

**BIRMINGHAM CITY COMMISSION
MUNICIPAL BUILDING, 151 MARTIN
MONDAY, MAY 8, 2023
6:45 P.M.
SPECIAL MEETING
(WORKSHOP)**

This will be considered a workshop session of the City Commission. No formal actions will be taken. The purpose of this workshop is to participate in a discussion the Process for Selecting a Mayor and Mayor Pro Tem.

I. CALL TO ORDER

Therese Longe, Mayor

II. ROLL CALL

Alexandria Bingham, City Clerk

III. PRESENTATION & DISCUSSION

A. Introduction

B. City Commission Discussion and Comment

Resources

1. Applicable City Commission Charter Provision, Chapter 3, Section 5
2. City Commission Rules of Procedure
3. April 24, 2023 Memo
4. Information submitted by David Bloom

IV. PUBLIC COMMENT

V. ADJOURN

This meeting is open to the public and the public is welcome to attend.

Should you wish to participate in this meeting, you are invited to attend the meeting in person or virtually through ZOOM: <https://zoom.us/j/655079760> Meeting ID: 655 079 760

You may also present your written statement to the City Commission, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the hearing.

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance. Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:2485301880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).

On the second Monday in November of each year, the commission shall meet at the usual place for holding the meetings of the legislative body of the city for the purpose of organization. At each of said organization meetings the commission shall elect one of its members as mayor who shall be the presiding officer of the commission and chief executive head of the city and who shall have such other powers and perform such other duties as are or may be imposed or authorized by the laws of the state, by this Charter or by the commission. He shall be the conservator of the peace and may exercise within the city the powers conferred upon sheriffs to suppress disorder. At each of said organization meetings the commission shall also elect another member of the commission as mayor pro tem, who during the mayor's absence or disability to perform his duties, shall act in his stead and shall during the time of said absence or disability exercise all of the duties and possess all of the powers of the mayor. In the absence or disability of the mayor pro tem, the commission may temporarily appoint one of its members to that office. The mayor as a member of the commission shall have the right to vote on all matters before the commission and shall possess all of the other rights and powers of members of that body. He shall not have the right to veto.

(Amend. of 11-2-99)



RULES OF PROCEDURE FOR THE CITY COMMISSION

OPEN MEETINGS

Regular meetings and special meetings of the Birmingham City Commission, which are normally held in the Commission Room of the Municipal Building, 151 Martin Street, shall be open to the public, in compliance with the Michigan Open Meetings Act.

It is the desire of the city commission to conclude all business not later than 11:00 PM. The commission will consider this goal during their deliberations.

CLOSED SESSIONS

All meetings of the Commission shall be open to the public and shall be held in a place available to the general public. A closed session, a meeting or part of a meeting that is closed to the public, may be called for the permissible purposes included in the Open Meetings Act (Act 267 of 1976 as amended). Examples of such purposes include personnel evaluation, collective bargaining, purchase or lease of real property, and pending litigation.

AGENDA

The Commission Meeting Agenda, including minutes, warrants, correspondence and reports shall be distributed to the City Commission on or before the Friday prior to the meeting date. Agendas shall also be made available for public review in the City Clerk's Office and on the City website. Minutes shall not normally be read as part of the meeting.

MINUTES

The minutes shall include the mandatory information as required by the Open Meetings Act 267 of 1976; Section 15.269. The minutes shall reflect an overview or brief summary of the subject matter and any Commission comments that may have had an effect on the outcome. Commission comments may include a summary in support or opposed and discussion which may be relevant for future reference.

The minutes shall include a participating citizen's name and position on an issue when there is public comment during the commission meeting in all of the following instances: (1) a public hearing, (2) an agenda item or (3) recognition of citizens in the audience.

PRESIDING OFFICER

The Mayor shall preside at all meetings of the City Commission. In the absence or disability of the Mayor, the Mayor Pro-Tem shall preside. In the absence or disability of both the Mayor and the

Mayor Pro-Tem, the Commission shall elect one of its members to act as presiding officer.

The Mayor shall possess all the rights and powers of any other Commissioner; he or she shall not have the right of veto.

CONDUCT OF BUSINESS

Commission Meetings shall be governed by the rules contained in the most recent edition of *Robert's Rules of Order, Newly Revised* in all instances in which they are applicable and not inconsistent with the statutes of the United States or the State of Michigan, or with the Charter or adopted of the City of Birmingham or these Rules of Procedure.

Commissioners should be recognized by the presiding officer before speaking.

COMMISSIONERS' ATTENDANCE AT BOARDS AND COMMITTEES

It is the decision of the Commission that to avoid the appearance of or a possibility of potential influence or duress upon appointees, or to avoid the possibility of violating the OMA, commissioners shall refrain from appearing at various boards and committees in person or with their names addressed upon remote attendance. Exceptions may occur upon presentation and vote of the entire Commission.

VOTING

Birmingham's City Charter states that four members of the City Commission shall constitute a quorum; that the Commission shall act only by ordinance or resolution, that is, an official action in the form of a motion; and that a minimum of four votes shall be required to adopt any such motion.

For all Boards, Commissions or Committees appointed by the City Commission the minimum number of votes shall be the same as the quorum number for that body. State statute, City of Birmingham Charter or ordinance may require a larger number of affirmative votes to approve certain actions for either the City Commission or appointed Boards.

The City Commission may take action on any motion either by voice or by roll-call vote. A roll-call vote shall be taken if requested by any Commissioner, the City Clerk, or any member of the public in attendance.

A motion may be amended or modified by combining the original motion and the modifications in one motion, provided all City Commission Members agree to include the "friendly amendment" in the original motion.

A Commission member may abstain from voting on a motion if he or she: 1) has a conflict of interest; or 2) lacks sufficient information about the issue to be decided. Any Commissioner who abstains from voting on a motion shall state, for the record, at the outset of the discussion both his or her intention to abstain and reason for doing so. Should the need to abstain become clear during discussion, the member shall state his or her intention at that time. The Commissioner shall then be prohibited from participating in any further discussion or debate on the issue.

After a motion has been voted upon, any Commissioner who voted on the prevailing side may move to "reconsider" said motion at the same meeting, or at the next regularly scheduled meeting, provided no action has been taken as a result of the previous vote.

General consent or consensus (in lieu of a motion) may be used to give direction. In this case, the minutes shall indicate that a majority consented.

CITIZEN PARTICIPATION

During any City Commission meeting, any person may question or comment upon any specific agenda item at the time the City Commission considers that item.

The public shall also be invited to make comments on any item not on the meeting agenda under the agenda item, "Meeting Open To The Public For Items Not On The Printed Agenda."

No person shall address the City Commission without first having been recognized by the presiding officer. Once recognized, the member of the public shall go to one of the available microphones, and state his or her name and community of residence before speaking.

Speakers may be requested to limit their comments so as to provide opportunities for comments from all interested persons. In particular, no member of the public shall normally be permitted to speak a second time on the same issue until all others wishing to make a presentation on the subject have had an opportunity to do so.

If any person becomes loud or unruly, the presiding officer may rule that person out of order and may forfeit that person's opportunity to speak further. A person may also be expelled from the meeting for breach of the peace.

COMMISSION VACANCIES

If a vacancy occurs on the City Commission, it shall be filled by a vote of the remaining Commissioners (not including the member who is vacating his or her seat). The vote to fill a vacancy shall be taken during a public meeting held within the time prescribed by State Law. Candidates for a vacant seat need not have previously served on, nor sought election to, the Commission.

The person selected to fill a vacancy shall serve only until the next following general election, at which time any remaining unexpired term shall be filled by the voters.

APPOINTMENT PROCEDURES

No member of the City Commission shall serve on any Board of the City of Birmingham, except the Retirement System, unless membership is required by Michigan Statute or the Birmingham City Charter.

When the City Commission desires to fill a vacancy on an appointed City of Birmingham Board, Commission or Committee, the City Clerk shall give notice to the public by publishing the intent to

fill the vacancy on the City website.

If the number of persons nominated for appointment to a City Board, Commission or Committee does not exceed the number of positions to be filled, the City Commission may use a voice vote. If the number of nominations exceeds the number of positions to be filled, nominees shall be voted upon in the order in which they were nominated, either by voice or by roll-call vote.

If no nominee receives the required four votes for appointment, the process of nomination and voting may be repeated either at the same meeting or at a subsequent meeting. If the Commission desires, the position may be re-noticed.

Requests for members of the City Commission to serve on non-city bodies shall be given to the Mayor, who shall make such information available to all Commissioners. Members shall indicate their interest in such positions to the Mayor and the appointment shall officially be made at a public meeting.

AMENDMENT OR SUSPENSION OF THE RULES OF PROCEDURE

These rules may be changed at any meeting of the City Commission by a majority vote with notice at the previous meeting or by a 2/3 vote (5) without notice.

Drafted by Eleanor A. Siewert, Birmingham City Commissioner - June, 1991
Revised June 28, 2004
Revised April 8, 2013
Revised August 26, 2013
Revised December 13, 2021



REPORT

City Manager's Office

DATE: April 18, 2023
TO: City Commission
FROM: Tom Markus
SUBJECT: Code of Conduct

INTRODUCTION:

Presented to the City Commission this evening is the latest edits and dissertations by the City Commissioners regarding the Code of Conduct and the future of the Code of Conduct.

BACKGROUND:

Please view <https://vimeo.com/656423258#t=3h32m>, which reflects the City Commission meeting of January 10, 2022 wherein the Code of Conduct was discussed and encouraged, most particularly by Commissioner Host, for items to be discussed for a future agenda. City Commissioner Host believed that we should have rules for how Commissioners ought to conduct themselves. To this end, the staff, based upon the City Commission's recommendation, looked at a number of other communities' Code of Conduct for their commissions, councils and boards. The City Commission was then presented with a very comprehensive presentation by Assistant City Manager, Jana Ecker at a workshop on February 14, 2022. The City Commission was presented with a first draft of a proposed Code of Conduct on February 28, 2022, to which the City Commission required changes. Changes were made and a new Code of Conduct was presented to the City Commission again on July 11, 2022.

With many other pressing matters before the Commission, the Code of Conduct was tabled and then brought back to the City Commission on February 13, 2023. At that time, the City Commission was concerned that many of the items were duplicative and then directed the City Attorney to prepare a study to demonstrate what parts of the proposed Code of Conduct were duplicative in either state law, state policies, Charter provisions, ordinances, or Rules of Procedure. The comparison was completed and discovered that most areas of the Code of Conduct were not as duplicative as believed it would be. The City Commission agreed to allow 14 days for the City Commissioners to make comments on how they think the document should be rewritten. Each City Commissioner's edits are attached for review.

It has been the staff's position since the outset of this endeavor that the Code of Conduct needs to be drafted, written, adopted and embraced by the City Commission in order for it to be a document that is self-governing by the City Commission, to the City Commission, and for the City Commission. It is evident from various Commissioner's comments that strong opposition remains to parts of the Code of Conduct.

Therefore, as City Manager I will now suggest that the staff has provided a framework for the City Commission, but it is up to the City Commission itself to take this Code of Conduct to the finish line, if that is their desire. The first question I would pose to the City Commission is: Does the City Commission want a Code of Conduct at all? If so, I would suggest that you schedule a workshop wherein all seven Commissioners work together to finalize language and verbiage that all Commissioners can agree upon.

ATTACHMENTS:

- February 7, 2022 Memo to City Manager from Assistant City Manager with attachments.
- February 14, 2022 Special Meeting Agenda Workshop.
- February 21, 2022 Memorandum to City Manager from Assistant City Manager with PowerPoint of the February 14, 2022 Code of Conduct Workshop.
- July 11, 2022 Memorandum from City Attorney to City Manager with draft Code of Conduct.
- February 13, 2023 Memorandum from City Attorney to City Manager with draft Code of Conduct Resolution.
- March 8, 2023 email from City Manager to City Clerk with draft Code of Conduct Resolution.
- Current proposed edits of City Commissioners.

SUGGESTED COMMISSION ACTIONS:

1. Set the Code of Conduct as a future agenda item to be determined if the City Commission desires a Code of Conduct at all.

AND

2. Set a schedule for the City Commission to collaboratively work to finalize the language and verbiage and adoption of a Code of Conduct.

OR

3. Agree to sideline the project entirely.



MEMORANDUM

City Manager's Office

DATE: February 7, 2022
TO: Thomas Markus, City Manager
FROM: Jana Ecker, Assistant City Manager
SUBJECT: Code of Conduct

At a recent City Commission meeting, there was discussion about creating guidelines and/or rules to ensure respectful and civil communication and public engagement between elected officials and members of the public, and the City Commission expressed interest in considering adopting a code of conduct.

Accordingly, the City Manager's Office has conducted research to identify other communities that have established rules or protocols to guide the communication and conduct of local government elected officials, appointed officials and members of the public. Many jurisdictions have created formal codes of conduct adopted by the governing body. Samples of ordinances and resolutions adopted in approximately 20 different jurisdictions across the U.S. and Canada were reviewed. Most contained very similar provisions designed to outline the following:

- The roles and responsibilities of elected officials, appointed officials, City staff and members of the public;
- The standards of conduct required of elected officials during public meetings of the body to which they were elected and other public meetings;
- The standards of conduct required of elected officials at ceremonial, public and private events;
- The standards of conduct required of elected officials in all communications with each other, with advisory board and commission members, City staff, the media and with the public;
- The standards of conduct required of other officials, City staff and the public while engaged in local government activities;
- Possible sanctions for violation of a code of conduct; and
- A process for reporting, investigating and enforcing the code of conduct.

The Code of Conduct for Elected Officials adopted in Rifle, CO provides a good example overall of the type of ordinance the Birmingham City Commission may wish to consider. Similar ordinances to Rifle, CO are also in place in communities such as Harrisburg, NC, Alexandria, MN, Sunnyvale, CA, and many other jurisdictions. While similar in content, the ordinances listed below have specific provisions that may be beneficial to consider in Birmingham:

- Edina, MN Edina City Council – Code of Conduct contains specific provisions outlining the roles and responsibilities between the governing body, advisory boards and commissions and staff similar to Birmingham’s current policies;
- Evans, CO Code of Conduct for Elected Officials contains specific provisions on conduct between elected officials that ensure issue-oriented discussion and not personal attacks;
- Mountain View, CA City Council Code of Conduct contains specific provisions regarding ex parte communications to avoid conflict with the Open Meetings Act;
- Brea, CA Code of Conduct for City Council contains clear direction for communications with both City staff and professional consultants; and
- Berthoud, CO Code of Conduct for Elected Officials, Boards and Commissions contains clear definitions for several terms to assist with enforcement and clarify the potential repercussions of violation.

Attachments:

- Rifle, CO - Code of Conduct for Elected Officials
- Edina, MN - Edina City Council – Code of Conduct
- Evans, CO – Code of Conduct for Elected Officials
- Mountain View, CA – City Council Code of Conduct
- Brea, CA – Code of Conduct for City Council
- Berthoud, CO – Code of Conduct for Elected Officials
- MMLs Ethics Handbook for Michigan Municipalities.



**CODE OF CONDUCT FOR
ELECTED OFFICIALS**

Adopted by City Council

Resolution No. 11, Series of 2016

August 3, 2016

10E2

City of Rifle Code of Conduct for Elected Officials

The Three R's of Rifle Government Leadership: Roles, Responsibilities and Respect

The City Charter provides detailed information on the roles and responsibilities of Council members, the Mayor Pro-Tem, and the Mayor. The City's Code of Ethics provides guidance on ethical issues and questions of right and wrong. Until now, what has not been clearly written down is a Code of Conduct for Rifles' elected officials.

This Code of Conduct is designed to describe the manner in which Council members should treat one another, city staff, constituents, and others they come into contact with in representing the City of Rifle. It reflects the work of the City Council while defining more clearly the behavior, manners, and courtesies that are suitable for various occasions.

The constant and consistent theme through all of the conduct guidelines is "respect." Council members experience stress in making decisions that impact the lives of the citizens. At times, the impacts of the entire community must be weighed against the impact of only a few. Despite these pressures, elected officials are called upon to exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help guide Council members to do the right thing in even the most difficult situations.

Overview of Roles & Responsibilities

Other resources that are helpful in defining the roles and responsibilities of elected officials can be found in the Rifle City Charter, Rifle Municipal Code and in the Handbook for Municipal Elected Officials, published by the Colorado Municipal League.

Mayor

- Elected from the members of the Council at its organizational meeting, by a majority vote, after each general municipal election (City Charter, Article III, Section 3.3).
- Recognized as head of the City Government for all ceremonial and legal purposes, and executes and authenticates legal instruments requiring the Mayor's signature as such official. (City Charter, Article III, Section 3.3).
- Preside over meetings of the City Council (City Charter, Article III, Section 3.3).
- Has same speaking and voting rights as any other member (City Charter, Article III, Section 3.3) Shall appoint a Councilor as Mayor Pro Tem at the organization meeting where the Mayor is elected (City Charter, Article III, Section 3.3)
- Leads the Council into an effective, cohesive working team.

Mayor Pro-Tem

- Acts as Mayor during the absence of the Mayor with all powers granted to the Mayor by Charter (City Charter, Article III, Section 3.3)

All Council Members

All members of the City Council, including the Mayor and Mayor Pro-Tem, have equal votes. No Council member has more power than any other Council member, and all should be treated with equal respect.

All Council members should:

- Fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others. Prepare in advance of meetings and be familiar with issues on the agenda.
- Represent the City at ceremonial functions at the request of the Mayor.
- Be respectful of other people's time. Stay focused and act efficiently during public meetings.
- Serve as a model of leadership and civility to the community.
- Inspire public confidence in Rifle government.
- Provide contact information with the City Clerk in case of an emergency or an urgent situation arises while the Council member is out of town.

- Demonstrate honesty and integrity in every action and statement.
- Participate in scheduled activities.

POLICIES & PROTOCOL RELATED TO CONDUCT

Ceremonial Events

Requests for a City representative at ceremonial events will be handled by City staff. The Mayor will serve as the designated City representative. If the Mayor is unavailable, then City staff will determine if event organizers would like another representative from the Council. If yes, then the Mayor Pro-Tem will be recommended to serve as the substitute. Invitations received at City Hall are presumed to be for official City representation. Invitations addressed to Council members at their homes are presumed to be for unofficial, personal consideration.

Correspondence Signatures

Council members do not need to acknowledge the receipt of correspondence, or copies of correspondence, during Council meetings. City staff will prepare official letters in response to public inquiries and concerns. These letters will carry the signature of the Mayor or the appropriate City staff. If correspondence is addressed only to one Council member, that correspondence will be shared with the rest of the Council.

Endorsement of Candidates

Council members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention endorsements during Council meetings or other official City meetings or functions.

Intergovernmental Relations

The Council values intergovernmental relations with neighboring communities and other entities. As a result, Council members should make a concerted effort to attend scheduled meetings with other entities to further promote intergovernmental relations.

Legislative Process

The City loosely follows Roberts Rule of Order for meeting management.

Public Meeting Hearing Protocol

The Mayor will open the public hearing. The applicant or appellant shall have the right to speak first. The Mayor will determine the length of time allowed for this presentation. Staff will make initial comments and/or presentation. Speakers representing pro points of view will be allowed to follow. Speakers representing opposing points of view will then follow. The Mayor will determine how much time will be allowed for each speaker, with 3 to 5 minutes the standard time granted. The Mayor will then ask the Council if any issues need clarification before the public hearing is closed.

The Mayor has the responsibility to run an efficient public meeting and has the discretion to modify the public hearing process in order to make the meeting run smoothly. Council members will not express opinions during the public hearing portion of the meeting except to ask pertinent questions of the speaker or staff. "I think" and "I feel" comments by Council members are not appropriate until after the close of the public hearing. Council members should

refrain from arguing or debating with the public during a public hearing and shall always show respect for different points of view. The Mayor shall direct public testimony and discussion to the City Council instead of staff, when appropriate.

Main motions may be followed by amendments, followed by substitute motions. Any Council member can call for a point of order. Only Council members who voted on the prevailing side may make motions to reconsider.

Travel Expenses

The purpose of this regulation is to establish the policies and procedures for Council members who travel on official City business either in-state or out-of-state. Such travel shall include attendance at conferences, seminars, and training sessions on behalf of the City. The City shall pay reasonable expenses for registration fees, lodging, meals, transportation, and all allowable miscellaneous expenses for the Council member only. All travel expenses will be handled in the same manner and consistent with the provisions within the City's Employee Handbook.

COUNCIL CONDUCT WITH ONE ANOTHER

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even as Council may "agree to disagree" on contentious issues.

In Public Meetings

- Practice civility, professionalism and decorum in discussions and debate difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, Council members to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. Council members should conduct themselves in a professional manner at all times, including dress.
- Honor the role of the Mayor in maintaining order it is the responsibility of the Mayor to keep the comments of Council members on track during public meetings. Council members should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.
- Avoid personal comments that could offend other Council members. If a Council-member is personally offended by the remarks of another Council member, the offended Council member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Council member to justify or apologize for the language used. The Mayor will maintain control of this discussion.
- Demonstrate effective problem-solving approaches. Council members have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.
- Be punctual and keep comments relative to topics discussed, Council members have made a commitment to attend meetings and partake in discussions. Therefore, it is important that Council members be punctual and that meetings start on time. It is equally important that discussions on issues be relative to the topic at hand to allow adequate time to fully discussed scheduled issues.

In Private Encounters

- Continue respectful behavior in private. The same level of respect and consideration of differing points of view that is deemed appropriate for public

discussions should be maintained in private conversations.

- Be aware of the insecurity of written notes, voicemail messages, and e-mail. Technology allows words written or said without much forethought to be distributed wide and far. How would you feel if this voicemail message was played on a speaker phone in a full office? What would happen if this e-mail message was forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.
- Even private conversations can have a public presence. Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted.

COUNCIL CONDUCT WITH CITY STAFF

Governance of a City relies on the cooperative efforts of elected officials who set policy and staff who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

- Treat all staff as professionals. Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.
- Limit contact to specific City staff. Questions of City staff and/or requests for additional background information should be directed to the City Manager, City Attorney, or Department Heads. The City Manager should be copied on or informed of any request.

Requests for follow-up or directions to staff shall be made through the City Manager or the City Attorney when appropriate. When in doubt about what staff contact is appropriate, Council members should ask the City Manager for direction. Materials supplied to a Council member in response to a request will be made available to all members of the Council so that all have equal access to information.

- Do not disrupt City staff from their jobs. Council members should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met.
- Never publicly criticize an individual employee. Council should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager through private correspondence or conversation.
- Do not get involved in administrative functions. Council members must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits. The City Charter, Article III, Section 3.10, also contains information about the prohibition of Council interference in administrative functions.
- Check with City staff on correspondence before taking action. Before sending correspondence, Council members should check with City staff to see if an official City response has already been sent or is in progress.
- Do not attend meetings with City staff unless requested by staff. Even if the Council member does not say anything, the Council member's presence implies support, shows partiality, intimidates staff, and hampers staff's ability to do their job objectively.

Requests for additional staff support – even in high priority or emergency situations -- should be made to the City Manager who is responsible for allocating City resources in order to maintain a professional, well-run City government.

COUNCIL CONDUCT WITH THE PUBLIC

In Public Meetings

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual Council members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- *Be welcoming to speakers.* Speaking in front of Council can be a difficult experience for some people. Some issues the Council undertakes may affect people's daily lives and homes. Some decisions are emotional. The way that Council treats people during public hearings can do a lot to make them relax or to push their emotions to a higher level of intensity.
- *Be fair and equitable in allocating public hearing time to individual speakers.* The Mayor will determine and announce limits on speakers at the start of the public hearing process. Generally, each speaker will be allocated three-minutes with applicants and appellants or their designated representatives allowed more time. If many speakers are anticipated, the Mayor may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers.

No speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the Council requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the Mayor reopens the public hearing for a limited and specific purpose.

- *Give the appearance of active listening.* It is disconcerting to speakers to have Council members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time gazing around the room gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as "smirking," disbelief, anger or boredom.
- *Ask for clarification, but avoid debate and argument with the public.* Only the Mayor – not individual Council members -- can interrupt a speaker during a presentation. However, a Council member can ask the Mayor for a point of order if the speaker is off the topic or exhibiting behavior or language the Council member finds disturbing.

If speakers become flustered or defensive by Council questions, it is the responsibility of the Mayor to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Council members to members of the public testifying

should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Council members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

- *No personal attacks of any kind, under any circumstance.* Council members should be aware that their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.
- *Follow parliamentary procedure in conducting public meetings.* The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. Final rulings on parliamentary procedure are made by the Mayor, subject to the appeal of the full Council.

In Unofficial Settings

- *Make no promises on behalf of the Council.* Council members will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).
- *Make no personal comments about other Council members.* It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Council members, their opinions and actions.
- *Remember that despite its population figures, Rifle is a small community at heart.* Council members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper behavior in the City of Rifle. It is a serious and continuous responsibility.

COUNCIL CONDUCT WITH OTHER PUBLIC AGENCIES

- *Be clear about representing the City or personal interests.* If a Council member appears before another governmental agency or organization to give a statement on an issue, the Council member must clearly state: If his or her statement reflects personal opinion or is the official stance of the City; whether this is the majority or minority opinion of the Council. Even if the Council member is representing his or her own personal opinions, remember that this still may reflect upon the City as an organization.

If the Council member is representing the City, the Council member must support and advocate the official City position on an issue, not a personal viewpoint.

If the Council member is representing another organization whose position is different from the City, the Council member should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Council members should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

- *Correspondence also should be equally clear about representation.* City letterhead may be used when the Council member is representing the City and the City's official position. A copy of official correspondence should be given to the City Clerk to be filed as part of the permanent public record.

It is best that City letterhead not be used for correspondence of Council members representing a personal point of view, or a dissenting point of view from an official Council position.

COUNCIL CONDUCT WITH CITY BOARDS AND COMMISSIONS

The City has established several Boards and Commissions as a means of gathering more community input. Citizens who serve on Boards and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

When attending a Board or Commission meeting, only express personal opinions. Council members may attend any Board or Commission meeting, which are always open to any member of the public. However, if the Board or Commission is conducting a public hearing, the Council member shall remove themselves from the proceedings. Council members should be sensitive to the way their participation – especially if it is on behalf of an individual, business or developer – could be viewed as unfairly affecting the process. Any public comments by a Council member at a Board or Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council. Also, a Council member's presence may affect the conduct of the Board or Commission and limit their role and function.

- *Limit contact with Board and Commission members.* It is inappropriate for a Council member to contact a Board or Commission member to lobby on behalf of an individual, business, or developer. Council members should contact staff in order to clarify a position taken by the Board or Commission.
- *Remember that Boards and Commissions serve the community, not individual Council members.* The City Council appoints individuals to serve on Boards and Commissions, and it is the responsibility of Boards and Commissions to follow policy established by the Council. But Board and Commission members do not report to individual Council members, nor should Council members feel they have the power or right to threaten Board and Commission members with removal if they disagree about an issue. Appointment and re-appointment to a Board or Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A Board or Commission appointment should not be used as a political "reward."
- *Be respectful of diverse opinions.* A primary role of Boards and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Council members must be fair and respectful of all citizens serving on Boards and Commissions.
- *Keep political support away from public forums.* Board and Commission members may offer political support to a Council member, but not in a public forum while conducting official duties. Conversely, Council members may support Board and Commission members who are running for office, but not in an official forum in their capacity as a Council member.

COUNCIL CONDUCT WITH THE MEDIA

Council members may be contacted by the media for background and quotes.

- *The best advice for dealing with the media is to never go "off the record".* Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.
- *The Mayor is the official spokesperson.* The Mayor is the designated representative of the Council to present and speak on the official City position. If an individual Council member is contacted by the media, the Council member should be clear about whether their comments represent the official City position or a personal viewpoint.
- *Choose words carefully and cautiously.* Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

SANCTIONS

- *Public Disruption.* Members of the public who do not follow proper conduct after a warning in a public hearing may be barred from further testimony at that meeting or removed from the Council Chambers.
- *Inappropriate Staff Behavior.* Council members should refer to the City Manager any City staff that fail to follow proper conduct in their dealings with Council members, other City staff, or the public. These employees may be disciplined in accordance with standard City procedures for such actions.
- *Council members Behavior and Conduct.* City Council members who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council. Serious infractions of the Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by Council.

Council members should point out to the offending Council member infractions of the Code of Ethics or Code of Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being challenged, then the matter should be referred to the Mayor Pro-Tem.

It is the responsibility of the Mayor to initiate action if a Council member's behavior may warrant sanction. If no action is taken by the Mayor, the alleged violation(s) can be brought up with the full Council in a public meeting.

If violation of the Code of Ethics or Code of Conduct is outside of the observed behaviors by the Mayor or Council members, the alleged violation should be referred to the Mayor. The Mayor should ask the City Manager and/or the City Attorney to investigate the allegation and report the findings to the Mayor. It is the Mayor's responsibility to take the next appropriate action. These actions can include, but are not limited to: discussing and counseling the individual on the violations; recommending sanction to the full Council to consider in a public meeting; or forming a Council ad hoc subcommittee to review the allegation; the investigation and its findings, as well as to recommend sanction options for Council consideration.

PRINCIPLES OF PROPER CONDUCT

Proper conduct IS ...

- Keeping promises
- Being dependable
- Building a solid reputation
- Participating and being available
- Demonstrating patience
- Showing empathy
- Holding onto ethical principles under stress
- Listening attentively
- Studying thoroughly
- Keeping integrity intact
- Overcoming discouragement
- Going above and beyond, time and time again
- Modeling a professional manner

Proper conduct IS NOT ...

- Showing antagonism or hostility
- Deliberately lying or misleading
- Speaking recklessly
- Spreading rumors
- Stirring up bad feelings, divisiveness
- Acting in a self-righteous manner

It all comes down to respect

Respect for one another...respect for the validity of different opinions...respect for the process... respect for the community that we serve.

CHECKLIST FOR MONITORING CONDUCT

- Will my decision/statement/action violate the trust, rights or good will of others?
- What are my interior motives and the spirit behind my actions?
- If I have to justify my conduct in public tomorrow, will I do so with pride or shame?
- How would my conduct be evaluated by people whose integrity and character I respect?
- Even if my conduct is not illegal or unethical, is it done at someone else's painful expense? Will it destroy their trust in me? Will it harm their reputation?
- Is my conduct fair? Just? Morally right?
- If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?
- Does my conduct give others reason to trust or distrust me?
- Am I willing to take an ethical stand when it is called for? Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?
- Do I exhibit the same conduct in my private life as I do in my public life?
- Can I take legitimate pride in the way I conduct myself and the example I set?
- Do I listen and understand the views of others?
- Do I question and confront different points of view in a constructive manner?
- Do I work to resolve differences and come to mutual agreement?
- Do I support others and show respect for their ideas?
- Will my conduct cause public embarrassment to someone else?

HOW GOVERNING BODY MEMBERS CAN GOVERN BETTER

The following is taken from the Colorado Municipal League, Handbook for Municipal Elected Officials, and is reprinted from the League of Kansas Municipalities' brochure, "Suggestions for Successful Public Service"

Governing is clearly more of an art than a science. There are no ultimate answers on how to govern; different approaches are to be expected, and probably desired. However, there do seem to be some fundamentals. The suggestions that follow range from practical, common sense fundamentals to those more philosophic and theoretical. These tips for successful and effective public service are intended to assist mayors, council members, and board trustees. While most suggestions relate to individual officers others apply to the governing body as a whole. These two applications, however, are interdependent - the capacity of a governing body to govern effectively depends on the collective capacities of at least a majority of its membership. These suggestions are not in any particular order, and not all are universally accepted. All of them, however, are worth consideration by anyone who would serve the public through an elective local office.

1. Learn all you can about your city, its history, its operation, its financing. Do your homework. Know your city ordinances. Dust off your comprehensive plan.
2. Devote sufficient time to your office and to studying the present and future problems of your community.
3. Don't burn yourself out on the little things but recognize that they are often important to the public. Save some energy - and time - for the important matters.
4. Don't act as a committee of one; governing a city requires team effort - practically and legally.
5. Don't let honest differences of opinion within the governing body degenerate into personality conflicts.
6. Remember that you represent all the people of your community, not just neighbors and friends. Be wary of personal experiences coloring your public decisions.
7. Take budget preparation seriously, for it determines what your city does or does not do for the coming year and will also influence what happens in future years.
8. Establish policy statements. Written policy statements let the public, and the city staff, know where they stand. They help the governing body govern, and writing them provides a process to develop consensus.
9. Make decisions on the basis of public policy, and be consistent. Treat similar

situations similarly, and avoid favoritism.

10. Focus your attention on ways to prevent problems, rather than just trying to solve them as they occur. Filling potholes is one approach to governing; developing plans to prevent them is more important.
11. Don't be misled by the strong demands of special interest groups who want it done now, their way. Your job is to find the long-term public interest of the community as a whole, and you may be hearing from the wrong people.
12. Don't rush to judgment. Few final actions have to be taken at the first meeting at which they are considered. Avoid "crisis management."
13. Don't be afraid of change. Don't be content to just follow the routine of your predecessors. Charge your appointed officers and employees with being responsible for new ideas and better ways. Listen to what they have to say.
14. Don't give quick answers when you are not sure of the real answer. It may be embarrassing to appear ignorant, but it can be more embarrassing and damaging to tell a person something which is wrong.
15. As an individual, even if you are the mayor, don't make promises you can't deliver! Most decisions and actions require approval of the governing body, and this takes a majority vote.
16. Remember that you have legal authority as a governing body member only when the governing body is in legal session.
17. Don't spring surprises on your fellow governing body members or city staff, especially at formal meetings. If a matter is worth bringing up for discussion, it's worth being on the agenda. Surprises may get you some publicity, at the embarrassment of others, but they tend to erode the "team" approach to governance.
18. Participate in official meetings with the dignity and decorum fitting those who hold a position of public trust. Personal dress and courteous behavior at meetings help create an environment for making sound public decisions.
19. Conduct your official public meetings with some formality, and follow rules of procedure. Have an agenda, and follow it. Most governing body members agree that formal meetings expedite the process and promote better decision making.
20. Don't be afraid to ask questions, it is one of the ways we learn. But do your homework by studying agenda material before meetings.

21. Vote yes or no on motions. Don't cop out by abstaining except when you have a conflict of interest. A pass does not relieve you of responsibility when some decision must be made.
22. Once a majority decision of the governing body has been made, respect that official position and defend it if needed, even if you personally disagreed.
23. Respect the letter and intent of the open meetings law, but also keep private and confidential matters to yourself. Don't gossip.
24. Retain competent, key employees, pay them well, trust their professional judgment, and recognize their authority and responsibilities.
25. Don't bypass the system! Stick to policy making and avoid personal involvement in the day-to-day operations of the municipality.
26. Don't let others bypass the system. Insist that people such as equipment or service suppliers work with your city staff. If direct contact with governing body members is necessary, it should be with the governing body as a whole, or a committee, and not on a one-on-one basis.
27. Don't pass the buck to the staff or employees when they are following your policies or decisions.
28. Don't always take no for an answer. The right question may be "How can we do this?" instead of "May we do this?" Be positive!
29. Learn to evaluate recommendations and alternative courses of action. Request that your staff provide options. Encourage imaginative solutions.
30. Avoid taking short-term gains at the expense of long-term losses. Be concerned with the long-term future of the city.
31. In determining the public interest, balance personal rights and property interests, the possible harm to a few versus the good of the many. Recognize that in some situations, everyone can't be a winner.
32. Remember that cities are for people! Be concerned with the total development - physical, economic, and social - of your community.
33. Don't act as if the city operates in a vacuum. Cities must work within the intergovernmental system to be effective. Keep in contact and cooperate with your federal, state, county, and school officials.

34. Know your neighbors. Get to know the officials of neighboring and similar size cities. Visit other cities, particularly those with a reputation of being well run.
35. Learn to listen- really listen- to your fellow governing body members and the public. Hear what they are trying to say, not just the words spoken.
36. Keep your constituents informed, and encourage citizen participation.
37. Be friendly and deal effectively with the news media. Make sure what you say is what you mean. Lack of good communication, with the media and the public, can be a major problem for municipal officials.
38. Remember that what you say, privately and publicly, will often be news. You live in a glass house. Avoid over-publicizing minor problems.
39. Expect, and respect, citizen complaints. Make sure that your governing body members and your city have a way to deal effectively with them. Have a follow-up system.
40. Be careful about rumors. Check them out. Help squelch them when you know they are false.
41. Appoint citizen advisory committees and task forces when you need them, but be prepared to follow their advice if you use them.
42. Take care in your appointments to boards and commissions. Make sure they are willing and capable as well as representative of the whole community.
43. Seek help. Use manuals, guides, and other technical assistance and information available from the Colorado Municipal League and other agencies. Attend workshops and conferences put on for the benefit of you and your city.
44. Pace yourself. Limit the number of meetings you attend. Set some priorities, including the need to spend time with your family. Recognize that life- and the city - is dependent on a lot of things you have little control over.
45. Establish some personal goals and objectives. What do you want to help accomplish this year? Next year?
46. Help develop some short-term and long-term goals and objectives for your city, and check your progress at least every six months.
47. Similarly, help your city develop a vision of the future.

48. Focus on the future, and try to leave your city better than that which you inherited as a city officer.
49. Be a leader, as well as part of the team of elected and appointed officials who were selected to make your city an even better place to live.
50. At least once a year, schedule a governing body discussion about how you are governing. Review the processes and procedures. Sit back and ask, "How are we doing and can we do things better?"
51. Be enthusiastic about your public service and the privilege you have, and let the public know it. But maintain your sense of humor. Don't take yourself or the business of government so seriously that you don't enjoy it. Governing should be fun as well as a rewarding experience.
52. Celebrate! Always focusing on problems and issues may lead you, the governing body, and the public, to believe that nothing positive ever happens. Good things do happen. Let the public share your successes.



Edina City Council – Code of Conduct

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Introductory Pledge

Edina residents and businesses deserve a fair, ethical and accountable local government which earns the public's full confidence for integrity. Recognizing these goals, the Code of Conduct is established for all elected officials of the City of Edina. As a member of the Edina City Council I agree to uphold the Introductory Pledge for elected officials adopted by the City Council and conduct myself by the following model of behavior. I will:

- Comply with the law, including
 - Staying within the City Council's authority
 - Following the open meeting, gift, and conflict of interest laws
- Respect City Council roles and responsibilities when working with staff, Boards and Commissions
- Be consistent in policy and respect process
- Fulfill the Council's fiduciary responsibility to act in the best interest of the City, and all of its residents, both financially and legally by:
 - keeping the common good as the highest purpose to focus on achieving constructive solutions for the public benefit
 - not disclosing private or confidential information of the City, or using that information to advance personal interests
 - protecting City interests and liability by following advice of legal counsel

Compliance and Enforcement

The Code of Conduct expresses standards of ethical conduct expected for members of the Edina City Council. Members themselves have the primary responsibility to assure the public that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

We will hold ourselves and each other accountable and when there is a suspected violation of the law, we will discuss with the City Manager.

Comply with the Law

Members shall comply with the applicable federal laws, state laws, and city ordinances in the performance of their public duties.

Authority

In statutory cities, powers are granted to the Council as a whole, and not to individual members.

Mayoral Role

According to **MN Statute 412.191** the Mayor is a full member of the council in addition to:

- Act as presiding officer of meetings (**Subd. 2**)
- Represent the City ceremoniously
- Execute official documents (**Subd. 4**)

Open Meeting Law (OML)

Public deliberations and processes shall be conducted openly and in a transparent manner. The Minnesota Open Meeting Law (**Chapter 13D**) requires that meetings of governmental bodies generally be open to the public in order to:

- Prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed about a public board’s decisions or to detect improper influences
- Assure the public’s right to be informed and observe public meetings

The Minnesota Supreme Court has noted that meetings of less than a quorum of a public body held serially to avoid a public meeting or to fashion agreement on an issue of public business may violate the open meeting law.

Gift/Donations

Gifts from Interested Persons: Under **MN Statute 471.895**, Council Members may not receive gifts from any “interested person” in conjunction with their City Council duties.

- A “gift” is defined as money, real or personal property, a service, loan, a forbearance or forgiveness of debt, or a promise of future employment, that is given and received without the giver receiving something of equal or greater value in return
- "Interested person" means a person or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make
 - Virtually every resident or person doing business in the City could have a direct financial interest in a decision
- See statute for exemptions

Gifts to the City: Council Members can recommend acceptance of general gifts through the City’s donation policy. All gifts to the city must be accepted by City Council resolution.

Logo

Members shall not use the City’s name or logo for the purpose of endorsing any political candidate or business.

Conflict of Interest

Conflict of interest is when any member who has a “financial interest” in, or who may receive a financial benefit as a result of, any action or if there is potential for the appearance of conflict of interest. Questions about a potential conflict of interest shall be discussed with the City Manager.

Contractual Conflict of interest: (**MN Statute 471.87, with exceptions in MN Statutes 123B.195 and 471.88**) A public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom.

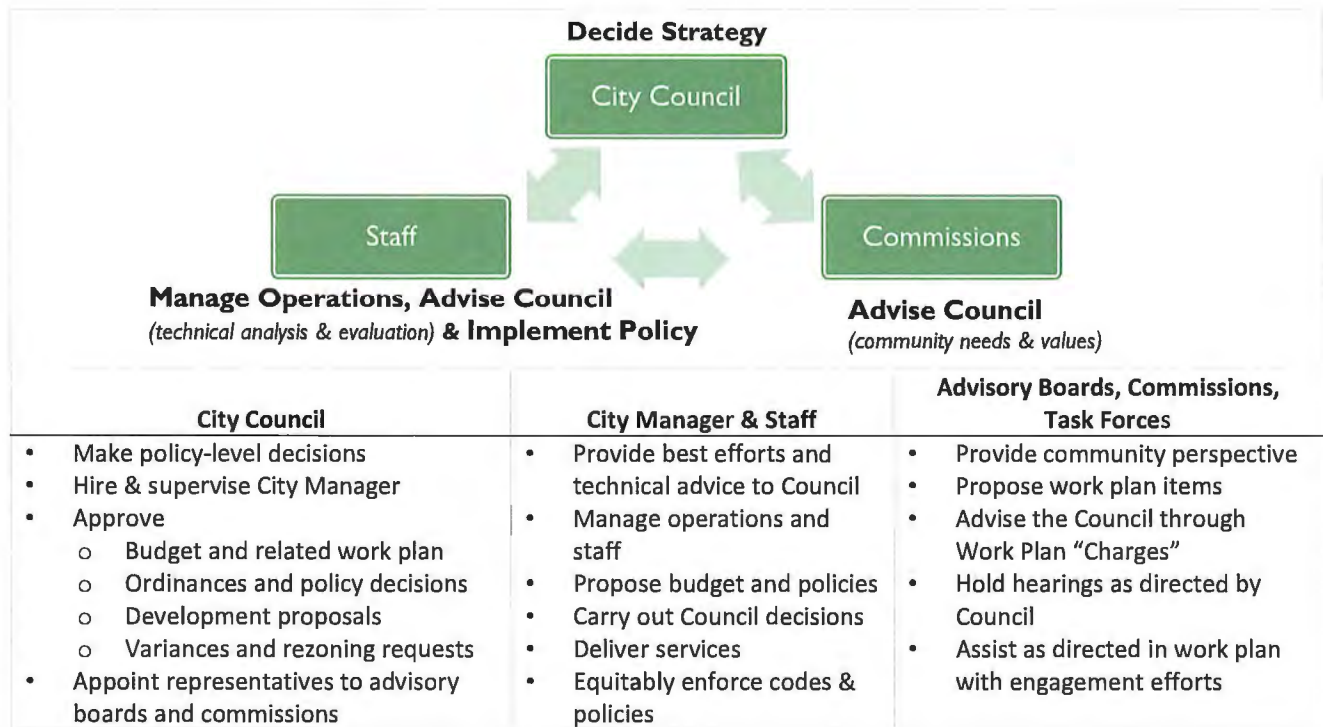
Non-contractual Conflict of interest: Non-contractual matters may include such things as Council decisions on zoning, local improvements, and the issuance of licenses. Although not generally prohibited by state law, an interested Council Member most likely should abstain from participating in the council discussion and from voting on these issues.

Members who have a potential conflict of interest shall:

- Disclose the conflict of interest to the group, and
- Abstain from the Council discussion debate and vote

Roles of Council, Staff and Commissions

We are all part of a team committed to the residents of Edina both today and in the future. To be effective we must come to meetings with an open mind, think strategically about City issues and delegate details of implementations to staff. We will strive to maintain a culture of trust, respect and candor as a Council and when working with staff and Boards/Commissions.



Respectful Behavior

Members should STRIVE TO:

- Treat people with courtesy, politeness, and kindness
- Encourage others to express their opinions and ideas
- Listen to what others have to say
- Use the ideas of others to improve decisions and outcomes
- Recognize and respect differences
- Prepare for the issues at hand
- Focus on the business of the body
- Consider only legally germane information in decisions
- Act as a decision maker, not an advocate

Members should AVOID:

- Speaking over or cutting off another individual's comments
- Insulting, disparaging, or putting down people or their ideas
- Bullying other members by displaying a pattern of belittling, demeaning, judging or patronizing comments
- Violence or the threat of violence will not be tolerated

Working with Staff

Members shall respect and adhere to the Council-Manager (Plan B) structure of Edina city government as outlined in **MN Statute 412**. This means:

City Council does...	City Council does not...
<ul style="list-style-type: none"> • Hire, fire, and supervise City Manager • Set the strategic direction for the City • Consider and approve budget and related work plan, and monitor performance relative to those items • Consider and approve policy decisions • Consider and approve development proposals • Consider and approve variances and rezoning requests • Appoint citizens to citizen advisory boards and commissions • Approve and amend work plans and bylaws 	<ul style="list-style-type: none"> • Hire and fire staff • Direct the activities of staff, other than the City Manager • Individually direct the activities of boards, commissions or other resident groups • Individually approve policies, projects etc. • Individually commit City resources or staff to specific causes • Individually enforce policies, City Code, etc. • Individually speak or prepare official correspondence on behalf of the City unless authorized by the City Council.

City Council Members promise City Staff they will:

- Respect staff as valued resources and members of our team
- Support the maintenance of a positive and constructive workplace environment for City employees where individual members, City staff and the public are free to express their ideas and work to their full potential
- Provide direction to the City Manager as a body and not direct the work of individual staff
- Encourage staff to focus on the big picture in reports
- When possible, notify the City Manager in advance of a Council Meeting of questions or requests to pull agenda items from the consent agenda so the appropriate staff can compile the information needed
- Agree that information they ask of the City Manager will be shared equally with all Council Members
- Copy the City Manager on all communications with staff, including questions

Working with Boards/Commissions

As set forth in the *Edina City Code Chapter 2 Article III*, Edina's Boards and Commissions are established by the City Council and serve as advisory to the council. Specific Board and Commission roles are:

- Investigate matters within the scope of the Commission or as specifically directed by the council
- Advise the Council by communicating the viewpoint or advice of the Commission
- At the direction of the Council, hold hearings, receive evidence, conduct investigations, and, based on such hearings, evidence and investigations, make decisions and recommendations to the council

City Council Members promise Boards and Commissions they will:

- View Boards and Commissions as vitally important resources to support our decision-making
- Communicate effectively with Boards and Commissions to ensure they have the tools to do their work
- Give clear direction as a body and take adequate time to review the result of their deliberations
- Because of the value of the independent advice of boards, commissions, and task forces to the public decision-making process, members of Council shall refrain from using their position to influence the deliberations or outcomes of board, commission, and task force proceedings
- The expectation is that Council Members will not typically attend Board, Commission, Committee, Working Group or Task Force meetings. However, under special circumstances, if we attend a meeting:
 - We will do so only as an observer and prior to attending we will notify the appropriate staff liaison
 - Strive for good communication by reporting out to other Council Members

Working with The Community

Residents: City staff is the first call for help for residents. We will refer residents who have concerns to the City Manager. If a resident has contacted the City Manager but is still not satisfied, we will discuss with the City Manager. We acknowledge if a resident receives conflicting information from different City Council Members or staff that is difficult for the resident and could increase liability for the City.

Businesses or other interests: The purpose of a City Council meeting is to discuss information needed to decide, review that information, and decide. It is not feasible to conduct all business in a public meeting. Particularly around development, business interests might ask a member to meet outside of the City Council meeting to facilitate idea generation about proposals.

The City Council's overarching principles for working the community are:

- Never grant any special consideration, treatment, or advantage
- Respect sensitivity of personal information

- Honor our rules regarding public testimony and clearly communicate the rules
- Make ourselves available to all parties on an equal basis and not advocate for a certain point of view
- Be cautious about how we participate in meetings or events and not prejudge the issue before the Council has had a chance to deliberate

Meetings requested by residents or businesses:

1. AFTER DECISION: If we are invited to a meeting about an issue the Council has decided upon, we will explain how the Council arrived at the decision.
2. DURING DECISION: If we are invited to a meeting about an issue that will be before the Council in the future, we will uphold the above principles for working with the community, and:
 - a. We will not make our decision about an issue before the city council until the process allows.
 - b. We will be sensitive to the fact that we are not hearing everyone, and we will give equal consideration to all feedback regardless of the way it is received.
3. DURING SPECIFIED ENGAGEMENT PROCESS: If we meet with a resident during a planned engagement process, we will notify the resident that we are there to listen and encourage them to participate through the established process to engage. We will ensure that staff received the feedback provided to us.

Intergovernmental Relations

Members shall represent positions approved by the City Council to the best of their ability when working with:

- Legislative bodies
- Federal or state agencies
- Other local governments, such as School Boards or Counties

If an individual Council Member's opinion differs from the City position, or a matter agreed upon by the full Council, Members shall explicitly state they do not represent their City Council or the City of Edina, nor will they allow the inference that they do.



CODE OF CONDUCT FOR ELECTED OFFICIALS

Adopted by City Council

Resolution No. 15-2004

March 2, 2004

City of Evans Code of Conduct for Elected Officials

The Three Rs of Evans Government Leadership: Roles, Responsibilities and Respect

The City Charter provides detailed information on the roles and responsibilities of Council members, the Mayor Pro-Tem, and the Mayor. The City's Code of Ethics provides guidance on ethical issues and questions of right and wrong. Until now, what has not been clearly written down is a Code of Conduct for Evans' elected officials.

This Code of Conduct is designed to describe the manner in which Council members should treat one another, city staff, constituents, and others they come into contact with in representing the City of Evans. It reflects the work of the City Council with defining more clearly the behavior, manners, and courtesies that are suitable for various occasions. The City Council also considered a wide variety of policy changes and clarifications designed to make public meetings and the process of governance run more smoothly.

The contents of this Code of Conduct includes:	Page
• Overview of Roles & Responsibilities	2
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The constant and consistent theme through all of the conduct guidelines is "respect." Council members experience stress in making decisions that impact the lives of the citizens. At times, the impacts of the entire community must be weighed against the impact of only a few. Despite these pressures, elected officials are called upon to exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help guide Council members to do the right thing in even the most difficult situations.

Overview of Roles & Responsibilities

Other resources that are helpful in defining the roles and responsibilities of elected officials can be found in the Evans City Charter, Evans Municipal Code and in the Handbook for Municipal Elected Officials, published by the Colorado Municipal League.

MAYOR

- Elected “at-large” for a two year term (Evans City Charter, Section 3.4)
- Recognized as head of the City Government for all ceremonial purposes (Evans City Charter, Section 3.9)
- Preside over meetings of the City Council (Evans City Charter, Section 3.9)
- Has same speaking and voting rights as any other member (Evans City Charter, Section 3.9)
- Shall in no case have the power to veto (Evans City Charter, Section 3.9)
- Executes and authenticates legal instruments requiring signature (Evans City Charter, Section 3.9)
- Shall be the conservator of peace, and in emergencies may exercise within the City the powers conferred by the Governor of the State of Colorado for purposes of military law, and shall have the authority to command the assistance of all able-bodied citizens to aid in the enforcement of the ordinances of the City and to suppress riot and disorder (Evans City Charter, Section 3.9)
- Leads the Council into an effective, cohesive working team.

MAYOR PRO-TEM

- Elected by the City Council at the first meeting following their election (Evans City Charter, Section 3.9)
- Performs the duties of the Mayor if the Mayor is absent or disabled (Evans City Charter, Section 3.9)

ALL COUNCILMEMBERS

All members of the City Council, including the Mayor and Mayor Pro-Tem, have equal votes. No Councilmember has more power than any other Councilmember, and all should be treated with equal respect.

All Council members should:

- Fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others
- Prepare in advance of meetings and be familiar with issues on the agenda
- Represent the City at ceremonial functions at the request of the Mayor
- Be respectful of other people’s time. Stay focused and act efficiently during public meetings.

- Serve as a model of leadership and civility to the community
- Inspire public confidence in Evans government
- Provide contact information with the City Clerk in case of an emergency or an urgent situation arises while the Councilmember is out of town
- Demonstrate honesty and integrity in every action and statement
- Participate in scheduled activities

Policies & Protocol Related To Conduct

Ceremonial Events

Requests for a City representative at ceremonial events will be handled by City staff. The Mayor will serve as the designated City representative. If the Mayor is unavailable, then City staff will determine if event organizers would like another representative from the Council. If yes, then the Mayor Pro-Tem will be recommended to serve as the substitute. Invitations received at City Hall are presumed to be for official City representation. Invitations addressed to Council members at their homes are presumed to be for unofficial, personal consideration.

Correspondence Signatures

Council members do not need to acknowledge the receipt of correspondence, or copies of correspondence, during Council meetings. City staff will prepare official letters in response to public inquiries and concerns. These letters will carry the signature of the Mayor or the appropriate City staff. If correspondence is addressed only to one Councilmember, that correspondence will be shared with the rest of the Council.

Endorsement of Candidates

Council members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention endorsements during Council meetings or other official City meetings or functions.

Intergovernmental Relations

The Council values intergovernmental relations with neighboring communities and other entities. As a result, Council members should make a concerted effort to attend scheduled meetings with other entities to further promote intergovernmental relations.

Legislative Process

The City generally follows Roberts Rule of Order for meeting management.

Public Meeting Hearing Protocol

The Mayor will open the public hearing. Staff will make the initial presentation. The applicant or appellant shall have the right to speak first. The Mayor will determine the length of time allowed for this presentation. Speakers representing pro points of view will be allowed to follow. Speakers representing opposing points of view will then follow. The Mayor will determine how much time will be allowed for each speaker, with 3 to 5 minutes the standard time granted. The Mayor will then ask the Council if any issues need clarification before the public hearing is

closed. The Mayor has the responsibility to run an efficient public meeting and has the discretion to modify the public hearing process in order to make the meeting run smoothly. Council members will not express opinions during the public hearing portion of the meeting except to ask pertinent questions of the speaker or staff. "I think" and "I feel" comments by Council members are not appropriate until after the close of the public hearing. Council members should refrain from arguing or debating with the public during a public hearing and shall always show respect for different points of view.

Main motions may be followed by amendments, followed by substitute motions. Any Councilmember can call for a point of order. Only Council members who voted on the prevailing side may make motions to reconsider.

Travel Expenses

The purpose of this regulation is to establish the policies and procedures for Council members who travel on official City business either in-state or out-of-state. Such travel shall include attendance at conferences, seminars, and training sessions on behalf of the City. The City shall pay reasonable expenses for registration fees, lodging, meals, transportation, and all allowable miscellaneous expenses for the Council member only. All travel expenses will be handled in the same manner and consistent with the provisions within the City's Employee Handbook.

Council Conduct with One Another

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even as Council may "agree to disagree" on contentious issues.

IN PUBLIC MEETINGS

• Practice civility, professionalism and decorum in discussions and debate

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, Council members to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. Council members should conduct themselves in a professional manner at all times, including dress.

• Honor the role of the Mayor in maintaining order

It is the responsibility of the Mayor to keep the comments of Council members on track during public meetings. Council members should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.

- **Avoid personal comments that could offend other Council members**

If a Councilmember is personally offended by the remarks of another Councilmember, the offended Councilmember should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Councilmember to justify or apologize for the language used. The Mayor will maintain control of this discussion.

- **Demonstrate effective problem-solving approaches**

Council members have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

- **Be punctual and keep comments relative to topics discussed**

Council members have made a commitment to attend meetings and partake in discussions. Therefore, it is important that Council members be punctual and that meetings start on time. It is equally important that discussions on issues be relative to the topic at hand to allow adequate time to fully discussed scheduled issues.

IN PRIVATE ENCOUNTERS

- **Continue respectful behavior in private**

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

- **Be aware of the insecurity of written notes, voicemail messages, and e-mail**

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note faxed to others? How would you feel if this voicemail message was played on a speaker phone in a full office? What would happen if this e-mail message was forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

- **Even private conversations can have a public presence**

Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted.

Council Conduct with City Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and City staff, who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

- **Treat all staff as professionals**

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

- **Limit contact to specific City staff**

Questions of City staff and/or requests for additional background information should be directed to the City Manager, City Attorney, or Department Heads. The City Manager should be copied on or informed of any request.

Requests for follow-up or directions to staff should be made only through the City Manager or the City Attorney when appropriate. When in doubt about what staff contact is appropriate, Council members should ask the City Manger for direction. Materials supplied to a Councilmember in response to a request will be made available to all members of the Council so that all have equal access to information.

- **Do not disrupt City staff from their jobs**

Council members should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met.

- **Never publicly criticize an individual employee**

Council should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager through private correspondence or conversation.

- **Do not get involved in administrative functions**

Council members must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits. The Evans City Charter, Section 4.6, also contains information about the prohibition of Council interference in administrative functions.

- **Check with City staff on correspondence before taking action**

Before sending correspondence, Council members should check with City staff to see if an official City response has already been sent or is in progress.

- **Do not attend meetings with City staff unless requested by staff.**

Even if the Councilmember does not say anything, the Councilmember's presence implies support, shows partiality, intimidates staff, and hampers staff's ability to do their job objectively.

- **Limit requests for staff support**

All mail for Council members is opened by the City Clerk. Mail addressed to the Mayor is reviewed first by the City Manager who notes suggested action and/or follow-up items.

Requests for additional staff support – even in high priority or emergency situations -- should be made to the City Manager who is responsible for allocating City resources in order to maintain a professional, well-run City government.

- **Do not solicit political support from staff**

Council members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

Council Conduct with the Public

IN PUBLIC MEETINGS

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual Council members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- **Be welcoming to speakers and treat them with care and gentleness**

Speaking in front of Council can be a difficult experience for some people. Some issues the Council undertakes may affect people's daily lives and homes. Some decisions are emotional. The way that Council treats people during public hearings can do a lot to make them relax or to push their emotions to a higher level of intensity.

- **Be fair and equitable in allocating public hearing time to individual speakers**

The Mayor will determine and announce limits on speakers at the start of the public hearing process. Generally, each speaker will be allocated three-minutes with applicants and appellants or their designated representatives allowed more time. If many speakers are anticipated, the Mayor may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers.

No speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the Council requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the Mayor reopens the public hearing for a limited and specific purpose.

- **Give the appearance of active listening**

It is disconcerting to speakers to have Council members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time gazing around the room gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as "smirking," disbelief, anger or boredom.

- **Ask for clarification, but avoid debate and argument with the public**

Only the Mayor – not individual Council members -- can interrupt a speaker during a presentation. However, a Councilmember can ask the Mayor for a point of order if the speaker is off the topic or exhibiting behavior or language the Councilmember finds disturbing.

If speakers become flustered or defensive by Council questions, it is the responsibility of the Mayor to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Council members to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Council members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

- **No personal attacks of any kind, under any circumstance**

Council members should be aware that their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.

- **Follow parliamentary procedure in conducting public meetings**

The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. Final rulings on parliamentary procedure are made by the Mayor, subject to the appeal of the full Council.

IN UNOFFICIAL SETTINGS

- **Make no promises on behalf of the Council**

Council members will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).

- **Make no personal comments about other Council members**

It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Council members, their opinions and actions.

- **Remember that despite its impressive population figures, Evans is a small community at heart**

Council members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City of Evans. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Council members, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

Council Conduct with Other Public Agencies

- **Be clear about representing the City or personal interests**

If a Councilmember appears before another governmental agency or organization to give a statement on an issue, the Councilmember must clearly state:

- 1) if his or her statement reflects personal opinion or is the official stance of the City;
- 2) whether this is the majority or minority opinion of the Council. Even if the Councilmember is representing his or her own personal opinions, remember that this still may reflect upon the City as an organization.

If the Councilmember is representing the City, the Councilmember must support and advocate the official City position on an issue, not a personal viewpoint.

If the Councilmember is representing another organization whose position is different from the City, the Councilmember should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Council members should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

- **Correspondence also should be equally clear about representation**

City letterhead may be used when the Councilmember is representing the City and the City's official position. A copy of official correspondence should be given to the City Clerk to be filed as part of the permanent public record.

It is best that City letterhead not be used for correspondence of Council members representing a personal point of view, or a dissenting point of view from an official Council position.

Council Conduct With Boards and Commissions

The City has established several Boards and Commissions as a means of gathering more community input. Citizens who serve on Boards and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

- **If attending a Board or Commission meeting, be careful to only express personal opinions**

Council members may attend any Board or Commission meeting, which are always open to any member of the public. However, if the Board or Commission is conducting a public hearing, the Councilmember shall remove themselves from the proceedings. Council members should be sensitive to the way their participation – especially if it is on behalf of an individual, business or developer -- could be viewed as unfairly affecting the process. Any public comments by a Councilmember at a Board or Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council. Also, a Councilmember's presence may affect the conduct of the Board or Commission and limit their role and function.

- **Limit contact with Board and Commission members**

It is inappropriate for a Councilmember to contact a Board or Commission member to lobby on behalf of an individual, business, or developer. Council members should contact staff in order to clarify a position taken by the Board or Commission.

- **Remember that Boards and Commissions serve the community, not individual Council members**

The City Council appoints individuals to serve on Boards and Commissions, and it is the responsibility of Boards and Commissions to follow policy established by the Council. But Board and Commission members do not report to individual Council members, nor should Council members feel they have the power or right to threaten Board and Commission members with removal if they disagree about an issue. Appointment and re-appointment to a Board or Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A Board or Commission appointment should not be used as a political "reward."

- **Be respectful of diverse opinions**

A primary role of Boards and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers must be fair and respectful of all citizens serving on Boards and Commissions.

- **Keep political support away from public forums**

Board and Commission members may offer political support to a Councilmember, but not in a public forum while conducting official duties. Conversely, Council members may support Board and Commission members who are running for office, but not in an official forum in their capacity as a Councilmember.

- **Inappropriate behavior can lead to removal**

Inappropriate behavior by a Board or Commission member should be noted to the Mayor, and the Mayor should counsel the offending member. If inappropriate behavior continues, the Mayor should bring the situation to the attention of the Council and the individual is subject to removal from the Board or Commission.

Council Conduct with The Media

Council members may be contacted by the media for background and quotes.

- **The best advice for dealing with the media is to never go "off the record"**

Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

- **The Mayor is the official spokesperson for the representative on City position.**

The Mayor is the designated representative of the Council to present and speak on the official City position. If an individual Councilmember is contacted by the media, the Councilmember should be clear about whether their comments represent the official City position or a personal viewpoint.

- **Choose words carefully and cautiously**

Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

Sanctions

- **Public Disruption**

Members of the public who do not follow proper conduct after a warning in a public hearing may be barred from further testimony at that meeting or removed from the Council Chambers.

- **Inappropriate Staff Behavior**

Council members should refer to the City Manager any City staff who do not follow proper conduct in their dealings with Council members, other City staff, or the public. These employees may be disciplined in accordance with standard City procedures for such actions.

• Council members Behavior and Conduct

City Council members who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council. Serious infractions of the Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by Council.

Council members should point out to the offending Councilmember infractions of the Code of Ethics or Code of Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being challenged, then the matter should be referred to the Mayor Pro-Tem.

It is the responsibility of the Mayor to initiate action if a Councilmember's behavior may warrant sanction. If no action is taken by the Mayor, the alleged violation(s) can be brought up with the full Council in a public meeting.

If violation of the Code of Ethics or Code of Conduct is outside of the observed behaviors by the Mayor or Council members, the alleged violation should be referred to the Mayor. The Mayor should ask the City Manager and/or the City Attorney to investigate the allegation and report the findings to the Mayor. It is the Mayor's responsibility to take the next appropriate action. These actions can include, but are not limited to: discussing and counseling the individual on the violations; recommending sanction to the full Council to consider in a public meeting; or forming a Council ad hoc subcommittee to review the allegation; the investigation and its findings, as well as to recommend sanction options for Council consideration.

Principles of Proper Conduct

Proper conduct IS ...

- Keeping promises
- Being dependable
- Building a solid reputation
- Participating and being available
- Demonstrating patience
- Showing empathy
- Holding onto ethical principles under stress
- Listening attentively
- Studying thoroughly
- Keeping integrity intact
- Overcoming discouragement
- Going above and beyond, time and time again
- Modeling a professional manner

Proper conduct IS NOT ...

- Showing antagonism or hostility
- Deliberately lying or misleading
- Speaking recklessly
- Spreading rumors
- Stirring up bad feelings, divisiveness
- Acting in a self-righteous manner

It all comes down to respect

Respect for one another as individuals . . . respect for the validity of different opinions . . .
respect for the democratic process . . . respect for the community that we serve.

Checklist for Monitoring Conduct

- Will my decision/statement/action violate the trust, rights or good will of others?
- What are my interior motives and the spirit behind my actions?
- If I have to justify my conduct in public tomorrow, will I do so with pride or shame?
- How would my conduct be evaluated by people whose integrity and character I respect?
- Even if my conduct is not illegal or unethical, is it done at someone else's painful expense? Will it destroy their trust in me? Will it harm their reputation?
- Is my conduct fair? Just? Morally right?
- If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?
- Does my conduct give others reason to trust or distrust me?
- Am I willing to take an ethical stand when it is called for? Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?
- Do I exhibit the same conduct in my private life as I do in my public life?
- Can I take legitimate pride in the way I conduct myself and the example I set?
- Do I listen and understand the views of others?
- Do I question and confront different points of view in a constructive manner?
- Do I work to resolve differences and come to mutual agreement?
- Do I support others and show respect for their ideas?
- Will my conduct cause public embarrassment to someone else?

How Governing Body Members Can Govern Better

The following items are taken from the Colorado Municipal League, Handbook for Municipal Elected Officials, and is reprinted from the League of Kansas Municipalities' brochure, "Suggestions for Successful Public Service"

Governing is clearly more of an art than a science. There are no ultimate answers on how to govern; different approaches are to be expected, and probably desired. However, there do seem to be some fundamentals. The suggestions that follow range from practical, common sense fundamentals to those more philosophic and theoretical. These tips for successful and effective public service are intended to assist mayors, council members, and board trustees. While most suggestions relate to individual officers others apply to the governing body as a whole. These two applications, however, are interdependent - the capacity of a governing body to govern effectively is dependent on the collective capacities of at least a majority of its membership. These suggestions are not in any priority order, and not all are universally accepted. All of them, however, are worth consideration by anyone who would serve the public through an elective local office.

1. Learn all you can about your city, its history, its operation, its financing. Do your homework. Know your city ordinances. Dust off your comprehensive plan.
2. Devote sufficient time to your office and to studying the present and future problems of your community.
3. Don't bum yourself out on the little things but recognize that they are often important to the public. Save some energy - and time - for the important matters.
4. Don't act as a committee of one; governing a city requires team effort - practically and legally.
5. Don't let honest differences of opinion within the governing body degenerate into personality conflicts.
6. Remember that you represent all the people of your community, not just neighbors and friends. Be wary of personal experiences coloring your public decisions.
7. Take your budget preparation job seriously, for it determines what your city does or does not do for the coming year and will also influence what happens in future years.
8. Establish policy statements. Written policy statements let the public, and the city staff, know where they stand. They help the governing body govern, and writing them provides a process to develop consensus.
9. Make decisions on the basis of public policy, and be consistent. Treat similar situations similarly, and avoid favoritism.
10. Focus your attention on ways to prevent problems, rather than just trying to solve them as they occur. Filling potholes is one approach to governing; developing plans to prevent them is more important.

11. Don't be misled by the strong demands of special interest groups who want it done now, their way. Your job is to find the long-term public interest of the community as a whole, and you may be hearing from the wrong people.
12. Don't rush to judgment. Few final actions have to be taken at the first meeting at which they are considered. Avoid "crisis management."
13. Don't be afraid of change. Don't be content to just follow the routine of your predecessors. Charge your appointed officers and employees with being responsible for new ideas and better ways. Listen to what they have to say.
14. Don't give quick answers when you are not sure of the real answer. It may be embarrassing to appear ignorant, but it can be more embarrassing, and damaging, to tell a person something which is wrong.
15. As an individual, even if you are the mayor, don't make promises you can't deliver! Most decisions and actions require approval of the governing body, and this takes a majority vote.
16. Remember that you have legal authority as a governing body member only when the governing body is in legal session.
17. Don't spring surprises on your fellow governing body members or your city staff, especially at formal meetings. If a matter is worth bringing up for discussion, it's worth being on the agenda. Surprises may get you some publicity, at the embarrassment of others, but they tend to erode the "team" approach to governance.
18. Participate in official meetings with the dignity and decorum fitting those who hold a position of public trust. Personal dress and courteous behavior at meetings help create an environment for making sound public decisions.
19. Conduct your official public meetings with some formality, and follow rules of procedure. Have an agenda, and follow it. Most governing body members agree that formal meetings expedite the process and promote better decision making.
20. Don't be afraid to ask questions. It is one of the ways we learn. But do your homework by studying agenda material before meetings.
21. Vote yes or no on motions. Don't cop out by abstaining except when you have a conflict of interest. A pass does not relieve you of responsibility when some decision must be made.
22. Once a majority decision of the governing body has been made, respect that official position and defend it if needed, even if you personally disagreed.
23. Respect the letter and intent of the open meetings law, but also keep private and confidential matters to yourself. Don't gossip.
24. Retain competent, key employees, pay them well, trust their professional judgment, and recognize their authority and responsibilities.
25. Don't bypass the system! If you have a manager or other chief administrative officer, stick to policy making and avoid personal involvement in the day-to-day operations of the municipality. If you do not have an administrative officer, make

sure you have some management system that officers, employees, and the public understand.

26. Don't let others bypass the system. Insist that people such as equipment or service suppliers work with your city staff. If direct contact with governing body members is necessary, it should be with the governing body as a whole, or a committee, and not on a one-on-one basis.
27. Don't pass the buck to the staff or employees when they are only following your policies or decisions.
28. Don't always take no for an answer. The right question may be "How can we do this?" instead of "May we do this?" Be positive!
29. Learn to evaluate recommendations and alternative courses of action. Request that your staff provide options. Encourage imaginative solutions.
30. Avoid taking short-term gains at the expense of long-term losses. Be concerned with the long-term future of the city.
31. In determining the public interest, balance personal rights and property interests, the possible harm to a few versus the good of the many. Recognize that in some situations, everyone can't be a winner.
32. Remember that cities are for people! Be concerned with the total development - physical, economic, and social - of your community.
33. Don't act as if the city operates in a vacuum. Cities must work within the intergovernmental system to be effective. Keep in contact and cooperate with your federal, state, county, and school officials.
34. Know your neighbors. Get to know the officials of neighboring and similar size cities. Visit other cities, particularly those with a reputation of being well run.
35. Learn to listen - really listen - to your fellow governing body members and the public. Hear what they are trying to say, not just the words spoken.
36. Keep your constituents informed, and encourage citizen participation.
37. Be friendly and deal effectively with the news media. Make sure what you say is what you mean. Lack of good communication, with the media and the public, can be a major problem for municipal officials.
38. Remember that what you say, privately and publicly, will often be news. You live in a glass house. Avoid over-publicizing minor problems.
39. Expect, and respect, citizen complaints. Make sure that your governing body members and your city, have a way to deal effectively with them. Have a follow-up system.
40. Be careful about rumors. Check them out. Help squelch them when you know they are false.
41. Appoint citizen advisory committees and task forces when you need them, but be prepared to follow their advice if you use them.
42. Take care in your appointments to boards and commissions. Make sure they are willing and capable as well as representative of the whole community.

43. Never allow a conflict of interest to arise between your public duties and your private interests. Be sensitive to actions you take that might even give the appearance of impropriety.
44. Seek help. Use manuals, guides, and other technical assistance and information available from the Colorado Municipal League and other agencies. Attend workshops and conferences put on for the benefit of you and your city.
45. Pace yourself. Limit the number of meetings you attend. Set some priorities, including the need to spend time with your family. Recognize that life - and the city - is dependent on a lot of things you have little control over.
46. Establish some personal goals and objectives. What do you want to help accomplish this year? Next year?
47. Help develop some short-term and long-term goals and objectives for your city, and check your progress at least every six months,
48. Similarly, help your city develop a vision of the future. Plan from the future to the present - no vision, no plan. One of the important purposes of a governing body is to establish a vision for the future.
49. Focus on the future, and try to leave your city better than that which you inherited as a city officer.
50. Be a leader, as well as part of the team of elected and appointed officials who were selected to make your city an even better place to live.
51. At least once a year, schedule a governing body discussion about how you are governing. Review the processes and procedures. Sit back and ask, "How are we doing? How can we do things better?"
52. Be enthusiastic about your public service and the privilege you have, and let the public know it. But maintain your sense of humor. Don't take yourself or the business of government so seriously that you don't enjoy it. It should be fun as well as a rewarding experience.
53. Celebrate! Always focusing on problems and issues may lead you, the governing body, and the public, to believe that nothing positive ever happens. Good things do happen. Let the public share your successes.

Glossary of Terms

attitude	The manner in which one shows one's dispositions, opinions, and feelings
behavior	External appearance or action; manner of behaving; carriage of oneself
civility	Politeness, consideration, courtesy
conduct	The way one acts; personal behavior
courtesy	Politeness connected with kindness
decorum	Suitable; proper; good taste in behavior
manners	A way of acting; a style, method, or form; the way in which things are done
point of order	An interruption of a meeting to question whether rules or bylaws are being broken, such as the speaker has strayed from the motion currently under consideration
point of personal privilege	A challenge to a speaker to defend or apologize for comments that a fellow Councilmember considers offensive
propriety	Conforming to acceptable standards of behavior
protocol	The courtesies that are established as proper and correct
respect	The act of noticing with attention; holding in esteem; courteous regard

**CITY OF MOUNTAIN VIEW
CITY COUNCIL
CODE OF CONDUCT**

**ADOPTED
NOVEMBER 19, 2002**

**REVISED
JANUARY 14, 2014**

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**CHAPTER 1
FORM OF GOVERNMENT**

1.1 Form of Government

- 1.1.1 The City of Mountain View municipal government operates under a council-manager form of government as established by the City Charter.
- 1.1.2 Under this form of government, the Council provides legislative direction, sets City policy and monitors its execution by City staff. The City Manager serves as the City's chief administrative officer and is responsible for directing the day-to-day operations of the City.
- 1.1.3 The key provisions that outline Mountain View's council-manager form of government are found in Section 607 of the City Charter.

"Neither the Council nor any of its members shall interfere with the execution by the City Manager of the City Manager's powers and duties, or order, directly or indirectly, the appointment by the City Manager or by any of the department heads in the administrative service of the City, of any person to any office or employment, or that person's removal therefrom. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately."

Specifically, Section 607 of the City Charter includes the following provisions:

- 1.1.3.1 Prohibits interference by either the City Council or any of its members with the City Manager's execution of his or her powers or duties.
- 1.1.3.2 Neither the Council nor a member shall interfere with the appointment by the City Manager of any of the department heads or any person to any office or employment.
- 1.1.3.3 Neither the Council nor any of its members shall interfere with the City Manager's power to remove any of those persons.

1.1.3.4 Except for purposes of inquiry (asking questions), the Council and its members shall deal only with the City Manager with respect to the administrative service of the City.

NOTE: See Chapter 4, Communications, for additional information regarding communications with staff.
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1.1.3.5 Neither the Council nor any of its members shall give orders to any subordinate of the City Manager, either publicly or privately.

1.1.4 Neither the City Council nor any of its members shall interfere with the administration of the City Attorney's or City Clerk's duties or give orders to the subordinates of the City Attorney or City Clerk.

CHAPTER 2
COUNCIL POWERS AND RESPONSIBILITIES

2.1 City Council Generally

- 2.1.1 The City Council has the power, in the name of the City, to do and perform all acts and things appropriate to a municipal corporation and the general welfare of its inhabitants, which are not specifically prohibited by the constitution, the City Charter, or State or Federal laws.
- 2.1.2 The Council acts as a body. Policy is established by majority vote. A decision of the majority binds the Council to a course of action. The Council majority may be a majority of the quorum of the Council.
- 2.1.3 No Councilmember has extraordinary powers beyond those of other members (except as may otherwise be provided in State law). All members, including the Mayor, have equal powers.
- 2.1.4 No member of the Council is permitted to hold any other City office or City employment (except as may otherwise be provided in the City Charter).
- 2.1.5 Councilmembers also serve as members of the Mountain View Capital Improvements Financing Authority, Successor Agency of the Mountain View Revitalization Authority, City of Mountain View Downtown Parking, Maintenance and Operations Assessment District, and Mountain View Shoreline Regional Park Community.

2.2 Mayor and Vice Mayor – Appointment, Power, and Duties

- 2.2.1 The selection of the Mayor and Vice Mayor occurs annually at the first Council meeting in January by majority vote of the City Council. City Council Policy A-6, Election of Mayor and Vice Mayor, sets forth nonbinding guidelines for the selection of the Mayor and Vice Mayor.
- 2.2.2 The Mayor is the presiding officer of the City Council. In the Mayor's absence, the Vice Mayor shall perform the duties of the Mayor.
- 2.2.3 The Mayor is the official head of the City for all ceremonial purposes.

- 2.2.4 The Mayor may perform such other duties consistent with the mayoral office as may be prescribed by the City Charter or as may be imposed by the Council.
- 2.2.5 The Mayor does not possess any power of veto.
- 2.2.6 The Mayor, or Council designee, coordinates with the City Manager in the development of agendas for meetings of the City Council. Once the agenda is published, the City Manager may withdraw an item; however, only the City Council may otherwise alter the agenda.
- 2.2.7 The Mayor and Vice Mayor serve at the pleasure of the Council and can be replaced at any time by a majority vote of the Council.

2.3 Council Actions

- 2.3.1 Legislative actions by the City Council can be taken by means of ordinance, resolution, or minute action duly made and passed by the majority (unless otherwise provided).
- 2.3.2 Public actions of the Council are recorded in the minutes of the City Council meeting. The City Clerk is required to make a record only of business actually passed upon by a vote of the Council and is not required to record any remarks of Councilmembers or of any other person, except at the special request of a Councilmember, with the consent of the Council.
- 2.3.3 Actions of the Council concerning confidential property, personnel, and/or legal matters of the City are to be reported consistent with State law.

2.4 Councilmember Committees (Refer to City Council Policy A-13, City Council Meetings, Section 16, and City Council Policy A-23, Work Item Referral Process for Council Advisory Bodies and Councilmember Committees)

- 2.4.1 The City Council may organize itself into standing and/or special/ad hoc committees of the Council to facilitate Council review and action regarding certain matters referred to them by the City Council or in accordance with City Council Policy A-23, Work Item Referral Process for Council Advisory Bodies and Councilmember Committees.
- 2.4.2 All work undertaken by a Councilmember committee must originate with the Council or as permitted under City Council Policy A-23, Work Item

Referral Process for Council Advisory Bodies and Councilmember Committees, and all actions of committees shall be reported to the Council.

- 2.4.3 The Council may create or dissolve standing committees at any time by the affirmative vote of a majority of the Council.
- 2.4.4 The Mayor annually appoints members to standing committees.
- 2.4.5 The Council or the Mayor may create special or ad hoc committees. The Mayor appoints members to special or ad hoc committees.
- 2.4.6 The Council may dissolve special or ad hoc committees.
- 2.4.7 If permitted by the Ralph M. Brown Act, other members of the Council not assigned to a committee may attend meetings of a committee, as an observer, however, they shall be seated with the audience and may not participate in any manner or address the committee.
- 2.4.8 If an absence is anticipated on a committee and that absence may impede the work of the committee, the committee chair or other member may request that the Mayor designate another member of the Council to attend for the absent member and serve as an alternate member of the committee, provided that the member's attendance, in the opinion of the City Attorney, will comply with the Brown Act. The term for service by the alternate member will be the term designated in the appointment, or for one meeting, if no term is specified.

2.5 Establishment and Appointment of Council Advisory Bodies

- 2.5.1 The Mountain View City Charter requires a Planning Commission, Recreation and Parks Commission, and Library Board (refer to Mountain View City Charter, Article IX).
- 2.5.2 The City Council may also establish by ordinance or resolution, boards, commissions, and committees to assist the Council in making its policy decisions.
- 2.5.3 The rules of procedure and code of conduct that govern the City Council apply with equal force to all Council advisory bodies.

NOTE: See Chapter 5, Council Advisory Bodies, for additional information regarding boards, commissions, and committees.

CHAPTER 3 LEGAL AND ETHICAL STANDARDS

3.1 Preamble

The residents and businesses of Mountain View are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government;
- Be independent, impartial, and fair in their judgment and actions;
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Mountain View City Council has adopted a code of ethics to encourage public confidence in the integrity of local government and its fair and effective operation.

This City Council code of ethics shall reside in two documents—the City Council Code of Conduct and the City Council Personal Code of Conduct. The City Council Code of Conduct and the Personal Code of Conduct shall not be interpreted to conflict with other rights and responsibilities of public officials set forth in this code or Federal, State, or local law. The City Council Code of Conduct shall be considered to be the definitive document relating to ethical conduct by Mountain View Councilmembers. The Personal Code of Conduct shall be considered to be a summary of the full City Council Code of Conduct.

3.2 Public Interest

3.2.1 Recognizing that stewardship of the public interest must be their primary concern, Councilmembers shall work for the common good of the people of Mountain View and not for any private or personal interest. Councilmembers must endeavor to treat all members of the public and issues before them in a fair and equitable manner.

3.2.2 Councilmembers shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the Mountain View City Charter; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer

responsibilities, and open processes of government; and City ordinances and policies.

3.3 Conduct

- 3.3.1 Councilmembers shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commissions, committees, staff, or the public.
- 3.3.2 Councilmember duties shall be performed in accordance with the processes and rules of order established by the City Council.
- 3.3.3 Councilmembers shall inform themselves on public issues, listen attentively to public discussions before the body, and focus on the business at hand.
- 3.3.4 Council decisions shall be based upon the merits and substance of the matter at hand.
- 3.3.5 It is the responsibility of Councilmembers to publicly share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Councilmembers and the public prior to taking action on the matter.
- 3.3.6 Appropriate City staff should be involved when Councilmembers meet with officials from other agencies and jurisdictions to ensure proper staff support as needed and to keep staff informed.
- 3.3.7 Councilmembers shall not attend internal staff meetings or meetings between City staff and third parties unless invited by City staff or directed by Council to do so.
- 3.3.8 Policy Role
 - 3.3.8.1 Councilmembers shall respect and adhere to the council-manager structure of Mountain View City government as provided in State law and the City Charter.
 - 3.3.8.2 Councilmembers shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

3.3.9 Implementation

- 3.3.9.1 Ethics standards shall be included in the regular orientations for City Council candidates. Councilmembers entering office and upon reelection to that office shall sign a City Council Personal Code of Conduct statement (Attachment 1) affirming they have read and understand this City of Mountain View City Council Code of Conduct.

3.4 Conflict of Interest

- 3.4.1 In order to assure their independence and impartiality on behalf of the public good, Councilmembers are prohibited from using their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.
- 3.4.2 In accordance with State law, Councilmembers must file annual written disclosures of their economic interests.
- 3.4.3 Councilmembers shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general.
- 3.4.4 Councilmembers shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They must neither disclose confidential information without proper legal authorization nor use such information to advance the personal, financial, or private interests of themselves or others.
- 3.4.5 City Councilmembers should avoid any action that could be construed as, or create the appearance of, using public office for personal gain, including use of City stationery or other City resources to obtain or promote personal business.
- 3.4.6 Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by Councilmembers for private gain or personal purposes.
- 3.4.7 In keeping with their role as stewards of the public interest, Councilmembers shall not appear on behalf of the private interests of a

third party before the City Council or any board, commission, or committee or proceeding of the City, except as permitted by law.

3.4.8 To the best of their ability, Councilmembers shall represent the official policies and positions of the City Council. When presenting their personal opinions or positions publicly, members shall explicitly state they do not represent the Council or the City.

3.4.9 Mountain View City Charter Provisions

3.4.9.1 Financial Interests in City Contracts Prohibited.

No officer or employee of the City shall become financially interested except by testate or intestate succession, either directly or indirectly, in any contract, sale, purchase, lease, or transfer of real or personal property to which the City is a party or be employed by any public service corporation regulated by or holding franchises in the City. ...[A]ny contract made in contravention of this section shall be void. (Section 706)

3.4.9.2 Nepotism.

The Council shall not appoint to a salaried position under the City government any person who is a relative by blood or marriage within the second degree of any one or more of the members of such Council and neither shall any department head or other officer having appointive power appoint any relative within such degree to any such position. (Section 707)

3.4.9.3 Political Activities Prohibited; Discrimination.

This provision provides that:

1. No employee shall, while in uniform or during the employee's working hours, take an active part in any municipal or other political campaign.
2. No employee shall, while in uniform or during the employee's work hours, seek or accept contributions for or against a candidate or issue.

3. An employee may not seek or accept signatures to any petition for or against any such candidate or issue during his or her work hours.
4. No person in the classified service shall be employed, promoted, demoted, or discharged or in any way favored or discriminated against because of political opinions or affiliations or because of race or religious belief. (Section 1003) (Also see Section 4.3.7)
5. For purposes of this section, the term "employee" shall include contract employees and consultants who function as City employees.

3.4.10 Mountain View City Code Provisions

3.4.10.1 Use of City Property—Limited to Lawful Business of City. (Section 2.4)

No person or persons other than City officials or employees shall use any City-owned equipment, tools, or paraphernalia other than for the purpose of conducting the lawful business of the City.

3.4.10.2 Use of City Property for Private Purposes by City Official, Employee, etc. (Section 2.5)

No City official, City employee, or other person shall borrow, take, or remove any City-owned equipment, tools, or paraphernalia for private use.

3.4.10.3 Use of City Property—Loan, etc., by City Official, Employee, etc.

No City official, City employee, or any other person shall lend, give, or transfer possession of such City-owned equipment, tools, or paraphernalia to any other City official, employee, or any other person with knowledge that the same shall be used for private purposes. (Section 2.6)

3.4.11 California State Law Regarding Conflicts

Four key areas of California State law regulate the ethics of public officials.

3.4.11.1 Constitutional prohibitions

State law strictly forbids elected and appointed public officials from accepting free or discounted travel from transportation companies. The penalty for a violation includes the forfeiture of office.

3.4.11.2 Contractual conflicts of interest

This prohibition, found in Government Code Section 1090, mirrors the City's Charter Provision Section 706 and applies to elected and appointed officials as well as other City staff members. It prohibits the City from entering into a contract if one of its members (i.e., a Councilmember) is financially interested in the contract. If the bar (or prohibition) applies, the agency is prohibited from entering into the contract whether or not the official with the conflict participates or not. In some limited circumstances, officials are allowed to disqualify themselves from participation and the agency may enter into the contract.

Financial interest has been defined to include employment, stock/ownership interests, and membership on the board of directors of a for-profit or nonprofit corporation, among others. Violations can be charged as a felony. A person convicted of violating Section 1090 is prohibited from ever holding public office in the State.

3.4.11.3 Political Reform Act—Conflicts of Interest

The Political Reform Act (PRA) was adopted by the voters in 1974 and is the primary expression of the law relative to conflicts of interest (and campaign finance) in California. The Act created the Fair Political Practices Commission (FPPC), a five-member State board which administers the Act.

The Act and the regulations are complex and are continuously subjected to official interpretation. The following synopsis of

key parts of the Act will be helpful in spotting issues; however, the FPPC and/or City Attorney should be consulted for further advice and clarification.

With respect to conflicts of interest, the FPPC has promulgated a regulation which establishes an analysis which assists in determining whether a public official is participating in a government decision in which they have a qualifying financial interest and whether it is reasonably foreseeable that the decision will have a material financial effect on the public official's financial interest, which is distinguishable from the effect the decision will have on the public generally.

3.4.11.3.1 If a member has a conflict of interest regarding a particular decision, they must refrain from making or participating in the making of a decision unless otherwise permitted by law.

If a public official has a financial interest that gives rise to a conflict of interest, one of the key determinations in the eight-step analysis is to determine whether or not the public official is "participating in" or "making" a governmental decision.

3.4.11.3.1.1 A public official makes a government decision when they do the following:

- Vote on a matter.
- Appoint a person.
- Obligate or commit his or her agency to any course of action.
- Enter into any contractual agreement on behalf of his or her agency.
- Determine not to act in certain circumstances.

3.4.11.3.1.2 A public official participates in making governmental decisions when acting within the authority of his or her position, they do the following:

- Negotiate without significant substantive review with a governmental entity or private person regarding a governmental decision.
- Advise or make recommendations to the decision-maker either directly or without significant intervening substantive review by:
 - Conducting research or an investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence governmental decisions; or
 - Preparing or presenting any report, analysis, or opinion orally or in writing which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision.

3.4.11.3.2 When a public official has a qualifying financial interest, that official may not use their office or otherwise attempt to influence governmental decisions or make appearances or contacts on behalf of a business entity, client, or customer.

3.4.11.3.3 If an official has a qualifying financial interest, there are nevertheless exceptions which allow a public official to make an appearance before an agency in

very limited circumstances. The one that is most commonly encountered is an appearance by a public official to represent himself or herself with respect to a proposed project or change in their neighborhood. If the appearance is permitted under State law, the appearance is limited to appearing at a public meeting at the podium and addressing a board, commission, or the City Council. The official may not contact members of staff, the City Manager, or City Attorney, or discuss the matter with other Councilmembers. A public official with a conflict cannot interact with staff on that issue other than to ask questions, pay fees, etc.

3.4.11.3.4 Political Reform Act—Gifts, etc.

Qualifying gifts of \$50 or more must be reported on an official's Statement of Economic Interest (SEI). In addition, the Political Reform Act imposes a limit on gifts a local official can receive. The dollar amount of the gift limit is modified every odd year to reflect changes in the Consumer Price Index.* There are various exceptions that apply to whether or not a gift is a "qualifying gift." In some instances, the gift limit does not apply (e.g., wedding gifts); however, the obligation to report the gift typically does apply.

- A gift is a payment made by any person of anything of value, whether tangible or intangible, real or personal property, a good or service that provides a personal benefit to an official when the public official does not provide goods or services of equal or greater value. It can include forgiveness of a debt, a rebate or discount unless the rebate or discount is made through the regular course of business to members of the public.
- There are exceptions to gifts for informational material, gifts that are returned unused, gifts from relatives—close family, campaign

* The gift limit can be found in Government Code §89503.

contributions, home hospitality, benefits commonly exchanged, reciprocal exchanges, acts of neighborliness, bona fide dating relationship, acts of human compassion, ceremonial role, etc.

- There are specific regulations for how gifts are valued, particularly with the value of tickets and passes and attendance at dinners and events.
- Gifts can be given to the public agency and they are not charged as gifts to an individual who may use the gift (e.g., tickets) provided the express terms of the appropriate regulation are satisfied.

3.4.11.3.4.1 Travel Reimbursements

The Political Reform Act contains extensive regulations on travel reimbursements; however, travel payment by one's own public agency as part of your official duties are typically exempt. Reimbursement from other entities (other than transportation companies) within California and outside of California are subject to very specific rules.

3.4.11.3.4.2 Honoraria

Honoraria are defined as a payment made in return for giving a speech, writing an article, or attending a public or private conference, convention, meeting, social event, meal, or similar gathering. Honoraria should be distinguished from campaign funds that go into that person's campaign or to a political party. Campaign funds cannot be used for personal benefit.

- Local elected officials or candidates may not accept honoraria. A local agency employee who is required to file a Statement of Economic Interest (Form 700) may not accept honoraria from any source requiring disclosure on a public official's SEI. There are approximately 12 exceptions to honoraria, including payments made for comedic, theatrical, and musical performances; income from bona fide personal services in connection with teaching, practicing law, etc.; and travel, lodging, and subsistence in connection with a speech, limited to the day before, day of, and day after within the United States.
- The exceptions for income from personal services in connection with teaching and practicing law do not apply if the sole or predominant activity is giving speeches.

3.4.11.3.4.3 Political Reform Act – Mass Mailings

A mass mailing is defined as 200 or more substantially similar pieces of mail sent at public or private expense by a public official within a calendar month.

- Sent at Private Expense – If sent for a political purpose, sender must place the name and address on the outside of the envelope.
- Sent at Public Expense – These mailings are subject to strict

limitations. For example, the mailing may not contain the name or pictures of elected officials except as part of the standard letterhead, and within the confines of that regulation they cannot be of different size or otherwise emblazoned on the mailing. Because the rules are complex, staff should be consulted for assistance.

3.4.11.3.4.4 Political Reform Act—Enforcement

The FPPC can assess administrative fines and penalties for violation of the Act. The District Attorney and the State Attorney General may prosecute violators as civil or criminal matters. Violators may also be removed from office pursuant to Government Code Section 3060.

3.4.11.5 Common Law Conflicts of Interest

This is the judicial expression of the public policy against public officials using their official position for private benefit. An elected official bears a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers or their office for the benefit of any private interest. This common law doctrine continues to survive the adoption of various statutory expressions of conflict law.

3.4.11.6 Appearance of Impropriety

When participation in action or decision-making as a public official does not implicate the specific statutory criteria for conflicts of interest; however, participation still does not "look" or "feel" right, that public official has probably encountered the appearance of impropriety.

For the public to have faith and confidence that government authority will be implemented in an even-handed and ethical manner, public officials may need to step aside even though no technical conflict exists. An example is where a long-term nonfinancial affiliation exists between the public official and an applicant or the applicant is related by blood or marriage to the official. For the good of the community, members who encounter the appearance of impropriety should step aside.

NOTE: State laws governing conflicts of interest are written to ensure that actions are taken in the public interest. These laws are very complex. Councilmembers should consult with the City Attorney, their own attorney, or the Fair Political Practices Commission for guidance in advance.

3.5 Compliance and Enforcement – All Rules

Councilmembers take an oath when they assume their office in which they promise to uphold the laws of the State of California, the City of Mountain View, and the United States of America. Consistent with this oath is the requirement of this Council policy to comply with the laws as well as report violations of the laws and policy of which they become aware.

3.5.1 Any suspected violation or alleged violation by a Councilmember must be reported to the Mayor. In the case of a City staff member making the report regarding a Councilmember, the report should be made to the City Manager who will then report it to the Mayor. Upon report, the City Manager and City Attorney will assist the Mayor in following one of the two (2) protocols for addressing the violation or alleged violation:

3.5.1.1 If the Mayor, City Manager, and City Attorney all agree that the violation or alleged violation is minor in nature, the Mayor and either the City Manager or City Attorney may contact the individual Councilmember and advise the member of the concern and seek to resolve the matter (Protocol 1).

3.5.1.2 If the Mayor, City Manager, and City Attorney do not agree that the violation or alleged violation is minor (see Section 3.5.1.1) in nature, then the Mayor shall convene a special ad hoc committee of the Mayor (who will serve as Chair), Vice Mayor,

and most recent Mayor (the "Ethics Committee") who will meet with the City Manager and City Attorney and appropriate staff and/or witnesses to determine how the matter may proceed, be resolved or be reported to the appropriate authorities (Protocol 2).

3.5.1.3 In implementing the provisions of this section, the Ethics Committee will be authorized to conduct all inquiries and investigations as necessary to fulfill their obligation.

3.5.1.4 For purposes of Sections 3.5.1.1 and 3.5.1.2, the incident or violation is not minor if it involves the injury or potential injury to any person (e.g., physical, emotional, defamation, harassment, etc.), significant exposure to the City Treasury or the probability for a repeat occurrence.

3.5.2 Councilmembers wishing to report a suspected violation by a staff member should report it to both the City Manager and City Attorney.

3.5.3 In the event any Councilmember with a role in this policy is the subject of the inquiry, the role of that official shall be assumed by the next ranking official in the chain. For example, if the Mayor is the subject of the inquiry, the Ethics Committee shall be comprised of the Vice Mayor (who will serve as Chair) and the two (2) most recent former Mayors. If the City Manager or City Attorney is the subject, the Committee will exclude that individual.

If there is no recent former Mayor available to fill the appropriate seat(s) on the committee, the Mayor or chair will select a member of the Council to serve—selection to be based on seniority as outlined in Policy and Procedure No. A-6.

3.5.4 The term "committee" or "Ethics Committee" is used for ease of reference only as it is not intended by this policy to create a permanent or standing committee but, rather, to assemble the officials necessary to review complaints should the need arise.

3.5.5 This policy and the protocols set forth are alternatives to any remedy that might otherwise be available or prudent. In order to ensure good government, any individual, including the City Manager and City Attorney, who believes a violation may have occurred is hereby authorized to report the violation to other appropriate authorities.

3.5.6 These same protocols may be utilized for any suspected violations or alleged violations by a Council advisory body member. In addition to those protocols, the Mayor may also refer the matter to the City Council if further action is needed.

3.6 AB 1234 – Required Ethics Training

AB 1234 requires elected or appointed officials who are compensated for their service or reimbursed for their expenses to take two hours of training in ethics principles and laws every two years. Those who enter office after January 1, 2006 must receive the training within a year of starting their service. They must then receive the training every two years after that.

The training must cover general ethics principles relating to public service and ethics laws including:

- Laws relating to personal financial gain by public officials (including bribery and conflict of interest laws);
- Laws relating to office-holder perks, including gifts and travel restrictions, personal and political use of public resources, and prohibitions against gifts of public funds;
- Governmental transparency laws, including financial disclosure requirements and open government laws (the Brown Act and Public Records Act);
- Laws relating to fair processes, including fair contracting requirements, common law bias requirements, and due process.

CHAPTER 4 COMMUNICATIONS

4.1 Written Communications

4.1.1 Written communications addressed to the City Council are to be referred to the City Clerk for:

- Forwarding to the Council with their agenda packet, or
- Placement on an agenda with or without a staff report, or
- Direct response to the citizen with a copy of the communication and staff letter to the Council.

4.2 Request for Staff Resources

4.2.1 Council requests for research or other staff work must be directed to the City Manager, or the City Attorney regarding legal matters or the City Clerk regarding matters within the Clerk's authority.

If more than one hour of staff time will be required to complete the task/project, the item will be agendaized to ask the City Council if time should be spent on preparing a report on the proposed item.

Staff responses prepared to Council inquiries shall be distributed to all City Councilmembers.

4.3 Relationship/Communications with Staff

Staff serves the City Council as a whole, therefore:

4.3.1 A Councilmember shall not direct staff to initiate any action, change a course of action, or prepare any report. Except as provided in City Council Policy A-23, Work Item Referral Process for Council Advisory Bodies and Councilmember Committees, a Councilmember shall not initiate any project or study without the approval of the majority of the Council.

4.3.2 Councilmembers shall not attempt to pressure or influence discussions, recommendations, workloads, schedules, or department priorities absent the approval of a majority of the Council.

- 4.3.3 When preparing for Council meetings, Councilmembers should direct questions ahead of time to the City Manager so that staff can provide the desired information at the Council meeting.
- 4.3.4 Any concerns by a member of the City Council regarding the behavior or work of a City employee should be directed to the City Manager privately to ensure the concern is resolved. Councilmembers shall not reprimand employees directly nor should they communicate their concerns to anyone other than the City Manager.
- 4.3.5 Councilmembers may direct routine inquiries to either the City Manager or appropriate department head.
- 4.3.6 Councilmembers serving on Council committees or as the City's representative to an outside agency may interact directly with City staff assigned to that effort as the City Manager's designee. The City staff member so designated and assigned will keep the City Manager appropriately informed.
- 4.3.7 Soliciting political support from staff (e.g., financial contributions, display of posters or lawn signs, name on support list, etc.) is prohibited. City staff may, as private citizens with constitutional rights, support political candidates, but all such activities must be done away from the workplace and may not be conducted while in uniform. (Also see Section 3.4.9.3)

4.4 Council Relationship/Communication with Council Advisory Bodies

- 4.4.1 Councilmembers shall not attempt to pressure or influence board, commission, or committee decisions, recommendations, or priorities absent the approval of the majority of the Council. However, the Mayor and Vice Mayor can authorize a work item for a Council advisory body under certain circumstances in accordance with City Council Policy A-23, Work Item Referral Process for Council Advisory Bodies and Councilmember Committees.

4.5 Handling of Litigation and Other Confidential Information

- 4.5.1 All written materials and verbal information provided to Councilmembers on matters that are confidential and/or privileged under State law shall be kept in complete confidence to ensure that the City's position is not compromised. No disclosure or mention of any information in these

materials may be made to anyone other than Councilmembers, the City Attorney, or City Manager.

- 4.5.1.1 Confidential materials provided in preparation for and during Closed Sessions shall not be retained and electronic copies must be deleted or documents returned to staff at the conclusion of the Closed Session.
- 4.5.1.2 Confidential materials provided to Councilmembers outside of Closed Sessions must be destroyed, deleted, or returned to staff within thirty (30) days of their receipt.
- 4.5.1.3 Councilmembers may not request confidential written information from staff that has not been provided to all Councilmembers.

4.6 Representing an Official City Position

- 4.6.1 City Councilmembers may use their title only when conducting official City business, for information purposes, or as an indication of background and expertise, carefully considering whether they are exceeding or appearing to exceed their authority.
- 4.6.2 Once the City Council has taken a position on an issue, all official City correspondence regarding that issue will reflect the Council's adopted position.
- 4.6.3 In most instances, the Council will authorize the Mayor to send letters stating the City's official position to appropriate legislators.
- 4.6.4 If a member of the City Council appears before another governmental agency organization to give a statement on an issue affecting the City, the Councilmember should indicate the majority position and opinion of the Council.
- 4.6.5 Personal opinions and comments may be expressed only if the Councilmember clarifies that these statements do not reflect the official position of the City Council.

4.7 Quasi-Judicial Role/*Ex Parte* Contacts

The City Council has a number of roles. It legislates and makes administrative and executive decisions. The Council also acts in a quasi-judicial capacity or "like a judge" when it rules on various permits, licenses, and land use entitlements.

In this last capacity, quasi-judicial, the Council holds a hearing, takes evidence, determines what the evidence shows, and exercises its discretion in applying the facts to the law shown by the evidence. It is to these proceedings that the rule relative to *ex parte* contacts applies.

4.7.1 *Ex Parte* Contacts/Fair Hearings. The Council shall refrain from receiving information and evidence on any quasi-judicial matter while such matter is pending before the City Council or any agency, board, or commission thereof, except at the public hearing.

As an elected official, it is often impossible to avoid such contacts and exposure to information. Therefore, if any member is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, the applicant or through site visits, the member shall disclose all such information and/or evidence acquired from such contacts, which is not otherwise included in the written or oral staff report, during the public hearing, and before the public comments period is opened.

Matters are "pending" when an application has been filed. Information and evidence gained by members via their attendance at noticed public hearings before subordinate boards and commissions are not subject to this rule.

4.8 No Attorney-Client Relationship

Councilmembers who consult the City Attorney, his or her staff, and/or attorney(s) contracted to work on behalf of the City cannot enjoy or establish an attorney-client relationship with said attorney(s) by consulting with or speaking to same. Any attorney-client relationship established belongs to the City, acting through the City Council, and as may be allowed in State law for purposes of defending the City and/or the City Council in the course of litigation and/or administrative procedures, etc.

CHAPTER 5 COUNCIL ADVISORY BODIES

5.1 Boards, Commissions, and Committees Generally

5.1.1 The Mountain View City Charter establishes the following boards and commissions to advise the City Council:

- Planning Commission (now known as the Environmental Planning Commission) (Section 906)
- Recreation and Parks Commission (now known as the Parks and Recreation Commission) (Section 909)
- Board of Library Trustees (now known as the Library Board) (Section 911)

5.1.2 The City Charter authorizes the City Council to establish additional advisory boards and commissions to assist the Council in its policy decisions. The City Council has the inherent power to create committees.

5.1.3 City boards, commissions, and committees (collectively "Council advisory bodies") do not set or establish City policy or administrative direction to City staff, except as provided in City Council Policy A-23, Work Item Referral Process for Council Advisory Bodies and Councilmember Committees.

5.1.4 Appointments to boards, commissions, and committees are made by adoption of a resolution of the majority of the Council after the review and consideration of the recommendation(s) of the Council Appointments Review Committee. Appointees to Council advisory bodies serve at the pleasure of the City Council.

5.1.5 The terms "board" and "commission" can be used interchangeably. Boards and commissions typically have broader policy and advisory responsibilities than committees which typically have much more focused advisory roles to the Council.

5.2 Board, Commission, and Committee Organization and Conduct

5.2.1 Annually, each board, commission, and committee elects one of their members to serve as the presiding officer or chair.

- 5.2.2 Boards, commissions, and committees shall hold regular and special meetings as may be required. The conduct of board, commission, and committee meetings are governed by the same rules of policy and procedure as the City Council.
- 5.2.3 Boards, commissions, and committees should comply with all applicable open meeting and conflict-of-interest laws of the State.
- 5.2.4 Upon appointment or reappointment, Council advisory body members shall sign a Council Advisory Body Personal Code of Conduct statement (Attachment 2) affirming they have read and understand this City of Mountain View City Council Code of Conduct.

5.3 Board, Commission, and Committee Appointments

- 5.3.1 The City Charter requires that members of City boards and commissions be qualified electors of the City (resident of Mountain View and United States citizen). Committees can include members that are not qualified electors.

Appointments will provide, as nearly as possible, a representative balance of the broad population of the City. All appointees should bring the skill, integrity, knowledge, interest, and commitment to evaluating issues in the broad context of the public interest.

- 5.3.2 Unless appointed to an unexpired term of less than two years caused by the resignation or other such vacancy, the term of office for each board, commission, or committee member is normally four years.

Appointees are limited to two consecutive terms prior to reappointment on a given board, commission, or committee (except where specifically provided). However, where the City Council expressly determines it to be in the best interest of the community, the City Council may reappoint beyond this limit.

- 5.3.3 The City Clerk provides application forms and maintains a composite listing of all applications on file which have been received.
- 5.3.4 The City Clerk solicits applications for vacancies in accordance with the procedures outlined in City Council Policy K-2, Board, Commission, and Committee Appointments.

5.3.5 Persons being considered for appointment (or reappointment) must be interviewed at least once to qualify for appointment.

5.4 Boards, Commissions, and Committees – Vacancy of Office

5.4.1 The City Charter provides that if "a member of a board or commission is absent from three regular meetings of such board or commission, consecutively or within a calendar quarter, or is convicted of a crime involving moral turpitude, or ceases to be a qualified elector and resident of the City, that office shall become vacant upon the declaration of Council. The Council may, for good cause, determine that a vacancy has not been created."

5.4.2 Resignations may be submitted at any time to the City Council either directly or through the board, commission, or committee chair. Resignations are effective upon submittal.

5.4.3 Upon notice of a vacancy, the Council Appointments Review Committee shall initiate the appointment procedure detailed in City Council Policy K-2, Board, Commission, and Committee Appointments, leading to a recommendation to the City Council for a successor of such vacancy and the successor will be appointed to serve only to the date of the unexpired term pursuant to Section 905 of the City Charter.

5.5 Boards, Commissions, and Committees – Removal

5.5.1 A board member, commissioner, or committee member is subject to removal by motion of the City Council adopted by at least four affirmative votes.

CHAPTER 6 MEETINGS

6.1. Ralph M. Brown Act

All meetings of the City Council, standing Councilmember committees, and Council advisory bodies are governed by the Ralph M. Brown Act (Government Code 54950 *et seq.*). The City Council views the Brown Act as a minimum set of standards and in several respects, the City's open meeting requirements exceed the requirements of the Brown Act.

If any member of a City legislative body, or City staff, believe that action has been taken on an item in contravention of the Brown Act, that person is privileged to place the item on a future agenda for reconsideration and/or action.

6.2 Regular Meetings

6.2.1 Regular meetings of the City Council are held on the second and fourth Tuesday of each month at 6:30 p.m. in the Council Chambers of Mountain View City Hall, 500 Castro Street.

All regular Council meetings are open to the public.

6.3 Study Sessions

6.3.1 Study Sessions are conducted as part of a public meeting which the Council may set from time to time to allow for a detailed review of important matters. Study Sessions may be conducted jointly with another City board, commission, or committee or another governmental agency. Formal action is typically not taken at a Study Session unless the agenda indicates that action may be taken. All Study Session meetings are open to the public.

6.4 Closed Sessions

6.4.1 Closed Sessions are also regulated pursuant to the Ralph M. Brown Act. All written materials and verbal information regarding Closed Session items must remain confidential. Written reports and/or exhibits or materials furnished to members of the Council as part of a Closed Session must not be copied or saved and must be deleted or returned to staff at the conclusion of the Closed Session. No member of the Council, employee of the City, or anyone else present should disclose to any other

person the intent or substance of any discussion that takes place in a Closed Session unless authorized by a majority of the Council.

- 6.4.2 Permissible topics/issues for a Closed Session discussion include, but are not limited to: labor negotiations, pending litigation, personnel actions, real estate negotiations, and certain licensing and public security issues.
- 6.4.3 All public statements, information, and press releases relating to Closed Session items should be handled by the City Attorney or as otherwise directed by the Council majority.
- 6.4.4 Closed Session meetings are closed to the public and the press.
- 6.4.5 Any suspected violation of the confidentiality of a Closed Session discussion shall be reported to the City Attorney. "Confidential information" means a communication, verbal or written, made in Closed Session that is specifically related to the legal basis for conducting the Closed Session.

6.5 Special and Emergency Meetings

- 6.5.1 Pursuant to the Ralph M. Brown Act, the Council may also hold special or emergency meetings as deemed necessary.

6.6 Meeting Agendas

6.6.1 Preparation of Agendas

- 6.6.1.1 Council agendas and supporting information are prepared by the City Manager and City Clerk.
- 6.6.1.2 For Council advisory bodies and Councilmember committees, agendas and supporting information are prepared by the supporting City department to the Council advisory body or Councilmember committee as directed by the City Manager.

6.6.2 Placing Items on Agendas

6.6.2.1 Council Agendas

- 6.6.2.1.1 The City Manager determines, in consultation with the Mayor, which items are placed on the agenda and the timing for scheduling such items.

6.6.2.1.2 A Councilmember's request for an item to be agendized will be done as an action item with support work of up to one hour by staff. If more than one hour of work is required, then the item will be agendized to ask Council if time should be spent on preparing a full report on the proposed agenda item.

6.6.2.1.3 Any person may request placement of a matter on the Council agenda by submitting a written request with the agreement of a sponsoring Councilmember.

6.6.2.2 Council Advisory Body and Councilmember Committee Agendas

Agenda items for Council advisory bodies and Councilmember committees must originate with the Council or as permitted under City Council Policy A-23, Work Item Referral Process for Council Advisory Bodies and Councilmember Committees.

6.6.3 Order of Agenda Items

The Council shall conduct business in the following order, except as the order may be adjusted pursuant to City Council Policy A-13, City Council Meetings.

1. **Call to Order/Pledge of Allegiance**
2. **Roll Call**
- 2A. **Proclamations/Presentations**
3. **Minutes Approval**
4. **Consent Calendar**

The consent calendar includes all matters of a routine or noncontroversial nature. All items on the consent calendar are approved by a single motion and vote. Any item on the consent calendar can be removed at the request of any member of the Council, City staff, or member of the audience when properly

recognized by the Mayor. Any items removed are considered separately by the City Council after the consent calendar.

5. **Oral Communications from the Public**

This is the portion of the Council meeting devoted to oral presentations to the Council by members of the public. During this time, a speaker may address the Council on any issue which does not appear on the printed agenda.

In most instances, speakers will be limited to three minutes in addressing the City Council.

Members of the Council shall not engage in debate with a member of the public or respond to issues/questions raised during this portion of the meeting.

No person who addresses the Council shall make any belligerent, personal, slanderous, threatening or abusive remark, statement, or commentary toward the Council, staff or other individuals in a manner which disrupts, disturbs, or otherwise impedes the orderly conduct of the Council meeting, nor shall any person engage in any disorderly conduct which disrupts or impedes the orderly conduct of the meeting. Any violation of this rule shall be grounds for terminating the speaker's comment period. Continued inappropriate behavior or comments, after having been directed to discontinue, shall be grounds for removal from the meeting.

Nothing in this section shall prohibit or discourage orderly criticism of any City decision or policy within the limits of State or Federal law or these rules.

6. **Public Hearings**

During this portion of the meeting, public hearings are conducted on all matters that have been properly and legally noticed as public hearings. Any issue scheduled for a public hearing will provide the proponents and opponents of the issue with the opportunity to express their points of view to the City Council. After all views have been expressed, the Mayor will close the public hearing, invite Council to discuss the matter and ask Council to render its decision on that matter.

7. Unfinished Business

These are items of business which, for a variety of reasons, are carried over from a previous meeting and require final Council action.

8. New Business

This portion of the meeting is devoted to discussion or consideration of items of business that have not previously been before the City Council.

9. Items Initiated by Council

Under this item, any Councilmember may bring before the Council for consideration any item he or she believes should be considered by the Council.

10. Council, Staff/Committee Reports

Councilmembers may provide a brief report on their activities, including reports on their committee activities, reports on inquiries they have received from any member, or the Council itself may provide a reference to staff or other resources for factual information, request staff to report back to the Council at a subsequent meeting concerning a matter, take action to direct staff to place a matter of business on a future agenda, or refer a work item to a Council advisory body or Councilmember committee.

11. Closed Session Report

The City Attorney will announce any reportable Closed Session actions taken by the City Council.

12. Adjournment

6.6.4 Order of Agenda Items for Council Advisory Bodies and Councilmember Committees

The order of agenda business items for all boards, commissions, and committees and Councilmember committees shall be the same as the order of Council agenda business items.

6.7 Rules of Procedure

- 6.7.1 City Council Policy A-13, *City Council Meetings*, provides general guidance for the conduct of Council meetings. From time to time, the Council may depart from its specific requirements for the convenience of the public, Council consideration and debate, or to expedite the processing of business. The Council by majority vote, however, may at any time reinvoke Policy A-13's specific requirements.
- 6.7.2 In instances not addressed by the rules provided in City Council Policy A-13, *City Council Meetings*, *The Modern Edition of Robert's Rules of Order* may be used for reference and/or guidance.

6.8 Decorum

- 6.8.1 While the City Council is in session, all persons shall conduct themselves with reasonable decorum.
- 6.8.2 Any person who is so disorderly or who so persistently disrupts the business meeting so far as to interfere with the proper conduct of the business may be ordered removed from the meeting place. At such time, the Mayor may call a recess.
- 6.8.3 The Police Chief or authorized representative shall be sergeant at arms of the Council meeting. The sergeant at arms shall carry out all orders and all instructions of the presiding officer for the purpose of maintaining order and decorum at Council meetings.

6.9 Time of Adjournment

It is the policy of the City that all evening meetings of the Council, including Study Sessions, be adjourned no later than 10:00 p.m., which time is referred to as the normal time of adjournment. No new item of business shall be taken up by the City Council after the normal time unless the Council has determined by majority vote to set aside this policy. In the event it appears that the entire agenda cannot be completed by the normal time of adjournment, the Council may take up and act upon the more pressing agenda items. All agenda items not considered at the meeting shall be on the agenda of the next regular, special, or adjourned regular meeting unless the Council directs otherwise.

6.10 Agenda Packets

- 6.10.1 Agenda packets are to be made available at the City Clerk's Office, the Mountain View Public Library, the City's web site (www.mountainview.gov), and at the Council meeting.

Council meeting agendas, minutes, and staff reports are generally available beginning the Thursday evening before each Council meeting.

NOTE: Also refer to City Council Policy A-13, City Council Meetings. This policy sets forth the rules of procedure for the conduct of City business.

**CHAPTER 7
COUNCIL FINANCIAL MATTERS**

7.1 Compensation

- 7.1.1 Pursuant to Article V, Section 503 of the Mountain View City Charter, each Councilmember will receive a monthly salary. The amount is the salary limit established by the State Legislature for members of the City Council of general law cities having a population range within which the City of Mountain View falls, as specified in California Government Code Section 36516(a).
- 7.1.2 The Mayor receives a monthly salary equal to the salary of a Councilmember plus an additional 25 percent.
- 7.1.3 The City Council has no power to increase its salary by ordinance, resolution, or motion.
- 7.1.4 Section 503 of the Mountain View City Charter stipulates that "if a member of the City Council, or Mayor, does not attend all meetings of the City Council or Study Sessions called on order of the City Council and held during the month, that person's salary for such month shall be reduced by the sum of Twenty-Five Dollars (\$25) for each meeting or Study Session not attended unless that person is absent on official duty with the consent of or on order of the City Council."

7.2 Benefits

- 7.2.1 The California Government Code provides that Councilmembers may receive health, retirement, and other benefits.
- 7.2.2 City-funded medical, dental, and life insurance plan benefits are provided.

7.3 City Council Budget and Expenses

- 7.3.1 City Council Policy A-2, City Council Policy Governing Expenses of the Council, provides policy guidance regarding Council expenditures for equipment, supplies and communications; travel; local expenses; and expenses charged against the City Council budget.

NOTE: Also refer to City Council Policy A-2, City Council Policy Governing Expenses of the Council. This policy sets forth the policies governing expenses of the City Council.

CITY OF MOUNTAIN VIEW
CITY COUNCIL
PERSONAL CODE OF CONDUCT

PREAMBLE

The residents and businesses of Mountain View are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government.
- Be independent, impartial and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Mountain View City Council has adopted this Code of Ethics to encourage public confidence in the integrity of local government and its fair and effective operation.

City Councilmembers shall sign this Personal Code of Conduct upon assuming office and upon reelection to that office as a symbol of each Councilmember's continuing commitment to abide by the principles of this code.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, Councilmembers shall work for the common good of the people of Mountain View and not for any private or personal interest, and they will endeavor to treat all persons, claims, and transactions in a fair and equitable manner.

2. Comply with the Law

Councilmembers shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the Mountain View City Charter; laws pertaining to conflicts of interest, election campaigns, financial

**Attachment 1 to
City Council Code of Conduct**

disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Members

Councilmembers shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commissions, committees, staff, or the public.

4. Respect for Process

Councilmember duties shall be performed in accordance with the processes and rules of order established by the City Council.

5. Conduct of Public Meetings

Councilmembers shall inform themselves of public issues, listen attentively to public discussions before the body, and focus on the business at hand.

6. Decisions Based on Merit

Council decisions shall be based upon the merits and substance of the matter at hand.

7. Communication

It is the responsibility of Councilmembers to publicly share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Councilmembers.

8. Coordination with City Staff

Appropriate City staff should be involved when Councilmembers meet with officials from other agencies and jurisdictions to ensure proper staff support as needed and to keep staff informed.

9. Disclosure of Corruption

All City officials shall take an oath upon assuming office, pledging to uphold the constitution and laws of the City, the State, and the Federal government. As part

of this oath, officials commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery, or other violation of the law.

10. Conflict of Interest

In order to assure their independence and impartiality on behalf of the public good, Councilmembers shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interest and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

11. Gifts and Favors

Councilmembers shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors, or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

12. Confidential Information

Councilmembers shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal, financial, or private interests.

13. Use of Public Resources

Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by Councilmembers for private gain or personal purposes.

14. Representation of Private Interests

In keeping with their role as stewards of the public trust, Councilmembers shall not appear on behalf of the private interests of a third-party before the City Council or any board, commission, or committee or proceeding of the City.

15. Advocacy

To the best of their ability, Councilmembers shall represent the official policies and positions of the City Council. When presenting their personal opinions or positions, members shall explicitly state that they do not represent the Council or the City.

16. Improper Influence

Councilmembers shall refrain from using their position to improperly influence the deliberations or decisions of City staff, boards, commissions, or committees.

17. Policy Role of Members

Councilmembers shall respect and adhere to the Council-Manager structure of Mountain View City government as provided in State law and the City Charter.

18. Positive Work Environment

Councilmembers shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

19. Implementation

Ethics standards shall be included in the regular orientations for City Council candidates. Councilmembers entering office shall sign a statement affirming they read and understood the City of Mountain View's City Council Code of Ethics.

20. Compliance and Enforcement

Councilmembers themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have full confidence in the integrity of City government.

**Attachment 1 to
City Council Code of Conduct**

This Personal Code of Conduct shall be considered to be a summary of the longer City Council Code of Conduct document. The City Council Code of Conduct document shall be considered to be the definitive document relating to ethical conduct by Mountain View City Councilmembers.

I affirm that I have read and understand the City of Mountain View City Council Personal Code of Conduct.

Signature

Date

CITY OF MOUNTAIN VIEW
COUNCIL ADVISORY BODY
PERSONAL CODE OF CONDUCT

PREAMBLE

The residents and businesses of Mountain View are entitled to have fair, ethical, and accountable local government. Such a government requires that public officials, including Council advisory body members:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government.
- Be independent, impartial, and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, Council advisory body members are expected to adhere to the Code of Conduct adopted by the Mountain View City Council to encourage public confidence in the integrity of local government and its fair and effective operation.

Council advisory body members shall sign this Personal Code of Conduct at the first meeting of the board, commission, or committee upon assuming office and, if applicable, upon reappointment to the board, commission, or committee as a symbol of each Council advisory body member's commitment to abide by the principles of this code during his or her term.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, Council advisory body members shall work for the common good of the people of Mountain View and not for any private or personal interest, and they will endeavor to treat all persons, claims, and transactions in a fair and equitable manner.

2. Comply with the Law

Council advisory body members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California Constitutions; the Mountain View City Charter; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Council Advisory Body Members

Council advisory body members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of Councilmembers; other members of the Council advisory body; other boards, commissions, or committees; staff; or the public.

4. Respect for Process

Council advisory body member duties shall be performed in accordance with the processes and rules of order established by the City Council.

5. Conduct of Public Meetings

Council advisory body members shall inform themselves of public issues, listen attentively to public discussions before the body, and focus on the business at hand.

6. Decisions Based on Merit

Council advisory body members shall base their decisions upon the merits and substance of the matter at hand.

7. Communication

It is the responsibility of Council advisory body members to publicly share substantive information that is relevant to a matter under consideration that they have received from sources outside of the public decision-making process with all other Council advisory body members.

8. Coordination with City Staff

Appropriate City staff should be involved when Council advisory body members meet with officials from other agencies and jurisdictions to ensure proper staff support, as needed, and to keep staff informed.

9. Disclosure of Corruption

All City officials shall take an oath upon assuming office, pledging to uphold the Constitution and laws of the City, the State, and the Federal government. As part of this oath, officials commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery, or other violation of the law.

10. Conflict of Interest

In order to assure their independence and impartiality on behalf of the public good, Council advisory body members shall not use their official positions to influence government decisions in which they have a financial interest or where they have an organizational responsibility or a personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interest and if they have a conflict of interest regarding a particular decision, refrain from participating in that decision unless otherwise permitted by law.

11. Gifts and Favors

Council advisory body members shall not take advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors, or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

12. Confidential Information

Council advisory body members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal

authorization nor use such information to advance their personal, financial, or private interests.

13. Use of Public Resources

Public resources not available to the general public (e.g., City staff time, equipment, supplies, or facilities) shall not be used by Council advisory body members for private gain or personal purposes.

14. Representation of Private Interests

In keeping with their role as stewards of the public trust, Council advisory body members shall not appear on behalf of the private interests of a third party before the City Council or any board, commission, or committee, or proceeding of the City.

15. Advocacy

To the best of their ability, Council advisory body members shall represent the official policies and positions of the City of Mountain View. When presenting their personal opinions or positions, members shall explicitly state that they represent neither the Council advisory body nor the City.

16. Improper Influence

Council advisory body members shall refrain from using their position to improperly influence the deliberations or decisions of City staff, boards, commissions, or committees.

17. Policy Role of Members

Council advisory body members shall respect and adhere to the Council-Manager structure of Mountain View City government as provided in State law and the City Charter.

18. Positive Work Environment

Council advisory body members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

19. Implementation

Ethics standards shall be included in the regular orientations for Council advisory body members. Upon entering office and upon reappointment, Council advisory body members shall sign a statement affirming they read and understood the City of Mountain View's City Council Code of Conduct.

20. Compliance and Enforcement

Council advisory body members themselves have the responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of City government.

This Personal Code of Conduct shall be considered to be a summary of the longer City Council Code of Conduct document. The City Council Code of Conduct document shall be considered to be the definitive document relating to ethical conduct by Mountain View City Council advisory body members.

I affirm that I have read and understand the City of Mountain View City Council Code of Conduct.

Signature

Date

City of Brea

CODE OF CONDUCT FOR
CITY COUNCIL



November 2014

Last Revised: February 2021

10E2

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CODE OF CONDUCT FOR CITY COUNCIL

"Always do right. This will gratify some people and astonish the rest."

-Mark Twain

INTRODUCTION

This Code of Conduct is designed to describe the manner in which Council Members should treat one another. City staff, constituents, and others they come into contact with in representing the City of Brea. As elected representatives of the citizens of the City of Brea, it is essential that each Council Member's behavior be consistent with the level of responsibilities and duties of governance entrusted to them by the people of the City of Brea.

The constant and consistent theme throughout of the Code of Conduct is "respect." Council Members experience tremendous stress in making decisions that could impact thousands of lives. Despite these pressures, elected officials are called upon to exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help guide Council Members to do the right thing in even the most difficult situations. Such respect is the cornerstone of civility.

The overall principles and guidelines contained in this Code of Conduct also describe the manner in which the City Treasurer, City Clerk, Commissioners, Committee members and Board members are expected to treat one another, City staff, and all others they come into contact with in representing the City of Brea.

OVERVIEW OF ROLES AND RESPONSIBILITIES

MAYOR

- Serves at the pleasure of the City Council
- Acts as the official head of the City for all ceremonial purposes
- Chairs City Council meetings and as otherwise authorized by the Council
- Calls for special meetings
- Recognized as spokesperson for the City Council
- Selects substitute for City representation when Mayor cannot attend
- Makes Council Member assignment nominations to applicable standing committees and regional boards and committees. Appointment to such standing committees and regional boards and committees requires approval of the majority of Council. These standing committees and regional boards and committees are those that do not require appointment through external agencies or organizations (such as Orange County City Selection). Council Members who are originally appointed to ad hoc committee shall continue in their assignments. Ad hoc committee assignments are not subject to change unless an assigned

Council Member resigns from the committee or is no longer serving on the Council. Ad hoc committees shall be created to support and further Council priorities. When an ad hoc committee is created, the Council will define the committee's goals and the committee shall provide periodic progress reports to Council. No ad hoc committee will be formed without Council approval.

- Makes judgment calls on which proclamations to give
- Leads the Council into an effective, cohesive working team
- Signs documents on behalf of the City of Brea
- Serves as official delegate of the City to the Leagues of California Cities, National League of cities and other events and conferences

MAYOR PRO TEM

- Serves at the pleasure of the City Council
- Performs the duties of the Mayor if the Mayor is absent or disabled
- Chairs City Council meetings in the absence of the Mayor
- Represents the City at ceremonial functions at the request of the Mayor

ALL COUNCIL MEMBERS

All members of the City Council, including those serving as Mayor and Mayor Pro Tern, have equal votes. No Council Member has more power than any other Council Member and all should be treated and treat each other with civility and respect.

All Council Members shall:

- Demonstrate honesty, integrity, and civility in every action and statement
- Fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others
- Prepare in advance of Council meetings and be familiar with issues on the agenda. Make a reasonable effort to meet with staff before meetings to receive answers to questions regarding the agenda
- Represent the City at ceremonial functions at the request of the Mayor
- Place activities and events on the Council's weekly activities calendar that invite official participation of all Council Members
- Be respectful of other people's time. Stay focused and act efficiently during public meetings
- Serve as a model of leadership and civility to the community
- Inspire public confidence in Brea City government
- Provide contact information to the City Manager's Executive Assistant in case an emergency or

urgent situation arises while the Council Member is out of town

- Participate in scheduled activities to increase team effectiveness

MEETING CHAIR

The Mayor will chair official meetings of the City Council, unless the Mayor Pro Tem or another Council Member is designated as Chair of a specific meeting. The Chair of meetings:

- Maintains order, decorum, and the fair and equitable treatment of all speakers
- Keeps discussion and questions focused on the specific agenda item under consideration
- Makes parliamentary rulings with advice, if requested, from the City Attorney who acts as an advisory parliamentarian. Chair rulings may be overturned if a Council Member makes a motion as an individual and the majority of Council votes to overrule the Chair.

POLICIES AND PROTOCOL RELATED TO CONDUCT

AGENDA ITEMS

The Mayor and Mayor Pro Tem, in consultation with the City Manager, shall determine agenda items for City Council Meetings. However, to ensure all Council Member views are represented, study session agendas contain a section titled "Council Member Reports/ Requests" and general session agendas contain a section titled "Council Requests". These portions of the meeting allow any Council Member to request an agenda item for a future meeting, and allow the City Council to have a short discussion on the request (but not on the substance of the item). Any request must include an explanation of the issue and the goal of the proposed Council discussion. If at least one other Council Member indicates support for the request at that time, then the item shall be placed on a future agenda. Upon support for the request, the Council will provide direction to staff on information that is desired to be presented when the item is placed on a future agenda. The Mayor and Mayor Pro Tem shall schedule the item no later than 45 days following the request, unless the Council Member who requested the item consents to it being placed on the agenda of a later meeting. Additionally, with the advice of the City Manager and City Attorney, the Mayor and Mayor Pro Tem will determine the type of meeting (regular or special) and the type of session (closed, study, or general) at which the item will be considered.

CEREMONIAL EVENTS

City staff will handle requests for a City representative at ceremonial events. The Mayor will serve as the designated City representative. If the Mayor is unavailable, then City staff will determine if event organizers would like another representative from the Council. If yes, then the Mayor Pro Tem will be asked to serve as a substitute; if the Mayor Pro Tem is unavailable, the request will go to another member of the Council. Invitations received at City Hall are presumed to be for official City representation. Invitations addressed to individual Council Members at their homes are presumed to be for unofficial, personal consideration, unless otherwise indicated, and the individual is expected to represent the City of Brea in a formal capacity.

ENDORSEMENT OF CANDIDATES

Council Members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention endorsements during Council meeting or other official City meetings.

LEGISLATIVE PROCESS

The City follows parliamentary procedure for the management of meetings using guidelines adopted by Resolution No. 2014-065 on October 7, 2014.

PUBLIC COMMENT ON AGENDA AND NON-AGENDA ITEMS

During a designated period of the agenda, the public may comment on any item of interest that is within the subject matter jurisdiction of the Council. As a general rule, a speaker will be limited to five minutes.

The City Manager will respond, as deemed appropriate, to comments related to items on the meeting's agenda. In compliance with the Brown Act, the City Council may not take action or discuss any item that does not appear on the Council meeting agenda.

PUBLIC INQUIRIES

City staff will prepare official letters in response to public inquires and concerns, as appropriate. These letters will carry the signature of the Mayor unless the Mayor requests that another Council Member or City staff sign them. If correspondence is addressed only to one Council Member that Council Member should generally check with staff on the best way to respond to the sender. In the event a Council Member, as an elected representative, feels compelled to express an opinion on a matter, it shall be with the express understanding and stated as such, that it is their personal opinion and does not in any way represent that of the City Council. Nor, under any circumstances, should a Council Member state or attempt to represent the opinion of the City Council or of another Council Member.

Council Members may receive public inquires via email and may choose to respond directly via email. All such correspondence is considered a public record and should be treated as such. As with official letter responses to public inquires, if a Council Member feels compelled to express an opinion on a matter, it shall be with the express understanding, and stated as such, that it is a personal opinion and does not in any way represent that of the City Council.

PUBLIC HEARING MEETING PROTOCOL

The applicant or appellant shall have the right to speak first after staff presentation regarding the item being appealed. The Chair will determine the length of time allowed for this presentation. Speakers representing either pro or con points of view will be allowed to follow. The Chair will determine and announce limits on speakers at the start of the public hearing process. Generally, each speaker will be allocated five minutes with applicants and appellants, or their designed representatives, allowed more time. If many speakers are anticipated, the Chair may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers. No speaker will be turned away unless he/she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the Council requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the Chair reopens the public hearing for a limited and specific purpose.

The applicant or appellant will be allowed to make closing comments. The Chair has the responsibility to run an efficient public meeting and has the discretion to modify the public hearing process in order to make the meeting run smoothly and/or accommodate extenuating circumstances.

Established protocol dictates that Council Members do not express opinions during the public hearing portion of the meeting except to ask pertinent questions of the speaker or staff. "I think" and "I feel" comments by Council Members are not appropriate until after the close of the public hearing. To maintain proper public decorum it is important that Council Members refrain from arguing or debating with the public during a public hearing and always show respect for different points of view.

Main motions may be followed by amendments, followed by substitute motions. Any Council Member can call for a point of order. Only Council Members who voted on the prevailing side may make motions to reconsider. Council Members who desire to make the first motion on issues that they feel strongly about should discuss their intention with the Chair in advance of the Council meeting.

COUNCIL CONDUCT WITH ONE ANOTHER

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal respectfully acknowledge this potential diversity of opinion and viewpoint even as Council may "agree to disagree" on contentious issues.

IN PUBLIC MEETINGS

- Use of formal titles

The Council should generally refer to one another formally during public meetings as Mayor, Mayor Pro Tem or Council Member followed by the individual's last name

- Practice civility and decorum in discussions and debate

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not, however, grant the right for Council Members to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening and otherwise disruptive can be tolerated. Disruptive behavior, at the direction of the Council, can result in expulsion from the proceedings.

- Honor the role of the Chair in maintaining order

It is the responsibility of the Chair to keep the comments of Council Members on track during public meetings. Council Members should honor efforts by the Chair to focus discussion on current agenda items. If there is a disagreement about the agenda or the Chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedures adopted on October 7, 2014. Differences of opinion of what constitutes appropriate versus inappropriate shall be resolved by consensus of the full Council at an appropriate time.

- Avoid personal comments that may offend other Council Members

If a Council Member is personally offended by the remarks of another Council Member, the offended Council Member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Council Member to justify or apologize for the language used. The Chair will maintain control of the discussion.

- Demonstrate effective problem-solving approaches

Council Members have a public stage to show how individuals with different points of view can find common ground and seek a compromise that benefits the community as a whole.

IN PRIVATE ENCOUNTERS

- Continue respectful behavior in private

The same level of respect and consideration in differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

Be aware that the insecurity of written notes, voicemail messages, and email technology allows words written or said without much forethought to be distributed wide and far. It could create unpleasant consequences and cause embarrassment. Written notes, voicemail messages and email should be treated as potentially "public" communication and part of the public record.

- Even private conversations can have a public presence

Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted. Council Members must behave at all times in a manner reflective of the trust placed in them by the public.

COUNCIL CONDUCT WITH CITY STAFF

Every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community. The City of Brea is a general law city governed by the council/manager form of government. The City Council, with the assistance of its advisory commissions and boards, makes policies and fundamental governmental decisions; the City Manager is charged with implementing those policies and decisions and administering the day-to-day affairs of the City with the assistance of his/her staff. The City Council has direct authority over the City Manager and the City Attorney; all other employees of the City are under the direct authority of the City Manager. Following this hierarchy is important to the success of the basic structure and to maintaining positive and effective working relationships between the City Council and employees, and will prevent any confusion and/or inefficiency associated with potentially contradictory direction.

- Treat all staff as professionals

Clear, honest communication that respects the abilities, experience and dignity of each individual is expected. Poor behavior toward staff is improper, disrespectful and, as such, inappropriate and unacceptable.

- Limit contact to specific City staff

Questions of City staff and/or requests for additional information or services should be directed only to the City Manager. If, in the opinion of the City Manager the request makes sense and requires little staff time and/or resources, the City Manager can direct the appropriate department to fulfill the request.

- Do not disrupt City staff from their Jobs

To maintain efficiency in daily activities, it is important that Council Members not disrupt City staff while they are in meetings, on the telephone, or engrossed in performing their job functions in order to have their individual needs met.

- Respect City staffs time

Given ongoing fiscal constraints and limited staff and Council time, individual Council Members should minimize memos and maximize face-to-face interaction with other Council Members or staff.

In this respect, individual Council Members should schedule meeting with their counterparts, the City Manager, or department directors, depending on the issue to be discussed. As a matter of courtesy and mutual respect, Council Members and staff should keep their scheduled meetings or call in advance to cancel or reschedule.

- Requests for information

All Council Members will receive the same material and information to make legislative and other policy decisions and all requests for information should be made to the City Manager to ensure consistency.

If a Council Member requests research on an issue, staff shall provide such research if it does not require extensive time to research the issue. The City Manager shall determine if the research is "extensive" or not. If the issue is complex and requires extensive staff time, the request must be approved by the City Council.

If a Council Member needs to review a document maintained in the City's records system, upon request to the City Manager, staff will retrieve the requested document. The City Manager is legally responsible for the management and retention of City records, and only staff is authorized to retrieve information from the records system.

Because of the associated costs, individual Council Members shall not make direct contact to City or Agency consultants or outside legal counsel requesting information, research or service. Any request should be directed to the City Manager for compliance.

Confidential private financial statements are not provided to individual Council Members or the Council as a whole without the concurrence of the City Attorney.

- Never publicly criticize an individual employee

Council should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager through private correspondence or conversation.

- Do not get involved in administrative functions

To prevent raising concerns of misdeeds, or questionable motives, Council Members must not attempt to influence City staff on the making of appointments, awarding of contracts, selection of consultants, processing of development applications, or granting of City licenses and permits.

- Check with City staff on correspondence before taking action

To prevent conflicting statements or duplications, before sending correspondence, Council Members shall check with City staff to see if an official City response has already been sent or is in progress. Typically the Mayor, through consultation with staff, should respond to communications addressed to the entire Council. When it is unclear whether a correspondence is to an individual Council Member or the City Council as a whole, Council Members should consult with the Mayor or staff to determine the appropriate response.

- Council Members are discouraged from attending public meetings with City staff unless requested by staff

Council Members correctly feel their presence at public meetings demonstrates an interest in the issue, however, it can also leave the public with an impression of the Council Member's position on the issue that may or may not be correct. Even if the Council Member does not say anything, the Council Member's presence can impact the meeting by implying support, showing partiality, intimidating staff, and hampering staff's ability to do their job objectively. This should be avoided because when the item does come before the City Council, Council Members' deliberative process may have produced a different outcome, which may be viewed as the Council Member misleading the public.

Staff will always provide the public with this explanation of why the City Council is not present at the meeting.

- Requests for additional staff support

Requests for additional staff support, even in high priority or emergency situations, should be made to the City Manager or Assistant City Manager, or designated representative who is responsible for allocating City resources in order to maintain a professional, well-run City government.

- Do not solicit political support from staff

Council Members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support lists, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates, but all such activities must be conducted away from the workplace.

COUNCIL CONDUCT WITH THE PUBLIC

IN PUBLIC MEETINGS

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual Council Members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- Be welcoming to speakers and treat them with care and respect

Remember that most people who address the Council are not professional speakers and are not accustomed to speaking in public, and even those that are may be intimidated by the situation.

- Be fair and equitable in allocating public hearing time to individual speakers

Public hearings provide the opportunity for the public to provide comment and feedback to the Council on issues that are of importance to them, and sometimes these comments can cause the meeting to go much longer than anticipated. However, each member of the public who wishes to speak should be given equal consideration and attention, and not rushed. But each speaker is expected to stay within the allocated time.

- Actively listen

Listening is a critically important skill. In the interest of courtesy and decorum, Council Members should listen patiently to various opinions from all quarters. It can be disconcerting to speakers to have Council Members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time, or gazing around the room gives the appearance of disinterest and may unintentionally offend the speaker. As public official it's important to be aware of facial expressions, especially those that could be interpreted as "smirking," disbelief, anger or boredom.

- Ask for clarification, but it's important to avoid debate and argument with the public

Only the Chair – not individual Council Members – can interrupt a speaker during a presentation. However, a can ask the Chair for a point of order if the speaker is off the topic or exhibiting behavior/language the Council Member finds disturbing.

If speakers become flustered or defensive by Council questions, it is the responsibility of the Chair to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Council Members to members of the public testifying should seek to clarify or expand information. It is never appropriate for elected officials to belligerently challenge or belittle a speaker. Council Members personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

- No personal attacks of any kind, are appropriate under any Circumstance

Council Members should be aware that their body language and tone of voice may appear to be intimidating or aggressive to some speakers.

- Follow adopted parliamentary procedure in conducting public meetings

The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. Final rulings on parliamentary procedure are made by the Chair, subject to an appeal by the full Council.

IN UNOFFICIAL SETTINGS

- Make no promises on behalf of the Council

No individual Council Member has the authority to represent or make commitments on behalf of the City Council. Council Members will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a street tree, plant new flowers in the median, etc.).

- Make no personal comments about other Council Members

It is acceptable to publicly disagree about an Issue, but it is unacceptable to make derogatory comments about other Council Members, their opinions and actions. Doing so may undermine confidence in and respect for the City Council as a body.

Remember that Brea is a small town at heart. Council Members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City. Honesty and respect for the dignity of each individual should be reflected in the words and actions taken by Council Members. It is a serious and continuous responsibility.

COUNCIL CONDUCT WITH OTHER PUBLIC AGENCIES

- Be clear about representing the City or personal interests

If a Council Member appears before another governmental agency or organization to give a statement on an Issue, the Council Member must clearly state if his/her statement reflects personal opinion or is the official stance of the City and whether this is the majority or minority opinion of the Council. If the Council Member is representing the City, the Council Member must support and advocate the official City position on an Issue, not a personal viewpoint. If the Council Member is representing another organization whose position is different from the City, the Council Member should withdraw from voting on the Issue if it significantly impacts or is detrimental to the City's interests.

Council Members should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

- Correspondence also should be equally clear about representation

City letterhead may be used when the Council Member is representing the City and the City's official position. A copy of the official correspondence should be given to the City Manager's Executive Assistant to be filed in the Council Office as part of the permanent public record.

It is best that City letterhead not be used for correspondence of Council Members representing a personal point of view, or a dissenting point of view from an official Council position. However, should a Council Member use City letterhead to express a personal opinion, it must be clear to the reader that this is not the official City position.

COUNCIL CONDUCT WITH COMMISSIONS, COMMITTEES AND BOARDS

The City has established commissions, committees and boards as a means of gathering more community input. Citizens who serve as such become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

- If attending a commission, committee or board meeting, be careful to only express individual personal opinions

Council Members may attend any commission, committee, or board meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation, especially if it is on behalf of an individual, business or developer, could be viewed as unfairly affecting the process. Any public comments by a Council Member at a commission, committee or board meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.

- Limit contact with commission, committee, or board members to questions of clarification

It is inappropriate for a Council Member to contact a commission, committee, or board member to lobby on behalf of an individual, business, or developer. It is acceptable for Council Members to contact commission, committee, or board members in order to clarify a position taken by the commission, committee, or board.

- Remember that commissions, committees, and boards serve the community, not individual Council Members

The City Council appoints individuals to serve on commissions, committees, and boards and it is the responsibility of these groups to follow policy established by the Council.

But commission, committee and board members do not report to individual Council Members, nor should Council Members feel they have the power or right to threaten members with removal if they disagree with them about an issue. Appointment and reappointment to a commission, committee, or board is governed by the Municipal Code and should be based on such criteria as expertise, ability to work with staff and the public, commitment to the community and to fulfilling official duties.

- Be respectful of diverse opinions

A primary role of commissions, committees, and boards is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Council Members may have a closer working relationship with some individuals serving on commissions, committees and boards, but must be fair and respectful of all citizens serving on commissions, committees and boards.

- Keep political support away from public forums

Commission, committee and board members may offer political support to a Council Member, but not in a public forum while conducting official duties. Conversely, Council Members may support commission, committee or board members who are running for office, but not in an official forum in their capacity as a Council Member.

COUNCIL CONDUCT WITH THE MEDIA

Council Members are frequently contacted by the media for background and quotes.

- The Mayor and the City Manager shall determine the official spokesperson for the City's position on high-profile Issues

If an individual Council Member is contacted by the media, the Council Member should refer the media to the Mayor or the City Manager and refrain from making statements that would give the appearance of representing the City's position.

- The City Manager or his/her designee shall be the City's spokesperson on routine media inquiries
- Remember who you are

A Council Member must always be aware of his/her role as a policy maker in the organization, and the deference that is afforded you by the public because of your office. Consequently, it is very important to remember not to speculate or venture outside your area of expertise. The public will rely on what they are told by an elected official.

- The best advice for dealing with the media is to never go "off the record"

Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

- Never say "no comment"

This statement can easily be misconstrued. If a Council Member does not have the information available, it is best to say so and let the media know when the information will be available and then make certain to follow through.

- Do not be afraid to say "I don't know"

If a Council Member does not know the answer to a question, it is best to just say so, then find out. It is helpful to ask the media for their deadline and then get back to them on time.

- Don't speculate; avoid hypothetical questions

A Council Member may choose to raise a case study hypothesis to illustrate a process, but should not be lured into speculating about what has not occurred.

- Be positive, not defensive
- Choose words carefully and cautiously

Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

- Avoid "never" and "always"

Opinions may change as additional information is revealed. Absolutes can come home to haunt!

- Do not fill in the silences

Silences can be a tool used by the media to keep a Council Member talking in hopes of obtaining more information. The only thing that should be said to fill in a silence is the Council Member's own prepared key messages.

- Do not lose your composure

A Council Member may win the battle, but will always lose the war.

- Do not argue with the media

Arguing with the media is a no-win situation. A Council Member who is calm and in good temper will also look like a sensible adult. That is a good image to convey. Keep in mind that editing has final control and an argument may be the only thing shown on the evening news.

- Never lie

It is better not to express an opinion than to fabricate a response that may not be entirely factual, and would tend to mislead the press.

SANCTIONS

PUBLIC DISRUPTION

Members of the public who do not follow proper conduct after a warning in a public hearing may be barred from further testimony at that meeting or removed from the Council Chambers.

INAPPROPRIATE STAFF BEHAVIOR

City staff members who do not follow proper conduct in their dealings with Council Members, other City staff, or the public will be referred to the City Manager. These employees may be disciplined by the City Manager in accordance with City policies and procedures.

COUNCIL MEMBERS BEHAVIOR AND CONDUCT

City Council Members who are alleged to be in violation of State or Fair Political Practices laws or guidelines should be referred to the appropriate agencies.

City Council Members who intentionally and repeatedly do not follow proper conduct as outlined in this Code of Conduct may be reprimanded or formally censured by the Council, lose seniority or committee assignments (both within the City or with intergovernmental agencies) or have official travel restricted. Serious infractions of the City's Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by Council.

It is the responsibility of the individual Council Member to initiate action if a Council Member's behavior may warrant sanction. The alleged violation(s) can be presented to the full Council in a public meeting. If violation of the Code of Ethics or Code of Conduct is outside of the behaviors observed by the Council, then subsequent investigation and potential sanctions should be reviewed and approved by the Council.

PRINCIPLES OF PROPER CONDUCT

PROPER CONDUCT IS...

- Keeping promises
- Being dependable
- Building a solid reputation
- Participating and being available
- Demonstrating patience
- Showing empathy
- Holding onto ethical principles under stress
- Listening attentively
- Studying thoroughly
- Keeping integrity intact
- Overcoming discouragement
- Going above and beyond, time and time again
- Modeling a professional manner

PROPER CONDUCT IS NOT

- Showing antagonism or hostility
- Deliberately lying or misleading
- Speaking recklessly
- Spreading rumors
- Stirring up bad feelings, divisiveness
- Acting in a self-righteous manner

IT ALL COMES DOWN TO RESPECT

- Respect for one another as individuals
- Respect for the validity of different opinions
- Respect for the democratic process
- Respect for the community that we serve

CHECKLIST FOR MONITORING CONDUCT

- Will my decision/statement/action violate the trust, rights or good will of others?
- What are my interior motives and the spirit behind my actions?
- If I have to justify my conduct in public tomorrow, will I do so with pride or shame?
- How would my conduct be evaluated by people whose integrity and character I respect?
- Even if my conduct is not illegal or unethical, is it done at someone else's painful expense?
- Will it destroy their trust in me?
- Will it harm their reputation?
- Is my conduct fair? Just? Morally right?
- If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?
- Does my conduct give others reason to trust or distrust me?
- Am I willing to take an ethical stand when it is called for?
- Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?
- Do I exhibit the same conduct in my private life as I do in my public life?
- Can I take legitimate pride in the way I conduct myself and the example I set?
- Do I listen and understand the views of others?
- Do I question and confront different points of view in a constructive manner?
- Do I work to resolve differences and come to mutual agreement?
- Do I support others and show respect for their ideas?
- Will my conduct cause public embarrassment to someone else?

GLOSSARY OF TERMS

Attitude	The manner in which one shows one's dispositions, opinions, and feelings
Behavior	External appearance or action; manner of behaving; carriage of oneself
Civility	Politeness, consideration, courtesy
Conduct	The way one acts; personal behavior politeness connected with kindness
Courtesy	Suitable; proper; good taste in behavior
Decorum	A way of acting; a style, method, or form; the way in which things are done
Manners	An interruption of a meeting to question whether rules or bylaws are being broken, such as the speaker has strayed from the motion currently under consideration
Point of order	A challenge to a speaker to defend or apologize for comments that a fellow
Point of personal privilege	Council Member considers offensive
Propriety	Conforming to acceptable standards of behavior
Protocol	The courtesies that are established as proper and correct

APPENDIX

REVISIONS TO CODE

DATE	SECTION	ACTION
October 2, 2018	COUNCIL CONDUCT WITH COMMISSIONS, COMMITTEES AND BOARDS	<p><u>Removal</u> of language:</p> <p><i>Inappropriate behavior can lead to removal - Inappropriate behavior by a commission, committee, or board member should be noted to the Mayor, and the Mayor should counsel the offending member. If inappropriate behavior continues, the Mayor should bring the situation to the attention of the Council and the individual may be subject to removal from the commission, committee or board.</i></p>
January 15, 2019	POLICIES AND PROTOCOL RELATED TO CONDUCT – AGENDA ITEMS	<p>Revisions amended the procedures for City Council to make agenda requests.</p> <p><u>Removal</u> of language:</p> <p><i>Individual Council Members should submit requests, preferably written, for agenda items to the Mayor for consideration. In the case of a dispute a Council Member may, at a public meeting, request the support of the majority of the Council to place an item on the agenda.</i></p> <p><u>Addition</u> of language:</p> <p><i>However, to ensure all Council Member views are represented, study session agendas contain a section titled “Council Member Reports/ Requests”. In addition to their reports, this portion of the meeting allows any Council Member to request an agenda item for a future meeting, and allows the City Council to have a short discussion on the request (but not on the substance of the item). Any request must include an explanation of the issue and the goal of the proposed Council discussion. If at least one other Council Member indicates support for the request at that time, then the item shall be placed on a future agenda. Upon support for the request, the Council will provide direction to staff on information that is desired to be presented when the item is placed on a future agenda. Additionally, with the advice of the City Manager and City Attorney, the Council will provide direction to staff on the type of meeting (regular or</i></p>

		<p><i>special) and the type of session (closed, study, or general) at which the item will be considered. The Mayor and Mayor Pro Tem shall schedule the item no later than 45 days following the request, unless the Council Member who requested the item consents to it being placed on the agenda of a later meeting.</i></p>
<p>April 2, 2019</p>	<p>POLICIES AND PROTOCOL RELATED TO CONDUCT – AGENDA ITEMS</p>	<p>Revisions clarified that the Mayor and Mayor Pro Tem, rather than the full Council, have the authority to provide direction to staff on the type of meeting and session at which Council-requested agenda items will be considered.</p> <p>Revisions also added an opportunity for City Council to make agenda requests during General Session.</p> <p><u>Removal of language:</u></p> <p><i>Additionally, with the advice of the City Manager and City Attorney, the Council will provide direction to staff on the type of meeting (regular or special) and the type of session (closed, study or general) at which the item will be considered..</i></p> <p><u>Addition of language:</u></p> <p><i>...and general session agendas contain a section titled "Council Requests."</i></p> <p><i>Additionally, with the advice of the City Manager and City Attorney, the Mayor and Mayor Pro Tem will determine the type of meeting (regular or special) and the type of session (closed, study, or general) at which the item will be considered.</i></p>
<p>February 16, 2021</p>	<p>OVERVIEW OF ROLES AND RESPONSIBILITIES - MAYOR</p>	<p>Revisions clarified Mayor's role in making internal and external committee assignments.</p> <p>Language revision:</p> <p><i>Makes Council Member assignments nominations to Council subcommittees applicable standing committees and regional boards and committees through consultation with other members. Appointment to such standing committees and regional boards and committees requires approval of the majority of Council. These standing committees and regional boards and committees are those that do not require appointment through</i></p>

		<p><i>external agencies or organizations (such as Orange County City Selection). Council Members who are originally appointed to ad hoc committee shall continue in their assignments. Ad hoc committee assignments are not subject to change unless an assigned Council Member resigns from the committee or is no longer serving on the Council. Ad hoc committees shall be created to support and further Council priorities. When an ad hoc committee is created, the Council will define the committee's goals and the committee shall provide periodic progress reports to Council. No ad hoc committee will be formed without Council approval.</i></p>
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Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

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Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

OVERVIEW AND PURPOSE

The Town of Berthoud, a Colorado Town, (hereafter the “Town” or “Town of Berthoud”) is committed to transparent, collegial, ethical local government, and to that end endorses the following “Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions” (hereafter “Code of Conduct”) to provide guidance assisting Public Servants in the performance of their duties in a manner which serves the public interest and honors public trust. This document is intended to embody core values of the government of the Town of Berthoud, including:

Fiscal Responsibility	Professionalism	Accountability	Integrity
Transparency	Respect	Service	

DEFINITIONS

“**Appearance of Impropriety**” means actions or decisions which do not fall under conflict of interest statutes, but reasonably give rise to an implication that an action is self-serving rather than considered solely with respect to its impact on the Town and its citizens.

“**Censure**” means an official written statement approved by the Board of Trustees as an official Sanction which identifies the Code of Conduct violation and expresses disapproval of those violations.

“**Gifts of Substantial Value**” are as defined in Section 18 of Title 24 of the Colorado Revised Statutes and include, but are not limited to, gifts which could be perceived as a reward for an official action taken.

“**Public Servant**” means any elected or appointed official of the Town of Berthoud as well as employees and volunteers, including, but not limited to: Board of Trustee members; Planning & Zoning Commissioners; Parks, Open Space, Recreation and Trails (PORT) Committee Members; Youth Advisory Committee Members; Historical Preservation Committee Members; Tree Board Members; any other Town boards or commissions that may arise from time to time; part time employees; recreation instructors and volunteers; and temporary employees.

“**Sanction**” means an action taken by the Board of Trustees if an individual member of the Board of Trustees or an advisory board member is in violation of this Code of Conduct. Sanctions can include Reprimand, formal Censure, and removal from boards and commissions (in compliance with state law).

“**Reprimand**” means a verbal statement in a meeting that addresses a violation of this Town of Berthoud Code of Conduct, and specifically references the provision that has been violated.

ROLES & RESPONSIBILITIES

The Town of Berthoud operates under the statutory town form of government and recognizes the importance of maintaining a transparent and well-defined structure. The Board of Trustees is composed

Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

of six Trustees and one Mayor. The Town Administrator is responsible for staff management and day-to-day operations; the Board of Trustees is responsible for legislative functions such as setting policy, establishing goals, and interacting with the public.

STATEMENT OF AGREED PRINCIPLES

The Town of Berthoud is committed to adhering to these principles in order to best serve its constituents. The Following are adopted as joint goals and commitments of all Public Servants:

- Be accountable to the community and public.
- Enhance and promote good will and public discourse among citizens and fellow Public Servants.
- Give consideration to potential consequences of conduct – both short and long term.
- Strive to maintain and improve public trust in their Public Servants.
- Behave and conduct all public business in a professional manner.
-
- Listen and consider all perspectives before reaching a conclusion.
- Approach discussion and decisions with an open mind.
- Engage in respectful and constructive discourse with an eye towards a mutually beneficial outcome.

CONFLICTS OF INTEREST

All Public Servants of the Town of Berthoud are expected to be familiar with and at all times comply with Colorado statutes addressing ethics and conflicts of interest as a baseline level of conduct. A summary of all applicable statutory provisions compiled by the Colorado Municipal League legal staff is attached hereto and incorporated herein as "Appendix A". The following provisions are intended only as practical direction for implementing such standards or for issues which do not rise to levels prohibited by statute but nonetheless raise the appearance of impropriety.

If a Board Member has questions or concerns about a potential conflict of interest or any other ethical issue, he or she should consult the Town Administrator (outside of a Board of Trustees meeting) requesting that the Town Administrator consult with the Town Attorney, or consult the Town Attorney during a meeting.

When participation in action or decision-making as a Public Servant does not implicate the specific statutory criteria for conflicts of interest, but does raise an Appearance of Impropriety, then that Public Servant is encouraged to recuse him/herself in order to avoid any Appearance of Impropriety.

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No board member may vote on any matter before the board if the board member's participation is prohibited by statute. If a conflict isn't clear, the member may choose to disclose the nature of the potential conflict to the board prior to a vote taking place, and request a determination be made by the non-conflicted board members as to whether the potentially conflicted board member may cast his/her vote. If the potentially-conflicted-member makes a request for the remaining members to determine whether the potentially-conflicted-member has a conflict of interest, then the remaining members may determine, by motion adopted by the affirmative vote of a majority of the remaining members, whether a conflict of interest exists. On all matters not rising to the level of a statutory prohibition, such vote shall be advisory only.

When a board member is precluded from voting on a matter because of a conflict of interest, then the board member shall physically remove himself/herself from the council dais, from the board room in which it is meeting, and shall refrain from attempting to influence the decisions of the other members of the board who will cast a vote on that matter. After the board has completed consideration of the matter, the board member may return and resume his or her duties as a member of the board.

As soon as a board member determines that he or she has a conflict of interest on any matter before the board, then he or she shall immediately refrain from attempting to influence the decision of the other members of the board on that matter.

No board member shall vote on any question concerning the member's own conduct.

CONFIDENTIALITY

Public Servants will often be privy to sensitive, private, or confidential matters, in formal and informal settings. All Public Servants shall respect the letter and intent of the open meetings laws, and keep secret all private and confidential matters. No Public Servant may disclose to third parties any confidential information, unless authorized to do so by a 2/3 vote of the applicable board. Public Servants shall comply with applicable state law – including without limitation C.R.S. 24-18-104 – concerning the prohibition of the use of confidential information for personal benefit.

GIFTS

Public Servants shall not accept Gifts of Substantial Value or of substantial economic benefit tantamount to a Gift of Substantial Value which would tend to improperly influence a reasonable person in a public position to depart from the faithful and impartial discharge of the Public Servant's public duties, of which the Public Servant knows, or which a reasonable person should know, is being gifted primarily for the purpose of rewarding an Official Action the Public Servant has taken or could take.

Public Servants shall comply with applicable state law – including without limitation C.R.S. 24-18-104 – concerning the prohibition of the receipt of Gifts of Substantial Value.

GENERAL ETHICS GUIDELINES

NEPOTISM - Except as otherwise required by law, no Public Servant should participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any appointed or elected

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position at the Town of Berthoud. Public Servants are expected to disclose the relationship, and recuse or remove him/herself appropriately.

PERSONAL USE OF TOWN PROPERTY - No Elected Official or Public Servant shall utilize Town Property for personal purposes. This prohibition shall not apply to occasional use of telephones, copiers, or technological equipment to the same extent that such use would be allowed to any citizen of the Town.

CODE OF CONDUCT

WITH ONE ANOTHER

Governing bodies are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the community and its future. In all cases, this common goal should be acknowledged even as Board members may "agree to disagree" on contentious issues.

IN PUBLIC MEETINGS

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of any individual Board member toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony. In addition, Board members should strive to:

- Be welcoming to speakers
- Speaking in public can be uncomfortable. Some issues and decisions can be personal or emotional. Be courteous, kind, supportive, attentive, and do not interrupt. Be fair and equitable in allocating public hearing time to individual speakers.
- Ask for clarification, but avoid debate and argument(s) with the public.
- Honor the role of the Mayor in maintaining order. It is the responsibility of the Mayor to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Board members to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Board members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed. All Board Members shall refrain stating their final decision until all information has been presented in the public meeting where the agenda item is to be voted upon.
- Practice civility, professionalism and decorum in discussions and debate
- Conflict, difficulty reaching consensus, and disagreement is a matter of course for a

Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

governmental organization; however, belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments will not be tolerated.

- Public Servants should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.
- Demonstrate effective problem-solving approaches
- Look for opportunities to utilize public discourse as an opportunity to display how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.
- Be respectful of others' time. Everyone in attendance at a public meeting has made a commitment to attend meetings and partake in discussions. Their time is valuable. Therefore, it is important that Public Servants are punctual and that meetings start on time. It is also important that comments are productive and relevant so that adequate time may be spent on scheduled issues.
- Abstain responsibly. Abstain (and furthermore, recuse) when you have any financial interest or other conflict of interest according to state law. Abstain from matters for which you do not have necessary information, such as the approval of minutes. While you cannot be compelled to vote on any given matter, keep in mind that it's your duty to vote on critical public matters even if the decision is difficult or uncomfortable.

IN PRIVATE ENCOUNTERS

- Continue respectful behavior in private
- The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.
- Be aware of the insecurity of written notes, voicemail messages, and e-mail.
- Technology presents the risk of quick public dissemination of communications far beyond the intended recipient. Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.
- Even private conversations can have a public presence.
- Public Servants are always on display – their actions, mannerisms, language, and interactions in

Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

non-official settings are under scrutiny. Public Servants should endeavor to conduct themselves in a way which would not reflect poorly on the Town of Berthoud's values.

BETWEEN STAFF & ELECTED OFFICIALS

Exemplary governance in Berthoud depends on the cooperative and symbiotic efforts of elected officials, who set policy, and Town staff, who implement and administer policy. Every effort should be made to be cooperative and show mutual respect for the contributions made by each Public Servant for the good of the community.

- Treat all Public Servants as professionals - Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.
- Job Disruption - Elected Officials should not disrupt Town staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met. Questions of Town staff and/or requests for additional background information should be directed to the Town Administrator.
- Never publicly criticize an individual employee – Board Members should never express concerns about the performance of a Town employee in public, to the employee directly, or to the employee's supervisor. Comments about staff performance should only be made to the Town Administrator through private correspondence or conversation.
- Do not act outside the scope of your authority – Board members should not attempt to influence Town staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of Town licenses and permits. Unsolicited attendance to staff meetings is discouraged. .
- Honor the established structure. Elected officials should not be involved with administrative matters. Staff members should not circumvent their supervisor or the established structure by appealing to an elected official for a raise or other consideration that should be between the staff member and their supervisor.
- Limit requests for staff support - Requests for additional staff support – even in high priority or emergency situations -- should be made to the Town Administrator who is responsible for allocating Town resources in order to maintain a professional, well-run Town government.
- Do not solicit political support from staff - Council members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from Town staff. Town staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

BETWEEN BOARDS & COMMISSIONS

- Familiarize yourself with the bylaws, policies, and structure of the Town and its governing entities and advisory entities. Act in a manner which honors those structures.
- Make an effort to communicate as one voice between boards & commissions. Take the time and make an effort to reach consensus and avoid confusing official recommendations with personal opinion or ex-parte information once a compromise has been reached.
- Do not direct staff individually or as an entity in a way that is inconsistent with established structures.

WITH THE MEDIA

- Make no promises on behalf of the Town of Berthoud
- Board members will frequently be asked to explain a Board action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of Town policy and to refer to Town staff for further information. It is inappropriate to overtly or implicitly promise Board action, or to promise Town staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).
- Staff should inform the media of official public actions, refer media to the public record, and refrain from providing personal opinions. If appropriate, always refer the media to the “point person” on any particular topic, such as a project lead or a department head rather than providing second-hand knowledge.
- Do not speak, write, or otherwise communicate for the Town of Berthoud without proper authorization.
- Unless you are expressly permitted to do so by Board of Trustee action prior to your communication, do not speak for the Town of Berthoud in an explicit or even implied manner. Always disclose your communications as an individual and not as a representative of the Town of Berthoud as a whole.
- It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory or personal comments about other Public Servants, or their opinions, actions or perceived motivations.
- After a Board has voted on an any policy issue it is considered closed and the Board moves on to other matters Board Members shall refrain from acting in any manner that would impede the carrying out of a decision which has been made by the Board. Continued actions to impair implementation of a decision undermines Board governance and the Board’s credibility and

Town of Berthoud Code of Conduct for Elected Officials, Boards and Commissions

trust with constituents and potential investors.

ENFORCEMENT/SANCTIONS

This Code of Conduct is meant to be self-enforcing. Public Servants should be familiar with its contents and support any training necessary to further its implementation.

If a member of the staff or a volunteer for the Town of Berthoud is in violation of this Code of Conduct, then their actions should be referred to the Town Administrator, and the employee/volunteer will be subject to Town disciplinary procedures at the Town Administrator's discretion.

If a member of the Board of Trustees or an advisory board for the Town is in violation of this Code of Conduct, then they may be Reprimanded or formally Censured by the Board of Trustees.

Serious infractions could lead to Sanctions as determined by a majority vote of the Board of Trustees.

Those Sanctions may include but are not limited to: Reprimand, formal Censure, and removal from boards and commissions (in compliance with state law). In the event that a violation escalates into a situation in which the board wishes to pursue a Sanction, an independent attorney may be consulted to avoid a conflict of interest with the Town Attorney.

COLORADO STATUTORY PROVISIONS CONCERNING ETHICS AND CONFLICTS OF INTEREST FOR MUNICIPAL OFFICIALS AND EMPLOYEES

by

Geoffrey Wilson, CML General Counsel

Applicable Statutes

Ethics and conflicts of interest for local government officers and employees are addressed in three areas of the Colorado Revised Statutes:

- I. Article 18 of Title 24. Part 1 is Colorado's "Code of Ethics" for public officers and employees. Part 2 addresses proscribed interests in contracts;
- II. Sections 31-4-404(2) and (3), concerning restrictions on members of municipal governing bodies voting on matters in which they have a personal or private interest; and
- III. Section 18-8-308 of the Colorado Criminal Code, imposing certain disclosure requirements on public officials.

Caveat: Be sure to check for local charter or ordinance provisions that may also bear on these issues.

Colorado "Code of Ethics" for Public Officials and Employees-

[C.R.S. 24-18-101, et seq.; C.R.S. 24-18-201, et seq.]

Violation of Public Trust and Fiduciary Duty- Standard of Proof

The Code of Ethics identifies several rules of conduct for local government officials and employees. Violation of these rules is declared to be a breach of fiduciary duty and the public trust. [C.R.S. 24-18-103(2)] A local government official or employee whose conduct departs from his fiduciary duty is "liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust." The district attorney in the district where the trust is violated is authorized to bring "appropriate judicial proceedings" on behalf of the people, and money collected in such proceedings is paid to the general fund of the local government. Successful prosecution under the Code of Ethics for breach of fiduciary duty requires proof beyond a reasonable doubt of the commission of any act proscribed in the Code.

Code of Ethics: Rules of Conduct

[C.R.S. 24-18-101, et seq]

The Code of Ethics specifies “Rules of Conduct”, violation of which constitutes breach of fiduciary duty and the public trust. (The Code also specifies non-binding “Ethical Principles”, which are intended as guides to conduct.)

1. Use of Confidential Information for Personal Benefit. [C.R.S. 24-18-104-(1)(a)]

A local government official or employee shall not:

“Disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal financial interest.”

- Note that this section restricts only use of “confidential” information.
- “Financial interest” is defined as a substantial interest held by an individual which is:
 - (a) An ownership interest in a business
 - (b) A creditor interest in an insolvent business
 - (c) An employment or prospective employment for which negotiations have begun
 - (d) An ownership interest in real or personal property
 - (e) A loan or any other debtor interest
 - (f) A directorship or officership in a business.(24-18-102-(4), C.R.S)

2. Accepting Gifts or Economic Benefits as Rewards or Inducements. [C.R.S. 24-18-104-(1)(b)]

A local government official or employee shall not:

“Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:

- 1) *Which would tend to improperly influence a reasonable person in his position to depart from the faithful discharge of his public duties; or*
 - 2) *Which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.”*
- This prohibition utilizes an objective “reasonable person” standard. Thus it is no defense to argue that the gift or benefit did not actually induce improper conduct or was not actually understood to be a reward for official action.
 - *Inclusions:* “Economic benefit tantamount to a gift if substantial value”
 - I. A loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans, and
 - II. Compensation received for private services rendered at a rate substantially exceeding the fair market value of such services. [C.R.S. 24-18-104(2)]

- *Exclusions: Economic benefits*". The Code does not define "gift of substantial value"; however, it does identify several items that are not considered "gifts of substantial value" or "economic benefits tantamount to gifts of substantial value." [See C.R.S. 24-18-104(3)] Among these exclusions are:
 - Campaign contributions reported under the Fair Campaign Act,
 - Honoraria
 - "Items of perishable or nonpermanent value, including, but not limited to, meals, lodging, travel expenses or tickets to sporting, recreational, educational, or cultural events."
- 3. Transactions With Those One Supervises or Inspects. [C.R.S. 24-18-109(2)(b)]

A local government official or employee shall not:

"Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties."

- 4. Acts Benefitting Ones Business or Client. [C.R.S. 24-18-109-(2)(b)]

A local government official or employee shall not:

"Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent."

- "Official act" is defined as including any "vote, decision, recommendation, approval, disapproval, or other action, including in action, which involves the use of discretionary authority." [C.R.S. 24-18-102(7)]

Exclusions: Section 24-18-109(4) provides that it is not a breach of fiduciary duty or the public trust for a local government official or employee to:

- (i) Use local government facilities or equipment to communicate with constituents, family members or business associates, or
- (ii) Accept or receive benefits as an indirect consequence of transaction local government business

Defense: Disclosure

- A. Section 24-18-110 provides for voluntary disclosure by a local government official or employee of the "nature of his private interest" prior to acting in a manner that may impinge upon fiduciary duty and the public trust. Proper disclosure is an affirmative defense to "any civil or criminal action or any other sanction." (Emphasis added)
- B. Proper disclosure:
 - 1. For local government officials and employees, disclosure must be in writing to the Secretary of State. Disclosure may be accomplished online: go to the Secretary of State website, www.sos.state.co.us; click on "Elections" and then "Conflict of Interest".

2. Elements of the disclosure
 - (i) Amount of financial interest if any,
 - (ii) Purpose and duration of services rendered, if any,
 - (iii) Compensation received for services, or
 - (iv) "Such other information as necessary to describe" the interest.
3. If the act is then performed, the official or employee shall state for the record the fact and nature of the interest involved.

Code of Ethics: Prohibited Interests in Contracts

[C.R.S. 24-18-201, et seq.]

Rule: Local government officials and employees *"shall not be interested in any contract made by them in their official capacity or by any body, agency or board of which they are members or employees."*

- **Note:** See particularly part (e) below, concerning compliance with the "Disclosure and Abstention" statutes.
- **"Safe Harbors":** The statute states that certain types of transactions are not "contracts" for purposes of these restrictions. [C.R.S. 24-18-201(1)(b)] Excluded transactions include:
 - a. Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;
 - b. Merchandise sold to the highest bidder at public auction;
 - c. Investments or deposits in financial institutions which are in the business of loaning or receiving monies;
 - d. A Contract with an interested party if, because of geographical restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.
 - e. A contract with respect to which any... local government official or employee has disclosed a personal interest and has not voted thereon or with any respect to which any member of the governing body of a local government has voted thereon in accordance with Section 24-18-109(3)(b) or 31-4-404(3), C.R.S. Any such disclosure shall be made: To the governing body, for local government officials and employees.
- **Noncompliance- contract voidable:** Violation of the prohibitions described above shall render the contract voidable at the instance of any party to the contract except the officer interested therein. [C.R.S. 24-18-203]

Rule: “Revolving Door” Provision: Former employees may not within six months of the end of their employment contract or be employed by any employer that contracts with a local government during his employment.

Title 31-Municipal Governing Body Members –Disclosure/Abstention

[C.R.S. 31-4-404(2) and (3)]

Rule: “Disclosure and Abstention”, a member of the governing body of a city or town who has a personal or private interest in any matter proposed or pending before the governing body shall:

- A. Disclose such interest to governing body,
- B. Not vote and
- C. Not attempt to influence the votes of other members of the governing body. [C.R.S. 31-4-404-(2)]

Exception

A member of the governing body may vote notwithstanding his or her personal or private interest if:

- A. Such member’s participation is necessary to achieve a quorum or otherwise enable the body to act, and
- B. Disclosure is made pursuant to Section 24-18-110 C.R.S. of the Colorado Code of Ethics for Public Officials and Employees (which, as noted above, requires disclosure in writing to the Secretary of State prior to official action). [31-4-404-(3)] C.R.S.

Criminal Code Disclosure Requirements

[C.R.S. 18-8-308]

Section 18-8-308 of the Colorado Criminal Code contains additional disclosure requirements affecting local government officials and employees.

Rule: When the disclosure requirement of section 18-8-308 C.R.S. is triggered, “actual advance written notice” to the Secretary of State and to the governing body is required 72 hours before any action is taken.

What triggers the Law (When you pay attention to this rule): An impending exercise of “substantially discretionary function with respect to a government contract purchase, payment or other pecuniary transaction” where a “potential conflicting interest” is known by the official or employee to exist.

- A “potential conflicting interest” exists when the public servant is a director, president, general manager or similar executive officer or owns or controls directly or indirectly a substantial interest in any non-governmental entity participating in the transaction in question.

Ethics Handbook for Michigan Municipalities



integrity > fair dealing > responsibility > accountability > openness



michigan municipal league
Better Communities. Better Michigan.



Thank you

The Michigan Association of Municipal Attorneys wishes to thank the Michigan Municipal League Foundation for their generous financial support of the Ethics Handbook project. The Foundation contribution has greatly assisted with the publication and distribution of the handbook, ensuring that it will be available to local governments and interested parties throughout Michigan.

Ethics Handbook For Michigan Municipalities

Presented by
The Ethics Roundtable
of the Michigan Association of Municipal Attorneys



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Dedication

This handbook is dedicated to the memory of William L. Steude, general counsel of the Michigan Municipal League from 1971 to 1997, and past chair of the Ethics Roundtable, a committee of the Michigan Association of Municipal Attorneys. Bill was a proponent of ethical conduct and civility in government at all levels, and this handbook was originally his idea. The essay on “Civility in Government” is his, and in it he considers the respect that is deserved by and owed to, both the public and its dedicated local government officials and staff. We have all benefited from Bill’s belief in the necessity of the trustworthiness of government, and with this handbook we hope to advance that belief.

Foreword

The Michigan Municipal League, representing some 518 local governments, is proud to join the Michigan Association of Municipal Attorneys in presenting a comprehensive resource for local government officials interested in the topic of ethics as it applies to municipalities.

One of the hallmarks of municipal governance in Michigan is its strong tradition of ethical conduct in the provision of services for local communities. The actions of municipal elected and appointed officials adhere not only to a statutory framework, but also to professional codes of conduct, local provisions, local organizational culture and, perhaps most importantly, a strong sense of personal ethics borne of the civic pride that leads individuals to be municipal officials. The Michigan Municipal League has traditionally worked to articulate and support the tradition of ethical conduct in Michigan's municipalities. This handbook represents an important additional step. It is both a conceptual resource and a "how to" manual. It is comprehensive in that it addresses numerous facets of ethics. And, it documents the ways numerous municipalities have addressed ethics, in a formal sense, by adopting a local ethics ordinance.

One of the great attributes of municipal government in Michigan is that the government can be tailored to meet the needs of a particular community. The best way to address an issue in one community may be very different from a neighboring community—the topic of ethics included. Thus, this handbook does not seek to present a "model." Rather it discusses the concept of ethics as it applies to municipal government, highlights particular issues, and then presents how several communities have addressed

those issues. It should be pointed out that for many municipalities it will be appropriate to adopt only selected provisions set forth in the handbook.

In making the choice to adopt an ordinance, a community should bear in mind that an ethics ordinance is a tool. While adopted with the intent of improving the government of the municipality, care has to be given to how this tool is used. That is, an ethics ordinance can be a shield—to shield the community from unethical conduct—or it can be used as a sword to unfairly attack municipal officials, and if so used, it can be a detriment to the community.

Ultimately, this handbook is a powerful resource for Michigan's municipal leaders to engage in community dialogue and deliberation to choose the best approach *locally* for maintaining high ethical standards in Michigan municipalities.

This handbook represents a great deal of devotion to this topic by a number of persons. Without their selfless contributions, it would not have been possible. In particular I would like to recognize and thank Daniel C. Matson, chair of the Ethics Roundtable whose guidance and persistence made the handbook a reality. Dennis A. Mazurek, senior counsel of Detroit's Law Department, who organized and analyzed the sample ordinance provisions, and Mary M. Grover, the editor of the handbook, who molded its disparate parts into a unified publication.

William C. Mathewson
General Counsel, Michigan Municipal League;
Secretary/Treasurer, Michigan Association of
Municipal Attorneys

Preface

This handbook is offered as a guide for establishing ethical standards for the conduct of all persons in service to municipal governments in Michigan. A number of Michigan communities have adopted some form of statement about ethics which may appear in the local charter, in an ordinance, or in both. Other communities may be considering adopting some form of standards of conduct for their public officials. This publication is intended to provide assistance to municipal officials in their efforts to either create new ethics policies and procedures, or to update them in keeping with today's expectations regarding the conduct of elected officials, employees, and volunteers.

The Home Rule principle allows Michigan communities to tailor ethics standards to fit local needs and expectations. Each can adopt provisions that are appropriate for a particular community in order to promote public trust in public officials and in government. Elected and appointed officials, staff and volunteers may rely upon this stated framework within which they conduct the affairs of government.

The authors and reviewers of this handbook bring considerable experience to the effort as they have represented the interests of Michigan municipalities and have encountered a broad range of ethical issues and concerns that confront public officials. The publication is the outcome of many such experiences as identified by members of the Ethics Roundtable, a group formed by the Michigan Association of Municipal Attorneys. The Roundtable has focused on aiding local officials to understand and to resolve ethics problems within established legal and voluntary requirements.

With this reference, municipal officials may consider addressing a variety of areas of conduct that would be appropriate for their organizations. The reader may also examine a variety of options that are currently in use in a number of Michigan communities. These approaches are the result of extensive study and discussion, and they reflect local concerns and values.

It is strongly recommended that the municipal attorney be involved in each step of the process of developing, proposing, and adopting ethical

standards. Numerous legal issues must be considered whenever local law of this nature is created, and particularly when enforcement is involved.

Ethical administration of government invites the citizen's confidence in, and respect for, government. Good governance is valued by the community. It is sustained by those who have dedicated themselves to public service, and it is reflected in the decisions made and the actions taken by that government. To that end, the Ethics Roundtable commends this handbook to all citizens of Michigan communities, and to those who serve them, in recognition of the need to promote, and to earn, the public trust.

I wish to acknowledge contributions to this work by members of the Ethics Roundtable of the Michigan Association of Municipal Attorneys, including the following: Dennis A. Mazurek, senior counsel of the City of Detroit Law Department, for his comprehensive research and analysis in authoring Chapter 3, the central chapter of the handbook. John J. Rae, former Midland city attorney, who brought erudite and insightful sharing of the meaning of ethics. Peter A. Letzmann, former Troy city attorney, and foremost seminar organizer and presenter to municipalities on many topics, always with ethical concerns in mind. Michael P. McGee, senior principal with Miller, Canfield, Paddock and Stone, PLC, who applies labor law considerations to the book. William C. Mathewson, general counsel, and Sue A. Jeffers, associate general counsel, of the Michigan Municipal League, who continue to field numerous inquiries regarding ethical issues from constituent municipalities. Dene Westbrook, Jeanette Westhead, and Breanne Bloomquist at the League for their design and production expertise. Mary M. Grover, of Traverse City, public sector facilitator, trainer and presenter of ethics programs on local, state, national and international levels, who served as editor. Many others have generously served as members of the Ethics Roundtable through its years of existence, and their meaningful participation in the ever-current ethics discussion has led to the completion of this handbook.

Daniel C. Matson, Chair
The Ethics Roundtable

Chapter 1: The Importance of Ethics for a Local Government

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“Ethics” and Why it Matters

By John J. Rae

Why should a municipal government be concerned about ethics? At first blush this appears to be a question, the answer to which is so obvious, that it need not be asked. As is the case with so many things, however, things are, more often than not, more complicated than they appear to be.

Aside from the almost automatic response of many, who might say that ethics must mean some sort of standard of good behavior, there appears to be little agreement about what the word “ethics” really means. This has led, unfortunately, to the term becoming so loose in scope and meaning that it is in danger of becoming as floppy as words like *liberal*, or *conservative*, words which often convey whatever meaning the speaker or writer wants, but to the listener or the reader, the words may have a very different meaning.

In addition to the immediate barrier to understanding which this moveable meaning creates (or perpetuates), the standard of good behavior which is supposedly being followed is, by this confusion, in danger of becoming nothing more than a belief that one’s personal opinion on the subject is no better or worse than the opinion of anyone else. The result is a kind of relativism around the word “ethics,” which logically raises the question of whether there should really be any “ethics” standards in the first place.

A large part of the problem here is that the term “ethics” has a number of meanings assigned to it by any standard dictionary. For example, one reference includes all of the following:

1. the study of the general nature of morals and of the specific moral choices to be made by an individual in his relationship with others; i.e. the philosophy of morals or moral philosophy;
2. a set of moral principles or values;

3. the moral quality, fitness or propriety of a course of action; and
4. the rules and standards governing the conduct of a profession.

Also, the historical tension between the religious traditions in our pluralistic society, and the protections of individual rights under our governmental system, inevitably lead to even more disagreement over the subject of “ethics.”

Given all of the foregoing, then why do we bother trying to establish any kind of rational system of ethics guidance for municipal government? The answer is that most people recognize civil society’s need for something which will enable them to live together in a peaceful and productive way. This recognition is already reflected in our Constitution, public laws, statutes, ordinances and regulations. What is driving the renewed interest in codes of ethics, however, appears to be an ever-growing belief that these laws do not go far enough.

What a carefully crafted and defined “ethics” code or ordinance can do is to establish behavioral standards of integrity, fair dealing, responsibility, accountability, and disinterested conduct which are not specifically covered by existing laws, but which are an essential part of the fiduciary duty (the highest standard of conduct) which is almost universally recognized in this country as being owed to the public by its public servants and officials.

Civility in Local Government: The Civil Society

By William L. Steude

While the subject of civility in government is a different concept than that of ethics in government, there can be little doubt that there is a close relationship between the two. It is hard to imagine that true ethical behavior would not be characterized by civil behavior, even though the opposite might not always be the case. The authors of this publication believe that these concepts complement one another, and for this reason have decided to include this chapter. We can find no better explanation and exposition of the subject than was set forth by our mentor, teacher and friend, Bill Steude, in an article entitled, "Civility in Local Government: The Civil Society," which appeared in the April 2001 issue of the Michigan Municipal Review. The article follows, in its entirety. – Editor

The decline in civil conduct and discourse, public and private, needs no documentation. But a search over the Internet under "civility" produces much that supports the case for its sharp decline and a yearning for its restoration. Universities have commissions to promote civility on campuses. Churches offer civility pledges to candidates for public office. Congress even had a civility camp where members and their families gathered to improve the courtesy level in the U.S. House of Representatives. The City of Bloomington, Indiana, established a task force for a safe and civil city, promoting discussion of what it means to be a civil participant. Several state jurisdictions have promulgated civil codes for practicing attorneys.

President George W. Bush, in his 13-minute inaugural address, referred to "civility" four times. He said, "Civility is not a tactic or a sentiment. It is the determined choice of trust over cynicism, of community over chaos."

To be civil, in ordinary understanding, means to be polite, respectful, decent, tolerant, graceful in language and gesture, tone, exercising restraint toward others, cooling the hot passions

of partisanship, adversarial and personalized argument, with magnanimity toward others.

The decline in civility in public affairs reflects the overall decline in American civility – in professional sports, the media, talk shows, politics, academics, interpersonal communication, even road rage. The loss of civility in our national life betrays more fundamental trends in our society and culture, argues Harvard Law Professor Stephen L. Carter in his recent book on civility.¹ He traces the historic, cultural and religious roots of civility that have withered or rotted and now account for the serious lapse in civil social behavior.

Civility probably cannot be codified into standards of behavior enforceable by penalty. In fact, civility codes for public officials may even set a lower threshold, and be an incentive for lowering, rather than raising standards, by setting what you can get away with, not how you should be.

There is no constitutional duty of a public official to be civil. But note Article I, Section 17 of the Michigan Constitution, in the same section in which the due process clause appears, which provides:

"the right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed."

This "fair and just treatment clause" does not speak to civility, but civility can help set the tone for demonstrating fair and just treatment in hearings and investigations.²

However impossible it may be to mandate, civility might be inspired by conscientious attention to the trappings of a meeting of a public body, by the physical setting, by the rules of procedure and the conscious example of members of the public body themselves.

The trappings of a meeting

Opening ceremonies, such as a prayer by a member of the clergy in the community, the pledge of allegiance to the flag led by Girl or Boy Scouts or by veterans, and a formal roll call of the members can set the level of respect with which such formality is usually accorded.

Remember, a city commission or council is an elected legislative body whose members take exactly the same constitutional oath of office taken by the governor and by every other elected official in the state. If members and the public have the respect for one another and from one another that reflects that status, a certain formal level of discourse and decorum might maintain a higher level of civility.

The physical setting for the meeting, the furnishings and seating arrangements, and even the council's attire influence and can elevate expectations about public deportment at council meetings. A card table or fold up table with folding chairs for the council members seems to belittle the office and may invite an informality that can slide into uncivil discourse or worse.

Money spent on decent furnishings and the setting is well worth the cost. It reflects the level of respect accorded by the community toward its self-government and its elected representatives.

Rules of procedure

No deliberative body can efficiently conduct its business without rules. A governing body has a relatively free hand in designing its own rules of procedure as long as constitutional (First Amendment), statutory (Open Meetings Act), and local charter requirements are not violated. Although most municipal governments which have rules seem to have automatically adopted *Robert's Rules*, *Robert's* does not necessarily have to be the primary source for local rules of procedure.

Robert's Rules of Order are complicated, highly detailed, and are intended primarily for large legislative bodies or for meetings of large associations whose membership may number

hundreds. Its procedures may be unnecessarily cumbersome for small governing bodies: the five-to-seven-member councils of most Michigan municipalities.³

For example, *Robert's* requires a second to support an ordinary motion and put it into debate, but a *small* body which meets weekly, fortnightly or monthly might opt not to require a second at all, but could proceed to debate directly if the rules permit it.

The complex details of parliamentary procedure may also confuse and frustrate elected officials and the public, particularly if the rules are seen as being manipulated for or against one side of an issue or the other, or are seen as being ignored, misunderstood or wrongly invoked. Such a use of the rules of procedure, or the perception of their *misuse*, will counter the very purpose of rules of procedure – to protect the minority and promote orderly deliberations and decisions, and will further undermine public confidence in government.

Truth in government depends on a set of procedural rules that are followed consistently, give equal opportunity for every member of the body to participate in making the decision, make for the most efficient procedure possible, and result in a decision by a majority of the body on the merits of the issue, not on manipulation of procedures.

A governing body ordinarily has the discretion to adopt its own simplified set of procedural rules, unless *Robert's Rules* or some other authority has been mandated by the municipal charter.⁴ Such rules do not automatically command civility, but a good set of rules may minimize the perception that the rules are drawn, or bent, to control an outcome. If parliamentary maneuvering is seen as manipulating the proceedings, a frustrated council member or minority, or the attending public, can erupt in anger.

Civility and decorum is strained by the gadfly, the activist and the protester, who tend to distrust government and those in government. If they engage in abusive and baseless charges, or monopolize a meeting, the presiding official can rapidly lose the ability to maintain order, unless the council backs a zero tolerance policy toward such disruptive behavior.

Personal attacks generate counter attacks and lead to verbal duels and free-for-alls difficult to break, leaving civility and decorum in the dust. The presiding officer in that event may have no choice except to declare a brief recess so tempers and rhetoric may cool.

A rule against personal attacks, applicable equally to members of the body and the public, can help keep a discussion “problem centered” and not “person centered.” A procedure to enforce a zero tolerance policy in progressive steps can be effectuated,

1. By reminding the speaker of the rule if a violation occurs.
2. If the misconduct persists, by calling the speaker to order, citing the rule—a formal warning which may cause the speaker to lose the floor, if the rule so provides (although it may also authorize restoring the floor to the speaker if the abuse ends and the body formally permits the speaker to resume); or
3. If the abuse still persists after warnings, the chair “names the offender”—a last resort step which has the effect of preferring charges. The presiding officer states what the offender has done. The body then decides how to penalize the member, if the offender is a member of the governing body. The rule could specify a range of penalties—e.g. reprimand, formal censure, or municipal civil infraction. If the offender is a member of the public, the presiding officer may order the offender to be escorted from the meeting room.⁵

A rule limiting the length of council meetings and speeches by elected officials and the public will contribute to keeping the deliberations on point. No good government is likely to occur in the late night hours of a meeting when the limits of patience strain the limits of civility.

Procedural rules that permit and promote flexible opportunities for public input may diffuse public frustration at being foreclosed from opportune comment and encourage constructive debate. For example,

- Schedule public comment time at the beginning of the meeting (or of a work session), rather than at the end of the meeting.
- Provide a short time for public comment at the first reading of an ordinance, rather than, or in addition to, at the second reading; (preliminary public comment may surface overlooked problems early and minimize any perception at the second reading that the work has already been done and gone too far to be altered and the issue already decided).
- Hold regular meetings explicitly for public participation separate from or in conjunction with and preceding the regular council meeting.

Titles and debate

How members of a governing body address one another and how the public is conditioned to address the council can promote the level of civility if formalities are observed. Using the “first name” may be appropriate in a casual street encounter or on the phone with a friend or neighbor who is a colleague on the council or a constituent, but it is not appropriate in a formal session of the governing body when addressing one another.

Titles may be a source of sensitivity to gender biased titles.

“Commissioner” when the legislative body is a commission is an easy gender-free title. “councilman” requires its counterpart, “councilwoman,” but “councilmember” fits either, and “councilor” is a shorter alternative. “Trustee” will work for general law villages. “Madam” or “mister mayor,” or just plain “mayor” works for cities. “Madam” or “mister president,” or just plain “president” works for a village presiding officer.

If the title is not in the municipal charter, the rules of procedure can establish the titles, how to address one another, and the practice that members of the public should be requested to follow suit. For example, “Council members shall be addressed as “councilor.”

Remember, a local government council is not only a local elected legislative body with chartered status. A council acquires a quasi-judicial character when it sits as a zoning board of appeals or other appellate hearing body. The decorum should reflect the quasi-judicial duty to be, and seem, judicious and dignified.

Judge Learned Hand was right: “(This) much I *think* I do know—that a society so driven that the spirit of moderation is gone, no court can save; that a society where that spirit flourishes, no court need save; that a society which evades its responsibility by thrusting on the courts the nurture of this spirit, that spirit in the end will perish.” The same might be said of civility.

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1. Stephen L. Carter, *Civility: Manners, Morals and the Etiquette of Democracy*, 1998, Basic Books.
 2. Violation of fair and just treatment in a legislative hearing was the basis for a \$7.6 million judgment against the Detroit Board of Education in an unpublished opinion of the Michigan Court of Appeals in *Jo-Dan Ltd. v. Detroit Board of Education*, No. 201406, July 14, 2000.
 3. A Michigan Municipal League survey of councils disclosed 80 with 5 members; 2 with 6; 420 with 7; 11 with 8; 15 with 9; 3 with 10; and 2 with 11 members. Of 533 councils, 502, or 94%, had 7 or fewer members.
 4. See *Suggested Rules of Procedure for Small Local Government Boards*, A. Fleming Bell II, Institute of Government, 2nd edition, 1998, presented to the IMLA 65th Annual Conference, 2000.
 5. See David M. Grubb, “Maintaining Civility at Council Meetings,” *New Jersey Municipalities*, March 1995, pp. 24, 47-48 for a good discussion of this. See also Webster’s New World *Robert’s Rules of Order, Simplified and Applied*, 1999, pp. 155-156.

Chapter 2: Things to Keep in Mind

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Different Forms of Local Government; Different Routes to Adopting Ethics Standards for Your Community

By William C. Mathewson

For most people, using this handbook will be straight forward. Michigan municipal elected and appointed officials who are giving consideration to adopting ethics standards for their community can review the handbook to see how others have addressed this issue. Finding the preferred approach from the materials presented, an official can offer a route for adoption of ethics standards in his or her community. However, to enhance the handbook as a resource, especially for persons new to municipal government within Michigan or from outside the state, it may be helpful to pause for a moment to review the Michigan local government structure in which the adoption of ethics standards fits, once the decision has been made locally to do so.

This handbook, which is a collection of essays, makes reference to different legal routes for the incorporation of ethics standards in the governance of a Michigan municipality. Each is accurate but it is helpful to understand how each fits within the larger picture.

There are several forms of local government within Michigan. In addition to Michigan's eighty-three counties, there are home rule cities (HRC), home rule villages (HRV), general law villages (GLV), charter townships (CT) and general law townships (GLT). Michigan cities and villages maintain a strong tradition of home rule. However, with ethics as with other governmental concerns, the state can prescribe what will be the law on a particular subject matter so long as the state statute is consistent with the state constitution. Some state laws relate to local ethics provisions. Two examples are labor law and campaign finance.

But to date, the state Legislature has not chosen to enact a comprehensive statute that would control the way local units of government would enforce ethical conduct within their jurisdictions. This may not always be the case, as it has periodically been discussed, typically within the context of addressing ethics with respect to all governmental jurisdictions within the state, including state government. Thus,

at present, local units of government have discretion in choosing the best approach to take to address ethical conduct within their unit of government.

For cities and villages in Michigan, this means that they may proceed in one of two ways. They can adopt an ethics provision in their city or village charter (the local equivalent of a constitution) coupled with the subsequent adoption of a local ordinance (the local equivalent of a statute) to carry out the intent of the charter provision. They can also adopt an ethics ordinance, without direct mention of the topic in the charter, under the authority granted in the Home Rule City Act, Home Rule Village Act or General Law Village Act to adopt ordinances to carry out the general grant of authority to these units of local government. If this were done, however, some sanction provisions might not be enforceable. (Perhaps a third way would be local guidelines, but they would not have the force of law and would not be legally enforceable.)

The essay by Bill Steude that follows this one discusses in some detail ethics provisions in the context of a municipal charter commission. This route is applicable to a city or home rule village that is being incorporated for the first time and thus has a charter commission to write its initial charter. Or, more likely, this route is one that would be taken by an existing city or home rule village that has chosen to convene a charter commission to review and offer new or revised sections of its existing charter for presentation to the electorate—which could include a provision regarding ethics.

Putting an ethics provision in the city's or village's local "constitution" (charter) could also take the form of a charter amendment. An amendment to the city's or village's existing charter could be offered to the citizens for their approval without convening a charter revision commission. An ethics amendment could stand alone or be one of a few amendments placed on the ballot for the electorate to consider. There are thus two ways to change an existing city or village charter: in cities or home rule villages

through the convening of a charter commission and presenting the proposed revised charter to the voters; or in cities and all villages by placing selected amendments on the ballot.

While a city or village charter can speak to or even require, addressing ethics, it need not do so. A city or village could adopt a binding set of ethics provisions in the form of an ordinance without the specific involvement of the charter. The majority of this handbook is devoted to setting forth samples and discussion of ethics provisions in ordinance form. This is appropriate because regardless of the approach taken in a charter, it is presumed that the implementation of ethical conduct/standards will be in the form of an ordinance. In fact, it would be impractical to put in a charter (again, the local equivalent of a constitution) the level of detail that is typical in an ordinance that addresses ethics.

With respect to cities and villages, a logical next question is why involve the charter of a city or village if a legally enforceable ethics ordinance can be adopted on its own, so to speak. There are various responses and ultimately the individual community will need to decide what the best approach is. That having been said, one reason is that some sanction provisions in an ordinance, such as removal from office, would not be enforceable if not authorized in the charter. Another reason for a charter provision is that it could be drafted to *mandate* that there be an ethics ordinance for the city or village. While it is beyond the scope of this publication to discuss the degree to which it is appropriate to require the legislative body (council or commission) to enact such an ordinance, if the citizens feel strongly enough about the topic of ethics they can require that the city or village adopt and enforce standards.

But whether a charter requires adoption of an ethics ordinance or speaks more generally about the topic, making reference in the charter is a clear expression of the intent of the electorate and should serve to guide the elected and appointed officials. Also, as a practical matter, a charter provision once adopted by the electorate will stand until changed by that electorate, unless the charter provision is nullified by state or federal law.

Conversely, care should be taken in putting an ethics (or any) provision in a charter. For instance, if the issue addressed is too topical, it may lose importance over time and the city or village will be saddled with a provision in its charter that is obsolete. The more relevant danger, however, is that the charter provision will be too detailed or too inflexible, thus restricting the appropriate implementation of the intent of the provision through the adoption, and if needed, subsequent revision of an ordinance. Again, further discussion of this aspect is beyond the scope of this particular essay. But suffice to say, care should be taken in drafting and adopting an ethics provision in a charter (or for that matter in ordinance form)...if for no other reason, as even with the best of intentions, such provisions may be subject to misuse, to unfairly attack a local official (sword) rather than protect (shield) the community.¹

Each of the sample ordinances presented in this handbook happen to be from cities. Other local units of government in Michigan could adopt similar provisions. In the case of villages, under the Home Rule Village or General Law Village Acts, the considerations for doing so are equivalent to cities. With respect to general law villages' charter authority² while their basic governing document is a state statute (the GLV Act) it is deemed to be their charter. The Act does not speak to ethics provisions but general law villages have the authority to amend their charters (via amendment but not revision) and to adopt local ordinances, including provisions pertaining to ethics.

Charter townships and general law townships do not have home rule charters, but rather are respectively governed by specific state statutes augmented by somewhat limited authority to adopt local ordinances. Ethics ordinances could be adopted, with the above noted limitation regarding sanctions.

	HRC	HRV	GLV	CT	GLT
Charter Revision	X	X			
Charter Amendment	X	X	X		
Ordinance	X	X	X	X	X
Guidelines	X	X	X	X	X

In summary, then, local government officials who seek to address the topic of ethics within their local governments need to be cognizant of the fact that there are different routes that can be taken. For cities and villages, their respective charter may or may not address the topic, in the initial charter or later by revision (HRC, HRV) or amendment (HRC, HRV, GLV), but to the extent that enforceable specifics are desired they will be in the form of a city or village ordinance. And in the case of local governments without charters, ethics ordinances may be adopted to the extent of their respective ordinance adoption authority under state law. Finally, the local approach presumes that the state does not in the future seek to preempt local authority and impose ethics standards on government officials including those at the local level.

For a complete discussion of forms of local government, a good source of information is chapter one of *Local Government Law and Practice in Michigan*, published by the Michigan Municipal League and the Michigan Association of Municipal Attorneys. This chapter, by Stratton S. Brown and Cynthia B. Faulhaber, outlines each of the forms

of local government and the authority that each has. Also, chapter seventeen, by Daniel C. Matson, sets forth the process of charter amendment and revision. Additional material regarding charter revision and amendment and other powers of cities and villages is available through the Municipal League's library. Information with respect to Michigan's townships is available from the Michigan Townships Association. Practical expertise on charter revision and amendment is available from municipal attorneys who specialize in that area of the law. Finally, the city, village, or township attorney for each jurisdiction is an essential resource when consideration is given to adopting standards for the local government to govern ethical conduct by its elected and appointed officials.

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1. See the following essay by Bill Steude, "Including Ethics Provisions in Charters: Advice for Charter Commissions"
 2. There are 211 general law villages; new village incorporations must be as home rule villages.

Including Ethics Provisions in Local Government Charters: Advice for Charter Commissions

By William L. Steude

[Editor's note: In this essay the author primarily addresses the incorporation of an ethics provision through the charter revision process that applies to Home Rule cities and villages. See the preceding essay, "Different Forms of Local Government; Different Routes to Adopting Ethics Standards for Your Community."]

Revelations in the media about the conduct of some public officials have raised the consciousness of local voters and taxpayers about appropriate standards of conduct for government officials. In

response, some local governments have voluntarily adopted ethics codes that focus on various aspects of the conduct of those entrusted with the public's business. In 1998 the Michigan Law Revision Commission published a report¹ calling for adoption of legislation that would provide an ethics code with uniform standards applicable to all public officials in local governments statewide. Charter commissions, authorized to draft or to revise the charter of a local government, often wonder *whether* to include ethics provisions, and *how far to go* in mandating adoption of an ethics code or ethical conduct.

Michigan law

The Home Rule Acts² neither mandate nor prohibit including a provision regarding ethical conduct or a code of ethics, so a charter commission could choose not to include ethics. In fact, most Home Rule charters in Michigan address ethics indirectly, or selectively, or not at all.

A Home Rule local government can enact an ethics ordinance without a specific charter provision authorizing it to do so. A broad powers provision in the charter could authorize the adoption of a comprehensive ethics code, as the Home Rule City Act permits a charter to provide,

... for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.³

General approaches and alternatives

A charter is not an ordinance; rather, it is the basic local law by which the local government is to be governed for a period that may be as long as forty or fifty years. The job of a charter commission is to establish a prescriptive legislative framework for the community, a document that isn't caught up in issues that may be currently of public concern. A charter commission *can* include a detailed system of ethical standards and enforcement procedures in the charter. However, this approach will be time consuming, and it carries some risk of making the charter outdated if some of the details are nullified by subsequent preemptive state legislation. In general, charter commissions are advised to *avoid excessive detail in the charter*, and leave the task of developing the details, by ordinance and policy, to the local governing body.

One approach would be for the charter to provide an alternative to inaction by the governing body by authorizing citizen initiatives and referenda. By this means, local voters could initiate an ethics ordinance by petition, or originate or reject local ethics legislation through the ballot process.⁴ The

charter may also be amended by the legislative body or by initiative of the voters, to address ethics requirements.⁵

If the commission chooses to include an ethics provision in the proposed charter, it has a number of options to consider.

1. It can *authorize* the adoption of an ethics ordinance by the governing body, which then could enact a detailed code of ethics.
2. It can *mandate* that an ethics ordinance be adopted within a specific period of time after the charter is adopted.⁶

A charter commission could also:

3. include in the charter a list of general principles or standards of conduct, without going into specific detail. For example, the list could refer to general standards of accountability, impartiality, integrity, confidentiality, conflicts of interest, or public trust. An ordinance could subsequently define these standards in greater detail, and provide procedures for enforcement.
4. take a traditional approach and address selective aspects of ethical conduct in the charter, focusing on particular problems that may have triggered community concerns, such as nepotism (the public employment of relatives), or specific areas of conflicts of interest, and require timely disclosure.⁷
5. specifically authorize or require in the charter the governing body to adopt a comprehensive ordinance with specific provisions governing the receipt of gifts, disclosure of conflicts of interest, moonlighting (i.e., a local government employee having a second job that might create a conflict of interest with the employee's public employment), pre-employment and post-employment limitations, and restrictions regarding nepotism, political activity, and representation before local government bodies.
6. have the charter authorize or require the establishment of an enforcement body, such as an ethics commission or board,

with responsibility to maintain and enforce the ethical standards of the charter and ordinances. Such a board or commission could assist local officials in determining the appropriate course of action when they are faced with uncertainty or conflict between ethical obligations. It could support public officials and employees in situations of unwarranted charges or criticism by adopting administrative rules, issuing advisory opinions, or recommending amendments to an ordinance or charter. It could also sanction unfounded complaints.

7. include a provision to require the governing body, and each local government board and commission established by charter, ordinance or law, to adopt standards of conduct for their respective members. The standards of conduct could be made subject to periodic review and approval by the governing body, or by the ethics board or commission if one is established.
8. include a provision to require that ethics education be included in orientation programs for newly elected officials, and in the training and continuing education of public employees.

Finally, the Michigan Municipal League maintains a charter database that is an excellent resource with examples of some of the approaches charter commissions have taken in recent years, to improve the ethical environment in the local government, and by extension, in the community.

4. State law would remain applicable to local officials and local governments. It governs conflicts of interest in public contracts, campaign finance, lobbying, the expenditure of public funds, codes of professional conduct governing the city manager, city attorney, public accountants, licensed engineers and other occupations, personnel policies and collective bargaining agreements affecting public employees.
5. See MCL 117.21, amendment by initiative for cities; and MCL 78.17, amendment by initiative for Home Rule villages.
6. One charter commission mandated enactment of a comprehensive ordinance within six months of the adoption of the charter. It was difficult to meet this deadline, and a longer period should be considered. A better approach is found in the Charter of the City of Jackson, Section 9.13: "Within two years after the effective date of this charter, the council shall adopt by ordinance a code of ethics by which all persons in the municipal service shall abide, whether compensated or voluntary." The Charter was adopted on November 4, 1997; the Ethics Ordinance was adopted November 16, 1999.
7. For example, Section 2-106 of the 1997 Detroit City Charter provides, "The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance, consistent with state law. . . . The ordinance shall provide for the reasonable disclosure of substantial financial interests held by any elective officer, appointee, or employee who regularly exercises significant authority over the solicitation, negotiation, approval, amendment, performance or renewal of city contracts, and in real property which is the subject of a governmental decision by the city or any agency of the city. The ordinance shall prohibit actions by elective officers, appointees, or employees which create the appearance of impropriety."

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1. *Final Report to the Michigan Law Revision Commission on the Proposed Government Ethics Act of 1999*, Michael A. Lawrence, November 2, 1998; published in the MLRC 33rd Annual Report, 1998, p. 13119.
 2. The Home Rule City Act 279 of 1909, MCL 117.1 et seq.; the Home Rule Village Act 278 of 1909, MCL 78.1 et seq.
 3. MCL 117.4j.

Labor Considerations

By Michael P. McGee

Although a municipal government may have authority to adopt an ethics policy or ordinance, the government as a public employer also may have an affirmative obligation to negotiate over such a policy or ordinance if the public employer is unionized. Specifically, if the policy or ordinance has an impact on or concerns the union members' wages, hours, or other employment conditions ("mandatory subjects of bargaining"), the public employer must bargain with the union before the policy or ordinance may be adopted.

In the seminal case of *Detroit Police Officers Association v City of Detroit*, 391 Mich 44 (1974), the city adopted a residency ordinance after reaching impasse in contract negotiations with the union. The union filed an unfair labor practice charge, and the case proceeded to the Michigan Supreme Court which held that just because an employer may have a legal right to take such action, it does not mean it may do so in derogation of its obligation under the Public Employment Relations Act ("PERA"):

"The enactment of an ordinance, however, despite its validity and compelling purpose, cannot remove the duty to bargain under PERA if the subject of the ordinance concerns the "wages, hours or other terms and conditions of employment" of public employees. If the residency ordinance were to be read to remove a mandatory subject of bargaining from the scope of the collective bargaining negotiations, the ordinance would be in direct conflict with state law and consequently invalid. Const. 1963, art.7, §22. . . . Therefore, if as we will consider below, residency is a mandatory subject of bargaining, a city ordinance cannot foreclose collective bargaining on the subject." *Id.*

The Court concluded that a residency requirement is a mandatory subject of bargaining, but found that the city did not engage in an unfair labor practice because it did not adopt the ordinance until after it had bargained to impasse in good faith. The Court noted that "[i]n future negotiations, however, the

city will again be required to bargain in good faith on the residency requirement if it is proposed as a bargaining issue by the [union]." *Id.*

Both the Michigan Employment Relations Commission (MERC) and subsequent appellate decisions have resulted in similar holdings circumstances other than residency. For instance, in *Pontiac Police Officers Association v City of Pontiac*, 397 Mich 674 (1976), the city refused to bargain over a union proposal regarding a grievance procedure for disciplined police officers. The city argued that because the city charter provided for a specific means by which discipline was to be imposed upon the officers, the charter provision controlled and there was nothing to bargain over. MERC disagreed, holding that the city committed an unfair labor practice by refusing to bargain because the grievance procedure was a mandatory subject of bargaining. On appeal, the Michigan Supreme Court affirmed MERC's ruling. See also *Local 1383, International Association of Firefighters, AFL-CIO v City of Warren*, 411 Mich 642 (1981) (a collective bargaining provision negotiated under PERA supersedes both a City Charter and the Michigan Constitution); *Senior Accountants, Analysts and Appraisers Association, UAW v City of Detroit*, 218 Mich App 263 (1996) (city cannot unilaterally implement pension provisions for union members without collective bargaining; the city could, however, through a City Charter Revision Commission, submit proposed changes to the electorate prior to collective bargaining as long as the city did not implement or enforce the voter-approved changes until the employer satisfied its PERA collective bargaining obligations).

Neither the courts nor MERC have yet addressed the question of whether ethics regulation is a "mandatory subject of bargaining" under PERA. Ethics regulation typically does not implicate wages or hours, and thus the unanswered question is whether ethics regulation falls within the scope of "other terms and conditions of employment."

This will depend on the facts and circumstances of the particular regulatory scheme. It may be, for example, that the *standards* announced by an ethics policy (e.g., disclosure of conflicts of interest, prohibitions for receiving gifts, etc.) may be imposed in the exercise of normal management rights. *Consequences* for breaching the standards, on the other hand, to the extent they affect discipline or punishment, may very well fall within the scope of mandatory bargaining under *Detroit Police Officers Association, supra*, and its progeny.

Accordingly, before a municipal employer adopts or implements an ordinance or any type of ethics policy or regulation that may affect its unionized employees, or refuses to bargain with a union based on a conflicting governmental policy, the employer should first consult with legal counsel to evaluate compliance with applicable labor law.

Chapter 3: The Substance of a Local Government Ethics Ordinance

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Definitions for an Ethics Ordinance

By Dennis A. Mazurek

Initial drafting considerations

An ethics ordinance should include definitions of some of the terms that will be used in its provisions. Many of these words will have a definition that is specific to the ordinance, rather than a more commonly understood meaning.

Charter requirements

Before drafting definitions, it must first be determined whether the local government charter requires that an ethics ordinance be organized around a central directive, and whether it must include specific definitions.¹ For example, the Detroit ethics ordinance was required to define the term “private gain,” and it is organized around the central theme of prohibiting the use of public office for private gain.

Jurisdiction and scope

As with any ordinance, the drafters must determine the persons to be regulated by the ethics ordinance, and the scope of the regulation. The definitions will establish the persons and relationships that are intended to be regulated. The jurisdiction of an ethics ordinance could be extended to,

- elected and appointed officials,
- full-time and part-time employees,
- paid and unpaid members of boards and commissions,
- people who provide services under a personal services contract, and
- the spouses or domestic partners, children, and other relatives of any or all of the above.

The scope of the ordinance will also be reflected in the definitions. For example, the definitions could establish that the ordinance will regulate,

- certain confidential information,
- decisions, and
- ownership interests.

Universal and comprehensive

It is important that the definitions be universal and comprehensive, and in as clear language as possible. Universality means the definition could be applied to most, if not all, Michigan municipalities. Comprehensive means complete definitions that have a tight interrelationship to one another.

Examples of definitions

Although there are no “definitive” definitions, the following definitions would be applicable in most local governments. They are both universal and comprehensive, and the list itself is comprehensive, as well.²

Agency means any department, office, multi-member body, or other organization of the local government.

Appointee means one who holds either a compensated or an uncompensated position, including an individual who is appointed by the mayor, the legislative body, other elected officials, or a department, division or commission head.

Basic living expenses means shelter, utilities, and all other costs directly related to the maintenance of the common household of the common residence of the [spouse or] domestic partners and any other cost, such as medical care, where some or all of the cost is paid as a benefit because a person is another person’s [spouse or] domestic partner.

City means the city of _____. [Alternatively, **village, township, or county** means the local government of _____.]

Clerk means the clerk of the local government of _____.

City council means the legislative body of the city of _____. [Alternatively, commission or board means the legislative body of the jurisdiction of _____.]

Commercial gain means the use by a public servant of any local government resource including, but not limited to, the local government's time, equipment, facilities, supplies or staff, which results or is intended to result in unauthorized income or other benefit to the public servant.

Confidential information means information that has been obtained by a public servant in the course of acting as a public servant, that is not available to members of the public pursuant to the Michigan Freedom of Information Act, being MCL 15.231 *et seq.*, or pursuant to other law, regulation, policy or procedure recognized by law, and that the public servant is unauthorized to disclose, including:

1. any written information, whether in document or in electronic form, which could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public servant disclosing the information is permitted by such authority to make disclosure; and
2. any non-written information which, if written, could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public servant disclosing the information is permitted by such authority to make disclosure; and
3. information which was obtained in the course of or by means of a written or electronic 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 the information is authorized by state law to make disclosure, or unless the public servant disclosing the information has been properly authorized to make disclosure pursuant to an applicable law, regulation, policy or procedure, except that when such information is available through channels

which are open to the public, this provision does not prohibit public servants from disclosing the availability of those channels.

Decision means:

1. a determination, action, vote, or other disposition upon a motion, proposal, recommendation, resolution, or ordinance by members of the governing body, or of a governing body of a local government agency; or
2. a determination, action or other disposition taken by an elected official with the authority to do so, or a local government agency in the performance of its public duties.

Domestic partner³ means one of two adults who

1. have a common residence; and
2. agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership; and
3. are not married or are not a member of another domestic partnership; and
4. are not related by blood in a way that would prevent them from being married to each other in this state; and
5. are at least eighteen years of age; and
6. have chosen to share one another's lives in an intimate and committed relationship of mutual caring; and
7. are capable of consenting to the domestic partnership.

Exercises significant authority means having the ability to influence the outcome of a decision on behalf of the local government in the course of the performance of a public servant's duties and responsibilities.

Extraordinary circumstances means circumstances which, due to the unavailability of information that is critical to the disposition by the Board of Ethics of an advisory opinion request or of a complaint, have prevented the board from completing its investigation.

Have a common residence means that both domestic partners share the same residence. Two people can have a common residence even if one or both have additional residences, or if both domestic partners do not possess legal title to the common residence. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return to it.

Immediate family means:

1. a public servant's spouse or domestic partner, or
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; or
3. an individual claimed by a public servant or a public servant's spouse as a dependent under the United States Internal Revenue Code, being 26 USC 1 *et seq.*

Joint responsibility means that each domestic partner agrees to provide for the other partner's basic living expenses if the partner is unable to provide for himself or herself.

Local government means the governmental organization of a jurisdiction which is a subdivision of a major political unit, as a state; the governing organization of the jurisdiction of _____.

Mayor means the mayor of the city of _____.

Municipal government means a Michigan city or village, for the purposes of this handbook.

Ownership interest means a financial or pecuniary interest that a public servant has in the affairs of 1) any business entity in which the public servant or a member of his or her immediate family is an officer, director, member, or employee; 2) any business entity in which the public servant or a member of his or her immediate family controls, or directly or indirectly owns, in excess of 5% of the total stock or an interest totaling \$50,000 or more in value; or 3) any person or business entity with whom the public servant has a contract.

Personal services contract means a contract for the retention of an individual to perform services on behalf of the local government for a fixed period and for fixed compensation.

President means the president of the village of _____.

Private gain⁴ means any benefit which is accepted or received by a public servant, or is perceived by a reasonable person to be accepted or received by a public servant, as remuneration for the purpose of improperly influencing an official action in a specific manner or for refraining from the performance of an official action in a specific manner, or as inducement for the public servant to act in favor of some interest other than in the public interest.

To clarify, *unless the above-standard is violated*, the following types of benefits, monetary payments or reimbursements, gifts, awards or emoluments may be received by a public servant:

1. payment of salaries, compensation or employee benefits to a public servant by the local government, or the payment of salaries, compensation or employee benefits to a public servant by an employer or business other than the local government pursuant to a contract where the payment is unrelated to the public servant's status as a public servant;
2. authorized reimbursement by the local government to a public servant of actual and necessary expenses incurred by the public servant;
3. fees, expenses or income, including those resulting from outside employment, which are permitted to be earned by, or reimbursed to, a public servant in accordance with the Code, policies, rules and regulations of the local government;
4. campaign or political contributions which are made and reported by a public servant in accordance with state law;
5. admission or registration fee, travel expenses, entertainment, meals or refreshments a) that are furnished to a public servant by the sponsor(s) of an event, appearance or ceremony which is related to official local government business in

- connection with such an event, appearance or ceremony and to which one or more members of the public are invited, or b) that are furnished to a public servant in connection with a speaking engagement, teaching, or the provision of assistance to an organization or another governmental entity as long as the local government does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity;
6. admission, regardless of value, to a charitable or civic event to which a public servant is invited in his or her official representative capacity as a public servant where any admission or other fees required of all persons attending the event are waived or paid for the public servant by a party other than the local government or the public servant;
 7. an award publicly presented to a public servant by an individual or by a non-governmental entity or organization in recognition of public service, acts of heroism, or crime solving;
 8. an award, gift or other token of recognition presented to a public servant by representatives of a governmental body or political subdivision who are acting in their official capacities;
 9. a gift received from a public servant's relative or immediate family member, provided that the relative or immediate family member is not acting as a third party's intermediary or an agent in an attempt to circumvent this article;
 10. a registration fee for a seminar or other informational conference that a public servant attends in a capacity other than as a speaker, panelist, or moderator, where such registration fee that is charged for the public servant's attendance is waived or paid for the public servant by a party other than the local government or the public servant;
 11. expenses or gratuities, including but not limited to admission fees, lodging, meals or transportation, that are paid for a public servant and are related to the public servant's participation at a seminar, conference, speaking engagement or presentation in his or her official capacity as a speaker, panelist or moderator where such expenses or gratuities are waived or paid for, as the case may be, by a party other than the local government or the public servant, provided that, within five business days after the conclusion of the seminar, conference, speaking engagement or presentation, such public servant files with the clerk a statement which contains the following information for each expense that is paid for or waived or for each gratuity that is provided: a) a description of the expense or of the gratuity; b) the amount of the expense or of the gratuity; c) the date that the expense was incurred or that the gratuity was received; d) the date that the expense was paid or waived, or that the gratuity was received; and e) the name and address of the party who paid or waived the expense or who provided the gratuity;
 12. meals or beverages provided to the public servant by an individual or by a non-governmental organization during a meeting related to official local government business;
 13. anything of value, regardless of the value, presented to or received by a public servant on behalf of the local government where the thing of value is offered to, and accepted by, the local government;
 14. a gift to a public servant that either is returned to the donor or is donated to the local government or to a charitable organization within thirty days of the public servant's receipt of the gift, provided that the public servant does not claim the donation as a charitable contribution for tax purposes;
 15. complimentary single copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials that are received by a public servant;
 16. compensation paid to a public servant for a published work which did not involve the use of the local government's time, equipment, facilities, supplies, staff or other resources where the payment is arranged or paid for by the publisher of the work;

17. compensation paid to a public servant for a published work which did involve the use of the local government's time, equipment, facilities, supplies, staff or other resources where the payment of the compensation to the public servant is lawfully authorized by a representative of the local government who is empowered to authorize such compensation;
18. receipt by the public servant of anything of value, where the payment, gift or other transfer of value is unrelated to, and does not arise from, a public servant's holding or having held a public position, and where the activity or occasion for which the payment, gift or other transfer of value given does not involve the use of the local government's time, equipment, facilities, supplies, staff or other resources in any manner or degree that is not available to the general public;
19. hospitality that is extended to a public servant by an individual, or by an organization, for a purpose unrelated to the official business of the local government, including a gift of food, beverage, or lodging; and
20. receipt by a public servant of a devise, bequest or inheritance.

Public servant means the elected mayor, president, members of the legislative body, any member of any local government agency, board, commission, or other voting body that is established by the local government Charter or by the Code, and any appointee, any employee, or any individual who provides services to the local government within or outside of its offices or facilities pursuant to a personal services contract.

Relative means a person who is related to a public servant as spouse or as any of the following, whether by marriage, blood or adoption: parent, child, brother, sister, uncle, aunt, nephew, niece, 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.

Voting body means the governing body and any other local government 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 where the action is advisory, must act as a body on the basis of a vote of some or all of its members.

Summary and conclusion

A first step in drafting an ethics ordinance must be a consideration of and discussion about the following issues:

1. Does the local government charter *require* that the ethics ordinance be organized around a central directive, or contain specific definitions?
2. If the charter does not mandate the enactment of an ethics ordinance, and if it doesn't require that the ethics ordinance be organized around a central directive or theme, and if it does not require specific definitions, which of the definitions listed in this chapter should be included?
3. What kinds of ethical issues have occurred in the past, or might arise in the future, with the elected officials, appointees, employees, volunteers and independent contractors associated with the local government?

The answers to these and other policy questions will ensure that charter-mandated requirements will be met, and that the definitions will be tailored to the needs and the concerns of the community. The answers will also assist policy makers in building a consensus with local government elected officials, appointees, employees, volunteers and independent contractors, as well as with the public, in accepting and adhering to the ethics ordinance. It is, therefore, recommended that the drafters of the ethics ordinance favorably consider the above definitions as a starting point for debate.

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1. For example, see the 1997 Detroit City Charter, Section 2-106, footnote.
 2. The terms and the definitions are adapted from the ethics ordinance of the City of Detroit, Section 2-6-3 of the 1984 Detroit City Code.
 3. The inclusion of “*domestic partner*” relationships is based on the reality that there are certain close personal, often intimate relationships involving non-married public servants which are equivalent to the personal relationships which exist between legally married spouses. The potential for public servants to be influenced by or on behalf of partners involved with them in such “domestic partner” relationships or arrangements is just as real as the potential for public servants to be influenced by or on behalf of spouses in legal marriages or family members. This article does not adopt any position regarding the propriety of such non-marital relationships among domestic partners. However, for purposes of implementing standards for the conduct of public servants in the performance of their duties for the local government, the article does attempt to include within its reach all public servants.

The definition of domestic partner included in this section is modeled on the definition of domestic partner contained in Division 2.5 of the Family Code, Article 9 of Chapter 1, Part 5 of Division 5 of Title 2 of the Government Code, and Section 1261 of the Health and Safety Code of the State of California.

4. *Private Gain*: Section 2-106 of the 1997 Detroit City Charter expressly prohibits the use of public office for private gain. Accordingly, a major provision in this article is the prohibition against a public servant's acceptance or receipt of private gain as compensation for 1) the taking of an official action in a specific manner by the public servant (for example, a particular decision or vote in a specific manner), or refraining from the taking of an official action, as the result of an improper influence by another party; or 2) incentive or inducement for the public servant to act in favor of an interest other than the public interest. In the interest of maintaining honesty, integrity and impartiality in government, the goal of this provision is to ensure that public servants conduct government business in a manner that enhances public confidence and respect for city government, and places paramount importance on the public interest, rather than a public servant's own personal interest or the private interest of a third-party.

Improper influence upon a public servant's official actions refers to 1) any action that would constitute a violation of federal or state laws regulating the conduct of public officials, such as state law prohibiting the acceptance by any executive, legislative or judicial officer of a bribe (Section 118 of the Michigan Penal Code, being MCL 750.118; or 2) facts, events or circumstances which give rise to an appearance of impropriety in the taking of an official action by a public servant, when such facts, events or circumstances are considered objectively according to a reasonable person standard.

What constitutes private gain to a public servant may take many shapes and forms and may vary depending upon the facts and circumstances of a situation. Therefore, the above definition of private gain does not attempt to enumerate all forms or types of tangible economic gain, or circumstances or situations from which a public servant may derive tangible economic gain for himself or herself. Rather than attempt to list what is private gain that may not be accepted in all circumstances, the article attempts to illustrate for public servants the circumstances or types of remuneration, emoluments, gratuities or other items that a public servant may accept without violation of this article. The listing set forth in this section is based on the most typical situations which confront city public servants. However, this is not an exhaustive list, and there may be other types of economic benefit to a public servant that are permissible under this article.

Fundamental Standards of Conduct For an Ethics Ordinance

By Dennis A. Mazurek

Overview

Before deciding upon the standards of conduct to regulate, drafters of the ethics ordinance must first determine whether the local government charter requires that its ethics ordinance include certain standards of conduct. For example, the 1997 Detroit City Charter (Section 2-106) required enactment of an ethics ordinance which, at a minimum, regulated specific areas of conduct: prohibiting the use of public office for private gain; “reasonable” financial disclosure for some officers; and the avoidance of the appearance of impropriety.

If the charter does not mandate specific provisions or standards for the ethics ordinance, the drafters can be guided by the experience of ethics experts and the ten fundamental standards of conduct that follow. Human nature too often lures public officials and public employees into taking advantage of their positions of trust to use these positions inappropriately and to unfairly benefit themselves, their families or their friends. It is this competition between self-interest and the public interest that results in unethical (and sometimes illegal) conduct; it is this conflict that gives rise to formal, codified statements regarding ethical conduct.

Ethics ordinances from 18 local governments were surveyed for this publication: Bay City, Detroit, DeWitt, Farmington Hills, Flushing, Harper Woods, Jackson, Lansing, Livonia, Mason, Midland, Riverview, Rochester Hills, Royal Oak, Sterling Heights, Warren, Wyandotte, and Ypsilanti. Many of them include some or all of the ten fundamental standards. In alphabetical order, the standards are:

1. Conflicts of interest
2. Disclosure
3. Impartiality
4. Improper use of position
5. Incompatible employment

6. Nepotism
7. Personal interests
8. Political activity
9. Public information
10. Public property and personnel

A list of citations to these local governments’ charter and ordinance provisions is in Appendix C.

These are the areas that are most often regulated because these are the areas in which misconduct by public officials most often occurs. In order to give drafters the benefit of learning from the language and the experience of existing ethics ordinances, excerpts from the ordinances of these communities are offered to illustrate different approaches to articulating the ten basic standards of conduct. In the pages that follow, each standard is presented with a statement of its purpose, along with a compilation of excerpts from ethics ordinances. In some instances the actual language is used; in others, the codes were used as references and the language is not verbatim. Variations that are used by different municipalities are noted in footnotes.

Editor’s note: To aid the reader, ordinance language options are either in brackets within the text, or footnoted. The excerpts presented here reflect a community’s thinking at a point in time, although the ethics ordinance may have subsequently been revised. Also, some stylistic changes were made for consistency with the rest of the text, eg. capitalization of the titles of officials.

1. Conflicts of interest

Purpose: The duty of a public servant is to represent the best interests of the public entity, and to serve the entity with the highest degree of loyalty. This standard is at the heart of any ethics ordinance. The absence of an easily understood standard regarding conflicts of interest diminishes the effectiveness of an ethics ordinance, and ignores the primary reason for having one. The fundamental concept is that a public official is not to exploit this position of power in unjust or inappropriate ways.

- A public servant shall not make a loan of public funds, grant a subsidy, fix a rate, issue a license, permit or certificate, [participate in the negotiation or execution of contracts] or otherwise regulate, supervise or participate in a decision that pertains¹ to an entity in which the public servant, or a member of his or her immediate family, has an ownership [or financial or personal] interest.² *(Bay City, Detroit, Harper Woods, Lansing, Rochester Hills, Warren)*
- A public servant [whether paid or unpaid] shall not solicit or accept [or receive, directly or indirectly] a³ gift or loan of money, [compensation], goods, services⁴ [contribution, reward, employment],^{5 6 7} or other things of value^{8 9} which would tend to influence¹⁰ the manner in which the officer or employee performs his or her official duties.^{11 12 13 14 15 16 17} *(Bay City, DeWitt, Farmington Hills, Flushing, Harper Woods, Jackson, Lansing, Livonia, Mason, Midland, Riverview, Rochester Hills, Warren, Wyandotte, Ypsilanti)*
- A public servant shall not represent his or her individual [personal] opinion as that of the city.¹⁸ *(DeWitt, Harper Woods, Lansing, Warren)*
- A public servant shall not solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or any solicitation or proposal thereof. *(Royal Oak)*
- A public servant shall not accept any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a contract or order. *(Royal Oak)*
- A public servant shall not retain a person to solicit or secure a contract with the local government upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for the retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. *(Royal Oak)*
- A public servant shall not be a party, directly or indirectly, to any contract with the city except for the renewal or negotiation of an employment or independent contractor contract with a city officer or employee, or a collective bargaining agreement or contracts with any bona fide union. *(Ypsilanti)*
- Except for personal employment agreements authorized by the governing body, a public servant shall not solicit, negotiate, renegotiate, or approve, directly or indirectly, any contract, or amendment of any contract, with the city and 1) himself or herself, 2) any partnership, limited liability company or unincorporated association, or other legal entity of which the officer or employee is a partner, member, owner or part owner or employee, 3) any corporation in which the officer or employee is an owner or stockholder of more than one percent (1%) of the total outstanding stock of any class where the stock is not listed on an exchange, or of value of \$25,000 or more where the stock is listed on a stock exchange or of which the public servant is a director, officer, or employee, or 4) any trust of which the officer or employee is a beneficiary or trustee, or represents any party to such contract. *(Ypsilanti)*

2. Disclosure

Purpose: If a government is to be both transparent and accountable, the public must know of real and potential conflicts of interest. The general public, and those within the local government organization, are entitled to know about the relationships and circumstances which might influence a public servant's performance of duty, and which might diminish an official's independence and objectivity. Public disclosure makes it possible to evaluate the potential effects of these interests upon the public official, and to prohibit participation in decision making, in the public interest. Questions about which information, how much, and when to disclose it should be resolved in favor of full, and timely, public disclosure.

- A public servant [or his or her relative] shall not engage in business with the city, directly or indirectly, [or have any financial or personal interest in any business transaction with the city] without filing a complete [written] disclosure statement for each business activity, prior to engaging in the activity, and on an annual basis. (*Farmington Hills, Jackson, Midland, Sterling Heights*)
- A public servant shall not participate, as an agent or representative of the city, in approving, disapproving, voting upon, abstaining from voting, recommending or otherwise acting upon any matter¹⁹ in which he or she [or a relative] has a direct or indirect financial²⁰ interest²¹ without disclosing²² the full nature and extent of their interest.²³ (*Detroit, Farmington Hills, Jackson, Midland, Riverview*)

3. Impartiality

Purpose: Public officials must assure the public that, except for publicly approved pay and related benefits, they receive no benefits or services that aren't available to any member of the public.

Intent and purpose

- It is the intent of this Code that a public servant, regardless of whether specifically prohibited by this Code, shall avoid any action which might result in, or create the appearance of,

1. Using public office or employment for private gain.
2. Giving improper preferential treatment to any person or organization.
3. Impeding government efficiency or economy.
4. A lack of independence or impartiality of action.
5. Making a government decision outside of official channels.
6. Affecting adversely the confidence of the public in the integrity of the local government.

It is not the intent of this Code to limit the right or ability of any public servant to exercise his or her discretion in making legitimate policy decisions which are within their discretion so long as such action does not provide a special benefit to that person, relieve the public servant of a particular duty, or treat that person differently than other similarly situated residents in the community. (*DeWitt*)

Fair and equal treatment

- No public servant shall request, use or permit the use of any consideration, treatment, advantage or favor beyond that which is the general practice to grant or make available to the public at large. All public servants shall treat all citizens of the local community with courtesy, impartiality, fairness and equality under the law. (*DeWitt*)

4. Improper use of position

Purpose: To the public, an official is the governmental organization. An official's misuse of his or her position not only destroys public confidence in that public official, but it also destroys trust and confidence in the governmental organization as well. A public official must use the position and power of public office for the benefit of the community as a whole. Thus, a public official should not receive a greater benefit from his or her actions than anyone else in the community. Although this standard may seem unnecessary because the potential effect of the misconduct is so

obvious, a clear and specific statement establishes for all the assurance that abuse or exploitation of public office or public employment will not be tolerated.

- A public servant shall not make any policy statements which promise to authorize or to prevent any future action, agreement or contract, when, in fact, the public servant has no authority to do so. *(Lansing)*
- A public servant shall not act on behalf of the city in the making of contracts when, in fact, he or she has no authority to do so. *(Ypsilanti)*
- A public servant shall not make policies that affect the citizens of the community that are not authorized by the local government Charter, Code of Ordinances, governing body, an authorized agency of the local government, or its adopted policies. *(Wyandotte)*
- A public servant shall not use his or her official position in violation of federal or state law, or to obtain or to create the appearance to obtain a private gain for the public servant in return for improperly influencing a decision of the mayor, of the city council, of the city clerk, or of a member of a city authority, board, commission, committee, council or group, or other city agency. *(Detroit, Rochester Hills)*
- A public servant shall not use, or attempt to use, his or her official position to unreasonably secure, request or grant, any privileges, exemptions, advantages, contracts, or preferential treatment for himself or herself, a relative, his or her immediate family, or others. *(Farmington Hills, Jackson, Livonia, Mason, Midland)*
- A public servant shall not use his or her public office and employment for personal [private or economic] gain,^{24 25} [or use or attempt to use his official or her official position to secure special privileges or exemptions for himself or herself, or others, except as provided by law].²⁶ *(Bay City, Flushing, Lansing, Rochester Hills, Sterling Heights, Wyandotte, Ypsilanti)*
- A public servant shall not make or participate in making a decision in his or her capacity as a public servant knowing that the decision will provide him or her, a member of his or her immediate family, or a business with which he or she is associated, a financial benefit of more than an incidental nature which is distinguishable from the benefits to the public servant as a member of the public or as a member of a broad segment of the public. *(Ypsilanti)*
- A public servant shall not take any action or create the appearance of making a government decision outside official channels. *(Rochester Hills)*
- A public servant shall not take any action or create the appearance of impeding government efficiency or economy. *(Rochester Hills)*
- A public servant shall not take any action or create the appearance of giving preferential treatment to any organization or person. *(Rochester Hills)*
- A public servant shall not take any action, or create the appearance, that adversely affects the confidence of the public in the integrity of the city. *(Rochester Hills)*
- Public servants who are members of a city agency shall not take final action on any matter under consideration that is before the agency until the citizens' rights to address the agency have been provided for, subject always to the provisions of the Michigan Open Meetings Act. *(Wyandotte)*
- A public servant shall not interfere with the ordinary course of law enforcement within the city, and shall not suggest or request special favors or consideration or disposition of any law enforcement person of the city, including the city manager, chief of police, police officers, ordinance officers, city attorney or administrative staff, concerning any city law enforcement matter including, but not limited to, parking tickets, traffic tickets, ordinance tickets, or the enforcement of city codes. *(Ypsilanti)*

5. Incompatible or dual employment

Purpose: Dual employment or dual representation by a public official can cause a conflict of interest between the discharge of official duties and the requirements of another employer. Such a conflict might impair the official's independent judgment. However, it may be possible to permit a public servant to participate in discussion or decision making due to "necessity," as determined by the public body, provided that full, timely and public disclosure takes place prior to discussion and action.

- A public servant shall not engage in or accept employment, or render services, for a private or public interest where such employment or service is incompatible [or in conflict] with the [proper] discharge [or performance] of the public servant's official duties [and responsibilities] for the city, or where such employment or service is reasonably expected²⁷ to impair the public servant's independence of judgment or action in the discharge [performance] of his or her official duties [and responsibilities] for the city. *(Bay City, Detroit, DeWitt, Farmington Hills, Harper Woods, Riverview, Rochester Hills, Warren, Wyandotte)*
- A public servant shall not act, for compensation from any person other than the municipality, as an agent, attorney, or representative for another person, business or organization in any matter that is pending before a city agency [other than in the course of the duties and responsibilities of his or her office or employment pursuant to duties assigned by city employee unions] [other than himself or herself before the governmental body of which the public servant is a member or employee]. *(Detroit, Flushing, Lansing)*
- A public servant may represent another person, business, or organization before a city agency where such representation is a required part of the public servant's official duties. *(Detroit)*

- A public servant shall not engage in private employment with, or render services for, any private person who has business transactions with the city, without first making a full public disclosure of the nature and extent of such employment. *(Sterling Heights)*
- A public servant who, while a city employee, is participating directly or indirectly in the procurement process, shall not become or be the employee of, or perform a service for, any person who is contracting with the city. *(Royal Oak)*
- An elected public servant shall not engage in employment with any other agency or department of the city. *(Wyandotte)*

Note: Incompatible public offices

Daniel C. Matson

There are standards governing an official holding more than one public office at the same time, and they are found in the Incompatible Public Offices Act, (IPOA), 1978 PA 566 (MCL 15.181 *et seq.*). Section 1(b) of the Act defines "incompatible offices:"

"Incompatible offices" means public offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:

1. The subordination of one public office to another
2. The supervision of one public office by another
3. A breach of duty of public office

Perhaps the most difficult questions arise as to when a breach of duty of public office has occurred when more than one public office is held.

The Michigan Attorney General has issued numerous formal opinions regarding public officials holding incompatible offices simultaneously. Excerpts from opinions adopted by courts involving breach of duty include these interpretive statements:

A breach of duty arises when a public official holding dual offices cannot protect, advance, or promote the interest of both offices simultaneously. A public office is a public trust, and the courts have imposed a fiduciary standard upon public officials that requires disinterested conduct.

It is well established that a breach of duty creating an incompatibility exists when a person holding dual public offices is placed at opposite sides of a contract. An incompatibility can also result out of a non-contractual matter, such as when one office has to pass upon a matter affecting the other office. (OAG 1997, No. 6931, p 124 (February 3, 1997); *Macomb County Prosecutor v Murphy*, 233 Mich App 372, 381, 382 (1999).)

Section 3 of the IPOA allows certain limited exceptions to a person holding two or more incompatible offices at the same time. The exceptions do not apply to allow or sanction activity constituting conflict of interest prohibited by the Constitution or laws of Michigan.

If there is any question about whether or not holding more than one office is incompatible, it is advisable to seek an opinion from the municipal attorney *before* the problem arises.

6. Nepotism

Purpose: Whether deserved or not, the limitation or prohibition of public service by certain persons related by blood, adoption or marriage, to others within the governmental organization avoids actual and perceived favoritism or partiality. The very fact of the relationship creates the perception of unfairness. In smaller communities it may be common for related parties to work for, or to serve in, the local government, particularly in dual-income families. In these situations the perception of favoritism can be reduced if the local government requires that such relationships be fully and publicly disclosed.

- A public servant shall not cause the employment or any favorable employment action of an immediate family member, or participate in any employment decision about such family member.

- The spouse of any elected city official, or the city administrator, shall be disqualified from holding any appointive office. The immediate family members of any elected official, or the city administrator, or the spouses of any such family members shall be disqualified from holding full-time or permanent part-time employment exceeding ten hours per week with the city during the term served by the elected official or during the tenure of the city administrator. (*Livonia, Mason*)

7. Personal interests

Purpose: The existence of a private business relationship between a public official and the municipality presents the opportunity for real or perceived abuse of public office. To protect the interests of all, the relationship should either be avoided, or should be fully and publicly disclosed.

This standard is akin to incompatible employment in that the conduct is detrimental to the objectivity of the public servant. However, participation in discussions or actions may be permitted if there is a showing of "necessity," as determined by the public body, provided that full public disclosure, and explanation, takes place.

- A public servant shall not engage in any act [or business transaction which may cause him or her] [or his or her immediate family or business that he or she is associated with] to derive a personal profit or gain directly or indirectly as a result of his or her official position [or authority] or omission in the discharge of his or her official duties for private gain [or use his or her official position or authority to profit from a business transaction] [or act in an official capacity on matters in which he or she has a private financial interest clearly separate from that of the general public]. (*Bay City, Detroit, DeWitt, Flushing, Harper Woods, Lansing, Warren*)
- A public servant shall not speculate or deal in equipment, supplies, materials, or property purchased by or sold to the city. (*Rochester Hills*)

- A public servant shall not hold a substantial financial interest, i.e., any stake, including stockholder, partner, joint venture, creditor, guarantor or director, in a firm which provides services or supplies, materials or equipment to the city, *excluding* holding an interest in a firm providing services or supplies, materials, or equipment to the city where, after reporting the conflict, 1) the contract for services or supplies, materials, or equipment is awarded pursuant to sealed bids, 2) the public servant is not involved, directly or indirectly, with making the decision on the award of the contract or with the city department for which the contract relates, and 3) the city council determines, after reviewing the circumstances, that the award of the contract would be in the best interests of the city. *(Rochester Hills)*

8. Political activity²⁸

Purpose: Public officials do not waive their constitutional rights upon assuming a position in a municipal government. However, reasonable limits can be established so that there is no public subsidy of the political activity. Political activity by public officials and employees jeopardizes the goal that the governmental unit will be objective and fair, and treat all equally. Local government assets such as employees' time, materials and other resources belong to the public, and should not be used for personal or political purposes.

Public officials must use public assets for authorized purposes only, and not for personal political benefit, or for the political benefit of someone else. Political activity should not be permitted under any circumstance during business hours.

- A public servant shall not use any city time or property for his or her own political benefit or for the political benefit of any other person seeking elective office, provided that the foregoing shall not prohibit the use of property or facilities available to the general public on an equal basis for due consideration paid. *(Livonia, Mason)*

9. Public information

Purpose: Government insiders are often "those in the know," with access to information that may not be generally available. To avoid abuse of a public position, information must be used only as authorized, and not for personal benefit or advancement.

- A public servant shall not benefit financially²⁹ [or further his or her private economic interests or that of a relative or any other person] from confidential information acquired in the course of holding office or employment,^{30 31} [or knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person].³² *(Bay City, Detroit, DeWitt, Farmington Hills, Harper Woods, Jackson, Lansing, Midland, Rochester Hills, Royal Oak, Sterling Heights, Warren, Wyandotte, Ypsilanti)*
- Except as authorized by law, a public servant shall not knowingly disclose³³ to a third party [to any unauthorized person] confidential information that is acquired in the course of his or her employment [in the course of holding office]^{34 35} [including, but not limited to, information provided, obtained or discussed in closed or executive sessions of city council]³⁶ [in advance of the time prescribed [authorized] [by the governmental body] [department head, city manager or law] for its authorized release to the public], [except as otherwise required [provided] or permitted by law]. *(Bay City, Detroit, DeWitt, Harper Woods, Lansing, Rochester Hills, Warren, Wyandotte, Ypsilanti)*
- A public servant shall not use information protected from disclosure by the Michigan Freedom of Information Act which she or he has obtained by reason of such position or authority. *(Flushing)*
- A public servant shall not disclose any confidential information, without prior formal authorization of the public body having jurisdiction, concerning any city official or employee, or any other person, or any property or governmental affairs of the city. *(Sterling Heights)*

- A public servant shall not suppress or refuse to provide city reports or other information which is publicly available. (*Livonia, Mason*)
- A public servant shall not suppress any public city report, document, or information available to the general public because it might tend to affect unfavorably his or her private financial or political interest. (*Farmington Hills*)

10. Public property and personnel

Purpose: Public resources or assets that are not offered to the general public are not to be used by the public official or anyone else for private purposes. To do so subsidizes private activities with public dollars.

- [Unless judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures], a public servant shall not [request], [directly or indirectly] use [misuse] [or permit others to use] any city [publicly]-owned [or publicly-supported] real or personal property, [vehicle, equipment, material, labor or service], city funds, city personnel, or any other tangible city assets [under his or her care] [or control] for commercial gain [for personal [financial] gain or benefit] [or personal convenience or private advantage of himself or herself or any other person] [for private economic interest or that of a relative] [or for a member of his or her immediate family or a business entity with which he or she is associated] [or the private benefit of a third party]. (*Bay City, Detroit, Farmington Hills, Harper Woods, Jackson, Lansing, Livonia, Mason, Midland, Sterling Heights, Warren, Ypsilanti*)

Summary

When selecting the standards of conduct to be codified, drafters should consider:

1. Whether the local government charter requires that the ethics ordinance contain certain minimum standards of conduct;

2. Whether the charter requires that the ethics ordinance have a specific focus, for example, a requirement to prohibit or limit the acceptance of gifts;
3. Whether some or all of the standards of conduct that have been featured in this chapter should be included; and
4. What kinds of ethical issues have occurred in the local government in the past, or what kinds of ethical issues might arise in the future, with elected officials, appointees, employees, and independent contractors.

Answering these questions will ensure that charter-mandated requirements will be met, and that the standards of conduct will be tailored to the needs and the will of the community. Further, the discussion itself will increase awareness of ethical issues, and will help build a consensus among elected officials, appointees, employees, and independent contractors, as well as with the public.

-
1. or relates
 2. other than as a citizen, officer, or employee of the city
 3. substantial
 4. promise
 5. or promise of future employment
 6. for the benefit of a person or organization, other than the city
 7. in the form of money, a loan, service, travel, entertainment, hospitality, or other thing of promise
 8. for the benefit of a person or organization
 9. or give anything of value
 10. or would unduly influence
 11. under circumstances where it can reasonably be inferred that the gift is intended to influence him or her in the performance of his or her official action or is intended as a reward for any official action
 12. or duties
 13. based upon an agreement or understanding that a vote or an official action or decision would be influenced thereby
 14. to accept in a one-year period a gift or any other item exceeding \$100 in value from people or business entities under circumstances which may tend to impair his or her independence of judgment or action in the performance of his or her official duties

15. or favors, gratuities, or special consideration from anyone currently doing business with the city, seeking to do business with the city, or who may currently be negotiating to do business with the city in the future, or who may otherwise is or may seek any actions or approval by the city unless specifically allowed by city policy, including soliciting or accepting, without reimbursement, meals, sporting event tickets, social amenities, or attendance at any event with any organization that does business or seeks to do business with the city unless specifically sanctioned as a city sponsored event,
16. or which is intended to influence a vote, decision, or other exercise of official authority in any matter involving the city
17. based upon an agreement that the vote or official action or the official action or decision of the public servant would be influenced thereby
18. or falsely represent his or her personal opinion to be the official position or determination of the governmental body which he or she is a member or employee
19. or in a decision or transaction
20. an economic
21. or benefit
22. on the public record
23. or without providing written notification to the city council, if an elected public servant, or to his or her immediate supervisor if a non-elected public servant.
24. or use the authority, title, or prestige of his or her public office for the attainment of a public servant's financial gain or that of a member of his or her immediate family's private financial benefit when inconsistent with the public interest
25. or engage in a business transaction in which the public servant may profit from his or her official position or authority
26. or make unauthorized use of his or her public position to obtain financial gain for himself or herself, a member of his or her immediate family, or a business [or entity] with which he or she is associated.
27. or tends to impair
28. The Michigan Campaign Finance Act, MCL 169.201 *et seq.*, requires that candidates for public office make campaign contributions and expenditures public by filing appropriate reports.
29. or use for private gain
30. or obtained or may obtain by reason of his or her position or authority
31. or use or permit the use of confidential information to advance a financial or personal interest of himself or herself, or of any other person
32. or make unauthorized use of any confidential information received through holding such public position to obtain financial gain for himself or herself, a member of his or her immediate family or a business [or entity] with which he or she is associated
33. or divulge
34. in the course of holding his or her position
35. in the course of his or her service
36. to any person not authorized to obtain such information

Consequences for Violating the Ethics Ordinance

By Dennis A. Mazurek

Overview

This chapter discusses the range of penalties, or sanctions, which can be found in the ethics ordinances of the 18 local governments that were surveyed for this study. These municipalities have taken different approaches to responding to violations of their ethics ordinances, and to enforcement. It's important to remember there are many players on the municipal stage, such as elected and appointed officials, employees (full-time and part-time), volunteers, vendors, and

contractors. Not all will come within the scope of an ethics ordinance. For those who are subject to an ethics ordinance, the range of sanctions runs from self-policing with no formal sanctions, to criminal penalties:

- No sanction or penalty
- Public admonition or reprimand
- Public censure

Forfeiture of office and removal proceedings

Disciplinary action

Termination of contract (external vendors or contractors)

Municipal civil infraction

Cumulative sanctions

Misdemeanor

Felony

Review of decision

Those who are charged with drafting or developing an ethics ordinance can consider a wide range of penalty options, and the penalties can be tailored to fit the community.

Before thinking about penalties, however, the first step must be to decide whether the ethics ordinance should be “*aspirational*,” whether it should have sanctions that are enforceable, or whether it should be something in between. An aspirational approach reminds officials of their mission in service to the public, sets forth what they should aspire to and how they should conduct themselves, but it stops short of imposing serious penalties for failing to live up to the standards. An approach that demands greater accountability states the standards of conduct that are expected, the consequences for violating the standards, and the means by which it will be enforced, which is usually through the local court system.

Ethics ordinances that lean toward the aspirational can be found in both large and small municipal governments, such as Detroit, Farmington Hills, Jackson, Mason, Midland, Riverview, and Rochester Hills. A more accountable approach can be found in the ethics ordinances of Bay City, Flushing, Harper Woods, Lansing, Livonia, Royal Oak, Sterling Heights, Warren, and Ypsilanti. Interestingly, two communities, DeWitt and Wyandotte, have combined the two approaches.

Considerations

To help drafters think through the kind of ethics ordinance they want for their community, the following considerations are proposed for discussion.

1. What does the local government charter say about enforcement?
2. Should the ethics ordinance be aspirational, establishing the standards of conduct that public officials should exemplify, or should the standards be enforceable, with penalties or sanctions imposed when violations occur?
3. If the standards of conduct are to be enforced, who will,
 - a. Receive and process complaints?
 - b. Investigate complaints?
 - c. Decide whether a violation has occurred?
 - d. Decide whether a sanction should be imposed?
 - e. Enforce the sanction?
 - f. Oversee the process?
 - g. Provide advice about whether a proposed action violates the ethics ordinance?
 - h. Provide training to all those to whom the ethics ordinance applies?
4. At what point in the process does the Michigan Freedom of Information Act provide the public with a right to know?
5. Should a body, such as a board of ethics, be created to respond to requests for advisory opinions and complaints?
6. Where discipline is contemplated, how will collective bargaining agreements be affected?
7. Will the local government be able to successfully prosecute its elected officials before its elected district court judges?
8. What effect will potential civil or criminal penalties have on employee morale?

9. Will civil or criminal penalties dissuade potential employees from seeking employment with the local government organization?
10. Does the political will exist to adopt an ordinance with serious sanctions?
11. Will the sanctions be fairly and uniformly applied?

A discussion of these questions is important to help policy makers understand what is being undertaken, and to develop a consensus for action. The process can be especially challenging when, in effect, the policy makers are proposing and enacting legislation to regulate themselves.

Responding to violations of an ethics ordinance

Eleven different kinds of responses to violations have been identified in the ethics ordinances of the 18 local governments that were surveyed. The enforcement sanctions are included below in the order of severity, from lesser to greater. Each example provides the actual language from the ordinance.

No sanctions

An aspirational ordinance is intended to encourage and promote the highest standards of ethical conduct and behavior by city officials and employees; it is not designed to be a punitive measure. It is anticipated that the issuance of advisory opinions by the Board of Ethics will conclude all matters originating as requests for advice, and substantially all matters originating as complaints. The Board of Ethics is not an adjudicative body and no finding of the Board should be deemed conclusive, nor should it subject any municipal official or employee to penalties. *(Mason)*

This chapter is intended to establish standards governing conduct in dealings with the city. Violations of this chapter shall not make the violator subject to a fine or incarceration. *(Rochester Hills)*

Public admonition

In the event the Board of Ethics determines that a violation of this article has occurred, the Board may adopt a resolution of public admonition [*Editor's note: mild rebuke or reprimand*] against a public servant which includes the mayor, members of the city council, the city clerk, any member of any city agency, board, commission, or other voting body that is established by the city charter or by the city code, and any appointee, any employee, or any individual who provides services to the city within or outside of its offices or facilities pursuant to a personal services contract regarding the violation. *(Detroit)*

Public censure of elected officials

Violation of this Ordinance by an elected official may result in censuring by unanimous vote of the remaining members of the city council. [*Editor's note: A censure is a strong disapproval or condemnation, expressed by a resolution passed by the governing body.*] *(Riverview)*

Forfeiture of office and removal proceedings

Where, based upon an investigation arising from a complaint, the Board of Ethics determines that there may be grounds for further investigation for possible forfeiture of or removal from office under the City Charter and applicable law, the matter may be referred by the Board to the city council for consideration of forfeiture or removal proceedings in accordance with the City Charter. *(Detroit)*

Depending upon the employment status of the city official or employee involved, or group concerned, and the nature of the action requested, all matters concerning the Conflict of Interest and Ethical Code shall be directed to either i) the mayor, the city council and the city attorney for elected and appointed officials, or ii) to the city manager and the city attorney for full and part-time appointed employees. In matters concerning the mayor, city manager or city attorney, the mayor pro tem will assume

the controlling authority position in place of the affected official. When requested, these authorities shall take appropriate action upon any complaint, request for information, or otherwise resolve matters concerning Conflict of Interest and the Ethical Code policy of the city. The appropriate action to be taken in any individual case shall be at the discretion of the controlling authority involved which may include, but is not limited to, taking *[Editor's note: or recommending]* appropriate disciplinary action, including removal from office or appointed position, in accordance with the City Charter, the City Code, state law, or the regulations or policies of the city. *(Farmington Hills, Jackson, Midland)*

The penalty or penalties imposed are not exclusive remedies under this ordinance and any and all statutory and Charter penalties or forfeitures may also be enforced. *(DeWitt, Sterling Heights)*

Any individual who believes that a violation exists as prohibited by this article may make a complaint which shall be a written formal signed complaint to the chief of police, who shall cause same to be investigated and referred to the city attorney for review and recommendation with a copy to the complainant. When requested, the above-listed authorities shall take appropriate action upon any complaint, request for information or otherwise resolve matters concerning a violation of said article. The appropriate action to be taken in any individual case shall be at the discretion of the above authorities, which may include, but is not limited to, taking appropriate disciplinary action, including removal from office or appointed position in accordance with the City Charter, Code of Ordinances or state law. *(Wyandotte)*

Disciplinary action

Where the Board of Ethics determines that a violation of this article by such public servant may present grounds for disciplinary action, the matter may be referred by the Board to such public servant's supervisor with a recommendation that the public

servant's conduct be reviewed for disciplinary action. Any such disciplinary action must be carried out in accordance with the provisions of the City Charter and other laws, policies and procedures that are applicable to the position of the public servant and with the gravity of the offense. *(Detroit)*

Depending upon the employment status of the public servant or group involved, or group concerned, and the nature of the action requested, all matters concerning the Conflict of Interest and Ethical Code shall be directed to either i) the mayor, the city council and the city attorney for elected and appointed officials, or ii) to the city manager and the city attorney for full and part-time employees. In matters concerning the mayor, city manager or city attorney, the mayor pro tem will assume the controlling authority position in place of the affected official. When requested, these authorities shall take appropriate action upon any complaint, request for information, or otherwise resolve matters concerning Conflict of Interest and the Ethical Code policy of the City. The appropriate action to be taken in any individual case shall be at the discretion of the controlling authority involved which may include, but is not limited to, taking *[Editor's note: recommending]* appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the City Charter, the City Code, state law, or the regulations or policies of the city, or the requirements of any collectively bargained agreement. *(Farmington Hills, Jackson, Midland)*

Violation of this Ordinance by the city manager, or an officer or employee may result in disciplinary action, up to and including discharge, in accordance with city policies, applicable collective bargaining agreements, and employment contracts. *(Riverview)*

Any individual who believes that a violation exists as prohibited by this article may make a complaint which shall be a written formal signed complaint to the city of Wyandotte

chief of police, who shall cause same to be investigated and referred to the city attorney for review and recommendation with a copy to the complainant. When requested, the above-listed authorities shall take appropriate action upon any complaint, request for information or otherwise resolve matters concerning a violation of said article. The appropriate action to be taken in any individual case shall be at the discretion of the above authorities, which may include, but is not limited to, taking appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the City Charter, Code of Ordinances or state law. *(Wyandotte)*

Recommendation of termination of contract

Where the Board of Ethics determines that an existing city contract has been entered into in violation of the provisions of this article, after such determination and recommendation from the Board, the city may void or seek termination of the contract where legally permissible. *(Detroit)*

Municipal civil infraction¹

This chapter is intended to encourage and promote the highest standards of ethical conduct and behavior by city officials and employees and is not intended to be a punitive measure. It is anticipated that the issuance by the Board of Ethics of advisory opinions will conclude all matters originating as requests for advice and substantially all matters originating as complaints. The Board of Ethics is not an adjudicative body and no finding of the Board shall be deemed conclusive nor, in and of itself, subject any city official or employee to penalties. In the event of legal proceedings alleging a violation of this chapter, then in accordance with the provisions of the City Charter, a violation of this chapter shall constitute a municipal civil infraction, and shall subject a person found responsible by a court of violating this chapter to a maximum civil fine of not more than one hundred dollars. *(Livonia)*

Misdemeanor

Any official, officer or employee who violates this ordinance shall be guilty of a misdemeanor, which shall be punishable by a fine not to exceed \$500 or by imprisonment of not more than ninety days in jail or both, in the discretion of the court. *(Bay City, DeWitt, Ypsilanti)*

Any person violating any of the provisions in this article shall, upon conviction, be punished as prescribed in this Code. *(Sterling Heights)*

Any person convicted under the provisions of this ordinance shall be deemed guilty of misconduct. *(DeWitt, Sterling Heights)*

Violation of the provisions of this ordinance shall be a misdemeanor. *(Flushing, Harper Woods, Lansing)*

Failure of an elected official or appointee to file a disclosure form with the city clerk by March 28 of each year, or to file a conflict of interest disclosure form with the city clerk, shall be a misdemeanor and may result in a fine not to exceed five hundred dollars (\$500.00) or imprisonment for not more than ninety days, or both. *(Wyandotte)*

Felony

To the extent that violations of ethical standards of conduct set forth in this Ordinance constitute violations of the Michigan Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Ordinance. *(Royal Oak)*

Cumulative sanctions

The invocation of one subsection of this section does not preclude the application of any other subsection of this section or of any other applicable laws or policies. *(Detroit)*

The penalty or penalties imposed are not exclusive remedies under this ordinance and any and all statutory and Charter penalties or forfeitures may also be imposed. *(DeWitt, Sterling Heights)*

Review of Decision

Where the Board of Ethics finds that a decision of the mayor, the city council, the city clerk, an appointee, or other public servant was made in violation of this article, the board may recommend to the mayor, the city council, the city clerk, an appointee, or other public servant that such decision be reviewed in accordance with the applicable provisions of the City Charter and the City Code. Upon such recommendation, the decision may be reviewed by the mayor, the city council, the city clerk, appointee, or other public servant in accordance with the applicable provisions of the City Charter, the City Code, and any other applicable laws. (Detroit)

Conclusion

What will happen when it appears, or when it is determined, that the ethics ordinance has been violated? Is it enough to plainly say what the public official's duty to the public is? Is it enough to say, in a formal and public way, what the standards of conduct should be for those who serve the local government? Or should some kind of consequence, from private admonition to criminal penalty, flow from a violation of those standards?

In drafting an ethics ordinance, the selection of an appropriate sanction and enforcement process for a municipality is a difficult task. While it is advisable to avoid harsh and extreme punishment for incidental infractions, it is unwise to allow significant violations to go unpunished. At the same time, it is important to remember that Michigan statutes provide for the prosecution of criminal offenses.

While both the aspirational and accountable approaches to ethics ordinances are worthy of consideration, the aspirational approach affords greater control of the enforcement process than does a more punitive approach. With both, enforcement involves some type of sanction. The aspirational approach is grounded in the concept of self-policing, and minimizes reliance on overloaded district courts by keeping enforcement "in-house." On the other hand, the punitive approach ultimately plays out in the courts, where the imposition of sanctions is a matter left to the discretion of judges for whom a violation of an ethics ordinance may be no more compelling than a minor violation of any ordinance of the local government.

-
1. There is an important legal distinction between a *municipal civil infraction* and a *civil infraction* as defined by statute. Consult the enabling act relevant to your jurisdiction to determine which class of infraction applies. Section 4L of the Michigan Home Rule City Act, MCL 117.4L, identifies certain statutes that will permit or prohibit their classification in either category.

Enforcement and Administration of an Ethics Ordinance

By Dennis A. Mazurek

Considerations

In designing systems for enforcement and administration of an ethics ordinance, the complexity of the task will depend on whether the drafters choose an aspirational approach to encouraging ethical behavior, or a more accountable and enforceable approach by which certain ethical conduct is required. The aspirational approach reminds public officials of the standards of conduct to which they should aspire, but it does not assign serious penalties for failure to abide by

the standards. On the other hand, an approach that includes serious sanctions must set clear standards for required conduct, along with the consequences for violating the standards.

In thinking through an enforcement system, drafters should consider some basic questions.

1. Which segments of the municipal organization come within the jurisdiction of the ethics ordinance?

2. Should there be one enforcement system for elected and appointed officials, and a separate process for employees?
 3. Who should be given authority to investigate and enforce the ordinance when the conduct of elected officials is questioned?
 4. Should the group that will have responsibility for enforcement be part of the municipal organization, or should it be independent of the municipality?
 5. Who shall appoint the members of that group, and how long should they serve?
 6. How should the process balance an individual respondent's right to privacy, and the public's right to know? Can any part of the process remain private under the Michigan Freedom of Information Act?
 7. How shall the enforcement system be funded? Should the ethics ordinance include a requirement that the municipality provide "adequate" resources for enforcement?
- k. Keeping records of complaints and results;
 - l. Providing advice, or advisory opinions, about whether a contemplated action would violate the ethics ordinance; and
 - m. Providing periodic training to all who are within the jurisdiction of the ethics ordinance.

In general, an enforcement process and administrative system usually include:

- a. Receipt and processing of complaints or allegations that the ethics ordinance has been violated;
- b. Notice to the person(s) complained about;
- c. Investigation of complaints;
- d. An initial decision whether a violation may have occurred, or whether the complaint is without grounds and should be dismissed;
- e. Gathering and recording of facts;
- f. Hearing the respondent's version of the circumstances of the alleged misconduct;
- g. Testimony from witnesses;
- h. Deciding whether a sanction should be imposed, and if so, what sanction;
- i. Implementing or enforcing the sanction;
- j. Overseeing the enforcement process;

Overview

As always, a first step is to determine whether the local government charter requires a specific enforcement mechanism that must be codified in the ethics ordinance, and then implemented. An example of how a local government incorporated some of the elements listed above, Section 2-106(2) of the 1997 Detroit City Charter may be helpful. It mandates a comprehensive structure for enforcement and improvement of ethical standards, and a Board of Ethics is its primary enforcement and administrative mechanism.

Section 2-106(2) An independent Board of Ethics is created. The Board of Ethics shall consist of seven members:

1. Seven members of the public,
 - a. Three of whom shall be appointed by the city council,
 - b. Three of whom shall be appointed by the mayor; and
 - c. One of whom shall be jointly appointed by the mayor and city
2. None of the Board members shall be removed by the respective appointing authority except for cause; [*Editor's note: "Cause" in this context might include breach of a duty relating to the office, e.g. misfeasance, malfeasance, or nonfeasance.*]
3. The term of membership of the Board shall be five years, and not more than two members' terms shall expire in any one year;
4. Each appointee may serve a maximum of two consecutive five-year terms, not to exceed a total of ten years.

Public members of the Board shall be residents of the city who are not elected officers, appointees, or employees of the city at any time during their Board membership. Members shall serve without compensation. All city elected officers, appointees, and employees shall be available for consultation with the Board of Ethics as it deems necessary. The Board of Ethics shall issue advisory opinions regarding the meaning and application of provisions of the Charter, city ordinances or other laws or regulations establishing standards of conduct for elected officers, appointees, or employees. Advisory opinions shall be rendered upon written request by an elected officer, appointee, or employee. Advisory opinions shall be published by the Board annually in a report to the mayor and city council. The opinions shall not disclose the identity of the elected officers, appointees, or employees concerned.

All meetings of the Board shall be open to the public, unless an individual involved in the matter to be addressed requests in writing that the meeting be closed, or unless otherwise provided by ordinance.

Consistent with state law, the Board of Ethics may recommend improvements in the standards of conduct to ensure the ethical behavior of city elected officers, appointees, and employees, or in the organization and procedures related to the administration and enforcement of those standards. The Board of Ethics shall be authorized by ordinance to conduct investigations on its own initiative, subpoena witnesses, administer oaths, take testimony, require the production of evidence relevant to a matter under investigation, appoint independent counsel when necessary, and to perform other functions essential to ensure the integrity of city government. The Board shall establish its rules and procedures, in accordance with Section 2-111 of this Charter. Funds sufficient to enable the Board to perform its duties shall be appropriated annually.

Examples of different enforcement systems

The ethics code enforcement mechanisms in the ordinances of 17 local governments in Michigan were surveyed and are highlighted below. These examples are from Bay City, Detroit, DeWitt,

Farmington Hills, Flushing, Harper Woods, Jackson, Lansing, Livonia, Mason, Midland, Riverview, Royal Oak, Sterling Heights, Warren, Wyandotte, and Ypsilanti. Six different versions of enforcement systems were identified in these ordinances.

1. Boards of Ethics

The cities of Detroit, Lansing, Livonia, Mason, and Warren have enacted ordinances requiring a Board of Ethics. Although the Ethics Ordinance of the city of Detroit goes far beyond where most communities will want to go, it, again, provides a useful and detailed example of the various elements that drafters might want to consider.

Charter independence; duties; promulgation of rules.

- a. The city of Detroit Board of Ethics is an independent body that was created by Section 2-106(2) of the 1997 Detroit City Charter for the following purposes:
 1. To render advisory opinions regarding the meaning and application of provisions of the 1997 Detroit City Charter, this article, and other laws or regulations which pertain to disclosure requirements and standards of conduct for public servants;
 2. To conduct investigations based upon a complaint in order to ensure the integrity of city government, through the subpoenaing of witnesses, the administering of oaths, the taking of testimony, compulsion of the production of relevant evidence, and, when necessary, the appointment of independent counsel; and
 3. To recommend a) improvements in the disclosure requirements that are found in Division 2 of this article, and the standards of conduct that are found in Division 3 of this article, and b) improvements in the administration and enforcement thereof, in order to promote an ethical environment within city government, and to ensure the ethical behavior of public servants.

- b. In accordance with Section 2-111 of the 1997 Detroit City Charter, the Board of Ethics shall promulgate administrative rules to perform its duties as set forth in the 1997 Detroit City Charter and this article.

Limitations on Board’s authority

The Board does not have the authority to reverse or otherwise modify a prior decision of the mayor, the city council, the city clerk, appointee, or other public servant.

Resources and staffing

- a. A sufficient annual appropriation shall be provided to enable the Board of Ethics to perform its duties as set forth in the 1997 Detroit City Charter and this article, including hiring adequate staff.
- b. The corporation counsel shall assign legal counsel from the city of Detroit Law Department who shall provide representation and advice to the Board on legal matters. The Board may refer a matter to the city attorney from the law department who represents the Board for appropriate action. Upon completion of review and consideration, the city attorney shall report his or her findings to the Board. Any retention of outside counsel on behalf of the Board of Ethics shall be governed by the provisions of section 6-408 of the 1997 Detroit City Charter.

Each city agency to cooperate and assist

As needed, each city agency shall cooperate in gathering information to assist the Board of Ethics in performing its duties.

Information provided to Board to remain confidential

Members of the Board of Ethics or any public servant who have access to any confidential information that is related to the functions or activities of the Board are prohibited from divulging such information to any person who is not authorized to possess the information.

Annual report

- a. On or before April 1 of each year, the Board of Ethics shall issue simultaneously to the mayor and to each member of the city council a report that contains:

- 1. An analysis of all activities of the Board including the number of advisory opinions requested and the number issued, and the number of complaints filed and the disposition thereof during the preceding calendar year;
- 2. A compilation of opinions that have been issued during the preceding calendar year; and
- 3. The Board's recommendations, if any,
 - a) for improvement of the disclosure requirements that are found in Division 2 of this article, and of the standards of conduct that are found in Division 3 of this article, and b) for improvement of the administration and enforcement thereof.
- b. In addition, a copy of this annual report shall be submitted to the city clerk, each department director, each agency head and the municipal reference library.

2. Chief of police/city attorney

In the ethics ordinance of the city of Wyandotte, the chief of police and the city attorney direct the enforcement process.

- a. Any individual who believes that a violation exists as prohibited by this article may make a complaint which shall be a written formal signed complaint to the city of Wyandotte chief of police, who shall cause same to be investigated and referred to the city attorney for review and recommendation with a copy to the complainant.
- b. The above listed authorities, when requested, shall take appropriate action upon any complaint, request for information or otherwise resolve matters concerning a violation of said article.
- c. The appropriate action to be taken in any individual case shall be at the discretion of the above authorities, which may include, but is not limited to, any of the following:
 - 1. Pursuing further investigation by the controlling authority;

2. Taking appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the Wyandotte City Charter, Code of Ordinances or state law;
3. Pursuing such other course of action which is reasonable, just and appropriate under the circumstances;
4. Pursuing criminal prosecution for failure to file the necessary disclosure forms required in this article;
5. Determining no action is required and stating the reasons therefore; and
6. Recovering the costs and expenses the city has incurred against an individual under the cost recovery provisions of Section 2-312.5.

3. City attorney

The Bay City ordinance provides that the city attorney shall head up the enforcement system.

All complaints concerning violations of this ordinance shall be made to the city attorney, who shall investigate and prosecute all allegations concerning or relating to violations of this ordinance.

4. City manager/city commission/ city council

Riverview and Royal Oak chose the city manager, city commission and city council to be the enforcement system.

The following sanctions shall not be construed to diminish or impair the rights of an employee under any collective bargaining agreement, nor the city's obligation to comply with such collective bargaining agreements.

- a. Mayor and commissioners. The Royal Oak city commission shall have the authority to issue an oral or written warning or reprimand to one of its members for violations of the ethical standards in this Ordinance.
- b. Employees other than elected officials. The city manager, or the city commission if the employee is appointed by the commission pursuant to the Charter, may impose any

one or more of the following sanctions upon an employee for violations of the ethical standards in this Ordinance:

1. Oral or written warnings or reprimands;
 2. Suspension with or without pay for specified periods of time; or,
 3. Termination from employment.
- c. Non-employees. The city manager or city commission may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards:
1. Written warnings or reprimands;
 2. Termination of contract; or,
 3. Disbarment or suspension.

5. Mayor/city council/ city attorney/city manager

The ordinances of Farmington Hills, Jackson, and Midland include the mayor, city council, city attorney, and city manager in the enforcement system.

- a. All matters concerning the conflict of interest and ethical code shall be directed to one of the two following controlling authorities depending upon the employment status of the city of Farmington Hills official /employee involved, or group concerned, and the nature of the action requested:
 1. Elected and appointed officials of the city of Farmington Hills to the mayor, city council and city attorney.
 2. Appointed employees, full and part-time, of the city of Farmington Hills to the city manager and city attorney.
- b. The above listed authorities when requested, shall take appropriate action upon any complaint, request for information, or otherwise resolve matters concerning conflict of interest and the ethical code policy of the city of Farmington Hills. The appropriate action to be taken in any individual case shall be at the discretion of the controlling authority involved which may include but is not limited to any of the following:

1. Referral of the matter to a higher authority.
 2. Pursuing further investigation by the controlling authority.
 3. Taking appropriate disciplinary action, including removal from office, appointed position or employment, in accordance with the Farmington Hills City Charter, City Code, state law, or the regulations or policies of the city of Farmington Hills.
 4. Determining no action is required.
 5. Pursuing such other course of action which is reasonable, just and appropriate under the circumstances.
- c. The above listed controlling authorities may render written advisory opinions, when deemed appropriate, interpreting the Conflict of Interest and Ethical Code of Conduct as set forth in Section 3 above. Any city official /employee may seek guidance from the controlling authority upon written request on questions directly relating to the propriety of their conduct as officials and employees. Each written request and advisory opinion shall be confidential unless released by the requester.
1. Request for opinions shall be in writing.
 2. Advisory opinions may include guidance to any employee on questions as to:
 - a. Whether an identifiable conflict exists between his/her personal interests or obligations and his/her official duties.
 - b. Whether his/her participation in his/her official capacity would involve discretionary judgment with significant affect on the disposition of the matter in conflict.
 - c. What degree his/her personal interest exceeds that of other persons who belong to the same economic group or general class.
 - d. Whether the result of the potential conflict is substantial or constitutes a real threat to the independence of his/her judgment.
 - e. Whether he/she possesses certain knowledge or know-how which the city will require to achieve a sound decision.
 - f. What effect his/her participation under the circumstances would have on the confidence of the people in the impartiality of their city officials and employees.
 - g. Whether a disclosure of his/her personal interests would be advisable, and, if so, how such disclosure should be made so as to safeguard the public interest.
 - h. Whether it would operate in the best interest of the people for him/her to withdraw or abstain from participation or to direct or pursue a particular course of action in the matter.

6. District court

Dewitt, Flushing, Harper Woods, Sterling Heights, and Ypsilanti have ethics ordinances featuring the district court as the head of the enforcement system.

Any person who shall be convicted, by a court of competent jurisdiction, of violating any of the provision(s) of this ordinance shall be guilty of a misdemeanor and shall be punished by a fine not to exceed five hundred dollars or by imprisonment of not more than ninety days, or both, in the discretion of the court.

- a. In addition, any person so convicted by a court of competent jurisdiction shall forfeit any city employment or office held. The office shall be vacant upon conviction.
- b. Any person convicted by a court of competent jurisdiction of a misdemeanor involving election fraud, or any felony, or a misdemeanor involving moral turpitude committed in the course of employment with the city, shall forfeit any city employment or office held. The office shall be vacant upon conviction.

Chapter 4: How to Proceed

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Developing, Adopting and Implementing an Ethics Ordinance: The Process

By Daniel C. Matson

1. Getting started

A charter can be *silent* on the question of an ethics ordinance, or it can *mandate* the adoption of an ethics ordinance, along with a time certain for enactment. In either case, because there is much to consider about the content of an ethics ordinance, and because there is much to research, a reasonable amount of time for its development should be allowed. A period of one year seems to be adequate time for most communities to prepare and enact an ethics ordinance, although some require a longer time.

2. The study committee

A committee should be formed to review the initial draft of a proposed ethics ordinance or to draft the ordinance in consultation with a knowledgeable municipal attorney. It is helpful to involve people with municipal experience, people with a legal background, and people with broad experience in the community. It is helpful to include at least one elected official who serves on the legislative body and who is interested in the undertaking. This person may assist in formulating the ethics policy, and also by endorsing and presenting the ordinance to the legislative body for adoption.

3. Finding background materials and examples

This publication is intended to serve as a guide for the ethics ordinance study committee. It provides the basic standards of conduct that are found in many ethics ordinances, and it points to a number of ordinances currently in use in Michigan cities. The Michigan Municipal League database can identify more communities in which comprehensive ethics ordinances exist. In addition, the League will provide

copies of ordinances upon request. Since no two communities will have the same perspective or approach toward codifying standards of conduct, it is strongly advised that the ethics ordinance of another local government not be adopted as is. One size doesn't fit all, and it is important that an ethics ordinance be tailored to the circumstances of the community and the municipality that will be asked to adopt and to abide by the ordinance.

4. Legal research and drafting

Ideally, the development of an ethics ordinance should have the benefit of legal advice every step of the way. This might be a luxury for some municipal governments, but legal review should occur periodically, or at least at the end of the drafting process, before the work product is offered to the public. Both Constitutional and statutory law must be consulted to ensure that the ethics provisions are valid subject matters for the ordinance, and are not preempted by higher law. Also, the ethics ordinance will affect various rights and duties of municipal employees, and collective bargaining agreements must be considered.

The municipal charter or a contract with the attorney may require the attorney to draft the document in its entirety because it is to be an ordinance, or may at least require the attorney's review prior to its presentation to the legislative body. Involving the attorney in the complete process is strongly recommended.

5. Adopting the ordinance

When the ethics ordinance committee is satisfied with its work product, and after it has had adequate legal review, the proposed ordinance is then submitted to the legislative body for consideration,

along with the committee's recommendation for adoption. Members of the committee may assist in the discussion during the public forum as the matter is debated. They can provide background information, explain the rationale for the standards of ethical conduct chosen, explain the committee's approach to the proposed ordinance, and facilitate an understanding of both the meaning and the effect of the provisions in the proposed ordinance.

6. Publication of the ordinance

The complete ordinance, or a summary of it, must be published in the manner required by state and local law. In addition, each person in service to the municipality (elected and appointed officials, full- and part-time employees, and volunteers serving on boards and commissions) should be given a copy of the ordinance. They should also be required to read it and be given an opportunity to raise questions about its effects. Depending upon the structure of the organization, it may be appropriate to have department heads review the ordinance with staff in special meetings scheduled for that purpose.

7. Living with the ethics ordinance

The ethics ordinance exists to provide a reasonable framework in which the local government servant is to function and meet public expectations. To be as effective as possible, on-going training and discussion should be available for all who come within the jurisdiction of the ordinance. The purpose of any ethics ordinance is, after all, to promote the trustworthiness of government. Those who serve *in* government, and those who are served *by* government, which is all of us, want to know that our government exists to promote the public good.

Appendix A: The Contributors

The contributing authors and the editor of the Ethics Handbook are all attorneys at law and they are all current and longstanding members of the Ethics Roundtable of the Michigan Association of Municipal Attorneys. All are indebted to William L. Steude, as without his belief in the importance of ethical conduct in the affairs of government, this project would not have happened.

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Editor

Appendix B: Some Ethics-Related Michigan Statutes

The following are Michigan statutes that have been referred to in the text, and that have implications for the development of ethics codes and ethics ordinances by local governments. The list is not intended to be comprehensive, but, rather, instructive.

Conflicts of Interests as to Contracts Act,
Act 317, 1968 (MCL 15.321 *et seq.*)

Failure to uphold or enforce the law
(MCL 752.11)

False statement of public finances
(MCL 750.489)

Incompatible Public Offices Act
(MCL 15.181)

Political Activities by Public Employees,
Act 160, 1976 (MCL 15.401 *et seq.*)

Public moneys, manner of keeping,
embezzlement, etc.
(MCL 750.490)

Purchase of goods on public credit
(MCL 750.490a)

Standards of Conduct and Ethics Act,
Act 196, 1973
(MCL 15.341 *et seq.*)

Whistleblower's Protection Act,
Act 469, 1980
(MCL 15.361-15.369)

Willful neglect of duty
(MCL 750.478)

Appendix C: Eighteen Local Government Ethics Ordinances

The text refers to eighteen municipalities' charters and ethics ordinances that were reviewed, and excerpts from them were offered as examples. The following is a listing of the citations for these charters and ordinances, some of which are available on the Michigan Municipal League website. Also included are citations for municipal charters that include provisions regarding ethics.

Local Government	Population ¹	Charter or Ordinance Citation
DeWitt	4,441	Charter Art. 8, §8.14; Code of Ordinances, Ch. 2, Art. VI, §2-191 <i>et seq.</i>
Mason	7,985	Ordinance 132, effective October 1, 1999
Flushing	8,110	Ch. 37 of Ordinances, §3701 Code of Conduct, A through G; and §3702 Financial Disclosure; adopted 1993
Riverview	12,744	City Code of Ordinances, Ch. 2, Div. 3, Secs. 2-71 through 2-78
Harper Woods	13,621	Ordinance 96-3: Article VIII, Secs. 2-275 through 2-280, City Code of Ordinances
Ypsilanti	21,832	Ypsilanti City Code, Chapter 46, Articles II and III, adopted May 22, 1995
Wyandotte	26,940	Ord. No. 1235, Sec. 1; revised July 18, 2005
Jackson	34,879	Charter, §9.13 Ethics Ordinance, adopted Nov. 4, 1997; Ordinance 99-25, adopted Nov. 16, 1999
Bay City	34,879	Charter, Article 7, §§7.1-7.3; Code of Ordinances, Chapter 2, §2.30 <i>et seq.</i>
Midland	41,760	Ordinance No. 1337: Ch. 32, Secs. 32-1 through 32-6, City of Midland Code of Ordinances, dated January 22, 1996
Royal Oak	58,299	Ch. 45, Royal Oak City Code, adopted in 1993, and amended in 1998 and 2004
Rochester Hills	69,995	Ch. 50, Ethics, Secs. 50-1 through 50-7, effective February 13, 1996
Farmington Hills	80,223	Code of Ethics, adopted December 11, 1989
Livonia	97,977	Ethics Ordinance, §2.200.010 through §2.200.100, adopted 1997
Lansing	115,518	Charter, Ch. 5, §§5-501-5-505; Ordinance 290.01-290.12 (1966)
Sterling Heights	128,034	Code of Ethics for Public Officials and Employees, Ord. No. 165, §1.01, with Guidelines, effective December 18, 1974
Warren	135,311	Article VIII, Code of Ethics, §§2-371 through 2-381, adopted September 11, 1991
Detroit	886,671	Detroit City Charter, §2-106 <i>et seq.</i> , 1997 Detroit City Charter; Detroit Code, Article VI Ethics, §2-6-1 <i>et seq.</i>

1. Source of population data: U.S. Census Bureau, 2005 population estimates

Appendix D:

Ethics Resources for Local Governments

Aaron, Henry J., Thomas E. Mann and Timothy Taylor. *Values and Public Policy*. Brookings Institution Press, Washington, D.C., 1994.

Bell, A. Fleming, II. *Ethics in Public Life, Adapted from Ethics, Conflicts, and Offices: A Guide for Local Officials*. Institute of Government, the University of North Carolina at Chapel Hill, 1998. The book explores what ethics and the public trust mean, and presents ways that the ethical climate of government can be improved.

Berman, Evan M., Jonathan P. West, and Stephen J. Bonczek, eds. *The Ethics Edge*. Washington, D.C.: International City/County Management Association, 1998. A collection of articles covering contemporary insights and current ideas on management practice in ethics.

Bok, Sissela. *Lying: Moral Choice in Public and Private Life*. Pantheon Books, a division of Random House, Inc., 1978. A inquiry into the practice of lying, the avoidance of the hard questions, and the resulting damage.

Bowman, James S., ed. *Ethical Frontiers in Public Management*. Jossey-Bass Publishers, San Francisco, 1992. The book presents current research that defines the moral environment found in public management, examines how and why thinking about government ethics needs to be revitalized, and offers theoretical strategies to bring that renewal to fruition.

Denhardt, Kathryn G. *The Ethics of Public Service: Resolving Moral Dilemmas in Public Organizations*. Greenwood Press, New York, 1988.

Dworkin, Ronald. *A Matter of Principle*. Harvard University Press, Cambridge, MA, 1985.

Elliott, Kimberly Ann, ed. *Corruption and the Global Economy*. Institute for International Economics, Washington, D.C., 1997. In some parts of the world, corruption threatens to slow or reverse trends toward democratization and international economic integration.

Ethics in Action Training Package. Washington, D.C.: International City/County Management Association, 1999. Designed to help local government leaders and staff explore ethics issues together. Using case studies, exercises, real local government examples, and mini lectures, the training package addresses how all staff can make ethical decisions all the time and how to build and maintain an ethical local government.

Fisher, Roger, Elizabeth Kopelman, and Andrea Kupfer Schneider. *Beyond Machiavelli: Tools for Coping with Conflict*. Harvard University Press, 1994. The authors look systematically at what is wrong with the world, present a theory on how conflicts ought to be handled, and suggest practical skills for bringing that theory to bear on the real world. They bring a perspective that is applicable on the world stage, and at the dinner table.

Fisher, Roger, and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*. Houghton Mifflin Company, 1981. What is the best way for people to deal with their differences? Being respectful, and separating the people from the problem goes a long way.

Glazer, M.P., et al. *The Whistleblowers: Exploring Corruption in Government and Industry*. Basic Books, New York, 1989.

Institute for Local Government, *Ethics Law Compliance Best Practices, A Check List*, 2005. See http://www.cacities.org/resource_files/23862.finalcompliancebooklet.pdf

Kellar, Elizabeth K., ed. *Ethical Insight, Ethical Action: Perspectives for the Local Government Manager*. Washington, D.C.: International City/County Management Association, 1988. The book covers the inevitable tensions between personal and organizational ethics, and several of the articles deal specifically with the nature of responsibility in public organizations.

Kellar, Elizabeth K., and Mary Slawson. *Ethos: Multimedia Ethics Training for Local Governments CD-ROM*. Washington, D.C.: International City/County Management Association, 1999. An interactive training program featuring 21 real-life ethics scenarios with options for resolutions. The participant watches a scenario, chooses a response, and learns the preferred response.

Lewis, Carol W. *The Ethics Challenge in Public Service: A Problem-Solving Guide*. Jossey-Bass Publishers, San Francisco, 1991. The author offers practical tools and techniques that public managers can use in making ethical choices in the ambiguous, pressured world of public service.

Lewis, Carol W. *Scruples & Scandals: A Handbook on Public Service Ethics for State and Local Government Officials and Employees in Connecticut*. The Institute of Public Service and the Institute of Urban Research, The University of Connecticut, 1986. The book looks further than Connecticut, and is meant to provide a useful, practical examination of the formal procedures and processes by which we seek to encourage, if not ensure, "good" or "right" behavior.

McCullough, Thomas E. *The Moral Imagination and Public Life: Raising the Ethical Question*. Chatham House Publishers, Chatham, NJ, 1991.

Richter, William L., Frances Burke and Jameson W. Doig, eds. *Combating Corruption, Encouraging Ethics: A Sourcebook for Public Service Ethics*. American Society for Public Administration, Washington, D.C., 1990.

Sabato, Larry J., and Glenn R. Simpson. *Dirty Little Secrets: The Persistence of Corruption in American Politics*. Times Books, New York, 1996.

Salkin, Patricia E., ed. *Ethical Standards in the Public Sector: A Guide for Government Lawyers, Clients, and Public Officials*. Section of State and Local Government Law, American Bar Association, 1999. The book is a compilation of essays, articles, and research, intended to help government lawyers focus on some of the ethical considerations that arise in the practice of law in the public sector.

Speers, JoAnne, *2000-2006: A California Ethics Odyssey*. A report distributed by the International Municipal Lawyers Association at its 2006 Mid Year Seminar held April 23-25, 2006 in Washington, D.C.

Steinberg, Sheldon S., and David T. Austern. *Government, Ethics, and Managers: A Guide to Solving Ethical Dilemmas in the Public Sector*. Praeger, New York, 1990.

Zimmerman, Joseph. *Curbing Unethical Behavior in Government*. Greenwood Press, Westport, Connecticut, 1994. The book stresses the importance of action to ensure open government as a deterrent to improper conduct, a facilitator for its detection, and a promoter of a moralistic political culture.

Appendix E: Professional Associations' Codes of Ethics

American Association of School Administrators
aasa.org

American Institute of Certified Planners
planning.org

American Planning Association
planning.org

American Public Works Association
(Standards of Professional Conduct)
apwa.net

American Water Works Association
(Members' Code of Practice, and Policy
on Conflicts of Interest)
awwa.org

Association of Government Accountants
agacgfm.org

Government Finance Officers Association
gfoa.org

International Association of Assessing Officers
iaao.org

International Association of Chiefs of Police
(Also at ethics.iit.edu/codes)
theiacp.org

International City/County Management Association
icma.org

Michigan Association of Planning
planningmi.org

Michigan Government Finance Officers Association
migfoa.org

Michigan Local Government Management
Association (adopted the ICMA Code of Ethics)
mlgma.org

Michigan Municipal Treasurers Association
(Code of Professional Ethics)
mmta-mi.org/pdf/profcodeethics

National School Boards Association
nsba.org

State Bar of Michigan
Rules of Professional Conduct
Code of Judicial Conduct
michbar.org



michigan municipal league
Better Communities. Better Michigan.

**BIRMINGHAM CITY COMMISSION
SPECIAL MEETING AGENDA
WORKSHOP
MONDAY, FEBRUARY 14, 2022
6:30 P.M.**

WORKSHOP SESSION

This will be considered a workshop session of the City Commission. No formal actions will be taken. The purpose of this workshop is to participate in a discussion regarding a Code of Conduct for the City.

I. CALL TO ORDER

Therese Longe, Mayor

II. ROLL CALL

Alexandria Bingham, City Clerk

III. PRESENTATION & DISCUSSION

A. Introduction – Tom Markus, City Manager

Early in 2021, Workshop Guidelines were approved by the City Commission to organize the sequence of upcoming topics, the structure and time management of the workshops and to establish procedures to guide the workshops in a smoother and more purposeful manner. Conduct guidelines were adopted as follows:

- Start on time and end on time.
- Cell phones must be on mute, no outside or behind the scenes communication on the content is permitted.
- Stay focused on the topic or question at hand.
- Actively listen and participate in discussion.
- Attack the issue, not the person.
- Maintain an open and positive mindset, explore multiple perspectives, and discuss potential outcomes.
- Workshops are not a place to argue or set policy. Formal decisions can only be made at the regular City Commission meeting, not during a workshop.
- Public comment is to be heard, not responded to.

B. Staff Update

C. City Commission Questions, Discussion and Comment

1. Is there support for a Code of Conduct to clearly convey expectations of professional and courteous discourse to provide sound governance for the City?
2. If so, are there any areas reviewed tonight that should be excluded from a proposed Code of Conduct for the City?

IV. PUBLIC COMMENT

V. ADJOURN

This meeting is open to the public and the public is welcome to attend.

Should you wish to participate in this meeting, you are invited to attend the meeting in person or virtually through ZOOM: <https://zoom.us/j/655079760> Meeting ID: 655 079 760

You may also present your written statement to the City Commission, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the hearing.

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance. Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:2485301880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).

**BIRMINGHAM CITY COMMISSION
SPECIAL MEETING AGENDA
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MEMORANDUM

City Manager's Office

DATE: February 21, 2022
TO: Thomas Markus, City Manager
FROM: Jana Ecker, Assistant City Manager
SUBJECT: Code of Conduct

The City Commission has recently expressed interest in adopting a formal code of conduct to establish rules and/or protocols to guide the communication and conduct of local government elected officials, appointed officials and members of the public.

On February 14, 2022 the City Commission held a workshop to discuss the purpose and benefits of adopting a code of conduct to ensure respectful and civil communication and public engagement between elected and appointed officials and members of the public. Sample provisions from ordinances and resolutions adopted in other municipalities were reviewed. Based on the discussion, there appeared to be support for the adoption of a formal code of conduct to encourage civil and respectful communication between all parties engaged in local governance.

ATTACHMENTS:

- Powerpoint presentation from February 14, 2022 City Commission Workshop

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution directing the City Manager to prepare a draft Code of Conduct for the City for placement on a future City Commission agenda for review and consideration.



Code of Conduct Workshop



City Commission
February 14, 2022

What is a Code of Conduct?

- Document adopted by the City Commission outlining the expectations for the conduct and communication between elected and appointed officials, City staff and the public
- Different than code of ethics, but very closely related
- Standard provisions include:
 - Clearly defined roles and responsibilities
 - Standards of conduct during public meetings and at ceremonial, public and private events
 - Standards of conduct required of elected officials in all communications with each other, other officials, City staff, the media and the public
 - Process for reporting, investigating and enforcing the Code of Conduct



Workshop

Code of Conduct

February 2021

- Start on time and end on time
- Cell phones must be on mute, no outside or behind the scenes communication on the content is permitted
- Stay focused on the topic or question at hand
- Actively listen and participate in discussion
- Attack the issue, not the person
- Maintain an open and positive mindset, explore multiple perspectives, and discuss potential outcomes
- Workshops are not a place to argue or set policy. Formal decisions can only be made at the regular City Commission meeting, not during a workshop
- Public comment is to be heard, not responded to

When / where would a Code of Conduct apply?



- On Duty:
- When conducting business of the elected office, including during City Commission meetings and other official public events
- When acting as a representative of the City Commission or giving the impression of representation **10E2**

- Off Duty:
- Continue respectful behavior at both public and private events - elected and appointed officials are always on display

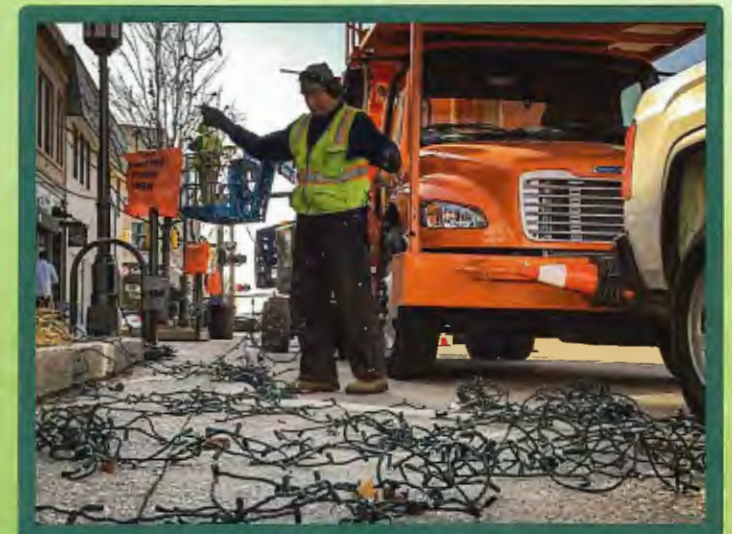


Sample Provisions: Outline Roles & Responsibilities



- City Commission is governing body responsible for policy making, approving budget, ordinances, development proposals, hiring City Manager and appointing members to advisory boards
- Should avoid personal involvement in day to day operations
- City Manager oversees staff and manages operation, implements Commission decisions

City Council	City Manager & Staff
<ul style="list-style-type: none"> • Make policy-level decisions • Hire & supervise City Manager • Approve <ul style="list-style-type: none"> ○ Budget and related work plan ○ Ordinances and policy decisions ○ Development proposals ○ Variances and rezoning requests • Appoint representatives to advisory boards and commissions 	<ul style="list-style-type: none"> • Provide best efforts and technical advice to Council • Manage operations and staff • Propose budget and policies • Carry out Council decisions • Deliver services • Equitably enforce codes & policies



Eliminate Predetermination on Issues

- Establish expectation that Commissioners cannot have or appear to have a closed mind or predetermined opinion on an issue prior to the public meeting
- Require Commissioners to come into the discussion with an open mind
- Come to public meeting prepared to actively listen, openly discuss issues, consider all perspectives



Conduct Issue-Oriented Discussion



- Require discussion to be focused on issues relative to the topic only
- Requirements for conduct between elected officials to ensure issue-oriented discussion and not personal attacks
- Allow for disagreement, but not derogatory comments about other Commission members, their opinions and actions
- Establish a "Point of Personal Privilege" rule for offensive remarks or conduct
- Encourage effective problem-solving
- Avoid debate with members of the public

Respect

GIVE IT



TO GET IT

Clear Communication Requirements

- Commissioner requests for research or other staff work to be directed to the City Manager
- Establish parameters - If more than one hour of staff time will be required to complete the task, item will be placed on City Commission agenda to determine the direction of the entire Commission
- Commissioner requests for information or service from City consultants to be directed to the City Manager
- Once a majority decision of the Commission has been made, all Commissioners must respect that official position and defend if needed, even if dissenting
- Media – Mayor is the official spokesperson



Avoid Conflict with Open Meetings Act



- Commissioners to refrain from receiving information and evidence outside of a Commission meeting (*ex parte communication*) on any quasi-judicial matter pending before the Commission
- If a Commissioner is exposed to *ex parte* communication, the Commissioner must disclose all such information during the public hearing before public comment is held
- Individual Commissioners not to make promises on behalf of the City Commission

Enforcement Provisions

- Establish process for review of potential violations of Code of Conduct
- Establish potential repercussions or sanctions for violation by elected officials, City staff and members of the public
- Sanction – An action taken by the City Commission if a person is found in violation of the Code of Conduct, may include:
 - Reprimand – a verbal statement in a meeting that addresses a violation of the Code of Conduct
 - Formal Censure – an official written statement approved by the City Commission as an official sanction which identifies the Code of Conduct violation and expresses disapproval of the violation(s)
 - Mandatory training, removal from board / committee assignments etc.



Code of
Conduct

Next Steps:



- Is there support for a Code of Conduct to clearly convey expectations of professional and courteous discourse to provide sound governance for the City?
- If so, are there any areas reviewed tonight that should be excluded from a proposed Code of Conduct for the City?
- What is the vision of the City Commission's organizational culture and values?

Questions?



MEMORANDUM

Legal Department

DATE: July 11, 2022
TO: Thomas M. Markus, City Manager and City Commission
FROM: Mary M. Kucharek
SUBJECT: Code of Conduct

INTRODUCTION:

Before the City Commission this evening is the first review of a proposed Code of Conduct for the Birmingham City Commission.

BACKGROUND:

In January and February of 2022, the City Commission discussed having a Code of Conduct for the City Commissioners, in conjunction with the Rules of Procedure which have already been adopted. At a workshop, the City Commission discussed and reviewed potential language of a Code which was presented by Assistant City Manager, Jana Ecker. Staff now brings before you a proposed draft of the Code of Conduct for your consideration and adoption.

LEGAL REVIEW:

The City Attorney has collaboratively drafted the Code of Conduct for your consideration and recommends City Commission approval and adoption.

FISCAL IMPACT:

The Code of Conduct is believed to foster more productive and efficient meetings of the Birmingham City Commission. Staff members also attend Birmingham City Commission meetings and whenever decisions are made and meetings are held that are more congenial and efficient then productivity is increased, which is always financially beneficial to the tax paying citizens.

PUBLIC COMMUNICATIONS:

Once approved, this Code of Conduct will be published on the City of Birmingham website along with the City Commission's Rules of Procedure.

SUMMARY:

The City Commission is asked to review and adopt this Code of Conduct for defined behaviors and expectations of City Commissioners. This document will result in defined actions of the City Commission and will be self-regulating.

ATTACHMENTS:

The City of Birmingham Code of Conduct.

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the City of Birmingham Code of Conduct and further direct staff to publish this document on the City of Birmingham website along with the Rules of Procedure of the Birmingham City Commission.



CITY OF BIRMINGHAM

Code of Conduct

As elected leaders of this community, we are entrusted to collaborate, and work as a united team committed to the residents of the City of Birmingham. In order to be effective, we must come to meetings with an open mind, think strategically about City issues, and conduct ourselves in a respectful and professional manner at all times. We shall strive to maintain a culture of candor, trust, and respect.

ROLES AND RESPONSIBILITIES

Sec. 1-1. – The Do’s and Don’ts.

City Commission	City Manager & Staff	Boards, Committees, Subcommittees & Task Forces
<ul style="list-style-type: none"> • Make policy-level decisions. • Hire & consult with the City Manager. • Consider & Approve: <ul style="list-style-type: none"> ○ Budget and related work plan; ○ Ordinances & policy decisions; ○ Development proposals; and ○ Rezoning requests. • Appoint representatives to advisory boards and committees. • Follow the established and accepted Rules of Procedure. • Delegate details of implementations to staff. 	<ul style="list-style-type: none"> • Provide best efforts & advice to the City Commission. • Manage operations & staff. • Propose budget & policies. • Carry out City Commission decisions. • Deliver services. • Equitably enforce codes & policies. 	<ul style="list-style-type: none"> • Provide community perspective. • Propose work plan items. • Advise the City Commission. • Hold hearings as directed by City Commission. • Assist as directed.

City Commission does NOT:

- Hire and fire staff.
 - Direct the activities of others, other than the City Manager.
 - Individually direct the activities of boards, committees, subcommittees or other resident groups.
 - Individually approve policies, projects, etc.
 - Individually commit City resources or staff to specific causes.
 - Individually enforce policies, City Code, etc.
 - Individually speak or prepare official correspondence on behalf of the City unless authorized by City Commission.
-
- The City Commission DOES speak through its motions and resolutions collaboratively.

Sec. 1-2. – City Commissioner Conduct with City Staff and Boards, Committees and Commissions

City Commissioners Make the Following Commitments to City Staff:

- Respect staff as valued resources and members of our team.
- Treat all staff as professionals.
- Not disrupt staff from their jobs.
- Support the maintenance of a positive and constructive workplace environment for City employees where individual members, City staff and the public are free to express their ideas and work to their full potential.
- Provide direction to the City Manager and not direct the work of individual staff members.
- When possible, notify the City Manager in advance of a City Commission meeting of questions or requests to pull agenda items from the consent agenda so the appropriate staff can compile the information needed.
- Send to the City Manager all communications and questions for staff.
- Agree that information they ask of the City Manager will be shared equally with all City Commission members.
- Not solicit political support from staff.

City Commissioners Make the Following Commitments to Board, Committee and Commission Members:

- View boards and committees as vitally important resources to support decision-making.
- Communicate effectively with boards and committees to ensure they have the tools to do their work.
- Give clear direction as a body and take adequate time to review the result of their deliberations.
- Understand, because of the value of the independent advice of boards, committees and task forces to the public decision-making process, members of the City Commission shall refrain from using their position to influence the deliberations or outcomes of boards, committees, and task force proceedings.
- Respect the expectation that City Commission members will not attend board, committee or task force meetings. However, under special circumstances, if City Commissioners do attend a board meeting, they will do so only as an anonymous observer, via Zoom.

Sec. 1-3. - City Commissioner Conduct with One Another

The Birmingham City Commission is comprised of individuals with a wide variety of backgrounds, educational and work experiences, personalities, values, opinions and goals. Despite this diversity, all City Commissioners have chosen to serve in public office in order to preserve and protect the present and the future of Birmingham. In all cases, this common goal should be acknowledged even as City Commissioners may "agree to disagree" on more controversial issues.

(a) IN PUBLIC MEETINGS

i. Practice civility, professionalism and decorum in discussions and debate

Difficult questions, tough challenges to a particular point of view, criticism of ideas and analysis of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, City Commissioners to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. City Commissioners should conduct themselves in a professional manner at all times.

ii. Use Respectful Behavior at All Times

Members Should STRIVE to:

- Treat people with courtesy, politeness and kindness.
- Encourage others to express their opinions and ideas.
- Listen to what others have to say.
- Use the ideas of others to improve decisions and outcomes.
- Recognize and respect differences.
- Prepare for the issues at hand.
- Focus on the business of the body.
- Consider only legally germane information in decisions.
- Act as a decision maker, not an advocate.

Members should AVOID:

- Speaking over or cutting off another individual's comments.
- Insulting, disparaging, or putting down people or their ideas.
- Bullying others by displaying a pattern of belittling, demeaning, judgmental or patronizing comments.
- Violence or the threat of violence which will not be tolerated.

iii. Honor the role of the Mayor in maintaining order

It is the responsibility of the Mayor to keep the comments of City Commissioners on track during public meetings. City Commissioners should honor efforts by the

Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure and the Rules of Procedure.

iv. **Avoid personal comments that could offend other City Commissioners**

If a City Commissioner is personally offended by the remarks of another City Commissioner, the offended City Commissioner should make notes of the actual words used and call for a "point of personal privilege" that challenges the other City Commissioner to justify or apologize for the language used. The Mayor will maintain control of this discussion.

v. **Demonstrate effective problem-solving approaches**

City Commissioners operate on a public stage, and, thus, have the opportunity to demonstrate how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole. City Commissioners should work together to resolve issues and act as public role models.

vi. **Be punctual and keep comments relative to topics discussed**

City Commissioners have made a commitment to attend meetings and partake in discussions. Therefore, it is important that City Commissioners be punctual and that meetings start on time. It is equally important that discussions be relative to the topic at hand in order to allow adequate time to fully discuss scheduled issues.

(b) **IN PRIVATE ENCOUNTERS**

i. **Continue respectful behavior in private**

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

ii. **Be aware of the insecurity of written notes, voicemail messages, and e-mail**

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable having this note faxed to others? How would you feel if this voicemail message was played on a speaker phone in a full office? What would happen if this email message was forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

iii. **Even private conversations can have a public presence**

Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted.

(c) **EX PARTE COMMUNICATION**

The City Commission has a number of roles. It legislates and makes decisions on issues prescribed to the City Commission by law. The City Commission also acts in a quasi-judicial capacity when it rules on various permits, licenses, and land use entitlements.

- i. **Ex Parte Contacts/Fair Hearings.** City Commissioners shall exercise caution in receiving or seeking out information and evidence on any quasi-judicial matter while such matter is pending before the City Commission or any agency, board, or committee thereof, except at the public hearing.
- ii. **Exposure to Information.** As an elected official, it is often impossible to avoid contacts and exposure to information. Therefore, if any City Commissioner is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, interested parties, the applicant, or through site visits, the City Commissioner member must disclose all contacts, information and/or evidence acquired from such contacts, during the public hearing, or meeting, and before the public comments period is opened. The Mayor will ask each City Commissioner at every meeting for disclosures of ex-parte communications. Self-reporting and disclosure is mandatory.

Sec. 1-4. - Working with the Public

- i. **Residents:** City Commissioners are sometimes the first call for help for residents. The City Commission acknowledges if a resident receives conflicting information from different City Commissioners or staff that it is difficult for the resident and could increase liability for the City. Therefore, all residents should be directed to the City Manager or GovPilot to address their concerns. The Manager will ensure that inquiries are responded to either by the Manager's office or the appropriate departmental representative. If the City Manager determines that the question and response is of public importance, the Manager may share the information with the City Commission and or making the information a subject of a public news report.

- ii. **Business or other interests:** The purpose of the City Commission meeting is to discuss information, review information, and decide upon issues. Particularly around development issues, business interests might ask a member to meet outside of the City Commission meeting to facilitate ideas about proposals. This contact is dissuaded as the City Commission should be receiving all information as a whole Commission.

- iii. **The City Commission's overarching principals for working with the community are:**
 - o Never grant any special consideration, treatment, or advantage.
 - o Respect sensitivity of personal information.
 - o Do not advocate for a certain point of view.
 - o City Commissioners should be cautious when participating in meetings or events and not prejudge an issue before the whole City Commission has had a chance to deliberate.

- iv. **Meetings or discussions requested by residents or businesses:**
 - o During Decision: If a City Commissioner is invited to discuss an issue that will be before the City Commission in the present or future, uphold the above principles for working with the community; and:
 - Do not make a decision about an issue before the City Commission until the deliberation process occurs at a public meeting and the City Commissioner is called upon to cast his or her vote.

 - o After Decision: If a City Commissioner is invited to discuss an issue the City Commission has decided upon, explain how the City Commission as a whole arrived at the decision. Be supportive of the vote, even if in disagreement.

Sec. 1-5. Enforcement/Sanctions

This Code of Conduct is meant to be self-enforcing. City Commissioners should be familiar with its contents and support any training necessary to further its implementation.

If a member of the City Commission is in violation of this Code of Conduct, or the Code of Ethics, then their actions should be referred to the City Commission as a whole or the Ethics Board.

If a member of the City Commission is accused of violating this Code of Conduct, then a public hearing shall occur with the Chair of the Ethics Board presiding over and managing testimony, physical evidence, discussion and public comment.

If a member of the City Commission is in violation of this Code of Conduct, then they may be reprimanded or formally censured by the City Commission. Serious infractions could lead to sanctions as determined by a majority vote of the City Commission. Those sanctions may include, but are not limited to: reprimand, formal censure, and removal from the City Commission (in compliance with state law).

Adopted by Resolution on _____, 2022.



MEMORANDUM

Legal Department

DATE: February 13, 2023
TO: Thomas M. Markus, City Manager and City Commission
FROM: Mary M. Kucharek
SUBJECT: Code of Conduct

INTRODUCTION:

The purpose of this Code of Conduct is to define the minimum standards of conduct that are expected of the City Commission and the individual Commissioners as determined by the City Commission, in conjunction with its Ethics Ordinance, in order to collaborate and conduct efficient and productive meetings.

BACKGROUND:

In January and February of 2022, the City Commission discussed the desire to draft and adopt a Code of Conduct for the City Commission in conjunction with the Rules of Procedure which have already been adopted. At a workshop, the City Commission discussed and reviewed potential language of a Code which was presented by Assistant City Manager, Jana Ecker. Staff drafted and presented a proposed Code of Conduct on July 11, 2022. Discussion occurred and suggestions were made by the City Commission. The City Manager now directs it is time once again to consider adopting a Code of Conduct.

LEGAL REVIEW:

The City Attorney has collaboratively drafted the Code of Conduct for your consideration and recommends City Commission approval and adoption.

FISCAL IMPACT:

The Code of Conduct is believed to foster more productive and efficient meetings of the Birmingham City Commission. Staff members also attend Birmingham City Commission meetings and whenever decisions are made and meetings are held that are more congenial and efficient then productivity is increased, which is always financially beneficial to the tax paying citizens.

PUBLIC COMMUNICATIONS:

Once approved, this Code of Conduct will be published on the City of Birmingham website along with the City Commission's Rules of Procedure.

SUMMARY:

The City Commission is asked to review and adopt this Code of Conduct to establish the defined conduct standards and expectations. This document will result in published and accepted expectations of the City Commission and individual Commissioners. This Code of Conduct is to be a self-regulatory policy.

ATTACHMENTS:

The City of Birmingham Code of Conduct.

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the City of Birmingham Code of Conduct and further direct staff to publish the Code of Conduct as adopted on the City of Birmingham website along with the Rules of Procedure of the Birmingham City Commission.



**City Commission
Code of Conduct
Resolution # _____**

Sec. 1-1. – Purpose

As elected leaders of the community, the City Commission is entrusted to collaborate, and work as a united team committed to the residents of the City of Birmingham. In order to be effective, City Commissioners must come to meetings with an open mind, think strategically about City issues, and conduct themselves in a respectful and professional manner at all times to maintain a culture of candor, trust, and respect.

Sec. 1-2. – Role of City Commission

- (1) The role of the City Commission is to:
 - (a) Make policy decisions.
 - (b) Hire & consult with the City Manager.
 - (c) Consider For Approval:
 - i. Budget and related work plan;
 - ii. Ordinances & policy decisions;
 - iii. Certain Development proposals; and
 - iv. Rezoning requests.
 - (d) Appoint representatives to advisory boards and committees.
- (2) Each City Commissioner is expected to:
 - (a) Act in accordance with the established and accepted Rules of Procedure.

- (b) Act in accordance with the City Charter and the City Code of Ordinances.
 - (c) Recognize the City Commission as a whole speaks through its motions and resolutions collaboratively.
- (3) In accordance with the City Charter and Code of Ordinances, the City Commission does not have authority to:
- (a) Hire and fire staff.
 - (b) Direct the activities of staff members, other than the City Manager.
 - (c) Individually direct the activities of boards, committees, subcommittees or other resident groups.
 - (d) Individually approve policies, projects, etc.
 - (e) Individually commit City resources or staff to specific causes.
 - (f) Individually enforce policies, City Code, etc.
 - (g) Individually speak or prepare official correspondence on behalf of the City unless authorized by the City Commission as a whole.
- (4) City Commissioners recognize it is the role of the City Manager to:
- (a) Provide best efforts & advice to the City Commission.
 - (b) Manage City operations & direct staff.
 - (c) Propose budget & policies.
 - (d) Implement City Commission decisions.
 - (e) Deliver services to the citizens.
 - (f) Equitably enforce codes & policies.
- (5) City Commissioners recognize it is the role of independent boards, committees, subcommittees & task forces to:
- (a) Provide the community's perspective.

- (b) Propose future projects and plans.
- (c) Advise the City Commission.
- (d) Hold hearings as directed by City Commission, the Charter and ordinances.

Sec. 1-3. – City Commissioner Conduct with City Staff and Boards, Committees and Commissions

- (1) To ensure the safe and efficient operation of City government, and to protect the best interest of the City, City Commissioners commit to:
 - (a) Respect staff as valued resources and members of the team.
 - (b) Treat all staff as professionals.
 - (c) Refrain from disrupting staff from their jobs.
 - (d) Support the maintenance of a positive and constructive workplace environment for City employees where individual members, City staff and the public are free to express their ideas and work to their full potential.
 - (e) Provide direction to the City Manager and not direct the work of individual staff members.
 - (f) Send to the City Manager all communications and questions for staff.
 - (g) When possible, notify the City Manager in advance of a City Commission meeting of questions or requests to pull agenda items from the consent agenda so the appropriate staff can compile the information needed.
 - (h) Agree that information individual Commissioners ask of the City Manager will be provided to all City Commission members.
 - (i) Refrain from soliciting political support from staff.
- (2) To protect the best interest of the City, City Commissioners commit the following to Board, Committee and Commission Members:
 - (a) View boards and committees as vitally important resources to support decision-making.

- (b) Communicate effectively in a public forum with boards and committees to ensure they have the tools to do their work.
- (c) Give clear direction as a body and take adequate time to review the result of a board's deliberations.
- (d) Refrain from using their position to influence the deliberations or outcomes of boards and committees because of the value of the independent advice of boards, committees and task forces to the public decision-making process.
- (e) Agree not to attend board, committee or task force meetings in person. However, City Commissioners may view meetings if doing so only as an anonymous observer via video or broadcast television, unless a City Commissioner is an appointed member of a board, committee or task force.

Sec. 1-4. - City Commissioner Conduct with One Another

The Birmingham City Commission is comprised of individuals with a wide variety of backgrounds, educational and work experiences, personalities, values, opinions and goals. All City Commissioners have chosen to serve in public office in order to preserve and protect the present and the future of Birmingham. As City Commissioners may "agree to disagree" on more controversial issues, each Commissioner agrees to abide by the following standards of conduct.

(1) IN PUBLIC MEETINGS

- (a) **Practice civility, professionalism and decorum in discussions and debate.**
Difficult questions, tough challenges to a particular point of view, criticism of ideas and analysis of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, City Commissioners to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. City Commissioners should conduct themselves in a professional manner at all times.
- (b) **Use Respectful Behavior at All Times.**
 - i. **City Commissioners shall:**
 1. Treat people with courtesy, politeness and kindness.
 2. Encourage others to express their opinions and ideas.
 3. Listen to what others have to say.
 4. Use the ideas of others to improve decisions and outcomes.
 5. Recognize and respect differences.

6. Prepare for the issues at hand.
7. Focus on the business of the body.
8. Consider only legally germane information in decisions.
9. Act as a decision maker, not an advocate for any position or project.

ii. **City Commissioners shall not:**

1. Speak over or cut off another individual's comments.
2. Insult, disparage, or put down people or their ideas.
3. Bully others by displaying a pattern of belittling, demeaning, judgmental or patronizing comments.
4. Threaten or commit acts of violence.

(c) **Honor the role of the Mayor in maintaining order.**

It is the responsibility of the Mayor to keep the comments of City Commissioners on track during public meetings. City Commissioners should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure and the Rules of Procedure.

(d) **Avoid personal comments that could offend other City Commissioners.**

If a City Commissioner is personally offended by the remarks of another City Commissioner, the offended City Commissioner should make notes of the actual words used and call for a "point of personal privilege" that challenges the other City Commissioner to justify or apologize for the language used. The Mayor will maintain control of this discussion.

(e) **Demonstrate effective problem-solving approaches.**

City Commissioners should work together to resolve issues and act as public role models. City Commissioners have the opportunity to demonstrate how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

(f) **Be punctual and keep comments relative to topics discussed.**

City Commissioners have made a commitment to attend meetings and partake in discussions. City Commissioners must be punctual to ensure meetings start on time. City Commissioners must keep discussions relative to the topic at hand in order to allow adequate time to fully discuss scheduled issues.

(2) **IN PRIVATE ENCOUNTERS**

(a) **Continue respectful behavior in private.**

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations as elected officials recognize that as public officials, they are always on display and even private conversations can have a public presence.

(b) **Be aware of the insecurity of written notes, voicemail messages, and e-mail.**

Technology allows words written or said without much forethought to be distributed wide and far. Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

(3) **EX PARTE COMMUNICATION**

(a) **Ex Parte Contacts/Fair Hearings.**

City Commissioners shall exercise caution in receiving or seeking out information and evidence on any quasi-judicial matter while such matter is pending before the City Commission or any agency, board, or committee thereof, except at the public hearing.

(b) **Exposure to Information.**

A City Commissioner that is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, interested parties, the applicant, or through site visits must disclose all contacts, information and/or evidence acquired from such contacts, during the public hearing or meeting, and before the public comment period is opened. Self-reporting and disclosure is mandatory.

Sec. 1-5. - Working with the Public

(1) **Residents.**

City Commissioners are sometimes the first call for help from residents. The City Commission acknowledges if a resident receives conflicting information from different City Commissioners that it is difficult for the resident and could increase liability for the City. Therefore, City Commissioners agree to direct all residents to the City staff or GovPilot to address their concerns. If the City Manager determines that the question and response is of public importance, the Manager may remark, clarify, and share the information with the City Commission at a public meeting.

(2) **Business or other interests.**

The purpose of a City Commission meeting is to discuss information, review information, and decide upon issues in an open and transparent public process. City Commissioners should not meet with applicants outside of a public meeting to facilitate ideas about

proposals. The City Commission should be receiving all information as a whole Commission in a public meeting.

(3) The City Commission's overarching principals for working with the community are:

- (a) Do not grant any special consideration, treatment, or advantage to anyone.
- (b) Do not advocate for a personal or specific point of view outside of City Commission meetings with the public.
- (c) City Commissioners should not prejudge an issue before the whole City Commission has received the information in a public meeting. Due process of an item means all the information is put to the whole public body before a decision is made. Each City Commissioner agrees not to make a decision about an issue before the City Commission until the deliberation process occurs at a public meeting and Commissioners are called upon to cast their vote.
- (d) Each City Commissioner may discuss an issue the City Commission has already decided upon by explaining how the City Commission as a whole arrived at the decision, and supporting the decision of the entire body, even if in disagreement.

Sec. 1-6. Enforcement/Sanctions

This Code of Conduct is meant to be self-enforcing. City Commissioners should be familiar with its contents and support any training necessary to further its implementation.

If there is a complaint or question as to whether or not a member of the City Commission is in violation of this Code of Conduct, their actions should be referred to the Mayor, and it shall be the function of the City Commission to conduct a public hearing. The hearing shall be moderated by the Chair of the Ethics Board presiding over the hearing and managing testimony, physical evidence, discussion and any public comment.

The City Commission shall, within 14 days after any matter is brought to the attention of the Mayor, set a date certain for the public hearing. The Chair of the Ethics Board, at least 14 days before the hearing date, shall give notice of the hearing, and provide a concise statement of the alleged breach of the Code of Conduct to the accused Commissioner by certified mail, return receipt requested. All hearings of the alleged violation shall be subject to the Open Meetings Act. While the Chair of the Ethics Board will preside over the hearing to assure fairness and efficiency, the entire Commission shall vote with the majority present as the final decision makers of whether or not an alleged violation has occurred. If a member of the City Commission is found to be in violation of this Code of Conduct, they may be reprimanded or formally censured by the City Commission. The City Commission will also vote with the majority prevailing as to sanctions of the violator, which may include, but are not limited to, a formal written reprimand

up to a request for removal of the City Commissioner by the Governor if the Commissioner's conduct is so egregious that the majority of the Commissioners believe this to be necessary.

Adopted by Resolution on _____, 2023.

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DRAFT



Alex Bingham <abingham@bhamgov.org>

Fwd: Code of Conduct

Tom Markus <tmarkus@bhamgov.org>

Wed, Mar 8, 2023 at 11:43 AM

To: Alex Bingham <abingham@bhamgov.org>, Christina Woods <cwoods@bhamgov.org>

Cc: Mary Kucharek <Mkucharek@bhlaw.us.com>

Please move the email and attachment into pending and i will place it under reports

----- Forwarded message -----

From: **Mary Kucharek** <Mkucharek@bhlaw.us.com>

Date: Wed, Mar 8, 2023 at 11:03 AM

Subject: Code of Conduct

To: Tom Markus <tmarkus@bhamgov.org>

Cc: Jana Ecker <Jecker@bhamgov.org>, Melissa Fairbairn <mfairbairn@bhamgov.org>

Tom,

As requested by the City Commission, I have identified and highlighted parts of the draft Code of Conduct that are duplicative and contained in others rules, charter provision or ordinances. However, the majority of the draft Code is not contained elsewhere, and I would suggest theses few area highlighted are worth repeating in one document. Once the Commissioners send to you their edits, we will combine their suggestions into one document for everyone's review.

Thank you.

Mary M. Kucharek


Attorney-at-Law

Beier Howlett, P.C.

Direct Dial (248)282-1075

(248) 645-9400 Ext. 211

mkucharek@bhlaw.us.com

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**City Commission
Code of Conduct
Resolution # _____**

Sec. 1-1. – Purpose

As elected leaders of the community, the City Commission is entrusted to collaborate, and work as a united team committed to the residents of the City of Birmingham. In order to be effective, City Commissioners must come to meetings with an open mind, think strategically about City issues, and conduct themselves in a respectful and professional manner at all times to maintain a culture of candor, trust, and respect.

Sec. 1-2. – Role of City Commission

- (1) The role of the City Commission is to:
 - (a) Make policy decisions.
 - (b) Hire & consult with the City Manager.
 - (c) Consider For Approval:
 - i. Budget and related work plan;
 - ii. Ordinances & policy decisions;
 - iii. Certain Development proposals;
 - iv. Rezoning requests.
 - (d) Appoint representatives to advisory boards and committees.
- (2) Each City Commissioner is expected to:
 - (a) Act in accordance with the established and accepted Rules of Procedure.

Commented [JC1]: Charter / Ordinance

Commented [JC2]: Charter / Ordinance

Commented [JC3]: Charter, Chapter III., Sec. 2

Commented [JC4]: In Zoning Ordinance in certain Chapters

Commented [JC5]: Ordinances and resolutions not one spot

- (b) Act in accordance with the City Charter and the City Code of Ordinances.
 - (c) Recognize the City Commission as a whole speaks through its motions and resolutions collaboratively.
- (3) In accordance with the City Charter and Code of Ordinances, the City Commission does not have authority to:
- (a) Hire and fire staff.
 - (b) Direct the activities of staff members, other than the City Manager.
 - (c) Individually direct the activities of boards, committees, subcommittees or other resident groups.
 - (d) Individually approve policies, projects, etc.
 - (e) Individually commit City resources or staff to specific causes.
 - (f) Individually enforce policies, City Code, etc.
 - (g) Individually speak or prepare official correspondence on behalf of the City unless authorized by the City Commission as a whole.
- (4) City Commissioners recognize it is the role of the City Manager to:
- (a) Provide best efforts & advice to the City Commission.
 - (b) Manage City operations & direct staff.
 - (c) Propose budget & policies.
 - (d) Implement City Commission decisions.
 - (e) Deliver services to the citizens.
 - (f) Equitably enforce codes & policies.
- (5) City Commissioners recognize it is the role of independent boards, committees, subcommittees & task forces to:
- (a) Provide the community's perspective.

- (b) Propose future projects and plans.
- (c) Advise the City Commission.
- (d) Hold hearings as directed by City Commission, the Charter and ordinances.

Sec. 1-3. – City Commissioner Conduct with City Staff and Boards, Committees and Commissions

(1) To ensure the safe and efficient operation of City government, and to protect the best interest of the City, City Commissioners commit to:

- (a) Respect staff as valued resources and members of the team.
- (b) Treat all staff as professionals.
- (c) Refrain from disrupting staff from their jobs.
- (d) Support the maintenance of a positive and constructive workplace environment for City employees where individual members, City staff and the public are free to express their ideas and work to their full potential.
- (e) Provide direction to the City Manager and not direct the work of individual staff members.
- (f) Send to the City Manager all communications and questions for staff.
- (g) When possible, notify the City Manager in advance of a City Commission meeting of questions or requests to pull agenda items from the consent agenda so the appropriate staff can compile the information needed.
- (h) Agree that information individual Commissioners ask of the City Manager will be provided to all City Commission members.
- (i) Refrain from soliciting political support from staff.

Commented [JC6]: Ethics Ordinance not verbatim though

(2) To protect the best interest of the City, City Commissioners commit the following to Board, Committee and Commission Members:

- (a) View boards and committees as vitally important resources to support decision-making.

- (b) Communicate effectively in a public forum with boards and committees to ensure they have the tools to do their work.
- (c) Give clear direction as a body and take adequate time to review the result of a board's deliberations.
- (d) Refrain from using their position to influence the deliberations or outcomes of boards and committees because of the value of the independent advice of boards, committees and task forces to the public decision-making process.
- (e) Agree not to attend board, committee or task force meetings in person. However, City Commissioners may view meetings if doing so only as an anonymous observer via video or broadcast television, unless a City Commissioner is an appointed member of a board, committee or task force.

Commented [JC7]: Ethics Ordinance

Sec. 1-4. - City Commissioner Conduct with One Another

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 5. Recognize and respect differences.

6. Prepare for the issues at hand.
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9. Act as a decision maker, not an advocate for any position or project.

ii. **City Commissioners shall not:**

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3. Bully others by displaying a pattern of belittling, demeaning, judgmental or patronizing comments.
4. Threaten or commit acts of violence.

Commented [JC8]: In general Robert's Rules of Order

Commented [JC9]: Ordinance Sec. 74

Commented [JC10]: Robert's Rules of Order

(c) **Honor the role of the Mayor in maintaining order.**

It is the responsibility of the Mayor to keep the comments of City Commissioners on track during public meetings. City Commissioners should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure and the Rules of Procedure.

Commented [JC11]: Robert's Rules of Order

(d) **Avoid personal comments that could offend other City Commissioners.**

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(2) **IN PRIVATE ENCOUNTERS**

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Sec. 1-5. - Working with the Public

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Sec. 1-6. Enforcement/Sanctions

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The City Commission shall, within 14 days after any matter is brought to the attention of the Mayor, set a date certain for the public hearing. The Chair of the Ethics Board, at least 14 days before the hearing date, shall give notice of the hearing, and provide a concise statement of the alleged breach of the Code of Conduct to the accused Commissioner by certified mail, return receipt requested. All hearings of the alleged violation shall be subject to the Open Meetings Act. While the Chair of the Ethics Board will preside over the hearing to assure fairness and efficiency, the entire Commission shall vote with the majority present as the final decision makers of whether or not an alleged violation has occurred. If a member of the City Commission is found to be in violation of this Code of Conduct, they may be reprimanded or formally censured by the City Commission. The City Commission will also vote with the majority prevailing as to sanctions of the violator, which may include, but are not limited to, a formal written reprimand

up to a request for removal of the City Commissioner by the Governor if the Commissioner's conduct is so egregious that the majority of the Commissioners believe this to be necessary.

Adopted by Resolution on _____, 2023.

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DRAFT

Janine Cochran

From: Mary Kucharek
Sent: Monday, March 27, 2023 8:24 AM
To: Janine Cochran
Subject: Fwd: City Commission Code of Conduct Feedback

Sent from my iPhone

Begin forwarded message:

From: Tom Markus <tmarkus@bhamgov.org>
Date: March 27, 2023 at 7:12:13 AM EDT
To: Elaine McLain <emclain@bhamgov.org>
Cc: Mary Kucharek <Mkucharek@bhlaw.us.com>
Subject: **Re: City Commission Code of Conduct Feedback**

Received, thank you.

On Sun, Mar 26, 2023 at 10:34 PM Elaine McLain <emclain@bhamgov.org> wrote:

Elaine McLain
Mayor Pro Tem,
City of Birmingham
248-225-9903

Begin forwarded message:

From: Elaine McLain <ekmclain@gmail.com>
Date: March 26, 2023 at 10:32:25 PM EDT
To: Elaine McLain <emclain@bhamgov.org>
Cc: Mary Kucharek-cell <Mkucharek@bhlaw.us.com>
Subject: **City Commission Code of Conduct Feedback**

Tom: It may be helpful to link the Code of Conduct red box references (Charter/Ordinances that already exist elsewhere) by an asterisk linked at the end of the document. I have no serious issue with repetition of what appears elsewhere. This document is meant for the Commission, by the Commission. Related existing info can add content and perspective.

My suggested changes are underlined:

Sec 1-2 Role of the Commission:

(4) City Commissioners recognize it is the role of the City Manager to:

(d) Implement City Commission decisions and support City Commission Strategic Goals.

Sec 1-3 City Commissioner Conduct with City Staff and Boards, Committees and Commissions:

(i) Refrain from soliciting political support, exerting political influence or pressure on staff.

Sec 1-4 City Commission Conduct with One Another

(b) i/9 Act as an informed objective decision maker with all the facts shared with the Commission. (Exclude "advocate" phrase or artfully rephrase intent.)

Sec 1-5 Working with the Public:

(2) ...should not meet with APPLICANTS (capitalize) outside a public meeting ... (We may often see members of the public asking questions about city matters in general and can certainly refer them to the City Manager, email or GovAlert app for answers.)

****Question:** How do we recommend handling sitting Commissioner behavior/guidance for things like social media outreach for meeting at The Farmer's Market?
Coffee with The Commish? Morning Walk with the Mayor or Mayor Pro Tem? **

Sec 1-6 Enforcement/Sanctions:

****Question:** How do we ensure that this self-enforcing Code of Conduct is not somehow hijacked, for want of another phrase, by a misguided or politically motivated majority for their own means? Can we somehow simplify the process listed?

Finally, the overarching goal of this Code of Conduct, is to guide a respectful, ethical and civil discourse as elected officials transparently serving the public. This is the time for us to work together to maintain the public's confidence in our balanced legislative process,

Elaine McLain
Mayor Pro Tem
248-225-9903

Janine Cochran

From: Mary Kucharek
Sent: Monday, March 27, 2023 8:23 AM
To: Janine Cochran
Subject: Fwd: City Commission Code of Conduct

Sent from my iPhone

Begin forwarded message:

From: Tom Markus <tmarkus@bhamgov.org>
Date: March 26, 2023 at 9:49:51 PM EDT
To: Mary Kucharek <Mkucharek@bhlaw.us.com>
Subject: Fwd: City Commission Code of Conduct

----- Forwarded message -----

From: Katie Schafer <kschafer@bhamgov.org>
Date: Sun, Mar 26, 2023 at 8:33 PM
Subject: City Commission Code of Conduct
To: Tom Markus <tmarkus@bhamgov.org>

Tom,

I didn't want you to think that I didn't have anything to say about the work that has been done on the Commission Code of Conduct by you and Mary.

Generally, as I have stated before, I believe that myself and my fellow commissioners can abide by this document and I don't feel there is much redundancy as might have been suggested by others.

Let this email serve to let you know I approve of the document as written.

I hope you had a nice weekend.

Thanks.

Katie



Jana Ecker <jecker@bhamgov.org>

Fwd: Code of Conduct

1 message

Tom Markus <tmarkus@bhamgov.org>
To: Jana Ecker <Jecker@bhamgov.org>

Thu, Apr 13, 2023 at 9:27 AM

Please add this to the report. It is in the approved agenda file.

----- Forwarded message -----
From: **Pierre Boutros** <pboutros@bhamgov.org>
Date: Thu, Apr 13, 2023 at 8:43 AM
Subject: Re: Code of Conduct
To: Tom Markus <tmarkus@bhamgov.org>

Tom,
I don't have any comments.

Pierre Boutros
City of Birmingham
248.361.6868

On Apr 12, 2023, at 1:29 PM, Tom Markus <tmarkus@bhamgov.org> wrote:

Pierre:
I have received comments per the commission direction to have the commissioners comment on the code of conduct from everyone but you at this time. Maybe when you get a chance you can review the code and give me your comments. Tom

Janine Cochran

From: Mary Kucharek
Sent: Monday, March 27, 2023 8:23 AM
To: Janine Cochran
Subject: Fwd: Commission Code of Conduct

Sent from my iPhone

Begin forwarded message:

From: Mary Kucharek <Mkucharek@bhlaw.us.com>
Date: March 26, 2023 at 12:00:19 PM EDT
To: Tom Markus <tmarkus@bhamgov.org>
Subject: **Re: Commission Code of Conduct**

Ugh. Don't even know where to begin answering said comments...if we can discuss tomorrow the best approach to all of them. I have some thoughts. Thanks. Enjoy the pretty day .

Sent from my iPhone

On Mar 26, 2023, at 10:43 AM, Tom Markus <tmarkus@bhamgov.org> wrote:

It is time to remind Mr. Host where this initiative came from. Please go back into the minutes to point out how all of this started.

----- Forwarded message -----

From: **Brad Host** <bhost@bhamgov.org>
Date: Sun, Mar 26, 2023 at 10:21 AM
Subject: Commission Code of Conduct
To: Kucharek, Mary <mkucharek@bhlaw.us.com>, Tom Markus <tmarkus@bhamgov.org>

Dear Mary and Tom,

The general tone of the proposed Code is excessively untrusting, controlling, defensive and punitive. It is overreaching in an effort to close off Commissioners from their constituents and sets up easy opportunities for Commissioners and City officials to bring charges of misbehavior against one another.

Throughout, there is a lack of understanding that Commissioners are elected officials, serving

at the will of the citizens of Birmingham---who have the authority to elect them or remove them

at the ballot box. Commissioners earn votes by having personalities, being good listeners,

holding and expressing opinions/positions on issues that come in front of the Commission.

The proposed Code discourages, if not forbids all that, I showed this first draft to a municipal attorney (and a former City Manager) who stated as written this Code is a City Manager's dream of controlling her/his employers. Outrageous is the overall observation. I remind you, I talked with Chris Johnson---MML counsel-- who calls this "overreaching". More on Mr. Johnson's comments later.

While the entire Code should be reexamined through a more constructive lens, here are three sections that in my opinion deserve the most attention and push back:

Section 1.1-PURPOSE.....The use of the adjective "united" with "team" is totally off base and needs to be changed to "democratic" or eliminated entirely. Are you trying to codify unity or

harmony? Ridiculous unless pro offering institutions of a police state.

Section 1.4 (3) EX PARTE COMMUNICATION....(b) This provision (like my third section), in addition to interfering with a Commissioner's freedom of speech, unreasonably closes Commissioners off from their constituents. Commissioners should be accessible, responsive, and involved members of our community. Such a provision would require Commissioners to hold their beliefs, curiosity and relationships in abeyance. Again, ridiculous and unreasonable. Also note (b) starts "A City Commissioner that is exposed" should be corrected to state "A City Commissioner who is exposed". This is a perfect example of the author's notion that Commissioners are objects or commodities, not people.

Respectfully, this section's prejudicial heading "Ex Parte Communication" (which in a legal sense suggests inappropriateness) should be changed to "Communication Outside Public Hearings." Also change the subhead from "Exposure to Information" (again, unnecessarily negative--- you get "exposed" to bad things like viruses, and Commissioners should be encouraged to get information, not hide from it) to "Disclosing Material Information."

Section 1.5 (3) THE CITY COMMISSION'S OVERARCHING PRINCIPALS..." (b) (c) and (d) Chris Johnson, MML Counsel, herein suggests saying something simple like "Keep an open mind."

These three subsections should be eliminated. "PRINCIPALS" should be corrected to "Principles" in any rewrite. Lastly, (d) demands the rules of a police state and certainly is undemocratic.

I hope all Commissioners are given an opportunity to address their concerns in one of our next meetings. This Code of Conduct, as presently written, would do serious damage to the effectiveness of the Commission.

Respectfully submitted,
Brad Host

Janine Cochran

From: Mary Kucharek
Sent: Monday, March 27, 2023 8:23 AM
To: Janine Cochran
Subject: Fwd: City Code of conduct 20230324
Attachments: BIRMINGHAM.pdf

Sent from my iPhone

Begin forwarded message:

From: Tom Markus <tmarkus@bhamgov.org>
Date: March 25, 2023 at 10:38:22 PM EDT
To: Jana Ecker <Jecker@bhamgov.org>, Mary Kucharek <Mkucharek@bhlaw.us.com>
Cc: Andrew Haig <ahaig@bhamgov.org>
Subject: Fwd: City Code of conduct 20230324

Andrews comments.

----- Forwarded message -----

From: Andrew Haig <ahaig@bhamgov.org>
Date: Sat, Mar 25, 2023 at 7:42 PM
Subject: City Code of conduct 20230324
To: Markus Tom <tmarkus@bhamgov.org>, Kucharek Mary <mkucharek@bhlaw.us.com>

Please find a scan of my hand markup of the proposed code of conduct.
Let me know if any of it is hard to read.
Andrew

City Code of conduct 20230324

From the Ether

GENERAL NOTES FROM 1ST MEETING:

- NOT A LAW OR ORDINANCE BUT APPEARS TO BE QUASI LEGAL AS IT IS APPARENTLY A BINDING "CONTRACT" BETWEEN PARTIES, WITH CONSEQUENCES
- "INTERNAL" DOCUMENT THAT IS PUBLIC DOMAIN AND IS ENFORCED?
- POLICY FOR THE C.C. BY THE C.C.
- DOES NOT APPLY TO RESIDENTS - DESPITE THE FACT C.C ARE RESIDENTS AS WELL.
- BROAD FORM RESIDENT CODE TOO? IS AMENDMENT ISSUES WITH THE ABILITY TO EXPRESS FREELY AS A RESIDENT IS OUR MAIN TIME / LIFE AND IS A PRE-REQUISITE TO BE A C.C.



City Commission
Code of Conduct

Resolution # _____

- WHAT IF PERSONAL RESIDENT CONCERNS ARE SIGNIFICANT IN SOME ISSUES - DO WE NOW "SUFFER IN SILENCE" AS A CONSEQUENCE? AFFECTS OUR FAMILIES?

Sec. 1-1. - Purpose

As elected leaders of the community, the City Commissioners are entrusted to collaborate, and work as a united team committed to the residents of the City of Birmingham. In order to be effective, City Commissioners must come to meetings with an open mind, think strategically about City issues, and conduct themselves in a respectful and professional manner at all times to maintain a culture of candor, trust, and respect.

Sec. 1-2. - Role of City Commission

(1) The role of the City Commission is to:

- (a) Make policy decisions.
 ↳ AND FIRE
- (b) Hire & consult with the City Manager.
- (c) Consider For Approval:
 - i. Budget and related work plan;
 - ii. Ordinances & policy decisions;
 - iii. Certain Development proposals;
 - iv. Rezoning requests.

(d) Appoint representatives to advisory boards and committees.
 ↳ AND BOARD MEMBER

(2) Each City Commissioner is expected to:

- (a) Act in accordance with the established and accepted Rules of Procedure.

REDUNDANT?

REDUNDANT?
- - -

- - -

NOTE FULL COMMENT:
Commented [JC1]: Charter / Ordinance

Commented [JC2]: Charter / Ordinance
Commented [JC3]: Charter, Chapter 11, Section 2

Commented [JC4]: In Zoning Ordinance in certain Chapters

Commented [JC5]: Ordinances and resolutions not one spot

CONSOLIDATION OF DOCUMENTS
BUT IS IT REDUNDANT?

(b) Act in accordance with the City Charter and the City Code of Ordinances.

(c) Recognize the City Commission as a whole speaks through its motions and resolutions collaboratively.

BOARDS REFER UP TO THE C.C. OR IT'S ONLY 1 WAY.

(3) In accordance with the City Charter and Code of Ordinances, the City Commission does not have authority to:

* CITY

COMMISSION OR ITS COMMISSIONERS

DO NOT

(a) Hire and fire staff. - EXCEPT THE CITY MANAGER - UNLESS SPECIFIED THIS INTRODUCES QUESTIONS + CONTRADICTION?

(b) Direct the activities of staff members, other than the City Manager.

(c) Individually direct the activities of boards, committees, subcommittees or other resident groups.

(d) Individually approve policies, projects, etc.

(e) Individually commit City resources or staff to specific causes.

(f) Individually enforce policies, City Code, etc.

(g) Individually speak or prepare official correspondence on behalf of the City unless authorized by the City Commission as a whole.

(4) City Commissioners recognize it is the role of the City Manager to:

(a) Provide best efforts & advice to the City Commission.

(b) Manage City operations & direct staff.

(c) Propose budget & policies.

(d) Implement City Commission decisions.

(e) Deliver services to the citizens.

(f) Equitably enforce codes & policies.

WHERE DOES THE CITY ATTORNEY COME INTO THE PICTURE HERE? C.A. GETS REFERRED TO FREQUENTLY IN PRACTICE.

C.A. IS ALSO PICTED WITH C.C. INPUT? HOW DOES THIS INTERACTION + RESPONSIBILITY TO ALL PARTIES QUESTIONS + ACTIVITIES WORK WITH THE C.C. IN REALITY? DOES IT NEED SPECIFYING AS THIS COULD GET BUDGET SOME.

(5) City Commissioners recognize it is the role of independent boards, committees, subcommittees & task forces to:

(a) Provide the community's perspective.

↳ TO ALLOW THIS TO HAPPEN C.C. CANNOT

BE CONSTRAINED IN MEETING, TALKING WITH, COMMUNICATING WITH THE ENTIRE COMMUNITY AS IT WHOLE OR ELSE IT IS PREVENTING OUR ABILITY TO PERFORM THIS ONE SENTENCE AT ALL WELL.

CANNOT THROTTLE OR SUPPRESS INTERACTION OR FEEDBACK OR THIS IS IMPOSSIBLE TO ACHIEVE. BECOMES A TUNNEL PERSPECTIVE AND A DISTORTED COMMUNITY VIEW (RISK)

10E1

CC MUST BE ALLOWED TO 'TRUST BUT VERIFY'

- (b) Propose future projects and plans.
- (c) Advise the City Commission.
- (d) Hold hearings as directed by City Commission, the Charter and ordinances.

IF WE ARE PREVENTED FROM JOINT MEETINGS OR FROM HAVING ROUTINE IN PERSON INTERACTION WITH THEM, THIS BECOMES TOO ABSTRACT AND AT RISK OF MISUNDERSTANDING DUE TO LIMITED COMMUNICATION Avenues USED.

Sec. 1-3. – City Commissioner Conduct with City Staff and Boards, Committees and Commissions

- (1) To ensure the safe and efficient operation of City government, and to protect the best interest of the City, City Commissioners commit to:
 - (a) Respect staff as valued resources and members of the team.
 - (b) Treat all staff as professionals.
 - (c) Refrain from disrupting staff from their jobs.
 - (d) Support the maintenance of a positive and constructive workplace environment for City employees where individual members, City staff and the public are free to express their ideas and work to their full potential.
 - (e) Provide direction to the City Manager and not direct the work of individual staff members. → CITY ATTORNEY DIRECTION IN SOME SITUATIONS?
 - (f) Send to the City Manager all communications and questions for staff.
 - (g) When possible, notify the City Manager in advance of a City Commission meeting of questions or requests to pull agenda items from the consent agenda so the appropriate staff can compile the information needed.
 - (h) Agree that information individual Commissioners ask of the City Manager will be provided to all City Commission members.
 - (i) Refrain from soliciting political support from staff.
- (2) To protect the best interest of the City, City Commissioners commit the following to Board, Committee and Commission Members:
 - (a) View boards and committees as vitally important resources to support decision-making.

- HOW MUCH IS DOCUMENTED IN OTHER FORMS?
HOW MUCH IS GENERALLY ACCEPTED HUMAN BEHAVIOUR?

- HOW DOES THIS APPLY TO EVERYONE ELSE?
THIS IS A 2 PARTY INDUCTION AND REQUIRES BOTH TO OPERATE UNDER THE SAME RULES

- COMMON THEMES TO ALL BOARDS TOO?
CANNOT CREATE A SUBJECT THAT IS SOMEWHAT DISCRIMINATORY.....

Commented [C6]: Ordinance not verbatim though

THESE SOMEWHAT COUNTERACT WITH EACH OTHER. HOW DO WE GET FEEDBACK PROPERLY, HOW DO THE JUNT MTG'S WORK IN PRACTICE?

HOW DO WE CROSS POLLINATE AND THRIVE? →

- (b) Communicate effectively in a public forum with boards and committees to ensure they have the tools to do their work. PERMITTED, WHICH HAS BEEN AN ISSUE ALREADY. (SEE OTHER NOTES)
- (c) Give clear direction as a body and take adequate time to review the result of a board's deliberations.
- (d) Refrain from using their position to influence the deliberations or outcomes of boards and committees because of the value of the independent advice of boards, committees and task forces to the public decision-making process.
- (e) Agree not to attend board, committee or task force meetings in person. However, City Commissioners may view meetings if doing so only as an anonymous observer via video or broadcast television, unless a City Commissioner is an appointed member of a board, committee or task force.

THIS CROSS POLLINATION IS → LACKING AND NOT BEING PERMITTED, WHICH HAS BEEN AN ISSUE ALREADY. (SEE OTHER NOTES)

Commented [JC7]: Ethics Ordinance

THIS HAS BEEN SHOWN TO BE → AN ISSUE WHEN ACTIVITIES AFFECT C.C. PERSONAL LIVES. SOMETIMES THIS CANNOT BE ENFORCED AS IT WILL BE TO OUR PERSONAL DETRIMENT AND THAT IS NOT FAIR + CAN CREATE A 2 CLASS SYSTEM FOR RESIDENTS.

ENFORCED AS IT WILL BE TO OUR PERSONAL DETRIMENT AND THAT IS NOT FAIR + CAN CREATE A 2 CLASS SYSTEM FOR RESIDENTS.

Sec. 1-4. - City Commissioner Conduct with One Another

The Birmingham City Commission is comprised of individuals with a wide variety of backgrounds, educational and work experiences, personalities, values, opinions and goals. All City Commissioners have chosen to serve in public office in order to preserve and protect the present and the future of Birmingham. As City Commissioners may "agree to disagree" on more controversial issues, each Commissioner agrees to abide by the following standards of conduct.

(1) IN PUBLIC MEETINGS

- (a) **Practice civility, professionalism and decorum in discussions and debate.** Difficult questions, tough challenges to a particular point of view, criticism of ideas and analysis of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, City Commissioners to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. City Commissioners should conduct themselves in a professional manner at all times.

MUST APPLY TO ALL OF ITS POINTERS.

HOWEVER THIS INHIBITS THE DESIRED CROSS POLLINATION OF IDEAS + THOUGHT.

- (b) **Use Respectful Behavior at All Times.**

- i. City Commissioners shall: AND BOARD MEMBERS.

1. Treat people with courtesy, politeness and kindness.
2. Encourage others to express their opinions and ideas.
3. Listen to what others have to say.
4. Use the ideas of others to improve decisions and outcomes.
5. Recognize and respect differences.

COMMON COURTESY

6. Prepare for the issues at hand.
7. Focus on the business of the body.
8. Consider only legally germane information in decisions.
9. Act as a decision maker, not an advocate for any position or project.

ii. **City Commissioners shall not:**

1. Speak over or cut off another individual's comments.
2. Insult, disparage, or put down people or their ideas.
3. Bully others by displaying a pattern of belittling, demeaning, judgmental or patronizing comments.
4. Threaten or commit acts of violence.

MY NOTE TOO
 Commented [JC8]: In general Robert's Rules of Order
 Commented [JC9]: Ordinance Sec. 14
 Commented [JC10]: Robert's Rules of Order

(c) **Honor the role of the Mayor in maintaining order.**

It is the responsibility of the Mayor to keep the comments of City Commissioners on track during public meetings. City Commissioners should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure and the Rules of Procedure.

*WHAT IF THE MAYOR IS OVER
 RUNNING OR NOT BEHAVING WELL?
 WHO THEN STEPS IN AS THE
 "ADULT IN THE ROOM"?*

(d) **Avoid personal comments that could offend other City Commissioners.**

If a City Commissioner is personally offended by the remarks of another City Commissioner, the offended City Commissioner should make notes of the actual words used and call for a "point of personal privilege" that challenges the other City Commissioner to justify or apologize for the language used. The Mayor will maintain control of this discussion. → *WHAT IF THE MAYOR IS NOT*

Commented [JC11]: Robert's Rules of Order

*MAINTAINING CONTROL OR IS
 THE ONE CAUSING OFFENSE ETC?
 - WHAT IF THIS IS OUTSIDE
 OF A MEETING (FORMAL)*

(e) **Demonstrate effective problem-solving approaches.**

City Commissioners should work together to resolve issues and act as public role models. City Commissioners have the opportunity to demonstrate how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

(f) **Be punctual and keep comments relative to topics discussed.**

City Commissioners have made a commitment to attend meetings and partake in discussions. City Commissioners must be punctual to ensure meetings start on time. City Commissioners must keep discussions relative to the topic at hand in order to allow adequate time to fully discuss scheduled issues.

(2) **IN PRIVATE ENCOUNTERS**

- (a) **Continue respectful behavior in private.**

- SOCIAL MEDIA?
- "FEEDING" MEDIA IN GENERAL IN PRIVATE. WE KNOW THIS HAPPENS REGULARLY BY SOME.

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations as elected officials recognize that as public officials, they are always on display and even private conversations can have a public presence.

- (b) **Be aware of the insecurity of written notes, voicemail messages, and e-mail.**
Technology allows words written or said without much forethought to be distributed wide and far. Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

(3) EX PARTE COMMUNICATION

- (a) **Ex Parte Contacts/Fair Hearings.**
City Commissioners shall exercise caution in receiving or seeking out information and evidence on any quasi-judicial matter while such matter is pending before the City Commission or any agency, board, or committee thereof, except at the public hearing. *WHAT EXACTLY MEANS QUASI JUDICIAL? WHO DEFINES IT BY CIRCUMSTANCE? WHO DRAWS THE LINE AND WHO APPROVES THE DELINEATION?*
- (b) **Exposure to Information.**
A City Commissioner that is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, interested parties, the applicant, or through site visits must disclose all contacts, information and/or evidence acquired from such contacts, during the public hearing or meeting, and before the public comment period is opened. Self-reporting and disclosure is mandatory. *WHO DEFINES EXPOSURE LIMITS? - READING A SOCIAL MEDIA POST?*

THIS HAS A HUGE RISK OF CRIPPLING INFORMATION GATHERING ABILITY IF NOT CAREFUL.

Sec. 1-5. - Working with the Public

WHAT IF C.C. OR (1) ANYONE ELSE DISAGREES WITH THIS? IF SOMEONE FEELS STRONGLY ENOUGH TO ASK, WHAT ARE THE CRITERIA FOR DETERMINING THE PUBLIC IMPORTANCE?

- (1) **Residents.**
City Commissioners are sometimes the first call for help from residents. The City Commission acknowledges if a resident receives conflicting information from different City Commissioners that it is difficult for the resident and could increase liability for the City. Therefore, City Commissioners agree to direct all residents to the City staff or GovPilot to address their concerns. If the City Manager determines that the question and response is of public importance, the Manager may remark, clarify, and share the information with the City Commission at a public meeting. *→ WHAT IF IT IS ASKED TO BE PUBLIC COMMENT IN A MEETING?*
- (2) **Business or other interests.**
The purpose of a City Commission meeting is to discuss information, review information, and decide upon issues in an open and transparent public process. City Commissioners should not meet with applicants outside of a public meeting to facilitate ideas about

proposals. The City Commission should be receiving all information as a whole Commission in a public meeting.

(3) The City Commission's overarching principals for working with the community are:

- (a) Do not grant any special consideration, treatment, or advantage to anyone.
- (b) Do not advocate for a personal or specific point of view outside of City Commission meetings with the public. → 1ST AMENDMENT. CANNOT
- (c) City Commissioners should not prejudge an issue before the whole City Commission has received the information in a public meeting. Due process of an item means all the information is put to the whole public body before a decision is made. Each City Commissioner agrees not to make a decision about an issue before the City Commission until the deliberation process occurs at a public meeting and Commissioners are called upon to cast their vote. → NOTHING IS EFFICIENT UNTIL VOTES ARE CAST
- (d) Each City Commissioner may discuss an issue the City Commission has already decided upon by explaining how the City Commission as a whole arrived at the decision, and supporting the decision of the entire body, even if in disagreement.

SUPPES PERSONAL OPINIONS AS NOT EVERYTHING CAN BE FORMAL OR BINARY ANSWERS

UNLESS YOU HAVE COMPLETE DATA AND DELIBERATION

Sec. 1-6. Enforcement/Sanctions

This Code of Conduct is meant to be self-enforcing. City Commissioners should be familiar with its contents and support any training necessary to further its implementation.

If there is a complaint or question as to whether or not a member of the City Commission is in violation of this Code of Conduct, their actions should be referred to the Mayor, and it shall be the function of the City Commission to conduct a public hearing. The hearing shall be moderated by the Chair of the Ethics Board presiding over the hearing and managing testimony, physical evidence, discussion and any public comment.

The City Commission shall, within 14 days after any matter is brought to the attention of the Mayor, set a date certain for the public hearing. The Chair of the Ethics Board, at least 14 days before the hearing date, shall give notice of the hearing, and provide a concise statement of the alleged breach of the Code of Conduct to the accused Commissioner by certified mail, return receipt requested. All hearings of the alleged violation shall be subject to the Open Meetings Act. While the Chair of the Ethics Board will preside over the hearing to assure fairness and efficiency, the entire Commission shall vote with the majority present as the final decision makers of whether or not an alleged violation has occurred. If a member of the City Commission is found to be in violation of this Code of Conduct, they may be reprimanded or formally censured by the City Commission. The City Commission will also vote with the majority prevailing as to sanctions of the violator, which may include, but are not limited to, a formal written reprimand

→ WHY? IF PERSONAL VOTE CAN BE IN SPITE THIS

PERSONAL VOTE BECAUSE IS FACT PERSONAL REASONS ARE BUILT INTO PERSONAL DATA AND DELIBERATIONS

- WHAT IF THE MAYOR IS THE OFFENDER? WHO TAKES OVER IN THAT SITUATION?

- WHAT IF THE MAYOR IS THE COMPLAINT? → RISK.

- IS THIS A UNILATERAL DECISION PROCESS? POSSIBLE THAT CAN BE A BIAS RISK DUE TO PERSONAL REASONS THIS IS WHY WE HAVE A 7 PERSON C.C FOR A MAJORITY CONSENSUS

10E1

- OR IS THIS A RESULT THAT FUNCTIONALITY IS REDUNDANT AS THERE IS NO PROCESS AND IT IS AN AUTOMATIC "I.F. THEN" STATEMENT? CUMMULATIVE

up to a request for removal of the City Commissioner by the Governor if the Commissioner's conduct is so egregious that the majority of the Commissioners believe this to be necessary.

Adopted by Resolution on _____, 2023.

0:\Bink\Bink\CODE OF CONDUCT\2023 02 03 RESOLUTION 2023 (CLEAN) CODE OF CONDUCT.docx

8

10E1

10E2

Janine Cochran

From: Mary Kucharek
Sent: Monday, March 27, 2023 8:23 AM
To: Janine Cochran
Subject: Fwd: Code of Conduct - invited comments
Attachments: Code of Conduct - Comments.pdf

Sent from my iPhone

Begin forwarded message:

From: Therese Longe <tlonge@bhamgov.org>
Date: March 24, 2023 at 9:58:36 PM EDT
To: Tom Markus <tmarkus@bhamgov.org>, Mary Kucharek <Mkucharek@bhlaw.us.com>
Subject: **Code of Conduct - invited comments**

Comments attached.

Thank you!



City Commission Code of Conduct

Resolution # _____

Sec. 1-1. -- Purpose

As elected leaders of the community, the City Commission is entrusted to collaborate, and work as a united team committed to the residents of the City of Birmingham. In order to be effective, City Commissioners must come to meetings with an open mind, think strategically about City issues, and conduct themselves in a respectful and professional manner at all times to maintain a culture of candor, trust, and respect.

The Commission has an obligation to provide responsible governance and to foster a collaborative, respectful, and inclusive environment that encourages people to live, work, and visit the City.

Sec. 1-2. -- Role of City Commission

- (1) The role of the City Commission is to:
 - (a) Make policy decisions.
 - (b) Hire & consult with the City Manager.
 - (c) Consider For Approval:
 - i. Budget and related work plan;
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- Commented [JC1]: Charter / Ordinance
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- Commented [JC3]: Charter, Chapter III., Sec. 2
- Commented [JC4]: In Zoning Ordinance in certain Chapters
- Commented [JC5]: Ordinances and resolutions not one spot

1

Sec 1-3

Unclear meaning:

in joint meetings?

When Commission gives direction at meeting?

- (b) Communicate effectively in a public forum with boards and committees to ensure they have the tools to do their work.
- (c) Give clear direction as a body and take adequate time to review the result of a board's deliberations.
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→ duplicate?

Commented [JC7]: Ethics Compliance

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ii. **City Commissioners shall not:**

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Commented [JC8]: In general Robert's Rules of Order

Commented [JC9]: Ordinance Sec. 74

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support and facilitate

(d) **Avoid personal comments that could offend other City Commissioners.**

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Commented [JC11]: Robert's Rules of Order

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Sec. 1-5. - Working with the Public

(1) **Residents.**

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(2) **Business or other interests.**

The purpose of a City Commission meeting is to discuss information, review information, and decide upon issues in an open and transparent public process. City Commissioners should not meet with applicants outside of a public meeting to facilitate ideas about

*Requests for information
or resolution of complaints.*

proposals. The City Commission should be receiving ~~all~~ information ^{from applicants} as a whole Commission in a public meeting.

Note: this should not prevent Commissioners from participating in other forums, service meetings, readings, etc.

(3) The City Commission's overarching principals for working with the community are:

- (a) Do not grant any special consideration, treatment, or advantage to anyone.
- (b) Do not advocate for a personal or specific point of view outside of City Commission meetings with the public.
- (c) City Commissioners should not prejudge an issue before the whole City Commission has received the information in a public meeting. Due process of an item means all the information is put to the whole public body before a decision is made. Each City Commissioner agrees not to make a decision about an issue before the City Commission until the deliberation process occurs at a public meeting and Commissioners are called upon to cast their vote.
- (d) Each City Commissioner may discuss an issue the City Commission has already decided upon by explaining how the City Commission as a whole arrived at the decision, and supporting the decision of the entire body, even if in disagreement.

While a Commission may have a pre-existing point of view,

Sec. 1-6. Enforcement/Sanctions

This Code of Conduct is meant to be self-enforcing. City Commissioners should be familiar with its contents and support any training necessary to further its implementation.

If there is a complaint or question as to whether or not a member of the City Commission is in violation of this Code of Conduct, their actions should be referred to the Mayor, and it shall be the function of the City Commission to conduct a public hearing. The hearing shall be moderated by the Chair of the Ethics Board presiding over the hearing and managing testimony, physical evidence, discussion and any public comment.

The City Commission shall, within 14 days after any matter is brought to the attention of the Mayor, set a date certain for the public hearing. The Chair of the Ethics Board, at least 14 days before the hearing date, shall give notice of the hearing, and provide a concise statement of the alleged breach of the Code of Conduct to the accused Commissioner by certified mail, return receipt requested. All hearings of the alleged violation shall be subject to the Open Meetings Act. While the Chair of the Ethics Board will preside over the hearing to assure fairness and efficiency, the entire Commission shall vote with the majority present as the final decision makers of whether or not an alleged violation has occurred. If a member of the City Commission is found to be in violation of this Code of Conduct, they may be reprimanded or formally censured by the City Commission. The City Commission will also vote with the majority prevailing as to sanctions of the violator, which may include, but are not limited to, a formal written reprimand.

Commissioners should refrain from disparaging in public, or in conversation with members of the public, decisions of the Commission with which they disagree.

- Does this duplicate role of Ethics Board?
- Seems burdensome in process.
- Can we simplify?

Is there any burden or test, or does every question/complaint lead to a public hearing?

Janine Cochran

From: Mary Kucharek
Sent: Monday, March 27, 2023 8:23 AM
To: Janine Cochran
Subject: Fwd: Code of conduct comments
Attachments: Code of Conduct comments.pdf

Sent from my iPhone

Begin forwarded message:

From: Tom Markus <tmarkus@bhamgov.org>
Date: March 24, 2023 at 5:45:41 PM EDT
To: Mary Kucharek <Mkucharek@bhlaw.us.com>
Cc: Clinton Baller <cballer@bhamgov.org>
Subject: Fwd: Code of conduct comments

----- Forwarded message -----

From: Clinton Baller <clinton@baller4bham.com>
Date: Fri, Mar 24, 2023 at 5:41 PM
Subject: Code of conduct comments
To: Tom Markus <tmarkus@bhamgov.org>, Jana Ecker <Jecker@bhamgov.org>
CC: Therese <tmquattro@gmail.com>

Tom: Please see attached and forward to Ms. Kucharek. Thanks. cb



**City Commission
Code of Conduct**

Resolution # _____

Sec. 1-1. – Purpose

As *elected* leaders of the community, the City Commission is entrusted to collaborate, and work as a ~~united~~ team committed to the residents of the City of Birmingham. In order to be effective, City Commissioners ~~must~~ come to meetings with an open mind, think strategically about City issues, and conduct themselves in a respectful and professional manner at all times to maintain a culture of candor, trust, and respect. **should**

Sec. 1-2. – Role of City Commission

- (1) The role of the City Commission is to:
 - (a) Make policy decisions.
 - (b) Hire & consult with the City Manager.
 - (c) Consider For Approval:
 - i. Budget and related work plan;
 - ii. Ordinances & policy decisions;
 - iii. Certain Development proposals;
 - iv. Rezoning requests.
 - (d) Appoint representatives to advisory boards and committees.
- (2) Each City Commissioner is expected to:
 - (a) Act in accordance with the established and accepted Rules of Procedure.

Commented [JC1]: Charter / Ordinance

Commented [JC2]: Charter / Ordinance

Commented [JC3]: Charter, Chapter III., Sec. 2

Commented [JC4]: In Zoning Ordinance in certain Chapters

Commented [JC5]: Ordinances and resolutions not one spot

- (b) Act in accordance with the City Charter and the City Code of Ordinances.
 - (c) Recognize the City Commission as a whole speaks through its motions and resolutions ~~collaboratively~~.
- (3) In accordance with the City Charter and Code of Ordinances, the City Commission does not have authority to:
- (a) Hire and fire staff.
 - (b) Direct the activities of staff members, other than the City Manager.
 - (c) Individually direct the activities of boards, committees, subcommittees or other resident groups.
 - (d) Individually approve policies, projects, etc.
 - (e) Individually commit City resources or staff to specific causes.
 - (f) Individually enforce policies, City Code, etc.
 - (g) Individually speak or prepare official correspondence on behalf of the City unless authorized by the City Commission as a whole.
- (4) City Commissioners recognize It is the role of the City Manager to:
- (a) Provide best efforts & advice to the City Commission.
 - (b) Manage City operations & direct staff.
 - (c) Propose budget & policies.
 - (d) Implement City Commission decisions.
 - (e) Deliver services to the citizens.
 - (f) Equitably enforce codes & policies.
- (5) City Commissioners recognize it is the role of independent boards, committees, subcommittees & task forces to:
- (a) Provide the community's perspective.

Most of this either goes without saying, or is part of charter or established rules of procedure. But no objections.

If this is "in accordance with the City Charter and Code of Ordinances," then it is duplicative. But no objections.

- (b) Propose future projects and plans.
- (c) Advise the City Commission.
- (d) Hold hearings as directed by City Commission, the Charter and ordinances.

Sec. 1-3. – City Commissioner Conduct with City Staff and Boards, Committees and Commissions

(1) To ensure the safe and efficient operation of City government, and to protect the best interest of the City, City Commissioners commit to:

- (a) Respect staff as valued resources and members of the team.
- (b) Treat all staff as professionals.
- (c) Refrain from disrupting staff from their jobs.
- (d) Support the maintenance of a positive and constructive workplace environment for City employees where individual members, City staff and the public are free to express their ideas and work to their full potential.
- (e) Provide direction to the City Manager and not direct the work of individual staff members.
- (f) Send to the City Manager all communications and questions for staff.
- (g) When possible, notify the City Manager in advance of a City Commission meeting of questions or requests to pull agenda items from the consent agenda so the appropriate staff can compile the information needed.
- (h) Agree that information individual Commissioners ask of the City Manager will be provided to all City Commission members.
- (i) Refrain from soliciting political support from staff.

Commented [JC6]: Ethics Ordinance not verbatim though

(2) To protect the best interest of the City, City Commissioners commit the following to Board, Committee and Commission Members:

- (a) View boards and committees as vitally important resources to support decision-making.

- (b) Communicate effectively in a public forum with boards and committees to ensure they have the tools to do their work.
- (c) Give clear direction as a body and take adequate time to review the result of a board's deliberations.
- (d) Refrain from using their position to influence the deliberations or outcomes of boards and committees because of the value of the independent advice of boards, committees and task forces to the public decision-making process.
- (e) Agree not to attend board, committee or task force meetings in person. However, City Commissioners may view meetings if doing so only as an anonymous observer via video or broadcast television, unless a City Commissioner is an appointed member of a board, committee or task force.

I suggest rewording (b). There are really two ideas here: communicate effectively and give them tools.

Commented [JC7]: Ethics Ordinance

Sec. 1-4. - City Commissioner Conduct with One Another

The Birmingham City Commission is comprised of individuals with a wide variety of backgrounds, educational and work experiences, personalities, values, opinions and goals. All City Commissioners have chosen to serve in public office in order to preserve and protect the present and the future of Birmingham. As City Commissioners may "agree to disagree" on more controversial issues, each Commissioner agrees to abide by the following standards of conduct.

Most of this is unnecessary and presumptive. The commission is comprised of individuals who managed to get themselves elected. Period. The only part that matters is that "each commissioner agrees to abide by the following standards of conduct."

(1) IN PUBLIC MEETINGS

- (a) **Practice civility, professionalism and decorum in discussions and debate.**
Difficult questions, tough challenges to a particular point of view, criticism of ideas and analysis of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, City Commissioners to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. City Commissioners should conduct themselves in a professional manner at all times.
- (b) **Use Respectful Behavior at All Times.**
 - i. **City Commissioners shall:**
 1. Treat people with courtesy, politeness and kindness.
 2. Encourage others to express their opinions and ideas.
 3. Listen to what others have to say.
 4. Use the ideas of others to improve decisions and outcomes.
 5. Recognize and respect differences.

6. Prepare for the issues at hand.
7. Focus on the business of the body.
8. Consider only legally germane information in decisions.
9. Act as a decision maker, not an advocate for any position or project.

ii. **City Commissioners shall not:**

1. Speak over or cut off another individual's comments.
2. Insult, disparage, or put down people or their ideas.
3. Bully others by displaying a pattern of belittling, demeaning, judgmental or patronizing comments.
4. Threaten or commit acts of violence.

Some of this duplicates what is above, beginning with "Practice civility..." I would suggest combining it.

Commented [JC8]: In general Robert's Rules of Order

Commented [JC9]: Ordinance Sec. 74

Commented [JC10]: Robert's Rules of Order

(c) **Honor the role of the Mayor in maintaining order.**

It is the responsibility of the Mayor to keep the comments of City Commissioners on track during public meetings. City Commissioners should honor efforts by the Mayor to focus discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure and the Rules of Procedure.

"Honor," or RESPECT?

(d) **Avoid personal comments that could offend other City Commissioners.**

If a City Commissioner is personally offended by the remarks of another City Commissioner, the offended City Commissioner should make notes of the actual words used and call for a "point of personal privilege" that challenges the other City Commissioner to justify or apologize for the language used. The Mayor will maintain control of this discussion.

Commented [JC11]: Robert's Rules of Order

(e) **Demonstrate effective problem-solving approaches.**

City Commissioners should work together to resolve issues and act as public role models. City Commissioners have the opportunity to demonstrate how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

(f) **Be punctual and keep comments relative to topics discussed.**

City Commissioners have made a commitment to attend meetings and partake in discussions. City Commissioners must be punctual to ensure meetings start on time. City Commissioners must keep discussions relative to the topic at hand in order to allow adequate time to fully discuss scheduled issues.

(2) **IN PRIVATE ENCOUNTERS**

(a) **Continue respectful behavior in private.**

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations as elected officials recognize that as public officials, they are always on display and even private conversations can have a public presence.

(b) **Be aware of the insecurity of written notes, voicemail messages, and e-mail.**

Technology allows words written or said without much forethought to be distributed wide and far. Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

(3) **EX PARTE COMMUNICATION**

(a) **Ex Parte Contacts/Fair Hearings.**

City Commissioners shall exercise caution in receiving or seeking out information and evidence on any quasi-judicial matter while such matter is pending before the City Commission or any agency, board, or committee thereof, except at the public hearing.

(b) **Exposure to Information.**

A City Commissioner that is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, interested parties, the applicant, or through site visits must disclose all contacts, information and/or evidence acquired from such contacts, during the public hearing or meeting, and before the public comment period is opened. Self-reporting and disclosure is mandatory.

It would be helpful to institute, at least temporarily, a regular reminder of this rule before relevant commission discussions.

Sec. 1-5. - Working with the Public

(1) **Residents.**

City Commissioners are sometimes the first call for help from residents. The City Commission acknowledges if a resident receives conflicting information from different City Commissioners that it is difficult for the resident and could increase liability for the City. Therefore, City Commissioners agree to direct all residents to the City staff or GovPilot to address their concerns. If the City Manager determines that the question and response is of public importance, the Manager may remark, clarify, and share the information with the City Commission at a public meeting.

This needs clarification, probably in the use of the word "concerns." It should not prohibit a commissioner from discussing city business or policy questions (possibly considered "concerns,") with constituents.

(2) **Business or other interests.**

The purpose of a City Commission meeting is to discuss information, review information, and decide upon issues in an open and transparent public process. City Commissioners should not meet with applicants outside of a public meeting to facilitate ideas about

proposals. The City Commission should be receiving all information as a whole Commission in a public meeting.

(3) The City Commission's overarching principals for working with the community are:

- (a) Do not grant any special consideration, treatment, or advantage to anyone.
- (b) Do not advocate for a personal or specific point of view outside of City Commission meetings with the public.
XXXXXXXXXXXX
- (c) City Commissioners should not prejudge an issue before the whole City Commission has received the information in a public meeting. Due process of an item means all the information is put to the whole public body before a decision is made. Each City Commissioner agrees not to make a decision about an issue before the City Commission until the deliberation process occurs at a public meeting and Commissioners are called upon to cast their vote.
- (d) Each City Commissioner may discuss an issue the City Commission has already decided upon by explaining how the City Commission as a whole arrived at the decision, and supporting the decision of the entire body, even if in disagreement.

Sec. 1-6. Enforcement/Sanctions

This Code of Conduct is meant to be self-enforcing. City Commissioners should be familiar with its contents and support any training necessary to further its implementation.

If there is a complaint or question as to whether or not a member of the City Commission is in violation of this Code of Conduct, their actions should be referred to the Mayor, and it shall be the function of the City Commission to conduct a public hearing. The hearing shall be moderated by the Chair of the Ethics Board presiding over the hearing and managing testimony, physical evidence, discussion and any public comment.

The City Commission shall, within 14 days after any matter is brought to the attention of the Mayor, set a date certain for the public hearing. The Chair of the Ethics Board, at least 14 days before the hearing date, shall give notice of the hearing, and provide a concise statement of the alleged breach of the Code of Conduct to the accused Commissioner by certified mail, return receipt requested. All hearings of the alleged violation shall be subject to the Open Meetings Act. While the Chair of the Ethics Board will preside over the hearing to assure fairness and efficiency, the entire Commission shall vote with the majority present as the final decision makers of whether or not an alleged violation has occurred. If a member of the City Commission is found to be in violation of this Code of Conduct, they may be reprimanded or formally censured by the City Commission. The City Commission will also vote with the majority prevailing as to sanctions of the violator, which may include, but are not limited to, a formal written reprimand

The last sentence about "receiving all information" might be omitted or clarified. It should not prohibit a commissioner from independently researching a topic in preparation for a discussion.

I would not call these "overarching principals." Which raises the very good question that each commissioner might be asked: "What do you believe are the overarching principals for working with the community?"

This should be amended to explicitly state that nothing here is meant to suggest that a commissioner is in any way prohibited from advocacy on behalf of legislation or other public policy.

Commissioners, in their oaths of office, promise to uphold the law. Does that mean they can't disagree with established law? What about cases in which amendments to law are proposed? A disclaimer here might also be appropriate. Nothing is meant to abridge a commissioner's right to free speech. Or just suggest that, in general, commissioners should do this or that, and lose any firm prescriptive language.

NO, NO, NO!! You say it is meant to be "self-enforcing," (whatever that means!), and then go on to prescribe an elaborate procedure that seems to be anything but, allowing anyone to make a claim of "violation." Notice? Certified mail?! Hearings!? NO! If someone breaks the law (including the Ethics Ordinance), then let them face the appropriate consequences of breaking that law. This entire section should be deleted.

up to a request for removal of the City Commissioner by the Governor if the Commissioner's conduct is so egregious that the majority of the Commissioners believe this to be necessary.

Adopted by Resolution on _____, 2023.

O:\Birmingham\CODE OF CONDUCT\2023.02.03 RESOLUTION 2023 - (CLEAN) CODE OF CONDUCT.docx

DRAFT

Fwd: Code of Conduct Input

6 messages

Tom Markus <tmarkus@bhamgov.org>

Fri, Feb 24, 2023 at 5:55 PM

To: Mary Kucharek <Mkucharek@bhlaw.us.com>, Alex Bingham <abingham@bhamgov.org>

Cc: City Commission <city-commission@bhamgov.org>, DepartmentHeads <departmentheads@bhamgov.org>, "Bloom, David (D.M.)" <dbloom4@ford.com>

Mary: Please review the attached codes from other jurisdictions and Mr. Bloom's comments noted on the proposed code of conduct.
Alex: Please include the Mayor and Mayor Pro-Tem process from Nevada City in the workshop to discuss our process for selecting Mayor and Mayor Pro-Tem. Note that it was provided by David Bloom.

----- Forwarded message -----

From: **Bloom, David (D.M.)** <dbloom4@ford.com>

Date: Fri, Feb 24, 2023 at 5:27 PM

Subject: Code of Conduct Input

To: Tom Markus <tmarkus@bhamgov.org>

Hello Tom,

Below and attached is my feedback and input for the proposed Code of Conduct workshop review ad discussed at the last commission Meeting.

While I think using the Fairfield model (link below), with perhaps some additions and modifications, would be best I am also attaching a markup of the current city proposal with comments and suggested edits.

1. This seems to be an excellent code of conduct and should be considered in lieu of the one presented for consideration at the last meeting

<https://www.fairfield.ca.gov/home/showpublisheddocument/2/637520323272230000>

2. A very simple one pager as an alternative:

<https://www.yakimawa.gov/council/assets/Principles-of-Conduct-for-Yakima-City-Council-Members.pdf>

3. Nevada City, CA documents with worthwhile Mayor and mayor Pro Tem appointment process that should be added to our code after the past few handovers which bypassed Birmingham tradition and unwritten policy:

<https://www.nevadacityca.gov/files/documents/NevadaCityCouncilStandardsandProcedures-Updated3-9-221338113805081522AM.pdf>

SECTION 2. MAYOR AND VICE MAYOR SELECTION PROCESS

2.1 Reorganization. In July of each year, the office of the Mayor and Vice Mayor (also known as Mayor Pro Tem) shall rotate based on the policy set forth in Nevada City Resolution Nos. 2007-34 and 2012-23, as follows:

(a) The Mayor shall be the senior member who has not previously served in that capacity and the term of office shall be one year, without succession, beginning at the first regularly scheduled City Council meeting each July or the first meeting following certification of a City Council election.

(b) The Mayor Pro Tem shall be the next senior member who has not previously served as Mayor and the term of office shall run concurrent with that of the Mayor as described above.

(c) When two or more members have equal seniority and have not yet served as Mayor or Mayor Pro Tem, the order of succession shall be determined by the number of votes each member received at the time of their election.

(d) The Mayor Pro Tem shall automatically succeed the Mayor each year, excepting that the Mayor Pro Tem may decline such succession. If the Mayor Pro Tem declines the position of Mayor, such office shall be extended to the next senior member in order, or by majority vote of the Council if all other members have served at least on year as Mayor.

(e) Once all seated members have served as Mayor, succession shall be based on a majority vote of the Council, recognizing that the term of office for each position shall be one year.

Members of the City Council who first took their seats on the Council more than twenty-three (23) months prior to the meeting at which the Mayor is being selected are eligible for Mayorship.

4. This is a more robust document and has elements worth considering
<https://www.sunnyvale.ca.gov/home/showpublisheddocument/618/637882968538000000>

5. Some interesting policy and legal info from New Hampshire.

<https://www.nhmunicipal.org/town-city-article/local-regulation-ethical-behavior>

Regards,

David Bloom
Birmingham

 **Redraft.docx**
23K

Tom Markus <tmarkus@bhamgov.org>
To: Mary Kucharek <Mkucharek@bhlaw.us.com>
Cc: Alex Bingham <abingham@bhamgov.org>, Therese Longe <tlonge@bhamgov.org>

Sat, Feb 25, 2023 at 10:02 AM

The Mayor stated that the commissioners had 14 days to get their comments to you for your review. Commissioner Baller attempted to get you to point out the provisions that were not replicated in other City policies (example ethics ordinance) as he made an issue of how duplicative the proposed code was. I believe the direction was to have the commissioners submit there revisions first. At the same time you can review the duplication of policies. Actually, I don't think redundancy is a problem or even an issue. I think Mr. Baller was throwing everything against the wall in hopes that something might stick to stop the code from further consideration. My thinking is every community should have a code of conduct and be proud that they had the courage to adopt one. By cc to Mayor Longe I am asking her to set the record straight as to what direction she thinks was given to the staff. I am not aware that we have received any comments from the commissioners who have comments about changes they want made to the code of conduct. Maybe the Mayor can make a clarifying pronouncement at Monday evenings meeting so it is clear what is expected of us.

On Sat, Feb 25, 2023 at 9:06 AM Mary Kucharek <Mkucharek@bhlaw.us.com> wrote:
Weren't the commissioners suppose to send us marked up versions? Then we compile and present versions?

Sent from my iPhone

On Feb 25, 2023, at 12:37 AM, Tom Markus <tmarkus@bhamgov.org> wrote:

----- Forwarded message -----
From: **Clinton Baller** <clinton@baller4bham.com>
Date: Fri, Feb 24, 2023 at 7:52 PM
Subject: Re: Code of Conduct Input
To: Tom Markus <tmarkus@bhamgov.org>

I plan to comment after receiving marked up version highlighting new provisions.

[Quoted text hidden]

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You received this message because you are subscribed to the Google Groups "City Commission" group.
To unsubscribe from this group and stop receiving emails from it, send an email to city-commission+unsubscribe@bhamgov.org.
To view this discussion on the web visit <https://groups.google.com/a/bhamgov.org/d/msgid/city-commission/CALPLqCjD76wTKDv-MXRuFOzUb%3DnZHVU76rkZO0YFz3p7TD3m%3DA%40mail.gmail.com>.

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Please don't hesitate to call or write.
Clinton
248-971-0123

Mary Kucharek <Mkucharek@bhlaw.us.com>
To: Tom Markus <tmarkus@bhamgov.org>
Cc: Alex Bingham <abingham@bhamgov.org>, Therese Longe <tlonge@bhamgov.org>

Sat, Feb 25, 2023 at 10:13 AM

I do believe I am to point out what parts of the code are not stated in other documents, or other set of rules or regulations. Other things have been a priority, so I definitely will get that done earlier this week. Thank you for reminding me of this.

Sent from my iPhone

On Feb 25, 2023, at 10:04 AM, Tom Markus <tmarkus@bhamgov.org> wrote:

[Quoted text hidden]

Therese Longe <tlonge@bhamgov.org>
To: Tom Markus <tmarkus@bhamgov.org>
Cc: Mary Kucharek <Mkucharek@bhlaw.us.com>, Alex Bingham <abingham@bhamgov.org>

Sat, Feb 25, 2023 at 6:54 PM

I'm back in town. I recall, as Mary did in her follow-up email, that she was going to highlight in the code of conduct we reviewed what parts of the code are not stated in other documents, or other set of rules or regulations.

I also recall that Commissioners had 14 days to submit their comments.

I do not recall that these two directions were dependent on each other. However, I can see why a Commissioner would prefer to comment only on the non-duplicative parts of the proposed code. We aren't going to make changes to the parts that exist in other documents, although Commissioners could recommend that those sections not be included.

Since the 14 days will expire tomorrow, perhaps we could mention Monday that the comment period has been extended to allow review of the document Mary provides.

[Quoted text hidden]

Tom Markus <tmarkus@bhamgov.org>
To: Therese Longe <tlonge@bhamgov.org>
Cc: Alex Bingham <abingham@bhamgov.org>, Mary Kucharek <Mkucharek@bhlaw.us.com>

Sat, Feb 25, 2023 at 7:39 PM

I think our memories are consistent. However, I would say that Mary may conclude that just because something appears in another policy does not mean that it would be required to be removed from the code of conduct policy. Redundancy may actually be of value as it would reiterate the expectation of behavior and it may actually be more appropriately described in connection to how a violation of the code would be dealt with. I interpreted commissioner Ballers comments as throwing every argument at the code he could think of,

because he doesn't really support the concept of a code of conduct. Mary should provide what she thinks is the best code she can produce whether it includes some redundancy or not.

[Quoted text hidden]

Alex Bingham <abingham@bhamgov.org>
To: Mary Kucharek <mkucharek@bhlaw.us.com>

Fri, Apr 21, 2023 at 2:54 PM

[Quoted text hidden]

--

Alexandria D. Bingham

City Clerk

City of Birmingham

151 Martin Street

Birmingham, MI 48009

(248) 530-1802 Office Direct

(248) 530-1080 Fax

abingham@bhamgov.org

****Important Note to Residents****

Let's connect! Join the Citywide Email System to receive important City updates and critical information specific to your neighborhood at www.bhamgov.org/citywideemail.

CITY OF FAIRFIELD
RESOLUTION NO. 2015-46

A RESOLUTION OF THE CITY COUNCIL APPROVING AN AMENDED CODE OF CONDUCT AND FAIRFIELD CITY COUNCIL PROCESS AGREEMENTS

WHEREAS, on June 6, 2006, the City Council adopted Resolution No. 2006-126 approving a Code of Conduct for the City Council and the City's Commissions; and

WHEREAS, at its January 2009 Annual Council Workshop, the Council adopted the Fairfield City Council Process Agreements establishing ground rules for the conduct of Council business; and

WHEREAS, at its February 2015 Annual Council Workshop, the Council reviewed the Code of Conduct and Fairfield City Council Process Agreements and directed that these two documents be updated with amendments directed by the Council.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRFIELD HEREBY RESOLVES:

Section 1. The Code of Conduct is hereby amended and approved as set forth in Attachment A to this resolution.

Section 2. The Fairfield City Council Process Agreements is hereby amended and approved as set forth in Attachment B to this resolution.

PASSED AND ADOPTED this 17th day of March, 2015, by the following vote:

AYES: COUNCILMEMBERS: Price/Timm/Bertani/Moy/Vaccaro

NOES: COUNCILMEMBERS: Timm, Vaccaro

ABSENT: COUNCILMEMBERS: NONE

ABSTAIN: COUNCILMEMBERS: NONE

Nancy F. Price
MAYOR

ATTEST:
Karen L. Rees
CITY CLERK

CITY OF FAIRFIELD

CODE OF CONDUCT

for members of City Council and Commissions

(As Amended on March 17, 2015)

Preamble

The residents and businesses of Fairfield are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. The effective functioning of democratic government therefore requires that:

- Public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government;
- Public officials be independent, impartial and fair in their judgment and actions;
- Public office be used for the public good, not for personal gain; and
- Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Fairfield City Council has adopted a Code of Conduct for members¹ of the City Council and the City's commissions to assure public confidence in the integrity of local government and its effective and fair operation.

¹ For ease of reference in the Code of Conduct, the term "member" refers to any member of the Fairfield City Council or any of the City's commissions established by the City Council.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Fairfield and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the City Council and the City's commissions.

2. Comply with the Law

Members shall comply with the laws of the federal government, the State of California and the City of Fairfield in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the City Code; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Members

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the Council and commissions, the staff or the public.

4. Respect for Process

Members shall perform their duties in accordance with the processes and rules of order established by the City Council and commissions governing the deliberation of public policy issues, the involvement of the public, and the implementation of policy decisions of the City Council by City staff.

5. Conduct of Public Meetings

Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

6. Decisions Based on Merit

Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

7. Communication

Members shall publicly share substantive information that is relevant to a matter under consideration by the Council or commissions, which they may have received from sources outside of the public decision-making process.

8. Conflict of Interest

In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest, or where they have an organizational responsibility or personal relationship, which may give the appearance of a conflict of interest.

9. Gifts

Members shall report all gifts received as may be required by the Political Reform Act and its implementing regulations.

10. Confidential Information

Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interest.

11. Use of Public Resources

Members shall not use public resources not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.

12. Representation of Private Interests

In keeping with their role as stewards of the public interest, members of the Council shall not appear on behalf of the private interests of third parties before the Council or any commissions or proceedings of the City, nor shall members of commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

13. Advocacy

Members shall represent the official policies or positions of the City Council or commissions to the best of their ability when designated as delegates for their purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Fairfield, nor will they allow the inference that they do.

14. Policy Role of Members

Members shall respect and adhere to the council-manager structure of city government as provided by state law and the City Code. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, commissions, and City staff.

Members therefore shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.

15. Independence of Boards and Commissions

Because of the value of the independent advice of commissions to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of commission proceedings.

16. Positive Work Place Environment

Members shall support the maintenance of a positive and constructive work place environment for City employees and for residents and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

17. Implementation

As an expression of the standards of conduct for members expected by the City, this Code of Conduct is intended to be self-enforcing. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, ethical standards shall be included in the regular orientations for candidates for City Council, applicants to commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming that they read and understand the City of Fairfield Code of Conduct.

Fairfield City Council Process Agreements (As Amended on March 17, 2015)

1. Review Process for Putting Agenda Together as It Relates to Position of Items

Agreement:

Controversial issues will be placed early in evening and noticed. Retain old business and then new business in agenda sequence. Currently have flexibility/latitude on council agenda to move items before other items. The goal is to move up items on the agenda that will attract large numbers of the public as soon as it is known there will be large number of people attending the meeting. Suggestion: Have a disclaimer on the agenda reading: "Depending on public interest, items may be moved forward in the agenda."

Level of Agreement: All councilmembers concurred with this agreement.

2. Process for Adding an Item to City Council Agenda

Agreement:

If a councilmember wishes to add an item to the agenda of an upcoming council meeting, the member needs to go to the mayor to seek his/her concurrence for it to be added. If the mayor does not agree, then, at the next regular council meeting, the councilmember can bring up the request and seek one other member of the council to agree. If a second member agrees, then the item is listed on the agenda for the following council meeting.

Level of Agreement: All councilmembers concurred with this agreement.

3. Recognition and Presentations

Agreement:

Presentations are put on the agenda with concurrence of the city manager or mayor. It is difficult to set a firm rule that will cover all situations. Mayor and city manager will use their best judgment on scheduling presentations and recognitions. Time limits shall normally be 5 to 10 minutes (made clear to all parties for presentations during council meetings). Presentations may be extended by special circumstances as needed. Exceptions can be made at city manager or mayor's discretion.

Level of Agreement: All councilmembers concurred with this agreement.

4. Study Session Process

Agreement

The purpose of study sessions is to educate and inform the council on particular city issues and to encourage councilmembers to ask wide-ranging questions. The study session is the opportunity for the council to come together to discuss city issues among themselves. Study sessions have a different format than a council meeting.

- a. Staff will come to council in open session under the city manager's report prior to a scheduled study session to get council direction on the study session to be held. Staff will come to the open session with the list of topics for the study session for council review.
- b. Councilmember deadline for submitting questions to be answered prior to the study session is 8:00AM Thursday prior to Tuesday study sessions. Questions received after the deadline will be answered at the study session. Councilmembers expressed a desire to receive information in a timely manner. This process and timeline will be monitored and discussed at future council meetings.
- c. Staff will respond to questions via e-mail by the end of business Friday. Early questions give staff more time to respond. Background material must be manageable for all to have time to read.
- d. Councilmembers including the mayor can excuse themselves after 9:00PM; however, those who wish to continue may do so. Extensions after 9:00PM require a decision by the council to extend the session. This normally would be in 30-minute time blocks. Study sessions will end when there is no longer a quorum of the council or those present are not willing to extend the session.
- e. Time will be devoted at study sessions to discuss questions and issues. In some cases, the council may request a more detailed staff report. Normally, executive summary style of staff reporting will be used.

Two kinds of study sessions:

- Creates a chance for councilmembers to interact and have expanded dialog among each other. This allows open, free-wheeling dialog, as well as allowing councilmembers to ask questions among themselves. Councilmembers commit to coming to this type of study session prepared. Brief or no staff presentation in this type of study session.
- Provides an opportunity to educate constituents on an issue. Most likely the staff presentation would be longer for this type of study session. One example is budget presentation. Budget study sessions will be televised on Channel 26. Topics for study sessions will be chosen by the council. In addition, the council will regularly schedule a session to review progress on longer term on-going projects.

Level of Agreement: All councilmembers concurred with this agreement.

5. Amount of Staff Time and Resources Spent on Individual Councilmember Inquiries Before Requiring Council Concurrence

Agreement:

Ranking of priorities:

- a. Constituent: priority to get an answer right away.
- b. Small/simple question: OK to go ahead (city manager and city attorney alert council if it will take a significant amount of research.
- c. If significant work involved, there must be 2 votes to put it on the agenda for discussion and 3 votes to approve the work to be done.

On those occasions when a councilmember asks for information or research that costs a significant amount of money or takes a great deal of staff time, the city manager will first give the councilmember a brief summary reply of the issue and let the council know that any further information would likely take significant amounts of time, resources, and dollars and will need to be brought to the council as a whole. The council agreed to support the city manager in making these decisions and to review the effectiveness of this agreement and process periodically. When a councilmember does need to talk to a staff member to answer questions or provide information that does not require significant amounts of research the council understands that they will direct this question or concern to the department head of city manager first. Councilmembers understand that staff members need not interrupt their normal duties to respond to council requests unless the councilmember indicates it is an emergency.

If is further agreed that information requested by one councilmember will be shared with all councilmembers.

Level of Agreement: All councilmembers concurred with this agreement.

6. Chain of Command

Agreement:

Relationship of city council and staff: It is important to stay with the chain of command. City councilmembers should work through city manager and city attorney. Council is welcome to have contact with any city employee, but requests for information should go through the city manager and or executive management team.

Council agrees to stay within the chain of command. All councilmembers are free to speak with anyone within the organization as long as not directing them. Keep the city manager informed of contacts made.

Level of Agreement: All councilmembers concurred with this agreement.

7. Public Relations

Agreement:

- a. Council is comfortable with current manner in which the mayor handles routine contacts with media regarding city business.
- b. Mayor will serve as the general spokesperson for the city.
- c. When council has not taken a position on an issue, neither the mayor nor any member of the council will speak on behalf of the council. In these situations, the mayor or councilmember will use a phrases like, "Council has not taken an official position. Personally this is what I think..."
- d. Councilmembers should not second-guess the city manager and staff. Staff can e-mail councilmembers on hot issues coming up but councilmembers should not confer with each other on the hot issue outside of council meetings.
- e. The council will develop a tool for more specific direction to council subcommittees and commission subcommittees. See attached form for reference.

Level of Agreement: All councilmembers concurred with this agreement.

8. Placing Articles on Controversial Issues in Observer, Channel 26, and the City Website

Agreement:

- a. Articles are to be impartial.
- b. Placement of political issues requires a council decision.
- c. If the political piece is approved, staff needs to produce it without city council input.
- d. Items need to be reviewed by the city attorney's office for impartiality in accordance with state law.

Level of Agreement: All councilmembers concurred with this agreement.

9. Councilmembers Receiving Same Information

Agreement:

All councilmembers will receive the same information.

Level of Agreement: All councilmembers concurred with this agreement.

10. Ground Rules and Principles for City Councilmember Conduct at Council Meetings or Study Sessions

Agreement:

Ground rules and principles

DO AVOID

- Everyone has the right to be heard respectfully.
- Avoid wording or phrasing that tends to “shut members down” by characterizing them personally in a negative way or characterizing their ideas in a way that becomes personal.
- Avoid personal attack and language that is demeaning.
- Focus on the issue not the person. It is acceptable for the council to question issues, decisions, projects, and process but to not personalize this with regard to staff members in public session.
- Use phrases such as “I see it differently”. “My understanding is...” Avoid seeking to make the other person wrong or demeaning them. “You are wrong to believe...”

DO

- Be careful how you say what you say and be aware of physical clues, body language. Avoid being too thin-skinned.
- Listen fully without interrupting.
- Avoid correcting others behavior in public settings, especially in two areas – relevance of comments to the topic and length of comments – this is the prerogative of the mayor/chair of the meeting.
- Let the mayor balance the tension between moving on in order to get through issues; AND creating the opportunity for members to explore the issue as needed to reach a decision.
- Allow the mayor to run the meeting. Councilmembers to direct their process concerns to the mayor for action.
- Avoid people moving beyond their roles or taking over the mayor’s role.
- Avoid pointing out ground rules to others and overlooking ground rules when topic is particularly important to you.
- Council agrees to have the mayor call for a recess when a situation is volatile.
- At public meetings, council should praise in public and criticize in private.

Level of Agreement: All councilmembers concurred with this agreement.

11. Council Appointments

Agreements:

When a councilmember cannot attend a meeting of a committee, they will call their alternate in advance. Councilmembers also agreed to periodically report back to the full

council on their committee assignments. Councilmembers are welcome to attend committees on which they are not the designated representative or alternate as an observer (As a courtesy, try to notify representatives if possible). If 3 or more councilmembers are present at any of these meetings, the non-representative councilmembers must not participate in the meeting.

Level of Agreement: All councilmembers concurred with this agreement.

PRINCIPLES of CONDUCT for YAKIMA CITY COUNCIL MEMBERS

The Principles of Conduct is supplemental to the Yakima Municipal Code and the Code of Ethics and applies to the City Council. The Principles of Conduct describes how City of Yakima Council members treat each other and work together for the common good of the community. Conducting the City's business in an atmosphere of respect and civility is the underlying theme in this Code. City Council members are responsible for holding themselves and each other accountable for displaying actions and behaviors that consistently model the ideals expressed in the Code.

As a City Council member, of the City of Yakima, I agree to these principles of conduct:

- I. Consistently demonstrate the principles of professionalism, respect, and civility in working for the greater good of Yakima.*
- II. Treat each other with trust, respect, honesty, fairness, sensitivity, and dignity.*
- III. Committed to acting and being seen as acting with integrity and impartiality that will bear the closest scrutiny.*
- IV. Committed to working with City officials and staff in a conscientious and respectful manner.*
- V. Support a positive and constructive environment for residents, businesses, and City employees.*
- VI. Refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the City Council, boards, commission, committees, staff, or the public.*
- VII. Refrain from influencing any person in an improper way to try to obtain any advantages or favors.*
- VIII. Avoid personal comments that could offend others.*
- IX. Listen courteously and attentively to all public discussions and treat all people the way I wish to be treated.*
- X. Be aware that written notes, voicemail messages, email, and other communication that occurs during the conduct of the City's business is subject to public disclosure. Even private conversations can have a public presence.*



CITY OF NEVADA CITY

CITY COUNCIL STANDARDS AND PROCEDURES

Updated March 9, 2022

COUNCIL STANDARDS AND PROCEDURES

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CITY OF NEVADA CITY

CITY COUNCIL STANDARDS AND PROCEDURES

SECTION 1. GENERAL

1.1 Purpose. The purpose of these Standards and Procedures is to promote communication, understanding, fairness, and trust among the members of the City Council and staff concerning their roles, responsibilities, and expectations for management of the business of the City of Nevada City.

1.2 Values. Respect for each Council Member's interpersonal style will be a standard of operation. Courtesy and respect for individual points of view will be practiced at all times. All Council Members shall respect each other's right to disagree. All Council Members shall practice a high degree of decorum and courtesy. When addressing the public in any way, all Council Members shall make certain their opinions are expressed solely as their own, and do not in any way necessarily reflect the opinions of any other Council Member or the City.

1.3 Overview of Council responsibilities. The City of Nevada City is a General Law city of the State of California operating under the Council/Manager form of government and the City Manager's duties shall define how the City Council and City Manager interact and perform their respective duties and responsibilities. The City Council has the following duties and responsibilities:

- (a) Appointment of the City Manager and City Attorney.** The City Council shall appoint the City Manager and the City Attorney. There should be an annual review for the City Manager and the City Attorney.
- (b) Establishment of boards and appointment of members.** The Council may appoint establish Boards, Commissions, and Committees, and by majority vote make appointments of members of all Boards, Commissions, and Committees.
- (c) Legislative decisions.** The Council is the legislative body; its members are the community's decision makers. Power is centralized in the elected City Council collectively and not in individual members of the Council. The City Council approves the budget and determines the public services. It focuses on the community's goals, major projects and such long term considerations as community growth, financing and strategic planning. The City Council hires a professional City Manager to carry out administrative responsibilities and supervises the City Manager's performance.

1.4 Overview of City Manager responsibilities. The City Manager is hired to serve the City Council and the community and to bring the benefits of education, training and experience in administering the City's projects, programs, and public services on behalf of the City Council. The City Manager has the following among his or her duties:

- (a) Preparation of a Recommended Budget.
- (b) Recruitment, Hiring, and Supervision of Personnel, Contractors, and Consultants.
- (c) Implementation of the Council's policies and programs and public services in an effective and efficient manner, providing professional advice on policy matters, intergovernmental affairs, economic development and environmental issues.

The City Manager follows the direction of the entire City Council and not individual members of the Council or the public, and serves at the sole discretion of the Council. *(See Nevada City Municipal Code Chapter 2.08.)*

1.5 Review. The City Council shall conduct a review of this document biennially, or whenever a new Council Member has been seated or Council deems necessary, to assist Council Members in being more productive in management of the business of the City. A new Council will consider the document within three months of its first regular meeting.

1.6 Ralph M. Brown Act. All conduct of the City Council, Commissions, Committees and Subcommittees shall be in full compliance with the Ralph M. Brown Act.

SECTION 2. MAYOR AND VICE MAYOR SELECTION PROCESS

2.1 Reorganization. In July of each year, the office of the Mayor and Vice Mayor (also known as Mayor Pro Tem) shall rotate based on the policy set forth in Nevada City Resolution Nos. 2007-34 and 2012-23, as follows:

- (a) The Mayor shall be the senior member who has not previously served in that capacity and the term of office shall be one year, without succession, beginning at the first regularly scheduled City Council meeting each July or the first meeting following certification of a City Council election.
- (b) The Mayor Pro Tem shall be the next senior member who has not previously served as Mayor and the term of office shall run concurrent with that of the Mayor as described above.
- (c) When two or more members have equal seniority and have not yet served as Mayor or Mayor Pro Tem, the order of succession shall be determined by the number of votes each member received at the time of their election.
- (d) The Mayor Pro Tem shall automatically succeed the Mayor each year, excepting that the Mayor Pro Tem may decline such succession. If the Mayor Pro Tem declines the position of Mayor, such office shall be extended to the next senior member in order, or by majority vote of the Council if all other members have served at least one year as Mayor.

- (e) Once all seated members have served as Mayor, succession shall be based on a majority vote of the Council, recognizing that the term of office for each position shall be one year.

Members of the City Council who first took their seats on the Council more than twenty-three (23) months prior to the meeting at which the Mayor is being selected are eligible for Mayorship.

2.2 Appointment of Vacancy. In the event of a vacancy on the City Council, the Council may fill the vacancy either by appointment or special election as set forth in Government Code section 36512.

SECTION 3. ADMINISTRATIVE MATTERS

3.1 Attendance. City Council Members acknowledge that attendance at lawful meetings of the City Council is part of their official duty. Council Members shall make a good faith effort to attend all such meetings unless unable. Council Members will notify the City Manager or the Deputy City Clerk, and, if possible, the Mayor as a courtesy, if they will be absent from a meeting. Failure to attend regular City Council meetings for sixty (60) consecutive days from the last regular meeting can result in your seat becoming vacant and filled accordingly. (Gov't Code § 36513.)

3.2 Regional Boards. The role of the Council on regional boards will vary depending on the nature of the appointment. Representing the interests of Nevada City is appropriate on some boards; this is generally the case when other local governments have their own representation. The positions taken by the appointed representatives are to be in alignment with the positions that the Council has taken on issues that directly impact the City of Nevada City. If an issue should arise, that is specific to Nevada City and the Council has not taken a position, the issue should be discussed by the Council prior to taking a formal position at a regional board meeting, to assure that it is in alignment with a majority of the Council's position.

Council representatives to such various boards shall keep the Council informed of ongoing business through brief oral or written reports to the Council during properly posted Council meetings.

Council Members shall make a good faith effort to attend all regional meetings that require a quorum of the appointed members to convene a meeting. Attendance should not be less than 75% of all scheduled meetings. If a Council Member is unable to attend, he/she should notify his/her alternate as far in advance of the meeting as possible so as to allow the alternate to attend.

3.3 Distribution of Information. It is essential that every member of the City Council have the same information from which to form decisions and actions. Any information distributed to one Council Member shall also be distributed to all Council Members.

3.4 Reimbursement. Every effort shall be made to limit the need to reimburse Council Members for expenses. City Council Members may be reimbursed for personal expenses for travel to and lodging at conferences or meetings related to their role as a Council Member in

accordance with the current Travel and Meeting Reimbursement Policy adopted by the City Council. Any request for reimbursement of expenses shall be accompanied by an expense form and receipts to document the expenditure. These documents are public records subject to disclosure under the California Public Records Act. *(See Nevada City Resolution 2014-12 and attached Travel and Meeting Reimbursement Policy.)*

Brief reports must be given on any outside meeting attended at the expense of the City at the next regular Council meeting. Reimbursement is conditioned on the submission of this report to the legislative body.

3.5 Ethics, Sexual Harassment and Anti-Bullying Training. Any member of the City Council and commissions, or advisory committees formed by the City Council, shall receive at least two hours of ethics training in general ethics principles and ethics laws *(as mandated by AB 1234)*, two hours of sexual harassment prevention training *(as mandated by AB 1825)* and two hours of abusive conduct prevention training *(as mandated by AB 2053)* all relevant to his/her public service every two years. New members must receive this training within their first year of service and file a certificate of completion with the Deputy City Clerk. Members shall attend training sessions that are offered locally in the immediate vicinity of Nevada County or by completing online a state-approved public service ethics education program.

An individual who serves on multiple legislative bodies need only receive two hours of each of these trainings every two years to satisfy this requirement for all applicable public service positions. The City will use and recognize training courses that have been reviewed and approved by the Fair Political Practices Commission and the California Secretary of State.

The Deputy City Clerk is required to keep ethics training records for five years to document and prove that these continuing education requirements have been satisfied. These documents are public records subject to disclosure under the California Public Records Act.

3.6 City Mission and City Seal. The Mission of the City of Nevada City is a strategic document that reflects the values of our residents. The City Seal is an important symbol of the City of Nevada City. No change to the City Mission and/or City Seal shall be made without Council approval. Pursuant to Government Code 40811, the City Clerk is the custodian of the City Seal. Individual councilmembers should not issue correspondence on City Letterhead or use the City Seal without authorization from the City Council or City Manager.

3.7 Use of Social Media and Email. See City of Nevada City's general social media and email policies.

SECTION 4. COUNCIL RELATIONSHIP WITH STAFF

4.1 City Manager. City Council Members are always free to go to the City Manager to discuss City business. Issues concerning the performance of a Department or any employee must be directed to the City Manager. Direction to City employees, other than the City Manager or City Attorney, is the prerogative of the City Manager. In passing along critical information, the City Manager will be responsible for contacting all Council Members. The City Manager may delegate this responsibility to Department Heads. *(See Nevada City Municipal Code Chapter 2.08.030.)*

4.2 Agenda Item Questions. If a Council Member has a question on a subject, the Council Member is encouraged to contact the City Manager prior to any meeting at which the subject may be discussed. This does not restrict Council Members from asking questions during a Council meeting.

4.3 Interaction of City Council with Staff. The Council shall treat staff with respect and shall not abuse staff, nor embarrass staff in public. The City Council Members are to work through the City Manager on all issues, concerns and questions. This is to allow the senior professional staff, with the proper education, training, experience and knowledge of issues, laws and City Council's policies to coordinate a full and complete response and reduce error or misunderstanding by staff members not necessarily knowledgeable on all issues. This can provide a better overall response, allow any new issues to properly be considered and avoid unintended redirection of staff efforts. Council Members may ask Department Heads for information. This informal system of direct communication is not to be abused. City Council Members shall not meet with groups of management employees for the purpose of discussing terms of employment or establishing employee policy.

4.4 Individual Council Member's Requests. Council Members shall make their reasonable requests for information to the City Manager. The amount of total staff time to be allotted to any reasonable request shall be determined by the City Manager at his/her discretion.

SECTION 5. PROCEDURES FOR APPOINTMENTS TO BOARDS/COMMISSIONS/COMMITTEES

5.1 Definitions.

- (a) Task Force:** A temporary grouping of individuals and resources for the accomplishment of a specific objective.
- (b) Committee:** A group of people officially delegated to perform a function, such as investigating, considering reporting, or acting on a matter.
- (c) Ad Hoc:** Committees established for a specific purpose. Formed for or concerned with one specific purpose (e.g. ad hoc parking committee); for the particular end or case at hand without consideration of wider application; formed or used for specific or immediate problems or needs; often improvised or impromptu; contrived purely for the purpose in hand rather than carefully planned in advance.
- (d) Commission:** A group of people officially authorized to perform certain duties or functions with certain powers or authority granted; the act of granting certain powers or the authority to carry out a particular task or duty; the rank and powers so conferred.

5.2 Recruitment Process.

- (a)** On or before December 31st of each year, the Deputy City Clerk shall prepare and post a list of all Council-appointed board, commission and committee terms that expire during the next calendar year in compliance with the state law (Government Code Sections 54970 et. seq.).

- (b) The Deputy City Clerk shall annually advertise on the City’s website for applicants wishing to be considered for appointment to boards, commissions and committees.
- (c) All persons seeking appointment to a City board, commission or committee shall complete and submit an application form to the Deputy City Clerk as set forth in Section 5.6. Applications shall be kept on file for two years in the Deputy City Clerk’s office and vacancies may be considered from applications on file, as well as new applications.
- (d) Appointments made by the Council, except to the planning commission (see 5.7), are official only after the Council has submitted a completed application and appointment form to the Deputy City Clerk, the Deputy City Clerk has determined that the individual is eligible to serve and the Deputy City Clerk has provided proper notification to the appointed board, commission or committee member, and chair of the board, commission or committee. The Council may announce an appointment at a City Council meeting; however, such an announcement is not required for the appointment to become effective.
- (e) If an unscheduled board or commission vacancy occurs during the term of the appointing Council Member and the Council Member so requests, the following steps should be taken to publicize vacancies on boards, commissions and committees:
 - 1. Public announcement of the vacancy at a Council meeting.
 - 2. A recruitment period of at least ten (10) days.
 - 3. A vacancy notice posted at City Hall, Redbud Library, and on the City’s website for at least 20 days.
 - 4. Announcements in the local media, such as press releases, online news outlets and free weekly sales papers.
 - 5. Distribution to appropriate professional and community organizations and all groups that have requested notification.

5.3 Requirement for Appointment.

- (a) All persons appointed to City boards, commissions and committees shall be residents of the City of Nevada City at the time of their appointment and shall remain so throughout their term of appointment. Should any person so appointed move from the City during their term of office, such office shall be forfeited. The Council shall, upon forfeiture, make a new appointment to fill the unexpired term.
- (b) All persons appointed to City boards, commissions and committees should complete and submit an application form to the Deputy City Clerk as set forth in Section 5.6.
- (c) Except as provided by state or local statute, the appointee shall not be a current City employee or currently appointed to another City board, committee or commission.

5.4 Council Notification. By September 1 of each year, the Deputy City Clerk will notify the Council of expiring terms for members of those City boards, commissions, and committees appointed by the full Council.

5.5 Incumbents.

- (a)** At the end of the first term, the incumbent board, commission or committee member may, at the discretion of the Council or appointing Council Member, be reappointed for an additional term without the need to apply or interview for re-appointment. In lieu of an application, the board, commission or committee member shall submit to the Deputy City Clerk a letter of interest in re-appointment 30 days prior to the expiration of the member's first term.
- (b)** Any incumbent interested in re-appointment who has served two or more terms must apply for re-appointment as set forth in Section 5.6.

5.6 Application. Except as set forth in Section 5.5, all persons considered for appointment or re-appointment shall complete an application form. This application form must be received by the Deputy City Clerk by the required deadline.

5.7 Appointment Procedure for Planning Commission Members. This portion of the policy sets forth the procedure for appointments of Planning Commission Members consistent with Chapter 2.36 of the Nevada City Municipal Code.

- (a)** The Commission shall consist of five (5) members and each member of the City Council shall have the right to appoint one (1) Planning Commissioner. Planning Commissioners must be residents of Nevada City.
- (b)** Planning Commissioners serve at the will and pleasure of the City Council and shall take an oath of office at a regular City Council meeting before assuming office.
- (c)** The normal term of each Planning Commissioner shall begin upon appointment and end no more than ninety (90) days after the appointing Council Member leaves office. In the event that a new Council Member takes office earlier than ninety (90) days after the appointing Council Member leaves office, the new Council Member may appoint a new Planning Commissioner before the end of the ninety (90) day period above mentioned (said appointment shall be pursuant to Section 2.36.020 of the Nevada City Municipal Code). In the event that a new Council Member has not been seated within ninety (90) days of the appointing Council Member leaving office, the City Council may appoint a person to act as a temporary Planning Commissioner until a new Council Member is seated and appoints a Planning Commissioner.
- (d)** Any planning commissioner may be removed by a majority vote of the total voting members of the Council.
- (e)** In the event that a Planning Commissioner resigns, is removed or otherwise ceases to act as a Planning Commissioner, that vacancy shall be filled by the Council Member who originally appointed that Planning Commissioner.

5.8 Appointment Procedure for Board and Committee Members Appointed by the Full Council. This portion of the policy sets forth the procedure for appointments made by the full Council for boards and committees appointed by the full Council.

- (a) The council or a duly established ad hoc committee shall conduct interviews of all nominated candidates prior to appointment.
- (b) If an unscheduled board or committee vacancy occurs prior to the expiration of the member's term, the vacancy shall be noticed in compliance with the state law (Government Code Sections 54970- 54974).
- (c) All persons appointed by the full Council to boards and committees serve at the pleasure of the Council and shall serve for the term indicated or until a successor has been appointed.
- (d) Members of boards and committees appointed by the full Council shall be interviewed at a duly noticed open Council meeting and shall be selected by motion and majority vote of the Council.

5.9 Attendance.

- (a) Board, commission and committee members are expected to regularly attend and participate on their respective boards, committees and commissions.
- (b) A board, commission or committee member whose attendance is less than seventy five (75%) of the required meetings over a period of a year may be subject to removal by the Council Member who appointed the person or the full Council if appointed by the Council.
- (c) The Council may grant an approved leave of absence for a board, commission or committee member for such reasons as the Council determines appropriate. During the approved leave of absence, the Council Member who appointed the person, or full Council, depending on how the person was appointed, may appoint a temporary person to fill the position.

5.10 Standards and Procedures and Conflicts of Interest.

- (a) Board, committee and commission members shall be expected to adhere to the Council Standards and Procedures.
- (b) Board, committee and commission members shall comply with all state and local laws with respect to ethics and conflicts of interests to the extent that such laws apply to their position, including state and local requirements to timely file Statements of Economic Disclosure if the member is designated as a filer by state law or by the City's Conflict of Interest Code. Boards, committees and commissions are generally subject to the Brown Act except for certain narrow circumstances outlined in Government Code 54952(b). The City Attorney should be consulted whenever there is a question on the transparency rules applicable to a particular board, committee or commission.

- (c) Members of City boards, commissions or committees may not use their board, commission or committee position title for political endorsements.

5.11 Conflicts with Federal, State or Local Law. In case of a conflict between this section of the Standards and Procedure policy with federal, state or local law, such federal, state or local law shall be the controlling factor.

SECTION 6. MEETINGS

6.1 Open to Public. All meetings of the City Council whether regular, special, or study sessions, shall be open to the public, unless a closed session is held as authorized by law. All meetings shall be noticed as required to allow action to be taken by the Council.

6.2 Broadcasting of City Council Meetings. All regular Council meetings shall be scheduled in the Council Chambers to allow for web streaming and simulcast on the Public Education Government Access Channel, unless alternative arrangements to hold meetings in another location are made in compliance with the Brown Act

6.3 Regular Meetings. The City Council shall convene its regular City Council meetings at 6:30 p.m. on the second and fourth Wednesday of each month. The City Council may, as the Council deems necessary, cancel regular meetings provided that the City Council shall hold a regular meeting at least once each month pursuant to Government Code Section 56803. The regular 6:30 p.m. starting time of a council meeting can be varied by the City Manager with the concurrence of the Mayor.

6.4 Cancelling Meetings. Any meeting of the City Council may be cancelled in advance by majority vote of the Council. The Mayor may cancel a meeting in the case of an emergency or when a majority of members have confirmed their unavailability to attend a meeting. The City Council may, as the Council deems necessary, cancel no more than four (2) Regular Meetings per calendar year (outside of the months of November and December which only have one meeting per month annually), by majority vote, provided, however, that the City Council shall hold a Regular Meeting at least once each month pursuant to Government Code Section 36805.

6.5 Special Meetings. A special meeting may be called at any time by a majority of the City Council or the City Manager in accordance with the Brown Act. Written notice of any such meeting must specify the purpose of the meeting. Notice of the meeting must be given in accordance with law. Public comments at special meetings shall be limited to only those items described on the special meeting notice/agenda.

The City Council may hold study sessions or joint meetings with other boards, commissions, committees, or agencies as deemed necessary to resolve City business. These meetings will be coordinated by the City Manager. Study sessions are scheduled to provide Council Members the opportunity to better understand a particular item. While Council may legally take action at any noticed meeting, generally no formal action is taken at study sessions. If action is to be taken at a study session, then the agenda will state that action may be taken.

6.6 Closed Sessions. The City Council may hold closed sessions at any time authorized by law (and in consultation with the City Manager and/or the City Attorney), to consider or hear any matter, which is authorized by law. The City Manager or any three Council Members may call closed session meetings at any time.

6.7 Quorum. Three (3) members of the City Council shall constitute a quorum and shall be sufficient to transact business. If fewer than, three Council Members appear at a regular meeting, the Mayor, Vice Mayor in the absence of the Mayor, any Council Member in the absence of the Mayor and Vice Mayor, or in the absence of all Council Members, the City Manager or Deputy City Clerk, shall adjourn the meeting to a stated day and hour.

Business of the City Council may be conducted with a minimum of three members being present; however, pursuant to the California Government Code, matters requiring the expenditure of City funds and all resolutions and non-urgency ordinances must receive three affirmative votes for approval.

6.8 Minutes. The Deputy City Clerk shall prepare action minutes of all public meetings of the City Council. Copies shall be distributed to each Council Member as part of the regular meeting agenda packet.

6.9 Adjourned Meetings. The City Council may adjourn any regular, adjourned regular, special, or closed session meeting to a time and place specified in the order of adjournment and permitted by law.

SECTION 7. AGENDA CONTENTS

7.1 Mayor's Responsibility. The Mayor is responsible for running a timely and orderly meeting. If the Mayor is unavailable to run a Council meeting, the Vice Mayor shall run the meeting. If the Mayor and the Vice Mayor are both unavailable to run a Council meeting, the Mayor shall designate another councilmember to run the meeting. If the Mayor is unavailable to make this designation, the Vice Mayor shall do so.

7.2 Description of Matters. All items of business to be discussed at a meeting of the City Council shall be briefly described on the agenda. The description should set forth the proposed action to be considered so that members of the public will know the nature of the action under review and consideration. As stated in Section 4.2, if a Council Member has a question on a subject, the Council Member should contact the City Manager prior to any meeting at which the subject may be discussed.

7.3 Availability to the Public. The agenda for any regular, special, or study session meeting, shall be made available to the public as required by law.

7.4 Limitation to Act Only on Items on the Agenda. No action shall be taken by the City Council on any item not on the posted agenda, subject only to the exceptions listed below:

- (a) Upon a majority determination that an "emergency situation" (as defined by State Law) exists; or

- (b) Upon determination by a 4/5 vote of the full City Council, or a unanimous vote if less than a full Council, that there is a need to take immediate action and that the need to take the action came to the attention of the City Council subsequent to posting of the agenda.

7.5 "Timing" of Agenda. Staff and/or the Mayor **may** "time" the agenda as a way for the Council to maintain a sense of how much time can be committed to any one item without going past an established ending time for the meeting.

7.6 Change in Order of Business. The City Manager, Mayor, or the majority of the Council, may decide to take matters listed on the agenda out of the prescribed order. Council Members shall be given the opportunity to ask questions about Consent Items for clarification without having them removed.

7.7 Agenda Request Policy. Requests for placement of items on the agenda by the public can be requested to the City Council during Public Comments for Items not on the Agenda. Any member of the Council may request that an item be placed on a future agenda by indicating their desire to do so under that portion of the City Council agenda designated, "Council Member Requested Items, Committee Reports and Future Agenda Items" Additionally, the City Manager may place items on the agenda. For requested items by the public and/or the City Council the majority of Council must agree on the addition of that item to a future agenda.

SECTION 8. PROCEDURES FOR THE CONDUCT OF PUBLIC MEETINGS

8.1 Role of Mayor.

(a) The Mayor shall be responsible for maintaining the order and decorum of meetings. It shall be the duty and responsibility of the Mayor to ensure that the rules of operation and decorum contained herein are observed. The Mayor shall maintain control of communication between Council Members and among Council, staff and public. The Mayor shall intervene when a Council Member, staff or other meeting participant is being verbally or otherwise attacked by a member of the public.

(b) Communication with Council Members:

1. Council Members shall request the floor from the Mayor before speaking.
2. When one member of the Council has the floor and is speaking, other Council Members shall not interrupt or otherwise disturb the speaker.

(c) Communication with members of the public addressing the Council on agenda items

1. The Mayor shall open the floor for public comment as appropriate.

2. Council Members may question a person addressing the Council at the conclusion of the person's comments or upon expiration of the person's time to speak.
3. Any staff member with an item on the agenda will be available to the City Council to answer questions arising during discussions between Council Members and among Council Members and members of the public.
4. Members of the public shall direct their questions and comments to the Council.

8.2 Rules of Order. The City Council shall refer to *Rosenberg's Rules of Order*, as a guide for the conduct of meetings, with the following modifications:

(a) A motion is not required prior to a general discussion on an agenda item. A pre-motion discussion allows the members to share their thoughts on the agenda item so that a motion can more easily be made that takes into account what appears to be the majority position.

(b) All motions require a second.

(c) A motion may be amended at the request of the maker and the consent of the person who seconded the motion. Such a procedure is often used to accommodate concerns expressed by other members.

(d) A motion to amend may still be used.

The Mayor has the discretion to impose reasonable rules at any particular meeting based upon facts and circumstances found at any particular meeting. These latter rules will be followed unless objected to by a majority of the City Council Members present.

8.3 Public Comment.

(b) The limit for speakers will be up to 3 minutes, depending on the number of speakers. Speakers are not allowed to delegate their time to another speaker without permission from the Mayor. The Mayor may limit the time to be spent on an item and may continue the item, with the approval of the majority of the Council, to a future meeting at his/her discretion.

(c) Upon addressing the Council, each speaker is requested, but not required, to first state his/her name, whom they represent and/or city of residence.

(d) After the speaker has completed their remarks, the Mayor may direct the City Manager or City Attorney to briefly address the issues brought forth by the speaker. Council Members shall be respectful of the speakers and shall not enter into a debate with any member of the public nor discuss amongst themselves.

(e) All Council Members shall listen to all public discussion as part of the Council's community responsibility. Individual Council Members should remain open-minded to informational comments made by the public.

(f) The Mayor has the right to ask a member of the public to step down if over the allotted time or if the speaker's comments are not within the city's jurisdiction.

8.4 Motions. It will be the practice of the City Council for the Mayor to provide Council Members an opportunity to ask questions of staff, comment on, and discuss any agenda item in order to help form a consensus before a motion is offered. After such discussion, the Mayor or any Council Member may make a motion. Before the motion can be considered or discussed, it must be seconded. Once a motion has been properly made and seconded, the Mayor shall open the matter to full discussion offering the first opportunity to speak to the moving party, and thereafter, to any Council Member recognized by the Mayor. Customarily, the Mayor will take the floor after all other Council Members have been given the opportunity to speak.

If a motion clearly contains divisible parts, any Council Member may request the Mayor or moving party divide the motion into separate motions to provide Council Members an opportunity for more specific consideration.

Tie Votes: Tie votes shall be lost motions. When all Council Members are present, a tie vote on whether to grant an appeal from official action shall be considered a denial of such appeal, unless the Council takes other action to further consider the matter. If a tie vote results at a time when fewer than all members of the Council, who may legally participate in the matter are present, the matter shall be automatically continued to the agenda of the next regular meeting of the Council, unless otherwise ordered by the Council.

8.5 Reconsideration.

(a) Request for reconsideration.

1. Request by a member of the public.

Notwithstanding *Rosenberg's Rules of Order*, a request for reconsideration may be made by a member of the public to the City Council at the next regular meeting of the City Council or at any intervening special meeting of the City Council.

2. Request by a member of the City Council.

Only a member of the City Council who voted on the prevailing side may request reconsideration. The request may be made at the same meeting or at the next regular meeting of the City Council or at any intervening special meeting of the City Council.

3. The member of the public or City Council Member making the request should state orally or in writing the reason for the request, without dwelling on the specific details or setting forth various arguments.

(b) Motion to reconsider any Council action.

1. Reconsideration at the same meeting.

A motion to reconsider an action taken by the City Council may be made at the same meeting at which the action was taken (including an adjourned or continued meeting). A motion to reconsider an action taken by the City Council may be made only by a Council Member who voted on the prevailing side, but may be seconded by any Council Member and is debatable. The motion must be approved by a majority of the entire City Council.

2. Reconsideration at a subsequent meeting.

If an intent to request a motion for reconsideration is communicated to the City Council prior to the deadline for posting the City Council meeting agenda, then the request for reconsideration may be agendaized if support for said action exists in accordance with the *Council Standards* Section 10.8. Otherwise, no City Council discussion or action on a possible reconsideration may occur unless the item is appropriately added to the agenda pursuant to Government Code section 54954.2(b), which addresses adding items that are not listed on a posted agenda (urgency agenda item). At the time such motion for reconsideration is heard, testimony shall be limited to the facts giving rise to the motion.

(c) Effect of approval of motion.

Upon approval of a motion to reconsider, and at such time as the matter is heard, the City Council shall only consider any new evidence or facts not presented previously with regard to the item or a claim of error in applying the facts.

If the motion to reconsider is made and approved at the same meeting at which the initial action was taken and all interested persons (including applicants, owners, supporters and opponents) are still present, the matter may be reconsidered at that meeting or at the next regular meeting or intervening special meeting (subject to the discretion of the maker of the motion) and no further public notice is required.

If the motion to reconsider is made and approved at the same meeting at which the initial action was taken but all interested persons are not still present, or if the motion is made and approved at the next regular meeting or intervening special meeting, the item shall be scheduled for consideration at the earliest feasible City Council meeting and shall be re-noticed in accordance with the Government Code, the City Municipal Code and the *Council Standards and Procedures*. The Clerk shall provide notice to all interested parties as soon as possible when a matter becomes the subject of a motion to reconsider.

8.6 Discussion.

(a) The discussion and deliberations at meetings of the City Council are to secure the mature judgment of Council Members on proposals submitted for decision. This purpose is best served by the exchange of thought through discussion and debate.

To the extent possible, Council Members should disclose any ex parte communication prior to discussion on an item. Ex parte communications are those made in private between an interested party and an official in a decision-making process.

Discussion and deliberation are regulated by these rules in order to assure every member a reasonable and equal opportunity to be heard.

(b) Obtaining the floor for discussion.

After the Council has commented on an issue, and a motion has been stated to the Council and seconded, any member of the Council has a right to discuss it after obtaining the floor. The member obtains the floor by seeking recognition from the Mayor. A member who has been recognized should make their comments clear, brief and concise.

(c) Speaking more than once.

To encourage the full participation of all members of the Council, no member or members shall be permitted to monopolize the discussion of the question. If a Council Member has already spoken, other Council Members wishing to speak shall then be recognized. No Council Member shall be allowed to speak a second time until after all other Council Members have had an opportunity to speak.

(d) Relevancy of discussion.

All discussion must be relevant to the issue before the City Council. A Council Member is given the floor only for the purpose of discussing the pending question; discussion which departs is out of order. Council Members shall avoid repetition and strive to move the discussion along.

A motion, its nature, or consequences, may be attacked vigorously. It is never permissible to attack the motives, character, or personality of a member either directly or by innuendo or implication. It is the duty of the Mayor to instantly rule out of order any Council Member who engages in personal attacks. It is the motion, not its proposer that is subject to debate.

Arguments, for or against a measure, should be stated as concisely as possible. It is the responsibility of each Council Member to maintain an open mind on all issues during discussion and deliberation.

It is not necessary for all City Council Members to speak or give their viewpoints if another Council Member has already addressed their concerns. Although issues with potential to be litigated or otherwise appealed should have comments by each Council Member on the record.

(e) Mayor's duties during discussion.

The Mayor has the responsibility of controlling and expediting the discussion. A Council Member who has been recognized to speak on a question has a right to the undivided attention of the Council.

It is the duty of the Mayor to keep the subject clearly before the members, to rule out irrelevant discussion, and to restate the question whenever necessary.

8.7 Council Member Respect. At all times, Council Members in the minority on an issue shall respect the decision and authority of the majority.

8.8 Announcements. Council reports at the end of Council meetings shall be limited to announcing Mayor/Council related activities in which Council Members are involved, City and City-sponsored activities and items which directly affect the City. Community groups may announce their activities during Public Comments at the beginning of Council meetings. Council Members should refrain from making personal comments, stating personal activities, or items that do not impact their role as a Council Member.

SECTION 9. CLOSED SESSIONS

9.1 Purpose. It is the policy of the City Council to conduct its business in public to the greatest extent possible. However, state law recognizes that, in certain circumstances, public discussion could potentially jeopardize the public interest, compromise the City's position, and could cost the taxpayers of Nevada City financially. Therefore, closed sessions shall be held from time to time as allowed by law. The procedures for the conduct of these meetings shall be the same as for public meetings, except that the public will be excluded.

Prior to convening the closed session meeting, the Mayor shall publicly announce the closed session items and ask for public input regarding any items on the closed session agenda.

Council Members are to keep all information obtained during closed session in complete confidence. All written materials provided to councilmembers during closed session shall be returned to the City Manager at the conclusion of each closed session.

If the City Council in closed session has provided direction to City staff on proposed terms and conditions for any type of negotiations, whether it be related to property acquisitions or disposal, a proposed or pending claim or litigation, or employee negotiations, all contact with the other party will be through the designated City person(s) representing the City in the handling of the matter. A Council Member, not so designated by the Council, will not under any circumstances have any contact or discussion with the other party or its representative concerning the matter which was discussed in the closed session, and will not communicate any discussions conducted in closed session to such party.

9.2 Rule of Confidentiality. The City Council recognizes that breaches in confidentiality can severely prejudice the City's position in litigation, labor relations and real estate negotiations. Further, breaches of confidentiality can create a climate of distrust among Council Members and can harm the Council's ability to communicate openly in closed sessions, thereby impairing the Council's ability to perform its official duties.

The City Council further recognizes that confidentiality of discussions and documents are at the core of a closed session. Confidentiality is essential if the closed session is to serve its purpose. Therefore, the City Council will adhere to a strict policy of confidentiality for closed sessions.

9.3 Breach of Rule of Confidentiality. No person who attends a closed session may disclose any statements, discussions, or documents used in a closed session except where specifically authorized by State law. Any authorized disclosure shall be in strict compliance with these rules and the Ralph M. Brown Act. Violation of this rule shall be considered a breach of this rule of confidentiality.

9.4 Agenda. The City Council agenda will contain a brief general description of the items to be discussed at the closed session, as required by law.

9.5 Permissible Topics. All closed sessions will be held in strict compliance with the Ralph M. Brown Act. The City Attorney, or his/her designee, will advise in advance on topics that may be discussed in a closed session.

9.6 Rules of Decorum.

(a) The same high standard of respect and decorum as apply to public meetings shall apply to closed sessions. There shall be courtesy, respect and tolerance for all viewpoints and for the right of Council Members to disagree. Council Members shall strive to make each other feel comfortable and safe to express their points of view. All Council Members have the right to insist upon strict adherence to this rule.

(b) Prior to a vote, the Mayor shall ensure that the motion is clearly stated and clearly understood by all Council Members.

(c) The Mayor shall keep the discussion moving forward so that debate and a vote can occur in the time allotted for the closed session. The Mayor will determine the order of debate in a fair manner

9.7 Public Disclosure After Final Action.

(a) The Ralph M. Brown Act requires that, as a body, the City Council make certain public disclosure of closed session decisions when those actions have become final. Accordingly, the City Council shall publicly report any final action taken in closed session, and the vote, including abstentions, at a publicly noticed meeting as follows:

- * Real Estate negotiations: After the agreement is final and accepted by the other party;
- * Litigation: After approval to defend or appeal a lawsuit or to initiate a lawsuit;
- * Settlement: After final settlement of litigation or claims;
- * Employees: Action taken to appoint or dismiss a Council-appointed employee;
- * Labor relations: After the Memorandum of Understanding is final and has been accepted by both parties.

(b) The report may be oral or written. The report will state only the action taken and the vote. Unless authorized by the majority of the City Council, the report will not state the debate or discussion that occurred. Except for the action taken and the vote, all closed session discussions will remain confidential.

SECTION 10. DECORUM

10.1 Council Members. Members of the City Council value and recognize the importance of the trust invested in them by the public to accomplish the business of the City. Council Members shall accord the utmost courtesy to each other, City employees, and the public appearing before the City Council.

10.2 City Employees. Members of the City staff shall observe the same rules of order and decorum applicable to the City Council. City staff shall act at all times in a business and professional manner towards Council Members and members of the public.

10.3 Public. Members of the public attending City Council meetings shall observe the same rules of order and decorum applicable to the City Council. These Standards and Procedures shall apply to all City Council Meetings.

10.4 Noise in the Chambers. Noise emanating from the audience, whether expressing opposition or support within the Council Chambers or lobby area, which disrupts City Council meetings, shall not be permitted. All cell phones and other electronic devices shall be muted while in the chambers. Refusal is grounds for removal.

10.5 Removal. Any member of the public making personal, impertinent, and/or slanderous or profane remarks, or who becomes boisterous or belligerent while addressing the City Council, staff or general public, or while attending the City Council meeting and refuses to come to order at the direction of the Mayor/Presiding Officer, shall be removed from the Council Chambers and may be barred from further attendance before the Council during that meeting. Unauthorized remarks from the audience, stamping of feet, whistles, yells, and similar demonstrations shall not be permitted by the Mayor/Presiding Officer. The Mayor/Presiding Officer may order that such offenders be removed from the room.

10.6 Dangerous Instruments. No person may enter the chambers of a legislative body as defined in Section 54852 of the Government Code of the State of California or any place where such legislative body is in session, with any firearm, weapon, or explosive device of any nature. The provisions of this section shall not apply to authorized peace officers or to those persons authorized by the Penal Code of the State to carry such weapons.

10.7 Prosecution. Aggravated cases shall be prosecuted on appropriate complaint to the City Prosecutor.

SECTION 11. ENFORCEMENT OF DECORUM

In extreme cases, such as when a meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals as provided for in this Policy, the Mayor/Presiding Officer may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held

pursuant to this Section. Nothing in this Section shall prohibit the City Council from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

SECTION 12. VIOLATIONS OF PROCEDURES

Nothing in these Standards and Procedures shall invalidate a properly noticed and acted upon action of the City Council in accordance with State Law.

This document shall remain in effect until modified by the City Council.

ADOPTED AT A REGULAR CITY COUNCIL MEETING ON MARCH 9, 2022



City of Sunnyvale

2023 Code of Ethics and Conduct for Elected and Appointed Officials

"Conduct is three-fourths of our life and its largest concern."

-- Matthew Arnold

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For ease of reference in the Code of Ethics and Conduct, the term “Member” refers to any member of the Sunnyvale City Council or the City’s boards and commissions established by the City Charter, City Ordinance or Council policy.

Ethics

Policy Purpose

The Sunnyvale City Council has adopted a Code of Ethics and Conduct for members of the City Council and the City's boards and commissions to assure public confidence in the integrity of local government and its effective and fair operation.

A. ETHICS

The citizens and businesses of Sunnyvale are entitled to fair, ethical and accountable local government, which will instill public confidence in the fair operation and integrity of Sunnyvale's City government.. In keeping with the City of Sunnyvale's Commitment to Excellence and the City Council's commitment to the ethical values while representing its residents and community, the effective functioning of democratic government requires that:

- public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government;
- public officials be independent, impartial and fair in their judgment and actions;
- public office be used for the public good, not for personal gain; and
- public deliberations and processes be conducted openly, unless legally permitted to be conducted in a closed session under the Ralph M. Brown Act, in an atmosphere of respect and civility.
- Public officials, both elected and appointed, act in a transparent manner to enable the public to obtain information about public official activities and the decision-making process.

To this end, the Sunnyvale City Council has adopted a Code of Ethics and Conduct for members of the City Council and of the City's boards and commissions to assure public confidence in the integrity of local government and its effective and fair operation. The Ethics section of the City's Code of Ethics and Conduct provides guidance on ethical issues and questions of right and wrong.

1. **Act in the Public Interest.** Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of all the people of Sunnyvale and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the Sunnyvale City Council, boards and commissions.
2. **Comply with both the spirit and the letter of the Law and City Policy.** Members shall comply with the laws of the nation, the State of California and the City of Sunnyvale in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the [Sunnyvale City Charter](#); laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.
3. **Conduct of Members.** The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of Council, boards and commissions, staff or the public.

Ethics

4. **Respect for Process.** Members shall perform their duties in accordance with the processes and rules of order established by the City Council and board and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions.
5. **Conduct of Public Meetings.** Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.
6. **Decisions Based on Merit.** Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.
7. **Communication.** Members shall verbally disclose any contact or receipt of substantive information they have received outside of the public decision-making process that is relevant to a matter under consideration by the Council or boards and commissions prior to considering that matter so that all parties have the opportunity to respond to that information.
8. **Conflict of Interest.** In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest, or where they have an organizational responsibility or personal relationship which may give the appearance of a conflict of interest. In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and they shall abstain from participating in deliberations and decision-making where conflicts may exist.
9. **Gifts and Favors.** Members shall not take any special advantage of their public office to access services or opportunities for personal gain that are not available to the general public. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise or appear to compromise their independence of judgment or action.
10. **Confidential Information.** Members shall respect the confidentiality of information concerning certain negotiations (e.g., labor and real property), personnel matters, claims and litigation in order to avoid prejudicing the legal or negotiating position of the City or compromise the private interest of employees. They shall neither disclose confidential information without proper City Council authorization nor use such information to advance their personal/private, financial, or other interests.
11. **Use of Public Resources.** Members shall not use public resources not available to the general public, such as City staff time, vehicles, equipment, supplies, land or facilities, for private gain or political or personal purposes.
12. **Representation of Private Interests.** In keeping with their role as stewards of the public interest, members of Council shall not appear on behalf of the private interests of third parties before the Council or any board, commission or proceeding of the City, nor shall members of

For ease of reference in the Code of Ethics and Conduct, the term "Member" refers to any member of the Sunnyvale City Council or the City's boards and commissions established by the City Charter, City Ordinance or Council policy.

Ethics

boards and commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the subject matter jurisdiction of their bodies.

13. **Advocacy.** Members shall represent the official policies or positions of the City Council, board or commission to the best of their ability when authorized to do so. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Sunnyvale, nor will they allow the inference that they do. Councilmembers and board and commission members have the right to endorse candidates for City Council or Mayor or other elected offices. It is inappropriate to mention or display endorsements during Council meetings, board/commission meetings, or other official City meetings or other governmental meetings where the member is serving in their capacity as an appointed official.
14. **Policy Role of Members.** Members shall respect and adhere to the council-manager structure of Sunnyvale City government as outlined by the Sunnyvale [City Charter Section 500 \(Form of Government\)](#). In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards and commissions, and City staff. Except as provided by the City Charter, members therefore shall not interfere with the administrative functions of the City or the professional duties of City staff, nor impair the ability of staff to implement Council policy decisions.
15. **Independence of boards and commissions.** Because of the value of the independent advice of boards and commissions to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or actions of board and commission proceedings.
16. **Positive Work Place Environment.** Members shall support the maintenance of a positive and constructive workplace environment for City employees and for residents and businesses dealing with the City. Members shall direct their requests of staff pertaining to their elected or appointed role to the appropriate staff liaison or in the case of Councilmembers, to the City Manager.

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Conduct

B. CONDUCT

This section is designed to describe the manner in which Members should treat one another, City staff, constituents, and others they come into contact with when representing the City of Sunnyvale.

The constant and consistent theme through all of the conduct guidelines is "respect." Members experience huge workloads and tremendous stress in making decisions that could impact thousands of lives. Despite these pressures, Members are called upon to exhibit appropriate and respectful behavior at all times.

1. Elected and Appointed Officials' Conduct with One Another

Elected and appointed officials have a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to support the community. In all cases, this common goal should be acknowledged even though individuals may "agree to disagree" on contentious issues.

1(a). In Public Meetings

Use formal titles

Elected and appointed officials should refer to one another formally during public meetings, such as Mayor, Vice Mayor, Councilmember, Chair, Vice Chair, Board Member or Commissioner followed by the individual's last name.

Practice civility and decorum in discussions and debate

Criticism is an essential component of democracy. This does not however, allow public officials to make belligerent, personal, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated.

Honor the role of the chair in maintaining order

It is the responsibility of the chair to keep members on track during public meetings. Members should honor efforts by the chair to focus discussions on current agenda items. If there is disagreement about the agenda or the chair's actions, members should follow parliamentary procedure to voice their objections politely.

Avoid personal comments that could offend other members

If a member is personally offended by the remarks of another member, the offended member should note the actual words used and call for a "point of personal privilege" that challenges the other member to justify or retract their language. The chair will maintain control of this discussion.

Demonstrate effective problem-solving approaches

Members have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

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Representing the Body

Outside of official board or commission meetings, individual board and commission members are not authorized to represent the City or their board or commission unless specifically designated by the Council or their board or commission to do so for a particular purpose. In private settings, board and commission members may communicate at any time and on any subject with individual members of the City Council, and may express to them individual viewpoints and opinions. In public, however, all members shall represent the official policies or positions of their board or commission, with the following exception:

1(b). In Private Encounters

Continue respectful behavior in private

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

Be aware of the insecurity of written notes, voicemail messages, and E-mail

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note posted to Twitter? How would you feel if this voicemail message were uploaded to YouTube? What would happen if this e-mail gets forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

Even private conversations can have a public presence

Public officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted. Cellular phones and other technologies allow for recording of these events with the potential for recorded conversations and actions being shared via social media.

In private, board and commission members may communicate at any time and on any subject with the City Council, and may express to Council individual viewpoints and opinions.

2. Elected and Appointed Officials' Conduct with City Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, appointed officials who advise the elected, and City staff who implements and administers the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

Treat all staff as professionals

Treat city staff with respect. Poor behavior towards staff is not acceptable.

Do not disrupt City staff from their jobs

Public officials should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions. Do not attend City staff meetings unless requested by staff – even

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if the official does not say anything, his or her presence could intimidate staff and hampers their ability to do their job objectively.

Never publicly criticize an individual employee

Public officials should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager privately. Comments about staff in the City Attorney's Office should be made directly to the City Attorney. Appointed officials should make their comments regarding staff to the City Manager or the Mayor.

Do not get involved in administrative functions

Public officials must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits. [See Code of Ethics] The Sunnyvale [City Charter, Section 807](#), also contains information about the prohibition of Council interference in administrative functions.

Check with City staff on correspondence before taking action

Before sending correspondence, Councilmembers should check with City staff to see if an official City response has already been sent or is in progress. Board and commission members shall not send correspondence except as authorized under the City's policy governing volunteers. ([Council Policy 7.2.19, Boards and Commissions](#))

Do not solicit political support from staff

Public officials should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace and outside of the employee's work hours.

3. Elected and Appointed Officials' Conduct with the Public

3(a). In Public Meetings

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

Be welcoming to speakers and treat them with respect and professionalism. While questions of clarification may be asked, the official's primary role during public testimony is to listen.

Be fair and equitable in allocating public hearing time to individual speakers.

The chair will determine and announce limits on speakers at the start of the public hearing process. Questions should *not* be asked for the express purpose of allowing one speaker to evade the time limit imposed on all others (e.g., "Was there something else you wanted to say?"). Generally, each speaker will be allocated three minutes with applicants and appellants or their designated representatives allowed additional time. If many speakers are anticipated, the chair may shorten the time limit and/or

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ask speakers to limit themselves to new information and points of view not already covered by previous speakers.

No speaker will be turned away unless he or she exhibits disruptive behavior. Each speaker may only speak once during the public hearing unless the chair requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the chair reopens the public hearing for a limited and specific purpose.

Give the appearance of active listening

It is disconcerting to speakers to have members not look at them when they are speaking. Avoid facial expressions that could be interpreted as smirking, disbelief, anger, disrespect, or boredom.

Maintain an open mind

Members of the public deserve an opportunity to influence the thinking of public officials. To express an opinion prior to the close of a public hearing casts doubt on the body's fairness. This is particularly important when officials are serving in a quasi-judicial capacity.

Ask for clarification, but avoid debate and argument with the public

Only the chair – not individual members – can interrupt a speaker during a presentation. However, a member can ask the chair for a point of order if the speaker is off the topic or exhibiting behavior or language the member finds disturbing.

If speakers become flustered or defensive by questions, it is the responsibility of the chair to calm and focus the speaker and to maintain order and decorum. Questions by members to the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker.

No personal attacks of any kind, under any circumstance

Members should also be aware of their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.

Follow parliamentary procedure in conducting public meetings

The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. The Mayor or Chair, subject to the appeal of the full City Council or board/commission makes final rulings on parliamentary procedure.

3(b). In Unofficial Settings

Make no promises on behalf of the Council, board/commission or City

Members will frequently be asked to explain a Council or board/commission action or to give their opinion about an issue as they talk with community members. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council or board/commission action, or to promise that City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).

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Make no personal comments about other members

It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other members, their opinions and actions.

Remember that despite its impressive population figures, Sunnyvale is a small town at heart
Members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City of Sunnyvale. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by members, 24 hours a day, seven days a week. This is a serious and continuous responsibility.

4. Elected and Appointed Officials' Conduct Regarding Ex-parte Communications

Members have the responsibility to hear all viewpoints at a public hearing. Members must always keep an open mind, and not rush to pre-judge any matter, until all concerned parties (including but not limited to applicants, members of the public and staff) are heard during the public hearing. Members must not come to a conclusion on a matter until the public hearing is closed.

One key responsibility involves “ex parte” communications. Ex parte is a Latin phrase that literally means “from one party.” Generally, it is defined as any oral or written communication with a decisionmaker about the subject matter of an upcoming quasi-judicial proceeding, which takes place outside of a noticed hearing that is open to all parties to the matter. An ex parte communication can include sensory information, such as things that are seen or heard during a site visit.

Hearings are “quasi-judicial” when they require the Members to apply general rules and standards to specific factual situations and to reach conclusions that affect the rights or interests of an individual person or entity. Common examples of quasi-judicial matters include decisions to approve or deny specific development projects, permit revocation proceedings, and employee disciplinary matters.

For quasi-judicial agenda matters, a Member must report (disclose) any information that they received outside of the public hearing or staff report, if the information significantly influenced their views of the matter. The disclosure should state the nature of the communication (e.g., whether it was oral, written, or sensory), and should explain the substance of the communication so that other Members, interested parties, and the public will have an opportunity to become apprised of the factors influencing the Member and to attempt to controvert or rebut any such factor during the hearing. Disclosure alone will not be deemed a sufficient basis for a request to continue the hearing. An ex parte communication is not grounds to disqualify a Member from participation in a quasi-judicial hearing unless the Member feels that they cannot reach an impartial decision.

5. Council Conduct When Serving on Intergovernmental Assignments

Be clear about representing the City or personal interests

When representing the City, the Councilmember must support and advocate the official City position on an issue, not a personal viewpoint. Outside of official board or commission meetings, board and commission members are not authorized to represent the City or their board or commission unless specifically designated by the Council or the board or commission to do so for a particular purpose.

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Correspondence also should be equally clear about representation

City letterhead may be used when the Councilmember is representing the City and the City's official position. A copy of official correspondence shall be given to the Council Executive Assistant to be filed in the Council Office as part of the public record.

City letterhead shall not be used for non-City business nor for correspondence representing a dissenting point of view from an official Council position.

6. Council Conduct with Boards and Commissions

The City has established several boards and commissions as a means of gathering more community input. Residents who serve on boards and commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

If attending a board or commission meeting, be careful to only express personal opinions

Councilmembers may attend any board or commission meeting, which are always open to any member of the public. Councilmembers are encouraged to attend board or commissions meetings in support of their role as council liaison to a board or commission. However, they should be sensitive to the way their participation could be viewed as unfairly affecting the process—especially if it is on behalf of an individual, business or developer. Any public comments by a Councilmember at a board or commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.

Limit participation to questions of clarification

It is inappropriate for a Councilmember to lobby on behalf of an individual, business, or developer, and vice versa. It is acceptable for Councilmembers to clarify a position taken by the board or commission or City Council.

Remember that boards and commissions serve the community, not individual Councilmembers

The City Council appoints individuals to serve on boards and commissions, and it is the responsibility of boards and commissions to follow policy established by the Council. But board and commission members do not report to individual Councilmembers, nor should Councilmembers feel they have the power or right to threaten board and commission members with removal if they disagree about an issue. Appointment and re-appointment to a board or commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A board or commission appointment should not be used as a political "reward."

Be respectful of diverse opinions

A primary role of boards and commissions is to represent many points of view in the community and to provide the City Council with advice based on a full spectrum of concerns and perspectives. Councilmembers may have a close working relationship with some individuals serving on boards and commissions, but must be fair and respectful of all individuals serving on boards and commissions.

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Conduct

Keep political support away from public forums

Board and commission members may offer political support to a Councilmember, but not in a public forum while conducting official duties. Conversely, Councilmembers may support board and commission members who are running for elective office, but not in an official forum in their capacity as a Councilmember.

7. Elected and Appointed Officials' Conduct with the Media

Board and commission members are not authorized to represent the City outside of official board/commission meetings unless specifically authorized to do so.

Councilmembers are frequently contacted by the media for background and quotes.

The best advice for dealing with the media is to never go "off the record"

Most members of the media follow journalistic ethics and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

The Mayor is the official spokesperson for the City on City positions.

The Mayor is the designated representative of the City Council to present and speak on the official City position. If an individual Councilmember is contacted by the media, the Councilmember should direct the requester to the Mayor. If the Councilmember chooses to engage with the requester, they should be clear about whether their comments represent the official City position or a personal viewpoint.

Choose words carefully and cautiously

Comments taken out of context can cause problems. Be especially cautious about humor, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

C. SANCTIONS

Model of Excellence

City Councilmembers, board and commission members, and Council appointees who do not sign the Model of Excellence (Appendix A) shall be ineligible for intergovernmental assignments or Council subcommittees.

Ethics Training for Public Officials

City Councilmembers, board and commission members, and Council appointees who are out of compliance with State- or City-mandated requirements for ethics training shall not represent the City on intergovernmental assignments or Council sub-committees, and may be subject to sanctions.

Public Disruption

Members of the public who do not follow proper conduct after a warning in a public hearing may be barred from further testimony at that meeting or removed from the Council Chambers/meeting room.

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Inappropriate Staff Behavior

Councilmembers should refer to the City Manager for any City staff or to the City Attorney for any City Attorney Office's staff who do not follow proper conduct in their dealings with members, other City staff, or the public. These employees may be disciplined in accordance with standard City procedures for such actions. (Please refer to the section on Council Conduct with City Staff for more details on interaction with Staff.)

Members Behavior and Conduct

The Sunnyvale Code of Ethics and Conduct expresses standards of ethical conduct expected for members of the Sunnyvale City Council, boards and commissions. Members are responsible for adhering to these standards. The chairs of boards and commissions and the Mayor and Council have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics and Conduct are brought to their attention.

City Councilmembers who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council, lose seniority and/or committee assignments (both internal and inter-governmental) and/or have official travel restricted. Serious infractions could lead to other sanctions as deemed appropriate by Council.

Councilmembers should point out to the offending Councilmember infractions of the Code of Ethics and Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being challenged, then the matter should be referred to the Vice Mayor.

It is the responsibility of the Mayor to initiate action if a Councilmember's behavior may warrant sanction. If no action is taken by the Mayor, the alleged violation(s) can be brought up with the full Council in a public meeting.

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D. GLOSSARY OF TERMS

attitude	The manner in which one shows one’s dispositions, opinions, and feelings
behavior	External appearance or action; manner of behaving; carriage of oneself
civility	Politeness, consideration, courtesy
conduct	The way one acts; personal behavior
courtesy	Politeness connected with kindness
decorum	Suitable; proper; good taste in behavior
manners	A way of acting; a style, method, or form; the way in which things are done
point of order	An interruption of a meeting to question whether rules or bylaws are being broken, such as the speaker has strayed from the motion currently under consideration
point of personal privilege	A challenge to a speaker to defend or apologize for comments that a fellow member considers offensive
propriety	Conforming to acceptable standards of behavior
protocol	The courtesies that are established as proper and correct
respect	The act of noticing with attention; holding in esteem; courteous regard

E. IMPLEMENTATION

As an expression of the standards of conduct for members expected by the City, the Sunnyvale Code of Ethics and Conduct is intended to be self-enforcing. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions. For this reason, this document shall be included in the regular orientations for candidates for City Council, applicants to board and commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they read and understood the City of Sunnyvale Code of Ethics and Conduct. In addition, the Code of Ethics and Conduct shall be annually reviewed by the City Council, boards and commissions, and the City Council shall consider recommendations from boards and commissions and update it as necessary.

(Adopted: RTC 08-113 (4/8/08), Update: RTC 09-036 (2/3/09); Updated: RTC 09-047 (2/24/09); Approved with no changes: RTC 10-078 (3/23/10); RTC 11-058 (3/29/11); RTC 12-067 (3/20/2012); Updated: RTC 13-060 (3/19/13); Approved with no changes: RTC 14-0211 (3/18/14); RTC 15-0050 (3/24/15); RTC 16-0360 (4/5/16); RTC 17-0161 (3/28/17); RTC 18-0036 (1/9/18); RTC 19-0185 (2/26/2019); RTC 20-0021 (3/17/20); RTC 21-0383 (3/16/21); RTC 21-0985 (10/26/21))

Lead Department: Office of the City Manager

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MODEL OF EXCELLENCE

Sunnyvale City Council, Boards and Commissions

MEMBER STATEMENT

As a member of the Sunnyvale City Council or of a Sunnyvale board or commission, I agree to uphold the Code of Ethics and Conduct for Elected and Appointed Officials adopted by the City and conduct myself by the following model of excellence. I will:

- Recognize the worth of individual members and appreciate their individual talents, perspectives and contributions;
- Help create an atmosphere of respect and civility where individual members, City staff and the public are free to express their ideas and work to their full potential;
- Conduct my personal and public affairs with honesty, integrity, fairness and respect for others;
- Respect the dignity and privacy of individuals and organizations;
- Keep the common good as my highest purpose and focus on achieving constructive solutions for the public benefit;
- Avoid and discourage conduct which is divisive or harmful to the best interests of Sunnyvale;
- Treat all people with whom I come in contact in the way I wish to be treated;

I affirm that I have read and understood the City of Sunnyvale Code of Ethics and Conduct for Elected and Appointed Officials.

Signature

Date

Name

Office/Meeting Body

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Local Regulation of Ethical Behavior

By C. Christine Fillmore, Esq. and David R. Connell, Esq.

The information contained in this article is not intended as legal advice and may no longer be accurate due to changes in the law. Consult NHMA's legal services or your municipal attorney.

What are "ethics?" It seems like a simple question, but ask several people and you are likely to get several different answers. When the question involves the ethical behavior of local government officials and employees, the answers might include things like:

- Avoiding conflicts of interest.
- Disclosing financial interests and other relationships.
- Avoiding criminal behavior.
- Keeping confidential information confidential.
- Properly using authority and acting cooperatively.
- Treating people fairly and equally.

The ethical behavior of all public officials and employees is of significant concern to everyone. Not only is it critical for officials and employees to act ethically, it is important to avoid even the appearance of unethical behavior. It is understandable, therefore, that towns and cities want to take appropriate steps to maintain the highest level of conduct. The question is, what can municipalities do, and how does the law already address issues of ethics?

Home Rule? Not Really.

Contrary to popular belief, New Hampshire is not a home rule state. Despite our political tradition of local control, New Hampshire's Constitution does not grant any power directly to municipalities. Our municipalities only have authority to act if the state legislature gives it to them through a statute. "Towns only have such powers as are expressly granted to them by the legislature and such as are necessarily implied or incidental thereto." *Girard v. Allentown*, 121 N.H. 268 (1981).

This means that when a town, local board or official wants to take a certain action, they must find a law that grants them that authority. It is not enough to conclude that there is no law prohibiting the action; silence in the law is usually a prohibition against that particular municipal action.

January 2009

The Curious Case of 'No Means No'

Creating Record Retention Policies: A Practical Guide

Local Regulation of Ethical Behavior

The Not So 'New' Right to Know Law

Given all of that, what may a municipality legally do to enforce ethical behavior among its employees and officials? Perhaps surprisingly, no single statute authorizes a town or city to adopt a broad "ethics ordinance" addressing every aspect of ethics, binding both employees and officials, and authorizing a local ethics board to remove an official from office. Instead, there are several different statutes that allow towns and cities to enact certain specific kinds of ordinances. There are also specific statutes that prohibit certain conflicts of interest, such as **RSA 673:14**, which prohibits land use board members from participating in matters when they have a direct personal or pecuniary interest in the outcome or when they would be disqualified from sitting as a juror at a trial upon the same matter. Several other statutes make certain behavior by officials and/or employees illegal, and there are various circumstances in which a municipal board or a court may remove an official from office for violations of those statutes.

Local Conflicts of Interest Ordinances

A charge of conflict of interest often implies unethical behavior, yet it is not always easy to distinguish an actual conflict of interest from an unsubstantiated allegation. A conflict of interest arises "when a public officer votes on a matter in which he has a direct personal and pecuniary interest" which is "immediate, definite, and capable of demonstration; not remote, uncertain, contingent, and speculative..." *Atherton v. City of Concord*, 109 N.H. 164 (1968). As the Court in *Atherton* explained, "The reasons for this rule are obvious. A man cannot serve two masters at the same time, and the public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is, or may be, in conflict with the public interest."

One of the challenges with conflicts of interest is that the existence of a conflict is, to a great extent, a question of degree to be determined on a case-by-case basis. Towns and cities may wish to adopt a conflicts of interest ordinance to provide more certainty. However, as with any exercise of municipal authority, a municipality can only enact a valid, enforceable ordinance if a law grants it the authority to do so. **RSA 49-C:33, I(c)** allows cities to include a conflict of interest provision in their charters. In addition, the legislative body of a city or town (town meeting, town council, city council or mayor and aldermen) may adopt a conflict of interest ordinance under **RSA 31:39-a**. An ordinance adopted under this statute may apply to both municipal officials and employees. Needless to say, a concise, carefully drafted ordinance can clarify what behavior is reasonably expected of people, whereas poor drafting can have the opposite effect.

In 2006 the legislature enacted **RSA 21-G:21-:27**, a code of ethics for the executive branch of state government, which can be a source of ideas for local legislation. A simple example is **RSA 21-G:22**, which clarifies the limit of the "personal and pecuniary interest" that must be avoided: "Executive branch officials shall not participate in any matter in which they, their spouse or dependents, have a private interest which may directly or indirectly affect or influence the performance of their duties." **RSA 21-G:29-:30** creates an Executive Branch Ethics Committee, which is authorized to issue written advisory opinions upon request of officials in specific situations. These opinions, edited to maintain confidentiality, may be found at www.doj.nh.gov/ethics/.

Significantly, however, because municipalities may only take those actions authorized by statute, a conflicts of interest ordinance adopted under **RSA 31:39-a** may only address the issues listed in the statute and those that are necessarily implied or incidental to those issues. See Girard, 121 N.H. at 271. A local ordinance may address only the following subjects:

- definitions of conflicts of interest;
- regulation of conflicts of interest;
- provisions requiring disclosure of financial interests for specified officers and employees;
- establishment of incompatibility of office requirements stricter than those otherwise established by law; and
- establishment of conditions under which prohibited conflicts of interest will require removal from office.

Despite the clear limits of this statute, local ethics ordinances often include unauthorized provisions. For example, many ordinances authorize the creation of a local ethics board or committee with the authority to investigate complaints and to punish or remove employees and officials for violations. Legally, a local ethics committee could be established to offer non-binding advice to the selectmen or other officials regarding alleged ethics violations, but not to remove municipal officials. Although a town or city may establish the conditions under which a prohibited conflict of interest will require removal from office, **RSA 31:39-a** is quite clear in providing that only the superior court can remove an official under these provisions.

The termination of an employee, in contrast, does not usually require action by a court, but this is a step that should be taken after careful consideration and only by the governing body or designated official, not by an ethics committee. There may be other significant factors to consider before removing an employee, such as any procedural or other rights that the employee may have under law (such as a police or fire chief) or under a collective bargaining agreement or individual employment contract.

Another unauthorized provision that has found its way into local ordinances is a declaration that certain operations of an ethics committee are exempt from disclosure under **RSA Chapter 91-A**, New Hampshire's Right to Know Law. Municipalities may not change the scope of RSA 91-A or declare that certain activities or records will not be available to the public. The ability to enter a nonpublic session during a public meeting must in each instance meet the specific conditions set forth in **RSA 91-A:3**. In addition, exemptions regarding the public availability of governmental records are construed narrowly and are often decided under **RSA 91-A:5** on a case-by-case basis based on the facts and circumstances of each matter. The activities and records of an ethics committee must be considered individually under the same standards as all other municipal activities and records.

It is also common to find a local ethics committee charged with investigating ethical complaints about employees or officials. However, although a committee of this nature may be very helpful in addressing thorny conflicts of interest questions, the referral of certain matters to the committee could result in even greater exposure to liability for the municipality. For example, referral of an employment harassment claim to an ethics committee may result in a breach of confidentiality because the employer likely owes the employee certain confidentiality measures. Likewise, the referral of a matter regarding fraud or misappropriation of funds may result in a charge that the municipality has interfered with a criminal investigation. The key to the success of any such committee, therefore, will be the quality of its membership and an understanding of the legal limits of its authority. Members must be intelligent, respected members of the community who are willing and able to meet on relatively short notice, to provide timely, thoughtful responses, and to refer matters to legal counsel as appropriate.

To address issues outside the scope of an ordinance under **RSA 31:39-a**, any municipal board is free to adopt its own, non-binding set of guidelines to help members understand the ethical standards the board wishes to uphold. These policies are not binding, and no board (including the Board of Selectmen) has the authority to enact ethical guidelines to bind members of other boards. However, the exercise of creating a policy can be helpful, and educating new members about the standards to which all board members should aspire can provide much-needed guidance.

It is also important to distinguish between the regulation of municipal officials and the supervision of municipal employees. Since municipal employees are subject to the supervision of the department heads and/or the governing body, the governing body (like any other employer) may adopt personnel policies to govern employees. Personnel policies may address virtually every aspect of the employment relationship, including expectations regarding ethics and behavior, and the discipline and termination consequences of violating those expectations. Therefore, even if some of the provisions of a local "ethics" policy go beyond the permissible subjects in **RSA 31:39-a** and thus would not be enforceable against municipal officials, those requirements might be enforced against its employees if incorporated into the municipality's personnel policies.

Other Legal Regulation of 'Ethics'

Criminal Statutes

Many state laws prohibit certain unethical behavior by public officials and impose civil and/or criminal penalties. For example, the corrupt practices provisions of **RSA Chapter 640** prohibit all state and local public officers or employees from engaging in bribery, improper influence, acceptance of gifts and improper compensation, and the purchase of public office. These and similar state laws are binding upon public officials without any need to enact a local ordinance.

Libel and Slander

Another check on unethical or improper behavior of local officials and employees is the tort (or civil wrong) of defamation, which includes both oral (slander) and written (libel) defamation. A "defamatory" statement tends to lower a person in the esteem of any substantial and respectable group, even if that group is quite a small minority. **Touma v. St. Mary's Bank, 142 N.H. 762, 766 (1998)**. It occurs when a person fails to exercise reasonable care in publishing (in print or by speaking) a false and defamatory statement of fact about someone to a third party without any valid privilege. **Pierson v. Hubbard, 147 N.H. 760, 763 (2002)**. A statement of opinion is generally not actionable as defamation unless it is reasonably understood that the opinion is based upon defamatory facts. *Duchesnaye v. Munro Enterprises, Inc.*, 125 N.H. 244, 249 (1984).

Defamatory statements might be privileged in certain situations. For example, statements made in the legislative process (such as during town meeting) or during judicial proceedings are absolutely privileged. Other statements during quasi-judicial proceedings (such as planning board hearings) might be protected by a qualified privilege if they are published on a lawful occasion, in good faith, for a justifiable purpose, and with the belief, founded upon reasonable grounds, that the statement is true. **Voelbel v. Bridgewater, 144 N.H. 599, 600 (1999)**; *Pickering v. Frink*, 123 N.H. 326, 329 (1983).

However, there is no specific privilege for municipal officials conducting town business, so they generally are not protected from liability for making any defamatory statements about other people during committee meetings. It is possible, therefore, for an official or employee to be sued by someone claiming that the official or employee has defamed them.

RSA Chapter 91-A, New Hampshire's Right to Know Law

Frequently, charges of "unethical behavior" involve the allegedly improper handling of sensitive information. Many of these issues are already governed by **RSA Chapter 91-A**, which exists "to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." **RSA 91-A:1**. Municipal boards, commissions and other "public bodies" are subject to this law, as are almost all records pertaining to municipal business.

With limited exceptions, meetings of all public bodies must be open to the public, with proper notice at least 24 hours before the meeting and publicly-available minutes within five business days afterward. **RSA 91-A:2, II**. A public body may only meet in a nonpublic session for the narrow list of reasons provided in **RSA 91-A:3, II**, and even minutes of a nonpublic session will become publicly available unless they are properly sealed. **RSA 91-A:2-a** clarifies the legal limits of communications among members of a public body outside a public meeting, whether in person, by electronic communication or by any other method. It is now much clearer that e-mail, instant messaging and other forms of communication that occur outside of the public eye (or ear) legally cannot be used to circumvent the spirit and purpose of the law. **RSA 91-A:2-a**.

Governmental records are similarly regulated under this statute. All governmental records must be made available to the public upon request for inspection and copying during regular business hours. **RSA 91-A:4**. The only categories of records that do not have to be disclosed are those listed in **RSA 91-A:5**. The New Hampshire Supreme Court construes these exceptions "restrictively," presuming that records should be disclosed to further the purpose of the law. **Goode v. N.H. Office of Legislative Budget Assistant, 145 N.H. 451 (2000)**.

It is particularly important for all local officials and employees to understand the requirements and limitations of this law because there are serious consequences when it is violated. When someone's access to public meetings or public records is wrongfully denied, the municipality may be required to pay that person's attorney's fees and costs. When a specific official or employee acts in bad faith in refusing to allow access, the court may require the individual official or employee to pay those attorney's fees and costs. In addition, a court may invalidate any action taken by a public body in a meeting that violates the open meeting requirements of the law. Finally, if any municipal official discloses confidential information that he or she knows or should know is protected from disclosure under **RSA 91-A**, that official may be removed from office by a court for violating his or her oath of office.

Noninterference

In towns with a charter and in cities, the elected body (selectmen, town council, city council or mayor and aldermen) is also governed by a statute prohibiting interference with the actions of the chief executive officer:

"The elected body shall act in all matters as a body, and shall not seek individually to influence the official acts of the chief administrative officer, or any other official, or to direct or request, except in writing, the appointment of any person to, or his removal from, office; or to interfere in any way with the performance by such officers of their duties. Any member [who does so], as determined through procedures established in the charter, shall forfeit his office." **RSA 49-C:19** (city charters); **RSA 49-D:4 (town charters)**.

In other words, no single member of a governing body in a municipality with a charter has the authority to direct or interfere with the official activities of the chief executive officer of the municipality or other officials. Furthermore, it should be noted that even in towns without a charter, the selectmen are only authorized to act as a board by majority vote. **RSA 41:8**. Although there is no statute authorizing removal of a selectman for improper interference, the old saying that "one selectman cannot do anything" is still valid. Only the board may act.

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