exist where there are no ethics. Therefore, an ethics ordinance can contribute nothing to an ethical environment if the ordinance contains no ethics, and ethics, by definition, go beyond what can be mandated by law. What an ethical community wants

in an ethics ordinance is not primarily the ordinance, but the ethics. It is a paradox that an ethics ordinance is a law pertaining to what is not a law. If it truly has ethical content, it is a law which goes beyond the law.

If a community is sincerely trying to promote ethics, and if it decides that an ethics ordinance will help in do so, its decision is not based on a belief that it can legislate ethics, which it cannot, but rather on a belief that it can legislate conduct which is conducive to an ethical environment, and it can prohibit conduct which is incompatible with an ethical environment. No ordinance can create ethics, and no ordinance can create an ethical environment, but an ordinance can prohibit some conduct which is contrary to ethics, and can mandate some conduct which facilitates the practice of ethics. This is the value of the various procedures and processes which can be established in an ethics ordinance. In the first instance, it is the environment which creates the ethics ordinance, not the ordinance which creates the environment, but once the ordinance is created, it can contribute to preserving and enhancing the environment. In other words, an ethical community wants not just an ethics ordinance, but an *effective* ethics ordinance.

An effective ethics ordinance is one which has its full share of both ethics and ordinance, that is, both ethics and law. Most ethics ordinances have plenty of law. They adequately accomplish their legal objectives: if they are intended so punish, they punish; if they are intended to inform, they inform. The weakness of most ethics ordinances is their deficiency in ethics, as if, by analogy, the ordinances suffer from the moral equivalent of a vitamin E deficiency. Because ethics is different from law, it is not realistic to expect the law, as such, to deal effectively with ethics. Ethics is more tolerant and considerate than law. Ethics may respect law enough to reject behavior solely because it is illegal, but the law never rejects behavior solely because it is unethical. Whether behavior is permitted or prohibited by ethics is irrelevant to the law. In this sense, the law is proud and disdains what does not belong to her. Before the law permits or prohibits behavior, the law recognizes that judgments of the rightness or wrongness of that behavior are made in the

realm of ethics, not law. Law will not practice in the courts of ethics. After the law permits or prohibits conduct, however, so that the conduct is judged in courts of law, judgments made in the realm of ethics are irrelevant to the law. The law imposes her own judgments in accordance with her own rules. Ethics may open-mindedly see a matter as both a matter of ethics and of law, but the law, blindfolded, sees the matter only as a matter of law. In this sense, the law consumes ethics and absorbs it into itself. To the law, conduct which was once a matter of ethics is no longer a matter of ethics after the law has made it mandatory, and, in a strict sense, conduct which is not mandatory is not law. When a person does something permissive, it is not the law which causes the person to do it. The law may serve to preserve and protect the right of a person to engage in permissive conduct, including ethics, but when the person performs a discretionary act, it is something other than the law which dictates which discretionary choice the person makes. If the law and ethics are envisioned as physical structures, the law being a courthouse, then the place of ethics, whether it be a palace or servants' quarters, is a place outside of law. The law may serve to preserve and protect the place of ethics, but it never becomes ethics.

The nature of law is to exercise the power to compel, while the nature of ethics is to persuade. It would be contradictory to enact a law to compel free choice. The most the law can do is to compel the provision or the protection of opportunities for free choice. The rest depends on how individuals respond to those opportunities. If the ethics element in an ordinance is effective at any given time in the life of a community, it is because of the current response of individuals within the community to the opportunities provided by the ordinance.

An effective ethics ordinance, therefore, is reflective of an effective community. In the case of a new ordinance which is effective, the community which adopted it was effective before the ordinance came into existence, and that is why the ordinance came into existence. If the ethics element of the ordinance continues to be effective, it is because the community continues to make it so. No magic

language causes people to obey or exceed the standards of the law. People's choices do. In the case of an old ordinance which is effective, it is the continuing choices of individuals in the current community which cause the ordinance to continue to be effective.

An ethics ordinance can grow out of those who practice ethics or those who practice ethics can grow into it, but in ethics, it is practice which produces growth. An ordinance alone is planted on stone; it will dry up and die. To be effective, an ordinance need not be original, but it must be lived by those who are subject to it.

The *process* of adopting and maintaining an ethics ordinance can be as important as the ordinance itself, because often the process determines to what extent and in what manner people become involved in the ordinance. The process established by the ordinance for the continuing involvement of those who are subject to it is as important as the substantive content of the ordinance. The more people are involved, the more it enters into their lives. No involvement, no life, or course, if there had always been *no* involvement, there would never have been an ordinance, so, if an ordinance exists, there was a process which involved some people at least once in its creation and adoption.

The terms creation and adoption, which are applied here to ordinances, are akin to the terms birth and adoption, which are applied to children. Those who create or adopt may begin with a kind of parental attachment to an object, but even parental attachment will wane if the object is abandoned. What is the object of an ethics ordinance? Whose object is it? How does it affect those who are subject to it? If those who are subject to the ordinance are never involved in any *creative* way, then they never adopt its object, and it never becomes a part of their lives to which they are attached. They never say of it, as they might say of some other idea, "this is my baby!" This expression suggests another way of illustrating the difference between law and ethics. As a matter of law, the ordinance is adopted when the governing body says it is adopted, but as a matter of ethics it is adopted only when the one who is subject to it says the equivalent of: "I have adopted it, and this is my baby!"

To the extent an ordinance is punitive, it can be imposed without regard to the state of mind of those who are subject to it, and it will be effective in being punitive. To the extent an ordinance is inspirational or motivational; it can be imposed, but not without regard to the state of mind of those who are subject to it. Unless it is also adopted subjectively by those who are subject to it, it will not be effective in being motivational. This distinction between external and internal norms illustrates the difference between law and ethics. When the law imposes a punishment on those who violate it, the legal punishment is external. Externally, in the realm of law, the person punished must submit to the punishment. Internally, in the realm of ethics, however, the person may:

- accept the punishment as just and voluntarily submit to it; or,
- reject the punishment as unjust because she believes she deserves a lesser punishment or no punishment at all; or
- reject the punishment as unjust because he believes he deserves a more severe punishment; sometimes people will punish themselves internally more than the law punishes them; or
- reject the punishment as unjust, but submit to it, sometimes voluntarily, sometimes not, because he believes the personal principle for which he is being punished is higher than the law; sometimes people will reward themselves internally without regard to how the law punishes them.

An ethics ordinance which makes no appeal to internal norms is like a sheet of white paper which is blank except for having the heading ETHICS typed on it. It refers to ethics, but it has no ethics content. An ethics ordinance which does nothing more than compile or reproduce other laws is like a photocopy. It adds no substantive content. Some ethics ordinances have no element of ethics in them. A law which defines an act as a violation of the law and does nothing more, regardless of the nature of the act

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which is defined as a violation, is merely a law doing what a law does. Even if the act is extracted from the realm of ethics, defined as being unethical, and prohibited, the mere prohibition of the act does not make the ordinance an ethics ordinance. For an ordinance to be truly an *ethics* ordinance, it must have ethics content. The ethics dimension of an ordinance pertains to the internal norms of individuals, and pertains to aspirations which exceed the minimum standards imposed by the law.

Any ordinance on any subject is effective as to any individual when the internal norms of the individual conform to the external norms of the ordinance. When the internal norms of an individual conform to the external norms of a zoning ordinance, the individual acts ethically in obeying the zoning ordinance, but that does not make the zoning ordinance an ethics ordinance. An ordinance must have some external *ethics* norms before an individual can conform his internal norms to those external norms.

The IMLA Model Ordinance on Ethics includes a provision which says

In addition to being a violation of other laws, it is also a violation of this [Ethics] Ordinance for any public servant to be convicted of chronic violations of other general Federal, State and local laws.

There would be no point in adopting this provision if it had no ethical content. Doing so would probably constitute double jeopardy, since the punishment for each violation has already been defined and imposed by other law. It would be like a city adopting a provision requiring any city employee who is convicted of murder to pay a \$200.00 fine. The penalty for murder is established elsewhere, and there is no nexus established between the \$200.00 fine and any other principle of law.

It is a different matter when a city charter provides that a member of the governing body who is convicted of a felony will be subject to removal from office. When a community is defining the qualifications of those who are eligible to hold public office in the community, it is reasonable for the community to decide that those who commit murder are not qualified

to hold office. There is an obvious nexus. If the provision were in an ethics ordinance rather than in a city charter, the nexus would be the same, the legal consequences would be the same, and the reasoning would be the same. It would not be said that the member of the governing body was removed from office because murder is unethical.

Similar reasoning applies whenever an ethics ordinance defines any conduct as being subject to disciplinary action. If a public servant is subject to discipline for being a chronic violator of laws, it is not because violating those laws is unethical. It may be unethical, but whether it is or not is irrelevant to the law. What constitutionally permits the conduct to be subject to discipline is that it relates to the fitness of the person to be a public servant. The discipline is not imposed to punish the person for violating the other law; that has already been done or not done in accordance with the process which pertains to the other law. The discipline is imposed because the person who was convicted of violating other laws is a public servant and public policy requires that public servants meet certain standards. If they fail to meet those standards, then public policy requires that action be taken either to bring them into compliance with those standards or to be removed from public service. The disciplinary steps may be graduated as appropriate, but as long as each step is tailored to correspond to the public servant's current degree of fitness to serve, there is sufficient nexus to justify the action even though the public servant has been independently punished elsewhere for the violation.

Discipline pursuant to an ethics ordinance, then, relates primarily to the fitness of a person to be a public servant, not to the coincidental fact that the prohibited behavior is also defined as being unethical. The disciplinary dimension of an ethics ordinance operates as any other law does. It does not have any particular ethical content.

An ethics dimension is present in an ordinance when it calls upon individuals to aspire to ideals which exceed the minimum standards of the community. When individuals respond by choosing

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to aspire to those ideals, then they are responding directly to the ethics content of the ordinance, and it is effective as to them. It is not effective as an ethics ordinance as to those individuals who reject or ignore the appeal for their interior sense of acceptable conduct.

Sometimes the process of considering an ethics ordinance helps a community find a more suitable way to express what the community wants to say about itself. The City of Farmington Hills, Michigan, adopted a Code of Ethics which is written in a conversational style. It includes a section entitled “Integrity and the City,” which begins:

Given time to think about it, each of us could fashion our own working definition of integrity and all these definitions might turn out to be surprisingly similar. That’s because people generally have a good sense of ethics, a sense usually instilled by our parents and nourished by our society.

Most of us tend to think of integrity in these terms:

- Integrity is fairness, honesty, evenhandedness and sincerity. It’s a way of acting and behaving. More importantly, it’s a way of thinking and of making judgments.
- Integrity is a system of values that is constant. Integrity doesn’t change, even in the face of shifting social standards and life styles
- Integrity is a positive force. It’s a proactive attitude that makes good things happen; it’s not just a check list of prohibited behavior.
- Mostly, though, integrity is doing what we know in our hearts is the proper thing to do. Integrity is not achieved simply through obedience to laws and regulations. The City, like any organization, has responsibilities which go far beyond matters of law.

The Farmington Hills Code, which is in some respects more like an honor code than a traditional municipal code, continues with other discussions in a similar tone about subjects like “Why Integrity is Important,” “Personal Reputation,” and “The City’s Reputation.” There are several codes around the country which, like Farmington Hills, seem to reflect an independent and innovative local approach to reaching the subjective dimensions of their citizens and public servants.

Farmington Hills said of integrity that “it’s not just a check list of prohibited behavior,” and of course it is not, but the legal dimension of an ethics ordinance is precisely a checklist of prohibited behavior. This is especially evident in those ordinances, and there are many of them, which simply assemble a series of prohibitions which originate elsewhere, such as provisions of federal and state statutes, the city charter, and other ordinances and policies. Substantively, such ordinances are more like handbooks or manuals than ordinances, and some communities appropriately adopt them in that format, rather than as ordinances. A handbook is one of many formats used across the country, but inescapably, every ethics ordinance, regardless of its format, includes its own checklist of prohibited behavior. That is one of the characteristics of law, as distinguished from ethics. The part of the ordinance which constitutes a checklist of prohibited behavior is one of the elements which establish its character as an ordinance. But for the punitive part of it, it would not need to be an ordinance. The ethics dimension of an ordinance, the motivative or aspirational dimension of it, could be accomplished by other means.

If an ordinance fails to inspire a community, few suffer, because few look to ordinances for inspiration in the first place, and if those few fail to find it there, they can find it elsewhere. If an ordinance fails to convict a perpetrator, however, many may suffer, and those who fail to find enforceability in an ordinance cannot find it elsewhere. Because violating an ordinance can subject a person to serious penalties,

the provisions of the ordinance must be clear and intelligible not only to every person who is required to comply with them, but also to everyone who is required to enforce them. To be effective, the provisions must be clear to lawyers, judges, city council members, members of boards, and to people whose conduct has already put them in a position to need to escape the plain meaning of a provision. If the plain meaning is not plain enough, they may escape, and if the plain meaning is too plain, they may escape. Plain talk may turn out to be just plain talk if it lacks the precision needed for enforcement.

A perfect provision, if one exists, is neither so precise as to be pedantic nor so vernacular as to be vague. A perfect ordinance, if one exists, is not perfect because its sentence construction adheres perfectly to the principles of grammar or because it says what it says in the most sophisticated language, although if the ordinance is perfect, the language is good enough. A perfect ordinance is one which works perfectly for those who are subject to it, and for some, perfect language is not the best language because it is not their language. There is a paradox here. A perfect ordinance would work perfectly if those who are subject to it would work perfectly to make it work, but those who are subject to ordinances are never perfect. Ordinances are necessary because in every community there are some people who refuse to adhere to even the minimum ethical standards of the community, so the community is compelled to define those minimum standards and to impose them on those unwilling to accept them.

Like an ugly duckling, an ethics ordinance is beautiful only when its nature is understood. It cannot fly as high as poetry or move as profoundly as a symphony or penetrate the steel resistance of one determined to do wrong, or by sheer strength of reasoning protect the City from invading forces gathered at its gates. It is an instrument of neither great deliverance nor devastation.

Some think of it as an instrument of devastation. Some public officials, for example, perhaps without realizing it, seem to think of ethics laws as spectators think of Siberian tigers in a zoo: "they are beautiful, but

I don't want to get too close to them. I want to be a spectator, not a spectacle." In these cases, the law may inspire, but what it tends to inspire is fear. An ethics ordinance, however, should be neither feared nor revered as a *major* crime-fighting weapon. If existing federal and state criminal statutes fail to prevent crimes, an ethics ordinance is not likely to prevent them. A fly swatter cannot do a SWAT team's job. Put another way, an ethics ordinance is not an international peacekeeper. Its role is much more modest. It helps insure domestic tranquility by serving as a sort of mouse trap. A public servant's ethical aberrations are small in the context of world history and cosmic exploration, but they are highly significant to those they personally touch, and like mice, it takes only a few of them to disrupt a big event. Sometimes what has taken years to build, such as a reputation, an opportunity or a career, can be destroyed in an instant by someone's lack of ethics, but whatever circumstances converge to cause such catastrophes, chances are an ethics ordinance would not have prevented them. Ethics might have prevented them, but ethics were not there, and the law which was there did not prevent them. At this final point in the process, when it is too late to undo what is done, the ordinance may seem to be an instrument of devastation to the one who has violated it, but to the community at large, the ordinance is a scalpel which the community can use, like a doctor performing minor surgery, to improve its health by excision.

### III. Caveat.

The IMLA Model Ordinance on Ethics is not intended to be adopted in any jurisdiction without the modifications which are necessary to make it conform to the law of that jurisdiction. In deciding whether to use any definition or provision in this Ordinance, all lawyers must recognize and account for issues which arise out of their own state law, such as those involving preemption and constitutionality; identify and account for any federal constitutional issue which might arise out of the application of a provision in their community; and make an independent judgment about the validity and utility of every provision. This model ordinance simply suggests issues and ideas to be considered by those who are drafting their own ethics ordinances, as a checklist might. It is intended

to serve as a starting place for discussion, not as an end product.

#### **IV. SECTIONS 9-101 and 9-102. Declaration of Policy and Purposes of Ordinance.**

“The principle policy which forms the foundation of this Ordinance is to encourage internal commitment by establishing and maintaining a work environment which supports integrity with pride and enthusiasm.”

This statement, which appears toward the end of the Declaration of Policy rather than at the beginning, emphasizes the ethics dimension of the Ordinance rather than the legal dimension. It suggests that the governing body has made a commitment to providing an external work environment which is designed to support, and perhaps even reward, those who have the courage to act with integrity. It implies that the real foundation of the Ordinance is the internal commitment of those who come into the work environment, which could include members of the community as well as public servants. It makes no pretense of legislating ethics as it might if it said “officers and employees of the City shall maintain the highest standards of ethics at all times.” It encourages pride and enthusiasm. Finally, it gives examples of what it means by a work environment which supports integrity.

A list of this type need not be long, but it ought to be substantive enough to give those who are subject to it something to talk about when they are discussing the Ordinance among themselves. For example, the Ordinance praises public servants who “in speaking about the conduct of those in public service, or in responding to others who speak about it, express approval of positive ethical principles and behavior, and refrain from unjustly disparaging or demeaning those who advocate ethical principles or practice ethical behavior,” and public servants who “when they observe serious unethical practices, promptly disclose them to appropriate authorities, and encourage others to do the same.” Would most public servants in a community praise these behaviors? Would they be happy in a workplace staffed by people who do these things?

The spirit of this Ordinance calls for those who are proposing the Ordinance to find ways to involve those who are going to be subject to it and to motivate them to develop their own criteria for what constitutes a work environment which supports integrity, and to state purposes for the Ordinance which they believe in and will commit themselves to support. The active participation of as many people as possible in this process must occur *before* the Ordinance is adopted. The reason for involving people in this manner is to declare policies which describe what people really do or aspire to do, not just what they say they do or what someone else would like them to do; and to state purposes which describe what people are really trying to accomplish by adopting the Ordinance. People are more likely to do what they say they are going to do if they have thought about what they are going to do and have committed themselves to do it *before* they are asked or told by someone else to do it.

#### **V. SECTION 9-103. Definitions.**

##### **A. Importance of Definitions**

The importance of definitions in this Ordinance can be demonstrated by examining the following provision, which is not a quotation from the Ordinance, but is used for purposes of illustration:

No public servant shall have any personal interest in any matter pending before a decision maker.

Even without any definitions being provided, the common meaning of the terms conveys some meaning, so that in at least some cases a legislative intent could be discerned to include some specific positions. The Mayor, City Manager and members of the governing body are clearly public servants; the City Manager would clearly have a personal interest in a contract between the City and a private business which he runs out of his home: a contract would clearly be a “matter,” and it would clearly be pending if it were on the agenda of the governing body, clearly a decision maker with reference to the contract.

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However, there could be considerable room for controversy about the meaning of each of the terms as attempts are made to apply them to holders of positions gradually more removed from the center of power, and as the interest becomes less significant. Every ethics ordinance has a provision which deals with conflicts of interest in some manner. Each community must decide for itself how strict or how precise it wants its ordinance to be.

One way to address the issue is to state details in the provision itself. For example, rather than saying “no *public servant* shall have any personal interest in any matter pending before a decision maker,” the provision could say:

*No member of the governing body or of any City agency, board, commission, committee, or other voting body, nor any agent, department head, employee, official, supervisor, volunteer, nor other person, whether elected or appointed, or legally authorized by contract or in any other manner to act in any capacity under the authority of the City shall have any personal interest in any matter pending before a decision maker*

Rather than saying “no public servant shall have any personal interest in any *matter* pending before a decision maker,” the provision could say:

No public servant shall have any personal interest in *any act, action, agenda item, allegation, application, amendment, auction, bill, business, case, charge, claim, consideration, contract, controversy, decree, deed, deliberation, discussion, hearing, issue, lease, license, measure, offer, order, ordinance, permit, personnel action, petition, policy, presentation, procedure, privilege, proceeding, project, proposal, proposition, purchase, recommendation regulation, rental, request, resolution, sale, subject, transaction, use, variance or other discretionary choice* pending before a decision maker.

Rather than saying “no public servant shall have any personal interest in any matter pending before a *decision maker*” the provision could say:

No public servant shall have any personal interest in any matter pending before *any public servant or group of public servants empowered to act in a discretionary manner on behalf of the City in any capacity whatsoever, including the making of recommendations; including, but not limited to any City agency, bureau, department, division, office, administrator or person who is charged with implementing and administering particular legislation or executive or administrative decisions, and, to the extent this Ordinance is applicable to them, any volunteer and independent contractor who is empowered to exercise any discretionary power which could influence a public servant in the performance or nonperformance of an official action.*

Rather than saying “no public servant shall have any *personal interest* in any matter pending before a decision maker,” the provision could say:

No public servant shall have any *expectation or hope of obtaining*

*(a) any valuable act, advance, award, contract, compensation, contribution, deposit, emolument, employment, favor, fee, forbearance, fringe benefit, gift, gratuity, honorarium, loan, offer, payment, perquisite, privilege, promise, reward, remuneration, service, subscription, or the promise that any of these things will be conferred in the future, or*

*b) any thing, regardless of its monetary value, perceived or intended by either the one who offers it or the one to whom it is offered to be sufficient in value to influence a public servant in the performance or non-performance of an official action; or*

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*(c) any thing, regardless of its monetary value, which, under the circumstances, a reasonably prudent person in the position of the public servant to whom the thing is or may be offered, would recognize as being likely to be intended to influence the public servant in the performance or non-performance of an official action;*

*and no such personal benefit shall accrue to either the public servant or*

*(a) a member of the public servant's immediate family; or*

*(b) a business with which the public servant or a member of the public servant's immediate family is associated, or*

*(c) any other person with whom the public servant or a member of his immediate family are in business, or are negotiating or have an agreement concerning future employment or the future conferring of any personal benefit, whether in the public servant's own name or the name of any business or person from whom the public servant is entitled, or expects to become entitled, to receive any personal benefit, as a result of any matter pending before a decision maker.*

By writing the ordinance in this manner, the drafter has now moved from “no public servant shall have any personal interest in any matter pending before a decision maker,” to a lengthy list which would be considerably longer if it did not contain terms already abbreviated by their own definitions. What appears to be a simple sentence would extend through several pages. This exercise demonstrates the capacity of definitions to serve as an effective method of shorthand in the text of the ordinance. Even a definition which is long and cumbersome has the virtue of being long and cumbersome only once in the ordinance.

Drafters who are required to repeat lists several times throughout an ordinance naturally tend to make

the lists as concise as possible. Conciseness is almost always preferable to wordiness as long as what is concise is also precise. A person who is constructing a definition to be used once in the definitions section of the ordinance, rather than a list, is likely to concentrate on making sure the definition has everything in it which it needs to have. A person who is constructing a list, to be repeated wherever necessary throughout the ordinance, may concentrate on omitting anything which can be omitted. Economy of words and energy may come at the expense of accuracy.

Another advantage of definitions over lists is that it is usually easier for the reader to see a modification to a definition than it is to see an addition or omission from a list. For example, it is easier to say “all public servants except volunteers,” than it is to repeat a long list from which the reader must detect that the term “volunteers” is missing. Using long lists also increases the risk of accidental omissions.

The key to constructing definitions of this type is to know how wide a net the legislative body wants to cast. When lawyers know their clients and the circumstances well enough, it is not hard to approximate what the clients want, or at least it is not hard to find out generally what they want. In some cases, the clients themselves do not know what they want, because they do not know all of their options and the implications of exercising them. In those cases, a lawyer may help them by providing them with a list, or a range of options, and explaining it. Sometimes clients prefer for a lawyer to simply draft an ordinance which deals with the broad subject matter in some ostensibly reasonable way so the client can adopt it, or consider it, and move on.

If a client wants the strictest possible ordinance, with no loopholes, then the lawyer has to try to draft a comprehensive definition, or at least a very precise definition. The definitions included in this Ordinance tend in the direction of being comprehensive, because it is easier for someone using the model to select words and ideas or to strike them than it is for them to add them if they are missing from the model.

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When an ordinance uses extensive definitions which are significantly different from the everyday usage of words, as this model ordinance does, any person interpreting the ordinance must exercise great care in applying the definitions. It is very easy for a person who is familiar with the common meanings of words to believe he understands the meaning of an ordinance which is written in clear, everyday language. Anyone who fails to read and understand definitions is tightrope walking on a silk thread.

### B. Comments on Specific Definitions

(1) *Board and board.* It is convenient to refer to the Board Ethics throughout simply as the Board and it is convenient to use the generic term "board" to cover every other voting body in the City except the governing body, and except when there is reason to identify specific boards.

(2) *Business.* The definition should expressly include or exclude non-profits, and not leave it for someone else to figure out at some future time whether they were intended to be included

(3) *Business with which a public servant is associated.* There is room for wide discretion about how broad or narrow to make this definition.

(4) *Candidate.* Behavior of candidates is often preempted by election codes or other laws.

(5) *Confidential information.* City Council members sometimes, without authorization, publicly disclose information which they obtained in an executive session. When this happens, one member of the body is waiving the confidentiality of the information which belongs to the entire body. This Ordinance would prohibit members of the governing body (and others) from disclosing "...information which was obtained in the course of or by means of a record or oral report of a lawful executive or closed session, whether or not the disclosure of the information would violate state law, unless the public servant disclosing it is authorized..." This may be preempted by state open meetings laws, but it is possible that the imposition of a

stricter standard than the one imposed by state law will not be viewed as conflicting with the state law.

(6) *Conflict of interest* means not only a personal interest, as defined in this Ordinance, but also a professional or non-pecuniary interest, such as arises when the City Attorney is precluded from representing one public servant because of the City Attorney's preexisting attorney-client relationship with another public servant. The vast majority of interests which create ethics problems are pecuniary interests, which are described in this Ordinance as personal interests, but it is necessary to regulate non-pecuniary interests also.

(7) *Decision maker.* This is a new definition constructed for this Ordinance. The term is "used to represent any and every public servant who could take any discretionary action regarding a matter in which a public servant or a partner in interest has or may have a conflict of interest, or as a result of which a public servant might receive a personal benefit." In drafting the text of the ordinance, it is very efficient to have one term that describes all of the positions in the City which could become involved in someone's conflict of interest.

(8) *Disclose.* It is not self evident that the term "disclose" needs to be defined. However, if it is not defined, there are numerous situations in the ordinance which require some explanation of the procedure by which disclosure must take place. If the procedure can be included within the definition of "disclose," it does not have to be explained again.

(9) *Employee.* " for purposes of establishing ethical obligations under this Ordinance and for no other purpose, the term employee includes volunteers, notwithstanding the fact that they are unpaid." This provision accounts for the existence of people who serve as employees on a contract basis, such as temporary clerical help, but who are not independent contractors. It also imposes ethical obligations on volunteers, whose work sometimes places them in situations having ethical implications which are similar to those affecting employees.

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(10) *Matter*. This is a new definition constructed for this Ordinance. It is helpful in simplifying the text. It prevents having to describe a variety of different kinds of actions that could be taken in different contexts.

(11) *Official Action*. A definition of “official action” makes it possible to use a single term throughout the ordinance to encompass a wide variety of actions which would otherwise have to be described in some detail.

(12) *Partner in Interest*. It is difficult and cumbersome to describe the whole cast of characters who are potentially involved in a public servant’s conflict of interest. As defined in this Ordinance, the term is comprehensive, but it, or a variation of it, could be defined to include or exclude whatever degree of relationship suits the needs of the community.

(13) *Personal Benefit*. This term is one of the cornerstones of the ordinance, since it pertains to one of the ethical issues which arise most frequently in a city. Because there are so many exceptions listed, someone might be inclined to ask why there is a rule at all. The rule applies to thousands of potential transactions, and allows for the 20 exceptions identified here. Most ordinances list only a few exceptions, not because the community has formed any conscious intent to regulate the rest, but because they either did not think of the rest, or no one pays much attention to them when they happen. This definition explains that the exceptions are different in nature from the personal benefits which are prohibited, because the exceptions involve activities which are primarily undertaken for the public good, and the benefit which accrues to an individual because of them is actually a public benefit more than a personal benefit.

(14) *Personal Interest*. “.. it is to be stressed that the phrase ‘personal interest of a public servant’ includes not only the personal interest of the individual public servant, but also the interest of any partner in interest.”

(15) *Public Servant* “...means any member of the governing body or of any City agency. board, commission, committee, or other voting body, and any agent, department head, employee, official, supervisor, volunteer, or other person, whether elected or appointed, or legally authorized by contract or in any other manner to act in any capacity under the authority of the City.” One of the objects of the ordinance is to enhance the dignity of those who are subject to doing that, and one minor way of doing that is to recognize the value of the service they give. Referring to all public servants as public servants symbolizes the primary characteristic which binds them all together, from the Mayor to the least volunteer.

### VI. SECTION 9-104. Exemptions.

This section suggests activities which communities might choose to exempt from its prohibitions against conflicts of interest.

The Model Ordinance allows for a person who obtains a prior favorable ethics opinion to be protected from being charged with a violation of the ordinance. What if the person obtains an opinion which says there is no conflict, but the opinion is later overruled, perhaps by a different body, and it is determined that there is a conflict? The person who acted in accordance with the opinion would not be subject to any discipline, but should there be any provision or process which allows for consideration of whether there are any steps which can be taken without damaging the person who obtained the opinion to address the problem of having a person engaging in behavior which constitutes a conflict of interest? Is it possible to mitigate the damage potentially caused by having permitted a person to act under an incorrect ethics opinion?

A subsection could be added which merely describes the review process which would occur if a favorable ethics opinion has been overruled, and, which describes the range of options available to the decision-making body under those circumstances. At the very least, the decision-making body could determine that the overruled ethics opinion could not be relied on again by the person who obtained it.

**VII SECTION 9-105. Who is Covered.**

“This Ordinance...shall not apply to a municipal judge when the judge is acting in a judicial capacity.” The separation of powers doctrine prevents a legislative body from regulating judges in the performance of their judicial functions, but not necessarily in the performance of non-judicial functions, such as administration.

**VIII. SECTION 9-106. Duties.**

(c) “All public servants have a general duty to report any ethical violations of this Ordinance of which they have knowledge.” This is an extremely broad imposition of a duty which some public servants would refuse to accept, some would interpret by means of their own standard of reasonableness, and some would possibly use as a basis for being excessively critical of others. Each community must decide for itself whether, or to what extent, it wants to formally impose this duty. Even if a community ultimately decides not to impose any duty, it would be better off for having debated the issue. In the type of ethical work environment envisioned in the Declarations of Policy section of the ordinance, a standard such as this would neither be simply mandated nor simply ignored. The issue would be raised and discussed, and the decision makers would obtain a sense of (not necessarily a consensus of) the beliefs and attitudes of those who would be subject to the ordinance.

Some communities encourage reporting without making it a duty. Phoenix publishes a phone number which can be used by city employees to make a confidential call to MAC (Management Audit Control); elected officials and board members may report to the City Attorney's Office.

Bangor, Maine suggests an alternative approach to the duty to comply with other laws:

There are certain provisions of the general statutes of the State of Maine which should, while not set forth herein, be considered an integral part of this Ordinance. Accordingly, the provisions of the following sections of the

general statutes of the State of Maine, as may be amended, are hereby incorporated by reference and made a part of this Code of Ethics, and shall apply to all City Councilors of the City of Bangor whenever applicable as if more fully set forth therein, to wit: [lists citation and titles statutory provisions].

**IX. SECTION 9-113. Unauthorized Outside Employment.**

The provision pertaining to attorneys is new:

Neither the City Attorney nor any Assistant City Attorney shall engage in any unauthorized private practice of law for compensation during the period in which they hold office. To the extent they may be authorized to engage in the private practice of law, they shall comply with the state laws governing the professional conduct of lawyers, and any violation of those laws while they are acting as attorneys for the City shall also be deemed to be a violation of this Ordinance. After the date of the adoption of this Ordinance, the City shall impose adherence to this Ordinance, and specifically to this Provision, as a condition of employment of any City Attorney or Assistant City Attorney who is hired thereafter.

**X. SECTION 9-114. Other Abuses or Misuses of Position.**

If a city has general city-wide or departmental policies governing the use of various types of equipment, the ethics ordinance may simply require compliance with those policies. If there are no such policies in place, they may be established through the ethics ordinance, as well as through other means. Clear, reasonable, written policies may promote some ethical behavior which would not occur if no written policies were promulgated.

Sometimes public servants are permitted to use public equipment, such as computers, desks,

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electricity, fax equipment, office space, telephones, typewriters, etc., during non-working hours, such as evenings or weekends for private purposes, such as writing letters to relatives, doing work for organizations of which they are members (whether profit or non-profit), or for some other personal use. These activities normally result in *de minimis* additional costs to the City. Whether these activities are permissible varies in accordance with city or departmental policies, and is simply a matter of policy. If a city permits the activities, it is in the theory that doing so benefits the public more than it benefits the individual, perhaps by improving the morale of those who engage in the activity.

Restrictions against the use of telephones and other means of communication with the outside world during work hours is necessary, but it is not absolute. It is probably not realistic, reasonable, or in the public's best interest, to require that telephones never be used for any personal use whatsoever during work hours. Under that limitation, for example, public servants could not receive or respond to personal emergency calls when they are at work

One reason members of boards should not use official city stationery to conduct correspondence at their homes is that by doing so, they risk evading the open records laws of the state. Correspondence should be conducted through official city channels so that the records are handled in accordance with the law.

### **XI. SECTION 9-129. Duties and Powers of the Board.**

An ordinance provides that "the Board may grant exemptions and modifications to the provisions of this section if it determines that application of those provisions would:

- (1) Constitute an unreasonable invasion of privacy;
- (2) Significantly reduce the availability of qualified persons for public service; and

(3) Not be required to preserve the purposes of this Ordinance."

This provision, depending on who it is interpreted and applied, may constitute an unlawful delegation of legislative authority.

Bangor, Maine, suggests alternative approaches: "The Board shall make findings of fact and render advisory opinions to the City Council when there is doubt as to the applicability of any provisions of this code to any particular situation. In the performance of its duties, the Board shall limit its review and fact finding only to those issues referred to it by the City Council." "If the Board finds any matter referred to it to have been based upon allegations it determines to have been frivolous, unfounded or with malice, it shall so advise the Council."

Each community must decide issues pertaining to complaints. Who can file? Anyone? Will anonymous complaints be accepted? Must complaints be written? Telephone calls? Must they be under oath?

Lansing, Michigan provides: "No person shall knowingly make a false or misleading statement in any complaint filed with the City Clerk pursuant to this Chapter."

A community provides: "If the Board determines that the verified complaint was brought for purposes of harassment, retaliation or any other variety of unlawful discrimination, the Board shall so state." Potentially serious financial consequences could result from this provision. The document could be used against the City, and the members of the Board who made findings that discrimination has taken place could become witnesses against the City's interest in a civil rights complaint or a civil suit for damages. The City has ordered the Board to make these potentially damaging statements in writing, but it is the City, and not the Board, which would be responsible for paying any damages which might result. Civil rights suits are likely to be preferred by plaintiffs because it is possible that the City can be

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compelled to pay attorneys' fees. Sometimes the attorneys' fees cost as much as, if not more than, the amount of the judgment.

### **XII. SECTION 9-140. Penalties.**

"A town official or employee found to have violated this section...may be subject to removal, termination of employment, disciplinary or other appropriate personnel action including suspension of town salary or other compensation, and such violation may be a misdemeanor subject to a fine of up to one thousand dollars (\$1,000.00) or imprisonment of up to one (1) year. The governing body of the Town of Cheverly shall determine the appropriate action." Cheverly, MD

"Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the Board of Ethics shall be guilty of a misdemeanor and punishable by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than ninety (90) days or both, with each day of violation being considered a separate violation" Bowling Green, KY.

"The violation of the Code of Ethics shall be punishable as follows: In the case of contractors, by one or more of the following: oral or written reprimands, cancellation of the transaction and suspension or disqualification from being a contractor or subcontractor under city or city-funded contracts, with such decision to be recommended by the City Manager and approved by the Board of Commissioners." Bowling Green, KY.

"...violation of this Code shall constitute cause for censure, after notice and hearing conducted by the City Council." Bangor, Maine.

"The Board of Ethics and Campaign Practices, after due hearing and finding that a violation of the Code of Ethics by a member of a board, commission or committee, has occurred, may issue a public reprimand" Albuquerque, N.M.

"The Board may issue a cease and desist order against any person found to be in violation of the Ordinance and may seek enforcement of this order in the \_\_\_\_\_ Court." Cheverly, MD.

"The Council may, upon the recommendation of the Board of Ethics and Campaign Practices, and after due hearing of the charge, order the suspension or removal of a member from office; provided, however, that no member shall be removed or suspended from office except upon the concurrence of two-thirds of the Councilors qualified to vote thereon." Albuquerque, NM.

"The Board of Ethics and Campaign Practices, after due hearing and finding that a violation of the Code of Ethics by a member of a board, commission or committee, has occurred, may issue a public reprimand or impose a fine of not to exceed \$100.00 for each violation or do both." Albuquerque, NM.

"Public officials and employees must in all instances maintain their conduct at the highest standards. No public official or employee shall continue in his or her City position or employment when he or she engages in activities which are found more than likely to lead to the diminishing of the integrity, efficiency or discipline of the City service." Bowling Green, K.Y.

# **Section 6**

## **GENERAL INFORMATION**

<b>Practical Difficulties with Ethics (ICMA)</b>	6-1 thru 6-6
<b>Sources for More Information on Ethics</b>	6-7

*Public Management*, April 2001, v83 i3 p2, International City-County Management Association

**Practical Difficulties With Ethics.** *Robert Ball.*

Pressure of work, loyalty to colleagues, power and politics within the organization, budgetary demands, and organizational culture can all muddy the waters when it comes to recognizing behavior as corrupt or unethical.

So why should we act ethically, and what are the practical difficulties of ethical behavior?

**What Is Ethical Behavior?**

The first practical difficulty is with definition. “What is ethical behavior?” we ask. Where do we set the bar? Is ethical behavior different from one authority to another or one industry to another? One of the fundamental issues is whether there is any standard. Ethical behavior is swathed in personal, cultural, and social norms.

Within organizations, “What is ethical behavior” can best be answered by involving staff in discussions leading to ownership of the outcome. The questions detailed later in this article could stimulate discussion and understanding within your organization.

As human beings, we have a marvelous capacity to justify our actions by reference to principles; we can rationalize anything to suit the occasion. Unfortunately, we often use different and even conflicting principles to sustain our justifications. We will probably always need the weight of the law and social pressures to provide additional reasons for the full maintenance of ethical standards.

**Tone at the Top**

Where the general manager/chief executive officer is clearly supportive of and models ethical behavior, a positive culture will permeate the whole organization. General Managers, CEOs, and other senior managers must give strong messages about ethical

behavior. Positive and effective messages provide the foundation on which to build a culture of proper, ethical behavior.

Training will rely heavily on the attributes and attitudes of the general manager and CEO and those of senior management, but staff will be cynical unless they get active support from them in projecting an appropriate “tone at the top.”

The manager and senior management personnel need to conduct themselves with even higher standards of probity, integrity, and ethical behavior than those of the council’s employees. However, isn’t it a slight on the character and professionalism of the manager to suggest that he or she cannot remain immune to unethical behavior while accepting gestures of goodwill?

### **Leadership**

If you accept that the manager and senior management are to conduct themselves with even higher standards of probity, integrity, and ethical behavior than those of the council’s employees, how would you rate yourself?

\* Do you spend more time in planning your attendance at the next Institute of Municipal Management or ICMA conference than you do in planning your work efforts?

\* Do you respond more quickly to an invitation to lunch than an invitation to participate in a work-related activity?

\* Do you apply the internal guidelines and principles for payment of expenses, approval of leave, and so on, as strictly to your claims as you would to an employee’s claims?

\* Do you spend a lot of time at the office organizing extracurricular activities without completing your office duties first?

\* Do you claim to work extra-long hours when, in fact, you could have completed the task in hand during office hours?

\* Do you use office equipment and other resources, like secretarial time, unreasonably for private work?

\* Do you follow up on complaints about other staff who are not complying honestly with ethical work practices, like filing timesheets, accurately reporting overtime, and the like?

\* Do you bully your subordinates?

\* Do you set a standard in the use of cab charge accounts or the reimbursement of travel expenses?

It is for you to answer these questions. During my long career in local government, I have *witnessed* the abuse of all of these challenges and seen the many justifications submitted. Specifically, I will comment on three distinct difficulties. Accommodation expenses were paid at one council based on actual costs. After a challenge of excessive expenditure and an investigation, a standard payment was set based upon public service guidelines. This led to higher payments and the ability to incur lower actual costs and “pocket the difference,” which then led to claims of improper behavior. A no-win situation.

Sometimes it is not sufficient just to remove yourself from a hiring process or take steps to distance yourself from supervision where an associate is involved. The fact remains that an association can give the perception of partiality. How can you show that you did not influence the decision to hire, when such a decision was taken by a subordinate manager? The wisest course of action might be for your spouse, partner, or close family to avoid employment or consultancy opportunities with your local authority. Is there a difference between attending a community event and accepting goodwill, like simple refreshments at a community gathering, and attending a prestigious sporting event with refreshments of a high standard? Do the standards of fare and entertainment simply

reflect the style of the organization hosting the functions? Are the opportunities for unethical behavior just as great as a result of accepting simple hospitality as they are after a five-star evening? Is the ability of the manager or CEO to behave ethically in future dealings with hosts more unlikely because the hospitality was of a lesser standard?

### **Elected Members**

Just as our subordinates may witness our behavior and determine its morality, so, too, do we assess the behavior of our elected members from the three tiers of government. We make judgments about the standards that they set. It is demotivating, with respect to the efforts that you are making, if their standards show an indifference to ethics and integrity. At a state level in New South Wales (NSW), Australia, we find an imposition on local government of standards that are higher than those applying to state public servants or politicians.

The Sydney Morning Herald for Saturday, July 8, 2000, listed gestures of hospitality accepted by federal politicians. These included invitations to events such as the Barbra Streisand concert and to sports like tennis, motor racing, and the America's Cup. In NSW, the Independent Commission Against Corruption (ICAC) advises that there is little risk of harm in allowing public officials to accept infrequently offered gifts of nominal value. Tickets to sporting events and entertainment are considered to have more than nominal value.

When there is hypocrisy, an "Everyone is doing it, so why not me" mentality is likely to prevail.

### **Codes of Conduct and Internal Control**

One method of communicating internal values is by documenting and implementing a code of conduct. Codes of conduct generally address the importance of maintaining

confidentiality and avoiding conflicts of interest, and explain the nature and significance of illegal or other improper acts and improper payments.

These are important, and employees at all levels should be encouraged to remain alert to deviations from established standards and to report such deviations through the appropriate organizational channels.

In New South Wales, the Protected Disclosures Act enables public officials to make disclosures that concern corrupt conduct, maladministration, or serious and substantial waste of public money. The Act helps protect officials who make disclosures from reprisals and provides for appropriate investigation of such matters.

But how prescriptive should codes of conduct be? With more prescriptive codes, it is likely that, in the event of a dispute, a clever employee or his or her advocate will find the hole through which to crawl to evade disciplinary action.

### **Internal Investigations**

Once significant weaknesses have been identified, the general manager or CEO must be prepared to conduct the necessary investigations and to bring about remedial measures.

Conducting internal investigations can be particularly challenging. Finding within an organization the investigation skills needed—skills to plan a strategy, gather evidence, and undertake questioning in a fair manner—can be a significant difficulty.

There can be an economic impact from the costs of gathering evidence. Additionally, the capacity to require that answers be given to questions posed as part of an investigation creates difficulties. There is no way in which a person can be required to answer questions, bearing in mind that declining to answer a question does not signal guilt. For further information and guidance, ICAC offers a comprehensive guide on internal investigations on its Web site, at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au).

We have all heard the cry for local government to become more like business.

This, however, only applies until mistakes are made or until the level of accountability drops to a private sector level—generally, an unacceptable level by our standards. Within the private sector, there is a drive for performance, performance, performance, almost at any cost. While corporations will act within the law, what is legal is not always what is ethical, and corporations will act overtly ethically and with social responsibility when this contributes to the bottom line.

We, however, must be sure that our goal of sustainability and our economic, social, and environmental objects are properly balanced. When does cutting corners, bending the rules, and using initiative in customer service become unethical or unacceptable, if it innocently leads to the perception that the customer has gained preferential treatment? If we operate business units in competition with the private sector, is it okay for our business units to wine and dine potential customers but not acceptable for the authority's staff to accept an invitation to a sporting event or an expensive dinner?

## **Conclusion**

The issue of ethical behavior is a challenging one in many practical ways. We need to have the moral courage to acknowledge that we must maintain high standards of integrity. Not only is it because we are the trustees of the public purse but also because we should not gain a personal benefit from our special position of trust.

Doing the right thing can sometimes come at a personal cost. If acting morally is personally costly in some circumstances, then what reason is there to act morally? As the sign at the local church yelled at me while I traveled to work: "If you don't stand for something, you will fall for anything!"

## Sources for More Information on Ethics

### A. Publications

1. Jane Kazman and Stephen Bonczek, *Ethics in Action* (ICMA, 1999).
2. Carol Lewis, *The Ethics Challenge in Public Service: A Problem Solving Guide* (American Society for Public Administration, 1991).
3. Evan Berman, Jonathan West and Stephen Bonczek, *The Ethics Edge* (ICMA, 1998).
4. Clay Wirt, *High Standards of Ethics: The Foundation for Public Trust* (Virginia Municipal League, 1996).
5. *Municipal Ethics Quiz*, Volumes 1, 2, 3 and 4 (CCM). These are compilations of the municipal ethics quizzes that have been published in each issue of CCM's bimonthly magazine-newsletter, *Connecticut Town and City*. They are available upon request from the Research and Information Service of CCM by calling 203-498-3000; they can also be ordered online at [www.ccm-ct.org/members/research/index.html](http://www.ccm-ct.org/members/research/index.html). Free for officials of CCM-member municipalities; \$6.00 each for all others.

### B. Agencies and Organizations

1. Rhode Island Bar Association, 115 Cedar Street, Providence, Rhode Island, 02903; 401-421-5740; [www.ribar.com](http://www.ribar.com).
2. Rhode Island Ethics Commission, 40 Fountain Street, Providence, Rhode Island, 02903; 401-222-3790; [www.state.ri.us/ethics](http://www.state.ri.us/ethics).
3. Council on Government Ethics Laws, PO Box 417, Locust Grove, Virginia, 22508; 540-972-3662; [www.cogel.org](http://www.cogel.org).
4. International City/County Management Association (ICMA), 777 North Capitol Street, NE, #500, Washington, DC, 20002-4201; 202-289-4262; [www.icma.org](http://www.icma.org).
5. International Municipal Lawyers Association, 1110 Vermont Avenue, NW, Suite 200, Washington, DC, 20005; 202-466-5424; [www.imla.org](http://www.imla.org).
6. National Civic League, 1445 Market Street, Suite 300, Denver, CO 80202-1728; 303-571-4343; [www.ncl.org/ncl.htm](http://www.ncl.org/ncl.htm).
7. National League of Cities (NLC), Municipal Referencing Service, 1301 Pennsylvania Avenue, NW, Washington, DC, 20004; 202-626-3000; [www.nlc.org](http://www.nlc.org).
8. US Office of Government Ethics, Suite 500, 1201 New York Avenue, NW, Washington, DC, 20005-3917; 202-208-8000; [www.usoge.gov](http://www.usoge.gov).