

ARTICLE 2. GENERAL PROVISIONS
(Short, Charter Like Version)

Sec. 2-106. Standards of Conduct; Ethics

(Insert into current §2-106)

Within one year after the effective date of this charter, the City Council shall adopt by ordinance amendments to Detroit Code, Article VI Ethics §§ 2-6-1 through 2-6-129, as now or hereafter amended, otherwise known as the Ethics Ordinance.

If the City Council fails to adopt such legislation within one year, a City resident may initiate amendments to the Ethics Ordinance to reflect the standards of conduct included in article 14 of this charter by a ballot initiative per article 12 of this charter and applicable laws.

The Ethics Ordinance shall be amended to include, at least, the following:

1. Lobbying registration and reporting requirements;
2. Mandatory ethics training for the Mayor, City Council members, Clerk, appointive officers and those with management responsibilities;
3. On-line or computer based ethics training for all other employees in City government including those subject to article 6, chapter 5 of this charter;
4. Prohibition on acceptance of gifts and gratuities by Public Servants;
5. Post-employment prohibitions for Public Servants;
6. Requirement that a Public Servant disclose the City's employment of his or her immediate family member;
7. Requirement that the contract form used by the City's purchasing department be revised to include a provision that any city contract can be voided/rescinded if disclosures are not made or if the contractor solicits or offers a prohibited gift or payment to a Public Servant in relation to the contract.
8. Penalties for violation of §2-106.

ARTICLE 14. STANDARDS OF CONDUCT
(Long, Ordinance Like Version)

Sec. 14-101. Standards of Conduct Ordinance

1. Within one year after the effective date of this charter, the City Council shall adopt by ordinance amendments to Detroit Code, Article VI Ethics §§ 2-6-1 through 2-6-129, as now or hereafter amended, otherwise known as the Ethics Ordinance. The Ethics Ordinance shall be amended to include standards of conduct consistent with Article 14 of this charter.
2. If the City Council fails to adopt such legislation within one year, a City resident may initiate amendments to the Ethics Ordinance to reflect the standards of conduct included in article 14 of this charter by a ballot initiative per article 12 of this charter and applicable laws.

Sec. 14-102. Standards of Conduct

1. These standards of conduct apply to Public Servants including the Mayor, City Council members, City Clerk, appointive officers, appointees, employees and contractors as defined in this charter. These standards of conduct apply to persons who are elected or appointed, employed full-time or part-time and paid or unpaid.

The purpose of applying and enforcing these standards is to ensure that governmental decisions are made in the public's best interest by prohibiting city officials and employees from participating in matters that affect their personal or financial interests.

2. The City Council shall implement the application and enforcement of these standards by the Ethics Ordinance. The Ethics Ordinance shall provide for penalties when a Public Servant violates the following standards of conduct.

Except as otherwise provided by applicable law, a Public Servant shall not knowingly:

- a. Act, or fail to act, in the discharge of his or her duties;
- b. Use or disclose confidential information, including information obtained at meetings which are closed pursuant to the Open Meetings Act MCL § 15.261 through 15.275, as now or hereafter amended, concerning the property, government or affairs of the City or any office, department or agency thereof, not available to members of the public and gained by reason of his or her official position;
- c. Use property of the City except in accordance with policies and procedures of the City;
- d. Engage in or accept private employment or render services when such employment or service is in conflict or incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence of judgment or action in the performance of official duties;

e. Represent a private person, business or organization in any action or proceeding against the City or any office, department, or agency thereof, subject to certain exceptions enumerated in the Ethics Ordinance;

f. Vote or otherwise participate in the negotiation or the making of any contract, or any other type of transaction, with any business entity in which he or she or an immediate family member has a financial interest;

g. Use his or her official position in violation of applicable law in return for improperly influencing a decision of the Mayor, City Council members, Clerk, appointees or employees; or

h. Solicit or accept a loan or payment from an individual who is providing service to, receiving tax abatements, credits or exemptions from the City, subject to certain exceptions as enumerated in the Ethics Ordinance.

3. The Mayor, City Council members and City Clerk shall not influence any decision to fill any position in City government with an immediate family member.¹

Sec. 14-103. Disclosures.

1. A Public Servant shall disclose:

a. Any financial interest, direct or indirect, that he or she or an immediate family member has in any contract or matter pending before City Council;

b. Any financial interest, direct or indirect, that he or she or an immediate family member has in any contract or matter pending before or within any office, department or agency of the City;

c. Any interest that he or she, or an immediate family member has in real and personal property that is subject to a decision by the City regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement or a development agreement.

d. Campaign contributions and expenditures, in accordance with applicable laws.

e. The identity of any immediate family member employed by the City or who is making application to the City.

¹ Some argue that to completely eliminate the “friends and family” plan there should be a complete prohibition of hiring family members. Others suggest that this sentence read “The Mayor, City Council members and City Clerk shall not influence any decision to fill any position in City government with an immediate family member unless that person possesses adequate training and educational credentials in satisfaction of that position. In such instance, that position shall be subject to extra scrutiny by the Human Resources Department.”

2. The above disclosures shall be made in writing and be made by sworn, notarized affidavit, in accordance with City ordinance and applicable laws.

Sec. 14-104. Lobbying Registration and Reporting.²

Any person lobbying a Public Servant shall be required to register with the City. Such a lobbyist shall file a report of his or her lobbying activity in accordance with requirements of an amended Ethics Ordinance as referenced in Sec. 14-101(a) of this charter. All documents shall be filed with the City Clerk. A fee shall be assessed to each lobbyist.

All documents filed by lobbyists shall be a public record and additionally published electronically on the world wide web or other format as to provide remote or on-line access to the reports.

Sec. 14-105. Gifts and Gratuities

A Public Servant shall not accept gratuities, honoraria, or other things of value up to \$50 on one occasion and up to \$100 for an annual, cumulative amount from any person or company doing business or seeking to do business with the City, is seeking official action from the City, has interests that could be substantially affected by the performance of the Public Servant's official duties, or is registered as a lobbyist under applicable laws.

Sec. 14-106. Two Year Post-Employment Prohibition.

For two (2) years after employment with the City, a Public Servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body or receive compensation for any services in connection with any matter in which he or she was directly concerned, personally participated, actively considered, or acquired knowledge while working for the City.

For a period of two (2) years after employment with the City, a Public Servant shall not accept employment with any person or company that did business with the City during the former Public Servant's tenure if that Public Servant was in any way involved in the award or management of that contract or the employment would require the sharing of confidential information.

Sec. 14-107. Contracts Voidable and Rescindable.

The City's purchasing department shall amend its standard contract form to include language which provides that City contracts shall be voidable or rescindable at the discretion of the Mayor or Inspector General at any time if a Public Servant has an interest in such contract

² This would require an amendment of the Clerk's duties at §3-103.

Also, many feel that this Charter can/should require the Clerk's office to electronically post all contracts, lobby reports, disclosure forms, *etc.* Some want an all out information management system reform. This would carry attendant budgetary costs.

and fails to disclose such interest. Such contract shall also be voidable or rescindable if a lobbyist or employee of the contracting party offers a prohibited gift, gratuity, honoraria or payment to a Public Servant in relation to the contract. A fine shall be assessed to the contractor in the event of a violation of this section of the charter. If applicable, the actions of the contractor, and its representative lobbyist or employee, shall be referred to the appropriate prosecuting authorities.

Sec. 14-108. Campaign Activities Using City Property Or During Working Hours

Appointees, appointive officers and employees are prohibited from engaging in campaign activities using City property or during working hours for any candidate for the office of Mayor, City Council member or Clerk.

The Mayor, City Council members and Clerk are prohibited from soliciting appointees, appointive officers and employees to work on political campaign activities using City property or during working hours.

Sec. 14-109. Board of Ethics, Application, Appointment, Qualifications and Terms

There is hereby continued an independent Board of Ethics to consist of seven (7) members, all of whom shall be known for their personal integrity and independent thought and judgment. Members of the Board of Ethics shall be City residents who are not Public Servants at any time during their board membership. Compensation for members of the board may be established by ordinance. All Public Servants shall be available for consultation with the Board of Ethics as it deems necessary.

The members of the Board of Ethics shall be selected as follows:

1. Three (3) who shall be appointed by the City Council;
2. Three (3) who shall be appointed by the Mayor; and
3. One (1) who shall be jointly appointed by the Mayor and City Council.

Such appointments shall be made after applications are received, reviewed and interviews conducted. Members shall serve for a term of three (3) years. Such terms shall be staggered. Members of the Board of Ethics are subject to removal for cause.

Sec. 14-110. Powers and Duties.³

The Board of Ethics shall:

1. 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 Public Servants. Advisory opinions shall be rendered upon written request by a Public Servant

³ Newly added duties 14-110(4-7) will require additional funding.

regarding his or her own actions. The advisory opinions shall not disclose the identity of the Public Servant concerned.

2. Receive and resolve complaints arising under the Ethics Ordinance. 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.

3. Prepare an annual report for submission to the Mayor and City Council. Consistent with state law, the board of ethics may recommend improvements in the standards of conduct to ensure the ethical behavior of city elective officers, appointees, and employees, or in the organization and procedures related to the administration and enforcement of those standards.

4. Provide mandatory, annual training for the Mayor, City Council, Clerk appointive officers and those with management responsibilities.

5. Provide mandatory training to newly elected, elected officials and newly appointed, appointive officers.

6. Provide on-line or computer based training for all other employees including those subject to article 6, chapter 5 of this charter;

7. Issue penalties for violations of article 14 of this charter.

Sec. 14-111. Violations and Penalties.⁴

1. Any negligent or intentional violation of article 14 of this charter or the Ethics Ordinance shall subject the violator to any one or more of the following:

- a. Public admonishment issued by Board of Ethics;
- b. If an employee, a recommendation that he or she be reviewed for disciplinary action;
- c. If the Mayor, City Council members or City Clerk, a recommendation to the City Council for removal or forfeiture proceedings;
- d. Administrative sanction of not more than \$1,000 assessed by the Board of Ethics; and

⁴ Some argue that there should be no dollar amount included but the BOE should have the discretion to assign a fee equal to the damages incurred by the City as a result of the violation.

Also, must investigate the burden (budgetary, work load, employee coverage, *etc.*) this will add to the Law Department.

e. Prosecution by the City's law department in 36th District Court and, upon conviction, to a fine of up to \$1,000 per violation and up to six months imprisonment, whether the official or employee is elected or appointed, paid or unpaid. Nothing in this section shall be interpreted to conflict with state law.

2. With regard to violations by Contractors, in addition to the remedies in paragraph (1), the Board of Ethics may recommend to the City's purchasing director one or more of the following:

a. Suspension of a contractor;

b. Disqualification or debarment from contracting or subcontracting with the City;

c. Administrative sanction assessed by the Board of Ethics. Such fine shall be determined by considering the amount of damages incurred by the City as a result of the subject violation; and/or

d. Prosecution by the City's law department in 36th District Court and, upon conviction, a fine for each violation and up to six months imprisonment.

All penalties associated with article 14 of this charter, or the Ethics Ordinance, are in addition to the civil and criminal penalties available to the City under applicable law.

Sec. 14-112. Meetings.

All meetings of the Board of Ethics shall be subject to the Open Meetings Act MCL §§ 15.261 through 15.275, and 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.

Sec. 14-113. Funding.

Funds sufficient to enable the Board of Ethics to perform its duties shall be appropriated annually.

Definitions To Be Added To Sec. 2-105 As A result of Proposed Articles 14 and 15

“City” means the City of Detroit.

“City Clerk” means the City Clerk of the City of Detroit.

“City Council” means the legislative body of the City of Detroit.

“Confidential Information” means information, including information obtained at meetings which are closed pursuant to the Open Meetings Act MCL § 15.261 through 15.275, as now or hereafter amended, concerning the property, government or affairs of the City or any office, department or agency thereof, not available to members of the public and gained by reason of his or her official position.

“Contractor” means a party who, or which, seeks to enter, or enters, into a contract with the City of Detroit for the delivery of goods or services, but does not mean one who seeks to enter, or enters, into a personal services contract, as defined in this section, with the City. “Public Servant” means the Mayor, members of City Council, the City Clerk, members of City agencies, boards, commissions or other voting bodies established by this charter or by City code, appointees, employees or individuals who provide services to the City within or outside the offices of facilities pursuant to a personal services contract.

“Employee” means a person employed by the City of Detroit, whether on a full-time or part-time basis.

“Immediate family member” means a public servant’s spouse, domestic partner, individual who lives in the Public Servant’s household or an individual claimed by a public servant or a public servant’s spouse as a dependent under the United States Internal Revenue Code at 26 USC 1 *et seq.*

“Lobbying” means all communications with a Public Servant for the purpose of influencing legislative or executive action.⁵

“Lobbyist” means a person whose expenditures for lobbying are more than \$50 on one occasion and up to \$100 for an annual, cumulative amount and is a person, or represents a company, doing business or seeking to do business with the City, is seeking official action from the City or has interests that could be substantially affected by the performance of a the Public Servant’s official duties, or is registered as a lobbyist under applicable laws.

“Official Act” means any action, omission, decision, recommendation, practice or procedure of any agency.

⁵ Source: MCL §4.415 (“Michigan Lobbying Act”)

DISCUSSION POINTS FOR TWO VERSIONS OF Standards of Conduct

Short, Charter Like Version

- Reads like charter, not ordinance.
- Could be inserted into current §2-106.

Long, Ordinance Like Version

- Create a new Article 14
- Reads more like ordinance, not charter.
- Moves from **advisory /aspirational** ordinance to **penalizing** ordinance with “teeth.”

Comments Germane To Both Versions

- Must make threshold decision of whether we want an advisory/aspirational or punitive Ethics Ordinance and Board of Ethics (“BOE”)
- Neither version makes changes to composition of BOE. The thought is that once you get to big, you have a hard time getting anything done.
- It is proposed that the BOE, under the foregoing penalizing scenario, is compensated as the duties of same expand exponentially.
- Includes (or directs amendments that provide for) new provisions regarding, lobby registration, mandatory training, post-employment prohibitions, *etc.*
- Need confirmation from legal counsel that there is enabling legislation authorizing the BOE to levy fines.
- Funding for a new BOE is critical. For example, any requirement for mandatory training of elected officials and appointees has to be buttressed by serious/dedicated funding.
- For FY 10/11, the BOE was funded at \$264,033 with two (2) employees.
- This funding seems insufficient if a BOE with teeth is to be successful.

Public Financing of Political Campaigns

- Corruption in municipal government is often linked to an elected official’s quest to be re-elected and raise funds for his or her next campaign.
- Some argue that public financing of campaigns is a way to ferret out corruption.
- That issue is not addressed in this proposal.
- Executive Director Hicks will separately present us information on that issue.