OFFICE OF THE CITY ATTORNEY

To: Mayor James and City Council / Ethics Task Force
From: William D. Geary, City Attorney
Subject: Explanatory comments on draft ethics code
Date: February 13, 2012

This memorandum provides a brief summary of changes proposed by the draft Code of Ethics developed by the Ethics Task Force.

Division 1. General

Section 2-2000. Declaration of policy; purpose of code.

The Code begins with a general statement of the City's policy of ethical behavior. A number of provisions now in various places in the ordinances are brought together to provide a more complete picture of the intent of the Code.

Section 2-2001. Definitions.

Current definitions used throughout the Code are defined in this general section. More expansive meaning is given to several provisions. "Official or employee" is used to include elected officials, board members, and employees. It also includes the Judges of the Municipal Court insofar as the requirements are not inconsistent with the Code of Judicial Conduct. When dealing with relatives of officials or employees the Code expands the definition to treat domestic partners as a spouse.

Section 2-2002. Orientation and training.

The current provisions of Section 2-1012.5 are incorporated.

Section 2-2003. Use of city property.

Current provisions found in Section 2-1014 are incorporated.

Section 2-2004. Authority to promulgate regulations.

This new provision reflects the philosophy that the Code reflects minimum standards of behavior. The Mayor, Mayor pro tem, City Manager, Board of Parks and Recreation Commissioners, department directors, and boards and commissions are given the explicit authority to promulgate stricter regulations.

Division 2. Conflicts of Interest.

Section 2-2020. Conflict of interest.

The current code of ethics includes a statement concerning conflicts of interest. The proposed Code expands on the nature of conflicts of interest by providing greater detail to the issue.

It is recognized that conflicts of interest may often arise because of indirect benefits, such as benefits received by a relative or business partner. The proposed Code includes persons who have a customer or client that paid over $1,000 in the prior two years; nongovernmental civic groups; unions; social, charitable or religious organizations.

The proposed Code continues to make a distinction between groups that present a conflict of interest and a "substantial segment of the city's population." The proposed Code states no group of government employees may be considered a "substantial segment" for conflict of interest purposes.

A member of the City Council would have a conflict of interest if a family member was a City employee and a relevant union agreement or other ordinance was presented to the City Council. An appropriation ordinance that provided funds to the department in which a relative of a Council member worked would present a conflict of interest to the Council member.

The proposed Code draws a distinction between participation on a non-City board or commission as a member of the City Council and as someone simply recruited to be a member. A conflict of interest would not exist if the Council member was filling a position reserved for a member of the City Council. A conflict of interest would exist if the Council member is serving in a non-official capacity.

Section 2-2021. Disclosure of conflicts and withdrawal.

A new section provides a process to address how a person confronts a conflicts of interest. A person with a conflict should leave the discussion of the matter and sit with the public. If the meeting is a closed meeting the person with a conflict of interest should leave the room.

If a person is challenged as having a conflict of interest, but chooses to not disqualify himself or herself, the remainder of the committee, board, commission or City Council must decide whether or not to allow the challenged member to continue participating.

If there is a withdrawal by a member because of a conflict of interest, the reason for withdrawal must be stated.

Section 2-2022. Preferential treatment.

Current provisions found in Section 2-1014 are incorporated.

Section 2-2023. Transactions with subordinates.

This new provision prohibits a person with supervisory authority over another to engage in any financial transaction, including charitable transactions, with a subordinate.

Section 2-2024. Conflict of interest annual report.

The current provisions of Section 2-1020 are incorporated.

In addition, the internal auditor is given the responsibility to verify that those required to file reports do, in fact, file.

Division 3. Gifts

Section 2-2030. Acceptance of gifts.

Most of the current procedures are adopted by the proposed Code, but new amounts and timing of reports are changed. A gift is defined as anything having a value of more than $50, as opposed to the current $200. Domestic partners are included within the relatives for whom a report must be made.

Councilmembers must disclose gifts from $50 to $3,000 they, or their relatives, receive. No gift over $3,000 may be accepted. No employee may accept a gift valued at $50 or more.

Section 2-2031. Tickets to city facilities.

This new section states tickets received by the Mayor, Council members, or City Manager to city facilities as a result of negotiations for the use of the facility are not gifts. If tickets are received by an employee to carry out duties, the tickets are not a gift. When tickets are provided in any other way or to a non-city venue the tickets are gifts.

Section 2-2032. Reporting.

Employees have always been required to report gifts within 30 days of receipt while elected officials and others filing annual reports with the Missouri Ethics Commission filed annually. The proposed Code requires all gifts received by those persons to also be reported within 30 days of receipt. (Employees will not file any report because they are forbidden from accepting any gift.)

Division 4. Employment.

Section 2-2040. Honesty in applications for positions.

This new provision extends a requirement of honesty to applicants for employment.

Section 2-2041. Patronage.

This new provision explicitly forbids patronage hiring.

Section 2-2042. Canvassing elected officials for appointment.

Current provisions found in Section 2-1014 are incorporated. A definition of canvassing is included.

Section 2-2043. Nepotism.

This new section implements the Missouri Constitution prohibition on nepotism. It also explicitly forbids direct supervision of certain relatives. The ethics commission is given the authority to waive this supervision prohibition.

Section 2-2044. Prohibited activities after leaving municipal service.

The current provisions of Section 2-1018 are incorporated.

Division 5. Confidential Information.

Section 2-2050. Confidential information.

The current provisions of Section 2-1023 are incorporated. The obligations are extended to board members.

Section 2-2051. Use of confidential information.

The current provisions of Section 2-1769 are incorporated.

Division 6. Expenses

Section 2-2060. Business expenses.

This section lists examples of authorized business expenses, as well as delineating non-public business expenses, such as participation in political affairs or self-promotion, donating money or goods to organizations and the purchase of advertising or other nonoperational expenses.

Section 2-2061. Council expense accounts.

The current provisions of Section 2-1019 are incorporated. New provisions providing for automatic paycheck deductions if expenses are not reconciled within the appropriate time period are instituted. No advances would be authorized without the agreement to allow a paycheck deduction after the time to reconcile the expenses has passed. Paycheck deductions would occur

after notice to the Mayor or member of the City Council and a chance to correct the failure to reconcile expenses.

The internal auditor is given a mandatory duty to quarterly review all reimbursements to the Mayor and members of the City Council. A written report will be distributed by the internal auditor within 30 days of the end of a quarter.

Section 2-2062. Travel and other expenses.

The current provisions of Section 2-1022 are incorporated. A paycheck deduction must be executed before an employee receives an advance. If a timely reconciliation of expenses is not made by an employee his or her paycheck will be reduced by the advance. The employee may still reconcile the expenses and receive the deducted funds.

Division 7. Political Activities

Section 2-2070. Permitted and prohibited political activities of employees.

This new section incorporates provisions of the 2006 City Charter amendments as well as the administrative regulation that was adopted in response to the City's loss in litigation challenging prior political restrictions in *Goodman v. City of Kansas City*.

Section 2-2071. Prohibition on required political participation.

This section duplicates provisions found in the City Charter. By placing them in the Code people can have a complete place to see provisions that may apply to ethics issues.

Section 2-2072. City communications – prohibitions related to city elections.

This section incorporates the provisions of Section 2-1025.

Division 8. Reporting.

Section 2-2080. Municipal hotline.

This section incorporates the provisions of Section 2-1021. However, it deletes the current limitation to employees, and allows any person to make a complaint or inquiry on the Hotline. This follows the current practice.

Section 2-2081. Complicity with or knowledge of other's violations.

This new section makes it mandatory for officials or employees who have actual knowledge of code violations to report those violations.

Section 2-2082. Whistleblower protection.

This section incorporates the provisions of Section 2-1110.5.

Division 9. Enforcement.

Section 2-2090. Municipal officials and officers ethics commission.

This section repeats the steps from the Charter necessary to create the Commission, and reiterates the prohibition on making campaign contributions by members of the Commission.

Section 2-2091. Prohibition on political contributions and support by Commission members.

This section incorporates the provisions of Section 2-1024.

Section 2-2092. Jurisdiction.

This provision expands the jurisdiction of the Commission to include all employees, not just elected officials, appointed officials, directors and certain other employees.

Section 2-2093. Powers.

This new section grants the Commission express powers to conduct its business. It also allows waivers by the Commission. An annual report must be filed by the Commission.

Section 2-2094. Advisory Opinions.

The Charter allows the Commission to make advisory opinions. This sets out the conditions under which a person who relies on an advisory opinion is protected from a later finding that the Code was violated.

Section 2-2095. Investigations.

This provision establishes the administrative procedure by which an investigation will be undertaken. The Commission is authorized to take testimony under oath or affirmation and to issue subpoenas. Officials and employees have a duty to cooperate in a Commission investigation.

Section 2-2096. Waivers.

A waiver may be issued by the Commission if the situation does not create a potential for undue influence, unfair advantage, or serious appearance of impropriety.

Section 2-2097. Staff.

The Code provides for an position to assist the Commission, an ethics compliance officer. This person will receive complaints, conduct investigations, prepare draft opinions, assist in training elected officials and employees, recommend acceptance or rejection of complaints to the Commission, and seek addition information from a complainant.

If an ethics compliance officer is not appointed, the City Attorney must perform the duties of the ethics compliance officer. Outside counsel may be secured for the Commission if funding is available.

Section 2-2098. Disposition.

This section sets out a procedure to bring the work of the Commission to a close. It provides a time in which a decision must be made and what must be done if a violation is found or not found.

Division 10. Penalty and Other Ramifications.

Section 2-2100. Penalty.

The current maximum penalty of $500 is increased to $1,000.

Section 2-2101. Other ramifications.

In addition to the current statements about administrative or disciplinary actions or the suggestion that a person should consider resigning, the authority to issue reprimands and censures is granted the Commission.

Section 2-2102. Commission findings required – councilmembers and certain others.

It is made clear that the City Council may act with or without Commission involvement pursuant to Section 211 of the City Charter that allows the Council to discipline Council members.

Division 11. Reporting.

Section 2-2110. City manager reports.

The City Manager will produce a quarterly report concerning any complaint or advisory opinion issued by the Commission.

Section 2-2111. Annual report.

The Commission will provide an annual report to the Mayor and Council on its work during the prior year. The report may include recommendations for amendments to the Code of Ethics.

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