City Council Study Session Agenda

Monday, May 23, 2022 at 6:00 PM
27400 Southfield Road, Lathrup Village, Michigan 48076

HYBRID MEETING INFORMATION: Council Chambers with remote access via Zoom
Webinar ID: 843 5533 0898
Password: 230294
CLICK HERE: Online Zoom Link
Telephone: 646.558.8656 or 312.626.6799
CLICK HERE: **Public Comment Form Link**

1. **Call to Order** by Mayor Garrett
2. **Discussion Items**
   A. Ethics Ordinance discussion
3. **Public Comments** (speakers are limited to 3 minutes)
4. **Mayor and Council Comments**
5. **Adjourn**

CITY OF LATHRUP VILLAGE

ETHICS AND CODE OF CONDUCT

CITY COUNCIL, BOARDS, COMMISSIONS, COMMITTEES

17.01 Ethics and Code of Conduct

Each employee, official, or volunteer is required to conduct him/herself efficiently and in a professional manner at all times. No employee, official or volunteer of the City shall:

1. Use their public office or employment for private gain;
2. Give preferential treatment to any organization or person except as expressly permitted by law, ordinance, resolution or policy;
3. Impede government efficiency or economy for personal gain or profit;
4. Engage in private or other public employment or render services for private or other public interests when such employment or service is incompatible with the proper discharge of his/her duties of the City;
5. Expend public funds unlawfully or without proper authorization;
6. Verbally, physically or psychologically abuse any citizen, elected official, supplier, vendor, guest or co-worker;
7. Be insubordinate, or refuse to carry out work assignments or day-to-day instructions pertaining to the job which are properly issued by the employee's immediate Supervisor;
8. Be excessively absent or tardy;
9. Work or report for work under the influence of alcohol or unlawful drugs, and/or possess alcohol or unlawful drugs on the premises of the City;
10. Falsify or misuse City forms, records or reports, including time sheets and employment applications;
11. Steal, misappropriate, remove, abuse, destruct, or misuse property belonging to the City or another employee. The City reserves the right to inspect all City offices, desks, files, vehicles and packages;
12. Fail to return from an authorized leave of absence or vacation at the designated time;
13. Discriminate against or harass others;
14. Possess weapons, firearms or explosives on City property (except for law enforcement officers);
15. Disclose or misuse confidential information;
16. Fail to maintain proper grooming, dress cleanliness and hygiene.
17. Misrepresent time worked;
18. Gamble on City property;
19. Engage in fraud, embezzlement, misrepresentation or any other act of dishonesty;
20. Engage in any conduct which reflects adversely on the City

CHAPTER 216

Ethics

216.01 Intent and purpose.

216.02 Definitions.

216.03 Standards of conduct.

216.04 Disclosure.

216.05 Compliance and enforcement.

216.06 Implementation.

216.01 INTENT AND PURPOSE.

In an effort to maintain the public trust, the Village Council of Wolverine Lake hereby declares that all public officials and employees of the Village of Wolverine Lake shall avoid any conflict between their private interests and those of the general public they serve. All Village officials and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact. Furthermore, to enhance the faith of the citizens in the integrity and impartiality of the elected and appointed officials of the Village of Wolverine Lake, it is necessary to provide specific guidelines for dealing with conflicts of interest and the proper conduct of officials and employees. The Village of Wolverine Lake intends that its officials and employees will avoid any action which might result in or create the appearance of:

(a) Using public office or employment for private gain;

(b) Giving or accepting preferential treatment or monetary gain to or from any person or organization;

(c) Impeding government efficiency or economy;

(d) A lack of independence or impartiality of action;

(e) Making an official decision outside of proper channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Village of Wolverine Lake.

(Ord. 155. Passed 1-13-16.)

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216.02 DEFINITIONS.

Whenever these terms are used in this section, they shall have the following meaning:

(a) “Compensation” is any money, property, thing of value or benefit received by any person in return for services rendered.

(b) “Confidential information” means information that has been obtained in the course of holding public office or employment that is not available to members of the public pursuant to the Michigan Freedom of Information Act, being M.C.L. 15.231 et seq., or pursuant to other law, regulation, policy or procedure recognized by law, and that the official or employee is not authorized to disclose, including written information, non-written information, and information obtained in the course of a lawful executive or closed session of Council.

(c) “Conflict of interest” is either a personal interest or a duty or loyalty to a third party that competes with or is adverse to a Village official's or employee's duty to the public interest in the exercise of official duties or official actions.

(d) “Decision” means a determination, action, vote or other disposition upon a motion, proposal, recommendation, resolution or ordinance by members of the governing body; or a determination, action or other disposition taken by an elected official with the authority to do so.

(e) “Official action” means a decision, recommendation, approval, disapproval or other action or failure to act which involves the use of discretionary authority.

(f) “Private gain” 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, or awards may be received by the public servant: payment of salaries, authorized reimbursements, etc.

(g) “Village official” or “employee” means the elected members of the Village Council, any member of any local government agency, board, commission, or other voting body that is established by the Village Charter or by the Code, and any employee, or any individual who provides services to the local government within or outside of its offices or facilities.

(Ord. 155. Passed 1-13-16.)

216.03 STANDARDS OF CONDUCT.

(a) Conflict of Interest. No Village official or employee shall use, or attempt to use, his or her official position to secure, request or unreasonably grant any special consideration, privilege, exemption, advantage, contract or preferential treatment for himself, herself, or others, beyond that which is available to every other citizen.

(b) Business Transactions. No Village official or employee, on his or her own behalf or on behalf of another person, shall have any financial or other direct personal interest in any contractual or non-contractual business transaction with the Village unless that official or employee shall first make full public disclosure of the nature of the interest prior to the approval of such transaction.

(c) Confidential Information. Village officials and employees shall respect the confidentiality of information concerning the property, personnel or affairs of the Village. They shall neither disclose nor divulge to an unauthorized person confidential information acquired in the course of their duties in advance of the time prescribed for its authorized release to the public without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

(d) Personal Opinion. A Village official or employee shall not represent his or her personal opinion as that of the Village.

(e) Appearance of Impropriety. An "appearance of impropriety" shall occur when an official or employee is involved in a decision concerning action of a Village body which will affect an immediate family member, even if that official or employee derives no direct or indirect financial benefit from the action. An appearance of impropriety shall be fully disclosed on the official record to the Village Council. After such disclosure, the official or employee may participate in the decision only if he or she has informed the Village Council in advance that he or she will so participate.

(f) Use of Village Property and Resources. An official or employee shall not use, or permit others to use, any property owned by the Village for profit or personal convenience or benefit, except:

(1) When available to the public generally, or to a class of residents, on the same terms and conditions;

(2) When permitted by policies approved by the Village Council; or

(3) When, in the conduct of official business, used in a minor way for personal convenience.

(g) Gifts, Favors and Loans. Except as permitted by this section, no Village official or employee shall intentionally solicit or accept any gift from any prohibited source or any gift that is otherwise prohibited by law or ordinance. This subsection shall not apply to the following:

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(1) Opportunities, benefits and services available on the same conditions as for the general public or to participants at any national, state or local conference or trade association meeting.

(2) Anything for which the official or employee pays the fair market value.

(3) Any contribution that is lawfully made under the Campaign Finance Laws of the State of Michigan.

(4) A gift from a relative, meaning those people related to the individual by blood or marriage.

(5) Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient and not because of the personal friendship.

(6) Food or refreshments not exceeding one hundred dollars ($100.00) per person in value on a single calendar day; provided that the food or refreshments are: (i) consumed on the premises from which they were purchased or prepared; or (ii) catered. For the purposes of this section, "catered" means food or refreshments that are purchased ready to consume which are delivered by any means.

(7) Food, refreshments, lodging, transportation and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of an official or employee), if the benefits have not been offered or enhanced because of the official position or employment of the official or employee, and are customarily provided to others in similar circumstances.

(8) Intra-governmental and inter-governmental gifts. For the purpose of this section, "intra-governmental gift" means any gift given to an official or employee from another official or employee of the Village, and "intergovernmental gift" means any gift given to an official or employee by an official or employee of another governmental entity.

(9) Bequests, inheritances and other transfers at death.

(10) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than one hundred dollars ($100.00).

(h) Respect for Process. Village officials and employees shall perform their duties in accordance with the processes and rules of order established by Village Council governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions by Village staff.

(i) Conduct of Public Meetings. Village officials and employees participating in public meetings 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 comments not germane to the business of the body, or

otherwise interfering with the orderly conduct of meetings.

(j) Nothing in this section shall negate or lessen any other standard, prohibition, or ethics requirement imposed on any Village official or employee by any other law, ordinance or legal requirement. Village officials and employees shall comply with federal, state and local laws in the performance of their public duties.

(Ord. 155. Passed 1-13-16.)

216.04 DISCLOSURE.

Whenever a Village official or employee is required to recuse himself or herself under the requirements of this chapter, he or she:

(a) Shall immediately refrain from participating further in the matter;

(b) Shall promptly inform his or her superior, if any; and

(c) Shall promptly file with the Village Clerk a signed statement disclosing the reason for the recusal. The Clerk shall send copies of the statement to all of the members of the Village Council, and the statement shall be attached to the minutes of its next meeting.

(Ord. 155. Passed 1-13-16.)

216.05 COMPLIANCE AND ENFORCEMENT.

(a) This Ethics Chapter for the Village of Wolverine Lake expresses standards of ethical conduct expected for the officials and employees of the Village of Wolverine Lake. Village Council members themselves have the primary responsibility to assure that they understand and meet the ethical standards expressed in this code of ethics and that the public can continue to have full confidence in the integrity of government.

(b) Complaints alleging a violation of this chapter by an employee shall be filed with the Village administrator. The Village administrator shall investigate the complaint to establish whether a violation of this section occurred and any appropriate sanction that should be imposed. In cases where an employee is a member of a union, compliance with applicable union policies and procedures shall occur.

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(c) Complaints alleging a violation of this section by any elected or appointed officials shall be filed with the Village administrator, who shall investigate the complaint If the Village administrator has a reasonable belief that a violation of this section occurred, then he or she shall report the complaint and the initial investigation findings to the Village Council.

(d) In addition to receiving complaints from the Village Administrator, all Village Council members shall have a responsibility to intervene when they learn of actions of another Village Council member or other Village official that appear to be in violation of the Ethics Ordinance.

(e) Upon acquiring reasonable suspicion of a violation of the Ethics Ordinance, by complaint or otherwise, the Village Council president shall set, or any three council members may require the setting of, a public hearing at a regular or special meeting of the Village Council to determine whether a violation of the Ethics Ordinance occurred and, if so, what sanctions shall be imposed for the violation. In complaints alleging a violation of this chapter by a member of the Village Council, that member shall not take part in any proceedings related to the complaint as a Village Council member.

(f) The Village Council may impose sanctions on Village officials whose conduct does not comply with the Village's ethical standards. A violation of this chapter by any Village official shall be deemed misconduct in office as set forth in Section 5.3 of the Village Charter. Sanctions may include reprimand, formal censure, loss of committee assignment, restrictions on budget or travel, and removal from office. Upon removal of a member of Council from office, Council shall appoint a successor in the manner described in the Village Charter for appointments.

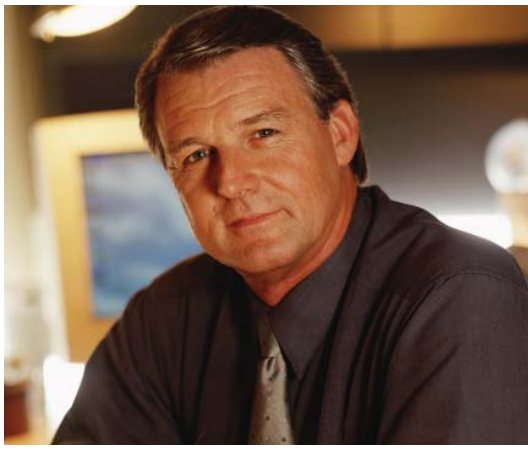
(Ord. 155. Passed 1-13-16.)

216.06 IMPLEMENTATION.

As an expression of the standards of conduct for Village officials and employees expected by the public, this code of ethics is intended to be both responsive to complaints and self-enforcing. It therefore becomes most effective when Village officials and employees are thoroughly familiar with it and embrace its provisions. Therefore, ethical standards shall be included in the regular orientations for newly elected, appointed or hired Village officials and employees. In addition, the Village Council shall annually review the code of ethics for the Village of Wolverine Lake.

(Ord. 155. Passed 1-13-16.)

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

A publication of

michigan municipal league
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Table of Contents

Dedication 1

Foreward 3

Preface 5

Chapter 1: The Importance of Ethics for a Local Government

"Ethics" and Why It Matters 9

Civility in Local Government: The Civil Society 10

Chapter 2: Things to Keep in Mind

Different Forms of Government;
Different Routes to Adopting Ethics Standards for Your Community 17

Including Ethics Provisions in Charters: Advice for Charter Commissions 19

Labor Considerations 22

Chapter 3: The Substance of a Local Government Ethics Ordinance

Definitions for an Ethics Ordinance 27

Fundamental Standards of Conduct for an Ethics Ordinance 33

Consequences for Violating the Ethics Ordinance 41

Enforcement and Administration of an Ethics Ordinance 46

Chapter 4: How to Proceed

Developing, Adopting, and Implementing an Ethics Ordinance: The Process 55

Appendices

Appendix A: The Contributors 57

Appendix B: Some Ethics-Related Michigan Statutes 59

Appendix C: Local Government Ethics Ordinances 61

Appendix D: An Ethics Bibliography 63

Appendix E: Professional Associations' Codes of Ethics 65

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

Essays

"Ethics" and Why It Matters 9

Civility in Local Government: The Civil Society 10

"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 *mis*use, 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

Essays

Different Forms of Government; Different Routes to Adopting Ethics Standards for Your Community 17

Including Ethics Provisions in Charters: Advice for Charter Commissions 19

Labor Considerations 22

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 authority[2] 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 report[1] 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 Acts[2] 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.

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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.

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."

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 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

Essays

Definitions for an Ethics Ordinance 27

Fundamental Standards of Conduct for an Ethics Ordinance.....33

Consequences for Violating the Ethics Ordinance 41

Enforcement and Administration of an Ethics Ordinance 46

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 partner[3] 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 gain[4] 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.

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 pertains[1] 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] a[3] gift or loan of money, [compensation], goods, services[4] [contribution, reward, employment], [5] [6] [7] or other things of value[8] [9] which would tend to influence[10] 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 matter[19] in which he or she [or a relative] has a direct or indirect financial[20] interest[21] without disclosing[22] 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 expected[27] 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 activity[28]

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 financially[29] [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 disclose[33] 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.

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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 infraction[1]

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.

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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?

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;
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.

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 cttorney/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

Essay

Developing, Adopting and Implementing an
Ethics Ordinance: The Process 55

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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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 *et seq.*
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 *et seq.*
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 et seq., 1997 Detroit City Charter; Detroit Code, Article VI Ethics, §2-6-1 *et seq.*

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.

McCollough, 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.