

## **ARTICLE V. ETHICS<sup>1</sup>**

### **DIVISION 1. GENERALLY**

#### **Sec. 2-5-1. Statement of purpose.**

The disclosure requirements and standards of conduct apply to public servants including the Mayor, City Council Members, the City Clerk, elected members of the Board of Police Commissioners, appointive officers, appointees, employees, and contractors as defined in Section 2-5-3 of this Code. The purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests.

(Code 1984, § 2-6-1; Ord. No. 22-00, § 1(2-6-1), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-1), eff. 8-31-2012)

**Commentary**—This article is adopted in compliance with the provisions of Section 2-106.1 of the Charter, entitled "Ethical Standards of Conduct," that the City Council may enact an ordinance necessary to effectuate the operation of Sections 2-106.1 through 2.106.14 of the Charter. Furthermore, a review of the best practices of the federal, state and municipal governments reveal that most jurisdictions have enacted codes governing the standards of conduct for elected and appointed public officials as well as employees.

The integrity of City government and public trust and confidence in elective officers and employees require that public servants be independent, impartial and responsible to the People; that government decisions and policy be made within the proper channels of the governmental system; and that public servants be prohibited from participating in matters that affect their personal or financial interests. The purpose of this article is to establish guidelines for ethical standards of conduct for all City government officials and employees by defining those acts or actions that are incompatible with the best interests of the City and by mandating disclosure by public servants of private financial or other interests in matters affecting the City.

Although the article addresses the subject matters set forth in Sections 2-206.1 through 2-106.14 of the Charter, it cannot by its terms and provisions specifically address every conceivable circumstance, situation or question that may raise an ethical consideration in the course of City government. Of course, every situation or issue arising under the article must be evaluated based on its individual merits. However, the article is intended to declare integrity in governmental decision making, operations and processes as a fundamental value and policy of City government to which all public servants in City government should strive to adhere at all times. To underscore the paramount importance of this policy, the article should be liberally construed so as to fully protect the public interest, and to effectuate the provisions of Sections 2-106.1 through 2.106.14 of the Charter that the article shall prohibit actions by elective officers, appointive officers, appointees, employees, or contractors.

#### **Sec. 2-5-2. Construction.**

This article shall be construed in conformity with state law including state law regulating conflicts of interest pertaining to public contracts involving public servants under the Michigan Contracts of Public Servants with Public

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<sup>1</sup>Charter reference(s)—Ethical Standards of Conduct, § 2-106.1*et seq.*

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Entities Act, being MCL 15.301 *et seq.*, and contributions to political campaign organizations under the Michigan Campaign Finance Act, being MCL 169.201 *et seq.*

(Code 1984, § 2-6-2; Ord. No. 22-00, § 1(2-6-2), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-2), eff. 8-31-2012)

### **Sec. 2-5-3. Definitions.**

For purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section:

*Agency* means any department, office, multi-member body, subdivision of the Legislative Branch of City government or other organization of City government and includes any elective officer, appointee, employee, or person acting or purporting to act in the exercise of official duties.

*Appointee* means a person who holds either a compensated or an uncompensated position.

*Appointive officer* means an appointee who holds a compensated position.

*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 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 domestic partner.

*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 service disclosing the information is permitted by such authority to make disclosure;
- (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, provided, 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.

*Contractor* means a party who, or which, seeks to enter, or enters, into a contract with the City 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.

*Decision* means:

- (1) A determination, action, vote, or other disposition upon a motion, proposal, recommendation, resolution, or ordinance by members of the City Council or of a governing body of a City agency; or
- (2) A determination, action or other disposition taken by the Mayor, the City Clerk, or a City agency in the performance of their public duties.

*Domestic partner* means one of two adults who:

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- (1) Have a common residence;
  - (2) Agree to have joint responsibility for each other's basic living expenses incurred during the domestic partnership;
  - (3) Are not married or are not a member of another domestic partnership;
  - (4) Are not related by blood in a way that would prevent them from being married to each other in this state;
  - (5) Are at least 18 years of age;
  - (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.

*Elective officers* means the Mayor, each member of the City Council, the City Clerk, and elected Board of Police Commissioners.

*Employee* means a person who is employed by the City on a full-time or a part-time basis.

*Exercises significant authority* means having the ability to influence the outcome of a decision on behalf of the City 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 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 member* means:

- (1) A public servant's spouse;
- (2) A public servant's domestic partner;
- (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.*; or
- (4) An individual who lives in the household of a public servant.

*In-kind* means goods or services but does not mean money.

*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 themselves.

*Lobbying* means all communications with a public servant for the purpose of influencing legislative or executive action.

*Lobbyist* means, with respect to lobbying City government:

- (1) A person whose expenditures for lobbying are more than \$1,000.00 in value in any 12-month period;
- (2) A person whose expenditures for lobbying are more than \$250.00 in value in any 12-month period where the amount is expended on lobbying a single public official; or
- (3) A registered lobbyist under applicable law who lobbies City government.

*Official action* means any act, omission, decision, recommendation, practice, or procedure of any agency.

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*Personal services contract* means a contract for the retention of an individual to perform services on behalf of the City for a fixed period and for fixed compensation.

*Public servant* means the Mayor, members of the City Council, the City Clerk, appointive officers, any member of a board, commission, or other voting body that is established by either branch of City government or by the Charter, or by this 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.

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

*Willful neglect of duty* means the intentional failure of a public servant to perform the duties of the public servant's office.

(Code 1984, § 2-6-3; Ord. No. 22-00, § 1(2-6-3), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-3), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-3), eff. 8-31-2012)

**Commentary—*Domestic Partner*:** The inclusion of "domestic partner" relationships in the scope of coverage of this article is based on the reality that there are certain close personal, often intimate relationships involving non-married public servants which are tantamount or 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. However, for purposes of implementing standards for the conduct of public servants in the performance of their job duties for the City, the article does attempt to include within its reach all public servants.

The definition of the term "domestic partner" included in this section is modeled on the definition of the term "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, relating to the domestic partners.

#### **Sec. 2-5-4. Police Department authorized to issue misdemeanors for enforcement of disclosure requirements and standards of conduct; Board of Ethics may recommend issuance.**

- (a) In accordance with Section 2-106.11(1)(e) and (2)(d) of the Charter, the Police Department is authorized to enforce disclosure requirements, which are contained in Division 2 of this article, and standards of conduct, which are contained in Division 3 of this article, through the issuance of misdemeanor violations.
- (b) In accordance with Section 2-106.11(1)(e) and (2)(d) of the Charter, and Sections 2-5-145(b)(6) and 2-5-166(6) of this Code, the Board of Ethics may recommend that the Police Department issue misdemeanor violations against public servants, contractors, vendors, and lobbyists, provided, that the City police officers may issue such violations on their own volition.

(Code 1984, § 2-6-4; Ord. No. 18-12, § 1(2-6-4), eff. 8-31-2012)

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**Sec. 2-5-5. Misdemeanor penalties.**

Any public servant, contractor, vendor, or lobbyist who is found guilty of violating this section shall be convicted of a misdemeanor for each ordinance violation that is issued, and, in the discretion of the court, may be fined up to \$500.00 and sentenced to up to 90 days in jail, or both, for each ordinance violation that is issued.

(Code 1984, § 2-6-5; Ord. No. 18-12, § 1(2-6-5), eff. 8-31-2012)

**Secs. 2-5-6—2-5-30. Reserved.**

*DIVISION 2. DISCLOSURE REQUIREMENTS<sup>2</sup>*

**Sec. 2-5-31. Disclosure of interests by public servants.**

- (a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority over a pending matter shall disclose:
  - (1) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before City Council;
  - (2) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before or within any office, department, or agency of the City; and
  - (3) Any interest that the public servant, or an immediate family member has in real or 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.
- (b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

(Code 1984, § 2-6-31; Ord. No. 18-12, § 1(2-6-31), eff. 8-31-2012)

**Commentary**—This provision implements the directive of Section 2-106.2 of the Charter that this article shall provide for the disclosure of any financial interest, which a public servant, or the public servant's immediate family member, has in any contract or in any real or personal property, that is the subject of a governmental decision by the City or any agency of the City over which the public servant exercises significant authority in the performance of the public servant's duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 *et seq.*

**Sec. 2-5-32. Disclosure of immediate family member's employment or application.**

- (a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority shall disclose the identity of any immediate family member employed by the City or who is making application to the City for employment.

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<sup>2</sup>Editor's note(s)—Section 1 of Ordinance No. 18-12, effective August 31, 2012, repealed Sections 2-6-31 through 2-6-34 of the 1984 Detroit City Code, as amended, and added substitute Sections 2-6-31 through 2-6-35.

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- (b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

(Code 1984, § 2-6-32; Ord. No. 18-12, § 1(2-6-32), eff. 8-31-2012)

### **Sec. 2-5-33. Disclosure of campaign contributions and expenditures.**

- (a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority shall disclose campaign contributions and expenditures in accordance with applicable laws.
- (b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

(Code 1984, § 2-6-33; Ord. No. 18-12, § 1(2-6-33), eff. 8-31-2012)

### **Sec. 2-5-34. Disclosure of interests by contractors and vendors.**

- (a) Except as otherwise provided for by applicable law, all contractors and vendors doing business with the City shall disclose the following:
- (1) Any financial interest, direct or indirect, that the contractor or vendor or an immediate family member has in any contract or matter pending before City Council;
  - (2) Any financial interest, direct or indirect, that the contractor or vendor or an immediate family member has in any contract or matter pending before or within any office, department or agency of the City;
  - (3) Any interest that the contractor or vendor, or an immediate family member, has in real or 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;
  - (4) Campaign contributions and expenditures in accordance with applicable law;
  - (5) The identity of any immediate family member employed by the City or who is making application to the City;
  - (6) The identity of all entities and persons with any financial interest, direct or indirect, in any contract or matter that the contractor or vendor has pending before City Council; and
  - (7) The identity of all entities and persons with any financial interest, direct or indirect, in any contract or matter that the contractor or vendor has pending before or within any office, department, or agency of the City.
- (b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

(Code 1984, § 2-6-34; Ord. No. 18-12, § 1(2-6-34), eff. 8-31-2012)

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**Sec. 2-5-35. Lobbying registration and reporting.**

- (a) Any lobbyist, as defined in Section 2-5-3 of this Code, who wishes to engage in the activity of lobbying, as defined in Section 2-5-3 of this Code, within City government shall first register with the Office of the City Clerk. The registration shall be made, in writing, on a form that is available at the Office of the City Clerk, that is created by the Law Department, and that is sworn to in the presence of a notary public. The City Clerk shall establish, subject to the approval of City Council, a non-refundable annual registration fee, which shall be paid by each lobbyist at the time of registration.
- (b) Each lobbyist shall file a report of the lobbyist's lobbying activity with the Office of the City Clerk on a quarterly basis, which shall be calculated from the date of registration. Any document that is filed by a lobbyist is deemed to be a public record and shall be published electronically on the World Wide Web, or other format, as to provide remote or online access to the reports.

(Code 1984, § 2-6-35; Ord. No. 18-12, § 1(2-6-35), eff. 8-31-2012)

**Secs. 2-5-36—2-5-60. Reserved.**

*DIVISION 3. STANDARDS OF CONDUCT<sup>3</sup>*

**Sec. 2-5-61. Willful neglect of duty prohibited.**

Except as otherwise provided for by applicable law and as defined as willful neglect of duty in Section 2-5-3 of this Code, a public servant shall not intentionally fail to perform the duties of the public servant's office or position.

(Code 1984, § 2-6-61; Ord. No. 18-12, § 1(2-6-61), eff. 8-31-2012)

**Sec. 2-5-62. Improper use or disclosure of confidential information prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly use or disclose to third parties confidential information, which is gained by reason of the public servant's official duties, concerns the property, government or affairs of the City, or any office, department or agency thereof, and is not available to members of the public.

(Code 1984, § 2-6-62; Ord. No. 18-12, § 1(2-6-62), eff. 8-31-2012)

**Sec. 2-5-63. Improper use of City property prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly use City property in violation of City policies and procedures.

(Code 1984, § 2-6-63; Ord. No. 18-12, § 1(2-6-63), eff. 8-31-2012)

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<sup>3</sup>Editor's note(s)—Section 1 of Ordinance No. 18-12, effective August 31, 2012, repealed Sections 2-6-61 through 2-6-63 and 2-6-69 of the 1984 Detroit City Code, as amended, and added substitute Sections 2-6-61 through 2-6-63 and 2-6-69 and repealed Section 2-6-64 in its entirety.

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## **Sec. 2-5-64. Incompatible employment or rendering services prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly engage in or accept employment, or knowingly render services, for a private or public interest where such employment or service is in conflict or incompatible with the proper discharge of the public servant's official duties for the City, or where such employment or service is reasonably expected to impair the public servant's independence of judgment or action in the performance of the public servant's official duties for the City.

(Code 1984, § 2-6-65; Ord. No. 22-00, § 1(2-6-65), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-65), eff. 8-31-2012)

## **Sec. 2-5-65. Representation of private person, business, or organization prohibited; exceptions.**

A public servant shall not act as an agent, attorney, or representative for another person, business, or organization in any matter that is pending before a City agency, except that:

- (1) 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;
- (2) A public servant who is an uncompensated member of a City board, commission, or other voting body may act as an agent, attorney, or representative for another person, business, or organization in a manner that is pending before a City agency, other than the board, commission, or other voting body on which the public servant is a member; or
- (3) A public servant who is compensated by the City may act as an agent, attorney, or representative for another person, business, or organization in a matter that is pending before a City board, commission or other voting body, other than the board, commission or other voting body on which the public servant serves as an appointee or as an employee, or under a personal services contract, as long as the public servant does so:
  - a. Without compensation; and
  - b. On the public servant's leave time; and
  - c. For appointees, in accordance with Chapter 35, Article III, Division 2, of this Code, *Vacation, Sick, Departmental, Funeral, and Jury Leave*; or
  - d. For non-union employees, in accordance with Chapter 35, Article III, Division 2, of this Code, *Vacation, Sick, Departmental, Funeral, and Jury Leave*, and the City's Civil Service Rules; or
  - e. For union employees, in accordance with the employee's respective union contract and the City's Civil Service Rules; or
  - f. For individuals who provide services to the City pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

(Code 1984, § 2-6-66; Ord. No. 22-00, § 1(2-6-66), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-66), eff. 12-15-2006)

**Commentary**—In general, there is an inherently high risk for the presence of a conflict of interest: 1) where a public servant receives compensation from both the City and a person who, or an organization which, the public servant represents before a City agency; or 2) where an uncompensated member of a City board, commission, or other body wishes to represent a person or organization before the same board, commission or voting body on which the public servant serves. At the same time, it is important to recognize that a public servant should be allowed to voluntarily commit the public servant's time to serving the public good, and



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that, as a volunteer, an uncompensated member of a City board, commission, or other body needs to earn a living.

There is a recognized interest in permitting a public servant who receives compensation from the City to voluntarily serve the Community without compensation by appearing before a City agency on behalf of another. Such a policy serves, in part, to protect the public servant's rights to freedom of speech and freedom of association. For these reasons, this section is intended to eliminate the potential for creating such conflict. Accordingly, this section expressly permits a public servant to engage in uncompensated volunteer service to the community within the applicable legal and regulatory guidelines.

There is a parallel interest in permitting an uncompensated member of a City board, commission, or other body to represent a person or organization before a different City agency. This section also permits an uncompensated member of a board, commission, or other voting body to represent non-City interests for compensation so long as it is not before the same board, commission or voting body on which the public servant serves. This policy encourages the most highly qualified individuals to serve the City in uncompensated positions while allowing these individuals to earn their livelihood.

For purposes of clarification, any action taken under this section must conform to any other applicable provision of this article. In addition, any action taken under this section must conform to other applicable laws, rules, and regulations.

### **Sec. 2-5-66. Self-interested regulation and participation prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly vote, or knowingly participate in the negotiation or making of any City contract, or any other type of transaction with any business entity in which the public servant or an immediate family member has a financial interest.

(Code 1984, § 2-6-67; Ord. No. 22-00, § 1(2-6-67), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-67), eff. 8-31-2012)

### **Sec. 2-5-67. Improper use of official position prohibited.**

Except as otherwise provided for by applicable law, a public servant shall not knowingly use the public servant's official position in violation of applicable law, to improperly influence 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.

(Code 1984, § 2-6-68; Ord. No. 22-00, § 1(2-6-68), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-68), eff. 8-31-2012)

**Commentary**—This provision prohibits a public servant from using the public servant's official position in violation of federal or state law, such as the state law prohibiting bribery, being MCL 750.118, the state law regulating conflicts of interest pertaining to public contracts involving public servants under the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 *et seq.*, the state law regulating political campaign organizations under the Michigan Campaign Finance Act, being MCL 169.201 *et seq.*, and the provisions of the Michigan Gaming Control and Revenue Act, being MCL 432.218(2)(c) and (d), prohibiting a government official from soliciting or knowingly accepting anything of value or benefit from a casino licensee in return for influencing official action.

The prohibition in the article is not intended to prevent a public servant from giving advice or seeking information as a necessary part of the public servant's duties, or from communicating with a City agency in the ordinary course of the City's business. Nor is this prohibition intended to chill a public servant's free speech rights under the First Amendment to the United States Constitution or under Article I, Section 5, of the 1963 Michigan Constitution where the public servant is expressing the public servant's views to another City public servant or before a City agency in a non-official capacity.

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**Sec. 2-5-68. Solicitation or acceptance of loan or payment prohibited.**

A public servant who, in the course of the public servant's duties, exercises significant authority shall not solicit or accept a loan or payment from an individual who, or entity which, is providing service to, or receiving tax abatements, credits, or exemptions from the City.

(Code 1984, § 2-6-69; Ord. No. 18-12, § 1(2-6-69), eff. 8-31-2012)

**Sec. 2-5-69. Public servant prohibited from unduly influencing decisions to fill any position in City government with immediate family members.**

A public servant who, in the course of the public servant's duties, exercises significant authority shall not unduly influence any decision to fill a position in City government with an immediate family member, as defined in Section 2-5-3 of this Code.

(Code 1984, § 2-6-70; Ord. No. 43-06, § 1(2-6-70), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-70), eff. 8-31-2012)

**Sec. 2-5-70. Prohibition on gifts and gratuities; exceptions.**

- (a) A public servant shall not accept gifts, gratuities, honoraria, or other thing of value from any person or entity 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 law and Section 2-5-35 of this Code.
- (b) The prohibition in Subsection (a) of this section shall not apply:
  - (1) To an award publicly presented to a public servant by an individual, governmental body, or non-governmental entity or organization in recognition of public service;
  - (2) To complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials;
  - (3) To a gift received from a public servant's immediate family member or relative, provided, that the immediate family member or relative is not acting as a third party's intermediary or an agent in an attempt to circumvent this prohibition;
  - (4) To an admission or registration fee, travel expenses, entertainment, meals or refreshments that are furnished to the public servant:
    - a. By the sponsor of an event, appearance or ceremony, which is related to official City business in connection with such an event, appearance or ceremony and to which one or more members of the public are invited; or
    - b. In connection with teaching, a speaking engagement, or the provision of assistance to an organization or another governmental entity as long as the City does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshment for the same activity.

(Code 1984, § 2-6-71; Ord. No. 18-12, § 1(2-6-71), eff. 8-31-2012)

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**Sec. 2-5-71. One year post-employment prohibition.**

- (a) Subject to state law, for one year 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 the public servant was directly concerned, personally participated, actively considered or acquired knowledge while working for the City.
- (b) Subject to state law, for one year after employment with the City, a public servant shall not accept employment with any person who, or entity which, did business with the City during the former servant's tenure where the public servant was in any way involved in the award or management of the contract, or the employment would require the sharing of confidential information.

(Code 1984, § 2-6-72; Ord. No. 18-12, § 1(2-6-72), eff. 8-31-2012)

**Sec. 2-5-72. Prohibition on campaign activities by using City personnel or property, or during working hours.**

- (a) Elective officers, as defined in Section 2-5-3 of this Code, are prohibited from soliciting appointive officers, appointees, and employees to work on political campaign activities using City property or during working hours.
- (b) Appointive officers, appointees, and employees are prohibited from engaging in campaign activities by using City property or engaging in such activity during working hours.

(Code 1984, § 2-6-73; Ord. No. 18-12, § 1(2-6-73), eff. 8-31-2012)

**Secs. 2-5-73—2-5-100. Reserved.**

*DIVISION 4. BOARD OF ETHICS<sup>4</sup>*

**Subdivision A. In General**

**Sec. 2-5-101. Charter independence; duties; promulgation of rules.**

- (a) The Board of Ethics is an independent body that was established by Section 2-106.8 of the Charter for the following purposes:
  - (1) To render advisory opinions regarding the meaning and application of provisions of the Charter, this article, and other laws or regulations, which pertain to disclosure requirements and standards of conduct for public servants;

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<sup>4</sup>Editor's note(s)—Section 1 of Ordinance No. 18-12, effective August 31, 2012, repealed Section 2-6-96 of the 1984 Detroit City Code, as amended, and added a substitute Section 2-6-96.

Cross reference(s)—Authorities, boards, commissions, and committees, § 2-4-1*et seq.*

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- (2) To adjudicate and dispose of complaints 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;
  - (3) To conduct investigations and, where appropriate, issue notice of charges 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;
  - (4) To recommend 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 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, contractors, and vendors;
  - (5) To provide mandatory training for the Mayor, City Council, Clerk, appointive officers, appointees, and employees who exercise significant authority in the exercise of their official duties; and
  - (6) To provide training of all other appointees and employees including those subject to Article 6, Chapter 4, of the Charter.
- (b) In accordance with Section 2-111 of the Charter, the Board of Ethics shall promulgate administrative rules to perform its duties as set forth in the Charter and this article. Whenever this article is amended, the Board of Ethics shall not take action, which requires the promulgation of any new administrative rule, until the rule has been properly promulgated under Section 2-111 of the Charter.

(Code 1984, § 2-6-91; Ord. No. 22-00, § 1(2-6-91), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-91), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-91), eff. 8-31-2012)

### **Sec. 2-5-102. Limitations on Board of Ethics authority.**

The Board of Ethics does not have the authority to reverse or otherwise modify a prior decision of the Mayor, the City Council, the City Clerk, voting body as defined in Section 2-5-3 of this Code, appointee, or other public servant.

(Code 1984, § 2-6-92; Ord. No. 22-00, § 1(2-6-92), eff. 8-11-2000)

### **Sec. 2-5-103. Composition of Board of Ethics; qualifications for members; terms; removal for cause; filling of vacancies.**

- (a) In accordance with Section 2-106.8 of the Charter, the seven-member Board of Ethics shall consist of:
- (1) Three members of the public who shall be appointed by the Mayor;
  - (2) Three members of the public who shall be appointed by the City Council; and
  - (3) One member of the public who shall be jointly appointed by the Mayor and the City Council.
- (b) In accordance with Section 2-106.8 of the Charter, members of the Board of Ethics shall be residents of the City who are not elective officers, appointive officers, appointees or employees of the City at any time during their board membership, and shall serve without compensation. Members of the Board of Ethics shall not be an immediate family member or a relative of the Mayor, the Deputy Mayor, or a member of the City Council or the City Clerk.
- (c) In accordance with Section 2-106.8 of the Charter, all members of the Board of Ethics shall be restricted to a maximum of two consecutive terms or to ten years. Except for the initial terms that are delineated in

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Subsection (d) of this section and the filling of vacancies under Subsection (e) of this section, the terms for all members of the Board of Ethics shall be five years.

- (d) The initial terms for the members of the Board of Ethics shall be:
- (1) Two years for one member who is appointed under Subsection (a)(1) of this section;
  - (2) Two years for one member who is appointed under Subsection (a)(2) of this section;
  - (3) Three years for one member who is appointed under Subsection (a)(1) of this section;
  - (4) Three years for one member who is appointed under Subsection (a)(2) of this section;
  - (5) Four years for one member who is appointed under Subsection (a)(1) of this section;
  - (6) Four years for one member who is appointed under Subsection (a)(2) of this section; and
  - (7) Five years for the member who is appointed under Subsection (a)(3) of this section.
- (e) The members of the Board of Ethics are subject to removal for cause, pursuant to Section 2-107(c) of the Charter, by the appointing authority. Where a member of the Board of Ethics resigns or is removed for cause, the appointing authority shall appoint another individual to serve the remainder of the term.

(Code 1984, § 2-6-93; Ord. No. 22-00, § 1(2-6-93), eff. 8-11-2000; Ord. No. 04-01, § 1(2-6-93), eff. 4-2-2001; Ord. No. 18-12, § 1(2-6-93), eff. 8-31-2012)

### **Sec. 2-5-104. Limitations on partisan political activity by Board of Ethics members.**

While a member of the Board of Ethics, the member shall not:

- (1) Be a candidate for the Office of Mayor, City Council, City Clerk, or Board of Police Commissioners;
- (2) Be a campaign treasurer, campaign manager or officer, or participate in a committee for the campaign of a candidate for the Office of Mayor, City Council, City Clerk, or Board of Police Commissioners;
- (3) Make a monetary or an in-kind contribution to, or expenditure for, a political campaign that is in excess of \$100.00 for a candidate for the Office of Mayor, City Council, City Clerk, or Board of Police Commissioners; or
- (4) Solicit votes, or raise monetary or in-kind contributions, for a candidate for the Office of Mayor, City Council, City Clerk, or Board of Police Commissioners.

(Code 1984, § 2-6-94; Ord. No. 43-06, § 1(2-6-94), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-94), eff. 8-31-2012)

**Commentary**—Members of the Board of Ethics are appointed by the Mayor, the City Council, or the Mayor and the City Council jointly and they may only be removed for cause by their respective appointing authority under Section 2-106.8 of the Charter. They should not be placed in a position where they appear to be beholden to the authority who appointed them. Therefore, this section ensures that members of the Board of Ethics are able to operate without any suggestion of obligation or pressure to take sides during election cycles for the Offices of Mayor, City Council, City Clerk, or Board of Police Commissioners.

The members of the Board of Ethics hold unique positions in City government as they are the only positions in City government that have jurisdiction over all public servants in both the Executive and Legislative branches, including the Mayor, City Council Members, the City Clerk, or Board of Police Commissioners. This section will help to ensure the independence of the Board of Ethics that is mandated in Section 2-106.8 of the Charter.

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**Sec. 2-5-105. Funding and staff.**

- (a) In accordance with Sections 2-106.13 and 8-214 of the Charter, the City shall annually appropriate funds sufficient to enable the Board of Ethics to perform its duties as set forth in the Charter and this article, including hiring adequate staff.
- (b) The Corporation Counsel shall assign legal counsel from the Law Department who shall provide representation and advice to the Board of Ethics on legal matters. The Board of Ethics 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 the Attorney's findings to the Board of Ethics. Any retention of outside counsel on behalf of the Board of Ethics shall be governed by the provisions of Section 7.5-201(1) of the Charter.

(Code 1984, § 2-6-95; Ord. No. 43-06, § 1(2-6-95), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-95), eff. 8-31-2012)

**Commentary**—Section 8-214 of the Charter requires that the City establish, through enactment of an ordinance, a proportional funding method for certain oversight agencies, including the Board of Ethics. This requirement ensures that, because of its importance to the efficient and ethical operation of City government, the function provided by the Board of Ethics, as an oversight agency, is not hampered in its ability to properly function.

**Sec. 2-5-106. Public servants, contractors, subcontractors, vendors and licensees, and applicants for certification of eligibility for City contracts or programs, to cooperate with the Board of Ethics; obstruction to result in penalties; requirements to be incorporated into City contracts.**

- (a) It shall be the duty of every public servant, contractor, subcontractor, vendor and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the Board of Ethics in any investigation pursuant to this article.
- (b) Any public servant who willfully and without justification or excuse obstructs an investigation of the Board of Ethics by withholding documents or testimony is subject to forfeiture of office, discipline, or any other applicable penalty.
- (c) Any contractor, subcontractor, vendor, or licensee who willfully and without justification or excuse obstructs an investigation of the Board of Ethics by withholding documents or testimony is subject to debarment or any other applicable penalty.
- (d) The requirements under this section shall be incorporated into all City contracts, where legally necessary for application and enforcement.

(Code 1984, § 2-6-96; Ord. No. 18-12, § 1(2-6-96), eff. 8-31-2012)

**Sec. 2-5-107. Information provided to Board of Ethics to remain confidential.**

Any member of the Board of Ethics or any public servant who has access to confidential information that is related to the functions or activities of the Board is prohibited from divulging such information to any person who is not authorized to possess the information.

(Code 1984, § 2-6-97; Ord. No. 43-06, § 1(2-6-97), eff. 12-15-2006)

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**Sec. 2-5-108. Annual report.**

- (a) On or before April 1st 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 of Ethics, 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 recommendations of the Board of Ethics, 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 the annual report shall be submitted to the City Clerk, each department director, each agency head, and the Detroit Public Library Main Branch.

(Code 1984, § 2-6-98; Ord. No. 43-06, § 1(2-6-98), eff. 12-15-2006)

**Secs. 2-5-109—2-5-120. Reserved.**

**Subdivision B. Advisory Opinions**

**Sec. 2-5-121. Opinion request; requirements for filing.**

- (a) A public servant, a former public servant, or an applicant or candidate to be a public servant may request an advisory opinion from the Board of Ethics regarding the application of the disclosure requirements that are found in Division 2 of this article, or of the standards of conduct that are found in Division 3 of this article, regarding the public servant's own conduct.
- (b) A request for an advisory opinion shall be addressed to the Board of Ethics, shall be submitted in writing, shall set forth the facts and circumstances upon which the opinion is sought, and shall be signed by the public servant who is making the request.

(Code 1984, § 2-6-101; Ord. No. 22-00, § 1(2-6-101), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-101), eff. 12-15-2006)

**Commentary**—Section 2-106.9 of the Charter requires that the Board of Ethics issue advisory opinions regarding the meaning and application of the Charter, City ordinances or other laws or regulations establishing standards of conduct for public servants. Aside from this Charter mandate, Section 2-5-121(a) of this Code arises out of the recognition that public servants can best conform their official conduct to the ethical standards set forth in this article if they understand these standards and how they apply in the everyday conduct of governmental business. Accordingly, it is the policy of this article to promote the submission by public servants of questions and issues they may have concerning the content and application of this article to the Board of Ethics for advisory opinions where necessary.

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**Sec. 2-5-122. Identity of public servant, former public servant, or an applicant or a candidate to be a public servant requesting opinion to remain confidential; waiver of confidentiality.**

- (a) The identity of a public servant, former public servant, or an applicant or a candidate to be a public servant who requests an advisory ethics opinion is confidential, and any information that reveals the identity of the requestor of the opinion request is likewise confidential where such disclosure of the information could lead to the disclosure of the identity of the public servant, former public servant, or applicant or candidate to be a public servant requesting the advisory opinion.
- (b) A public servant, former public servant, or an applicant or a candidate to be a public servant who requests an advisory opinion and makes, or purports to make, their identity public is deemed to have waived the confidentiality of the request for an advisory opinion.

(Code 1984, § 2-6-102; Ord. No. 22-00, § 1(2-6-102), eff. 8-11-2000)

**Sec. 2-5-123. Board precluded from taking action where request made in good faith, concerns past or current conduct, and public servant has conformed conduct to advisory opinion.**

Where a public servant's request for an advisory opinion regarding the public servant's prospective conduct:

- (1) Is made in good faith;
- (2) Includes past or current conduct; and
- (3) The public servant conforms the public servant's conduct to the advisory opinion that was issued by the Board of Ethics to the public servant,

the Board is precluded from taking any action regarding any complaint that is filed under Subdivision C of this division, or is precluded from conducting any investigation that may take place under Subdivision D of this division.

(Code 1984, § 2-6-103; Ord. No. 43-06, § 1(2-6-103), eff. 12-15-2006)

**Sec. 2-5-124. Disposition of opinion requests.**

- (a) The Board of Ethics shall dispose of an opinion request within 91 days after its receipt of such request. However, under extraordinary circumstances, as defined in Section 2-5-3 of this Code, the Board of Ethics may extend its time to respond to a specific request by not more than 91 additional days. In the event the Board of Ethics extends its time to respond to a request, the Board shall notify, in writing, the requester of the extension and of the specific reasons therefor.
- (b) The Board of Ethics shall dispose of a request for an advisory opinion in one of the following ways:
  - (1) Deny the request where the request does not relate to this article;
  - (2) Decline to issue an advisory opinion where the Board of Ethics determines that the request does not merit review by the Board;
  - (3) Decline to issue an advisory opinion where the Board of Ethics determines that the request concerns past or current conduct, which is more appropriately addressed by the filing of a complaint or by the contracting of an investigation; or



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- (4) Issue an advisory opinion in response to the request.

(Code 1984, § 2-6-104; Ord. No. 22-00, § 1(2-6-104), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-104), eff. 12-15-2006; Ord. No. 20-10, § 1(2-6-104), eff. 11-15-2010)

**Commentary**—Section 2-5-124(b) recognizes the discretion the Board of Ethics has in addressing advisory opinion requests in the manner that it deems appropriate. In particular, the Board of Ethics has discretion to decline to issue an advisory opinion where the request does not actually relate to the subject matter of the article, or where the Board determines that the request does not otherwise merit review by the Board, such as where the Board determines that the request is frivolous in nature, or where the Board determines that the request was not made in good faith, or where the request does not present sufficient facts or information to enable the Board to formulate appropriate advice.

**Secs. 2-5-125—2-5-140. Reserved.**

### **Subdivision C. Complaints**

**Sec. 2-5-141. Complaint; contents thereof; limitation of action.**

- (a) Except for members of the Board of Ethics, any person may file a complaint with the Board of Ethics where the person believes that a public servant, contractor, or vendor may have violated this article.
- (b) A complaint shall be made in writing on a form that is created by the Law Department and prescribed by the Board of Ethics, shall specify the provisions of this article alleged to have been violated and the facts alleged to constitute the violation, and shall be signed by the person who is making the complaint and sworn to in the presence of a notary public.
- (c) Such a complaint shall be filed within 182 days from the date that the complainant knew or should have known of the action that is alleged to be a violation of this article, and in no event shall the Board of Ethics consider a complaint which has been filed more than two years after a violation of this article is alleged to have occurred.
- (d) A complaint that has been filed within the time period contained in Subsection (c) of this section and, where dismissed by the Board of Ethics due to other investigations of pending proceedings, shall be deemed dismissed without prejudice and may be reinstated and reconsidered by the Board at the conclusion of the other proceedings.

(Code 1984, § 2-6-111; Ord. No. 22-00, § 1(2-6-111), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-111), eff. 12-15-2006; Ord. No. 20-10, § 1(2-6-111), eff. 11-15-2010; Ord. No. 18-12, § 1(2-6-111), eff. 8-31-2012)

**Sec. 2-5-142. Retaliation and harassment prohibited.**

- (a) It shall be a violation of this article for any public servant, contractor, or vendor to retaliate against any individual who files a complaint with the Board of Ethics on the basis that the individual has filed the complaint.
- (b) It shall be a violation of this article for an individual to use this article to harass a public servant, contractor, or vendor by filing a complaint with knowledge of its falsity or with reckless disregard for its truth or falsity.

(Code 1984, § 2-6-112; Ord. No. 22-00, § 1(2-6-112), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-112), eff. 8-31-2012)

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**Commentary**—Section 2-5-142(a) of this Code arises out of the recognition that the entire public as well as all public servants, contractors, and vendors must be vigilant in promoting and safeguarding ethical practices in the conduct of government business. As a mechanism for the enforcement of the article's provisions, Section 2-5-141 of this Code allows any person or member of the public as well as any public servant to file a complaint with the Board of Ethics where the person believes that a public servant, contractor, or vendor has violated this article. Not only will the availability of the complaint procedure serve as a vehicle for enforcement of the article's code of conduct, but it is also intended to serve as a substantial deterrent to conduct or practices which violate the article. In furtherance of this policy, and the fundamental goal of integrity in government, individuals must be immune from fear of retaliation for filing of legitimate complaints asserting violation of the article. Accordingly, Section 2-5-142(a) of this Code prohibits retaliation against an individual who files a complaint against a public servant, contractor, or vendor with the Board of Ethics.

Section 2-5-142(b) of this Code arises out of the parallel recognition that, despite the salutary objectives of the article, some individuals may nevertheless attempt to misuse and abuse its enforcement provisions for improper or bad faith motivations that have as their goal the infliction of harm or damage upon other public servants, and contractors and vendors, and their respective reputations. Accordingly, Section 2-5-142(b) of this Code prohibits use of the article's complaint procedure for the purpose of harassment of another public servant, or contractor or vendor. For purposes of this article, harassment is defined as the assertion by an individual of a false or frivolous complaint of violation of this article by a public servant, contractor, or vendor where the person making the complaint knows of the falsity of the assertion or makes the false assertion with a reckless disregard for its truth or falsity, that is, has no reasonable basis for believing in the truthfulness of the complaint.

**Sec. 2-5-143. Communications with the Board of Ethics regarding a complaint in the absence of the complainant, respondent, or the complainant's or respondent's respective counsel prohibited; exception; reporting substance of prohibited communication.**

- (a) After a complaint has been filed and during its pendency before the Board of Ethics, no member of the Board may communicate regarding the complaint directly or indirectly with any complainant, respondent, or the complainant's or respondent's respective counsel, in the absence of the opposing party, except that:
  - (1) The members of the Board of Ethics may discuss the complaint with their staff, and may obtain legal advice from the Law Department or, when necessary, from outside counsel;
  - (2) The members of the Board of Ethics may discuss the complaint at a lawfully conducted meeting; and
  - (3) When directed to do so by the Board of Ethics, its staff may engage in communications necessary to investigate a complaint.
- (b) Where any complainant or respondent, or the complainant's or respondent's respective counsel, attempts to communicate with a member of the Board of Ethics regarding a pending complaint in the absence of the opposing party, the member shall report the substance of the communication to the Board on the public record at the next regular meeting of the Board.

(Code 1984, § 2-6-113; Ord. No. 22-00, § 1(2-6-113), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-113), eff. 12-15-2006)

**Sec. 2-5-144. Running of limitations of action; processing complaints.**

- (a) No action may be taken by the Board of Ethics on any complaint which is filed later than 182 days from the date that the complainant knew or should have known of the action that is alleged to be a violation of this

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article, and in no event shall the Board consider a complaint which has been filed more than two years after a violation of this article is alleged to have occurred.

- (b) In accordance with administrative rules that are promulgated pursuant to Section 2-5-101 of this Code:
- (1) The staff of the Board of Ethics shall acknowledge its receipt to the complainant, and forward the complaint simultaneously to each member of the Board, the public servant, contractor, or vendor who is complained against, and the City Attorney from the Law Department who represents the Board;
  - (2) The City Attorney from the Law Department, or outside counsel, who represents the Board of Ethics shall provide the Board with a preliminary written legal analysis of the complaint;
  - (3) The public servant, contractor, or vendor who is complained against shall have the opportunity to submit a written response to the complaint prior to the Board of Ethics deciding whether to hold a hearing;
  - (4) After receipt of the City Attorney's analysis, the Board of Ethics shall review and consider the complaint and the City Attorney's analysis, and, if a hearing is to be held, shall set a date certain for the hearing to take place.

(Code 1984, § 2-6-114; Ord. No. 22-00, § 1(2-6-114), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-114), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-114), eff. 8-31-2012)

### **Sec. 2-5-145. Disposition of complaints.**

- (a) The Board of Ethics shall dispose of a complaint within 91 calendar days after its receipt. However, under extraordinary circumstances, as defined in Section 2-5-3 of this Code, the Board of Ethics may extend its time to respond to a specific complaint by not more than 91 additional days. In the event the Board of Ethics extends its time to respond to a complaint, the Board shall notify, in writing, the complainant, the public servant, and, if applicable, the contractor, or vendor of the extension and of the specific reasons therefor.
- (b) After giving due consideration to a complaint in accordance with the time lines delineated in Subsection (a) of this section, the Board of Ethics shall take any action or combination of actions, upon majority vote, which the Board deems appropriate in order to dispose of a complaint including, but not limited to, one or more of the following:
- (1) Dismiss the complaint based on any of the following grounds:
    - a. The Board of Ethics has no jurisdiction over the matter;
    - b. The complaint does not allege facts sufficient to constitute a violation of this article;
    - c. The complainant has failed to cooperate in the Board of Ethics' review and consideration of the complaint;
    - d. The complaint is defective in a manner which results in the Board of Ethics being unable to make any sound determination; or
    - e. There are other pending proceedings arising out of the same transaction or occurrence, or the same transactions or occurrences including, but not limited to, local, state or federal law enforcement investigations or criminal cases which, in accordance with Section 2-5-141 of this Code, the complaint may be reinstated and reconsidered;
  - (2) Determine that no violation of this article has occurred; or
  - (3) Determine that further information must be obtained in order for the Board of Ethics to determine whether the complaint alleges facts sufficient to constitute a violation of the article or whether a violation of this article has occurred; and:

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- a. Conduct its own investigation with respect to any alleged violation; or
  - b. Request the City Attorney to investigate the complaint and report all findings back to the Board of Ethics; or
- (4) Determine that a violation of state or federal law may have occurred, and refer the matter to the appropriate governmental authorities for review; or
  - (5) Determine that the complaint alleges facts sufficient to constitute a violation of this article and that the Board of Ethics will conduct a hearing with proper notice to determine whether a violation of this article has occurred; or
  - (6) Determine, on its own motion or upon request of the party against whom the complaint was filed, whether the complaint was filed with knowledge of its falsity or with reckless disregard for its truth or falsity; or
  - (7) Refer the complaint to the Police Department for review and possible issuance of a misdemeanor violation in accordance with Section 2-5-4 of this Code and, where issued, for prosecution by the Law Department.
- (c) Where a hearing is held, the Board of Ethics shall issue written findings of fact and conclusions of law as to whether a violation of this article has occurred. In its decision, the Board of Ethics may recommend the appropriate determinations that are delineated in Section 2-5-146 of this Code.

(Code 1984, § 2-6-115; Ord. No. 22-00, § 1(2-6-115), eff. 8-11-2000; Ord. No. 20-10, § 1(2-6-115), eff. 11-15-2010; Ord. No. 18-12, § 1(2-6-115), eff. 8-31-2012)

**Commentary**—Where the Board of Ethics has determined, after disposition of a complaint pursuant to Section 2-5-145 of this Code, that the article has been violated by the conduct complained of, the public servant against whom the complaint was made: 1) may be entitled to reasonable attorney fees incurred in the defense against the complaint, as provided for in Section 2-5-147 of this Code, where the Board of Ethics has also found that the public servant against whom the complaint was filed acted in the good faith performance of the public servant's duties, 2) may file a complaint against the original complainant for violation of the prohibition at Section 2-5-142(b) of this Code against use of the article for harassment, and/or 3) may file a civil action for defamation against the original complainant.

To constitute harassment in violation of Section 2-5-142 of this Code, the complainant must have filed the complaint with knowledge of its falsity or with reckless disregard of its truth or falsity. Beyond the determination of whether the conduct complained of constitutes a violation of the article, the Board of Ethics may make, upon its own determination or in response to a request by the public servant, contractor, or vendor against whom the complaint was filed, the separate determination as to whether the complaint was filed with knowledge of its falsity or with reckless disregard for its truth or falsity.

#### **Sec. 2-5-146. Violations of article; Board of Ethics permitted to make public admonition and to refer findings; cumulative effect.**

- (a) 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 against an elective officer, or an appointee, regarding the violation. In addition, 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 Section 2-107(B) of the 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 Section 2-107(B) of the Charter.
- (b) 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 against a public servant other than an elective officer, or an appointee,

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regarding the violation. In addition, 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 Charter and other laws, policies and procedures that are applicable to the position of the public servant and with the gravity of the offense.

- (c) Where the Board of Ethics finds that a decision of the Mayor, the City Council, the City Clerk, an appointee, a voting body, or other public servant was made in violation of this article, the Board may recommend to the Mayor, the City Council, the City Clerk, the appointee, the voting body, or other public servant that such decision be reviewed in accordance with the applicable provisions of the Charter and this Code. Upon such recommendation, the decision may be reviewed by the Mayor, the City Council, the City Clerk, the appointee, the voting body, or other public servant in accordance with the applicable provisions of the Charter, this Code, and any other applicable laws.
- (d) 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:
  - (1) Suspend the contractor or vendor where legally permissible; and
  - (2) Disqualify or debar the contractor or vendor from contracting or subcontracting with the City where legally permissible.
- (e) 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.

(Code 1984, § 2-6-116; Ord. No. 22-00, § 1(2-6-116), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-116), eff. 8-31-2012)

**Commentary**—Section 2-106.10 of the Charter directs that the code of governmental conduct enacted by ordinance shall contain appropriate penalties for violations of its provisions. Section 2-5-146 of this Code sets forth these potential penalties. Section 2-5-146(a) of this Code establishes public admonition as a punishment for violation of the article by an elective officer or appointee. In addition, information discovered by the Board of Ethics in the course of investigation of a complaint against an elective officer or appointee may reveal circumstances which may constitute the basis for forfeiture of or removal from office under Section 2-107(B) of the Charter. Inasmuch as this Charter section confers upon the City Council rather than the Board of Ethics the authority to decide whether the circumstances for forfeiture or removal from office exist, Section 2-5-146 of this Code provides that the Board may refer a matter to the City Council for investigation and consideration where a Board investigation reveals a possible basis for forfeiture under the Charter or applicable law.

Likewise, Section 2-5-146(b) of this Code makes public admonition available to the Board of Ethics as a penalty for violation of the article by a public servant other than an elective officer or appointee, such as a City employee. It is also recognized that a violation of the article by such a public servant may constitute grounds for disciplinary action against the public servant. Although the Board of Ethics is not empowered by the Charter to impose discipline upon a public servant, the Board may refer a proven violation by the public servant to the appropriate City official and/or supervisor who has the authority to consider and impose discipline. Any disciplinary action based on a violation of this article must be consistent with the provisions of the Charter and any other laws, policies, or procedures that may apply to the public servant, such as the City's civil service rules or collective bargaining agreements. Section 2-5-146(c) of this Code recognizes that a decision which was made in violation of this article may warrant review by the appropriate public officials. Whether or not such decision may be subject to reconsideration or reversal will depend upon the facts and circumstances of the situation and the application of relevant law.

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## Sec. 2-5-147. Reimbursement of reasonable attorney fees to a public servant.

- (a) In accordance with Michigan common law and within the structures of Subsections (b), (c) and (d) of this section, the Board of Ethics shall reimburse a public servant from the City's general fund for reasonable attorney fees which are incurred in the defense of a complaint filed against the public servant under Section 2-5-141 of this Code where the Board determines that, based upon all factual findings from the hearing, the public servant:
- (1) Acted in the good faith performance of the public servant's duties; and
  - (2) Did not violate this article.
- (b) The maximum reimbursement for such attorney fees shall not be greater than 150 percent of the hourly rate that is established, pursuant to 18 USC 3006A(d), for the payment of appointed counsel for matters arising in the United States District Court for the Eastern District of Michigan.
- (c) When determining the hourly rate of attorney fees to be reimbursed to a public servant under Subsection (a) of this section, the Board shall consider the following factors:
- (1) The professional standing and experience of the attorney;
  - (2) The skill, time, and labor involved in defending the ethics complaint; and
  - (3) The complexity of the complaint.
- (d) Where the Board of Ethics determines that a public servant is entitled to reimbursement of attorney fees under Subsection (a) of this section, the administrative rules that are promulgated pursuant to Section 2-5-101 of this Code shall control the procedure for submission and review of relevant documentation.

(Code 1984, § 2-6-117; Ord. No. 22-00, § 1(2-6-117), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-117), eff. 8-31-2012)

**Commentary**—In spite of the salutary objectives of the article, some individuals may attempt to misuse it by making unjustified, false or frivolous charges of violation of the article by public servants. A public servant may expend substantial time and monetary resources in defending against a complaint, including attorney fees. This expenditure of resources may be compounded where a public servant is the unwitting target of and must defend against more than one baseless complaint. In recognition of this potential, this section requires that the Board of Ethics grant an application for reimbursement of reasonable attorney fees incurred for the defense of a complaint where the Board determines that the public servant acted in good faith in the performance of the public servant's duties and did not violate the article.

The authorization for the use of the City's general fund for this purpose is rooted in Michigan common law which recognizes the discretionary power of a municipality to appropriate funds for the necessary expenses incurred by a public servant in defending against complaints arising out of the good faith performance of official duties. *Messmore v Kracht*, 172 Mich 120; 137 NW 549 (1912). See also, *City of Warren v Dannis*, 136 Mich App 651; 357 NW2d 731 (1984); 1976 OAG, No 4947, pp 349-350 (March 24, 1976) (concluding in favor of City reimbursing a public official for attorney fees incurred in defending against misconduct charges where official acted in good faith in discharging official duties); *accord, Ellison v Reid*, 397 So2d 352 (Fla App Div 1 1981) (affirming use of public funds to pay legal expenses of municipal official defending against claim of ethical misconduct). The formula for attorney fee awards is adapted from the national rate which is used by the federal district courts to pay appointed counsel in such courts. The discretion of the Board of Ethics in determining the amount of attorney fees to be reimbursed must be exercised reasonably, in accordance with the criteria set forth in Subsection (c) of this section.

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As indicated above, the reimbursement of attorney fees in defending against a claim of ethical misconduct is limited under Michigan law to public servants. As such, contractors and vendors are precluded from receiving reimbursement of attorney fees in defending against a claim of ethical misconduct.

**Secs. 2-5-148—2-5-160. Reserved.**

**Subdivision D. Investigations and Notices of Charges**

**Sec. 2-5-161. Authority; contents thereof; procedure; notice to public servant, contractor, or vendor.**

- (a) The Board of Ethics is authorized to conduct investigations, on its own initiative, regarding a Board member's perceived violation of the disclosure requirements that are found in Division 2 of this article, or the standards of conduct that are found in Division 3 of this article.
- (b) An investigation may be initiated by a member of the Board of Ethics who raises the matter at a Board meeting, but, in order for the investigation to proceed, the Board must approve the investigation at the same or subsequent Board meeting, by a three-fourths vote of Board members serving.
- (c) Where the Board of Ethics initiates an investigation, the public servant, contractor, or vendor who is the subject of the investigation shall be sent, via first class and certified mail, a written notice:
  - (1) That an investigation has been authorized and is taking place; and
  - (2) Which contains a summary of the basis for the possible violation.

(Code 1984, § 2-6-121; Ord. No. 43-06, § 1(2-6-121), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-121), eff. 8-31-2012)

**Sec. 2-5-162. Running of limitations of action.**

- (a) No action may be taken by the Board of Ethics on any investigation which is initiated by a member of the Board, where 182 days have passed from the date that the member of the Board raised an alleged violation of this article at a Board meeting.
- (b) In no event shall the Board of Ethics conduct an investigation more than two years after a violation of this article is alleged to have occurred.

(Code 1984, § 2-6-122; Ord. No. 43-06, § 1(2-6-122), eff. 12-15-2006)

**Sec. 2-5-163. Harassment prohibited; removal from Board of Ethics.**

- (a) It shall be a violation of this article for a member of the Board of Ethics to harass, through the initiation of an investigation against any public servant, contractor, or vendor by conducting an investigation with knowledge of its falsity, or with reckless disregard for its truth or falsity.
- (b) In the event that a member of the Board of Ethics violates Subsection (a) of this section, the member is subject to removal, in accordance with Section 2-107(C) of the Charter, by the authority who appointed the member, whether the Mayor, the City Council, or the Mayor and City Council jointly.

(Code 1984, § 2-6-123; Ord. No. 43-06, § 1(2-6-123), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-123), eff. 8-31-2012)

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**Commentary**—Section 2-5-163(a) of this Code arises out of the recognition that the entire public, as well as all public servants, contractors, and vendors, must be vigilant in promoting and safeguarding ethical practices in the conduct of government business. As a mechanism for the enforcement of the article's provisions, Section 2-5-161 of this Code allows a member of the Board of Ethics to initiate an investigation where the member raises the issue that a public servant, contractor, or vendor has violated this article. Not only will the availability of the investigation process serve as a vehicle for enforcement of the article's code of conduct, but it is also intended to serve as a substantial deterrent to conduct or practices which violate the article. In furtherance of this policy, and the fundamental goal of integrity in government, public servants, contractors, and vendors must be immune from fear of harassment under this article. Accordingly, Section 2-5-163(a) of this Code arises out of the recognition that, despite the salutary objectives of the article, the Board of Ethics may nevertheless attempt to misuse and abuse its enforcement provisions for improper or bad faith motivations that have as their goal the infliction of harm or damage upon other public servants, or contractors or vendors, and their respective reputations. Accordingly, Section 2-5-163(a) of this Code prohibits use of the article's investigation process for the purpose of harassment of public servants, contractors, or vendors. For purposes of this article, harassment is defined as the assertion by a member of the Board of Ethics of a false or frivolous allegation of violation of this article where the member of the Board making the allegation knows of the falsity of the assertion, or makes the false assertion with a reckless disregard for its truth or falsity, that is, has no reasonable basis for believing in the truthfulness of the allegation.

Section 2-5-163(b) of this Code applies: 1) where a member of the Board of Ethics uses the member's position to harass a public servant, contractor, or vendor by raising an allegation of an ethics violation, under this article, at a meeting of the Board, with knowledge of its falsity, or with reckless disregard for its truth or falsity; or 2) where members of the Board of Ethics use their positions to harass a public servant, contractor, or vendor by voting to proceed with an ethics investigation, under this article, at a meeting of the Board, with knowledge of its falsity or with reckless disregard for its truth or falsity, by a three-fourths vote of Board members serving.

**Sec. 2-5-164. Communications with the Board of Ethics regarding an investigation prohibited; exceptions; reporting substance of prohibited communication.**

- (a) After an investigation has been initiated and during its pendency before the Board of Ethics, no member of the Board may communicate regarding the investigation directly or indirectly with the public servant, contractor, or vendor who is the subject of the investigation, or the public servant's, contractor's or vendor's respective counsel, except that:
  - (1) The members of the Board of Ethics may discuss the investigation with their staff, and may obtain legal advice from the Law Department or from outside counsel;
  - (2) The members of the Board of Ethics may discuss the investigation at a lawfully conducted meeting; and
  - (3) When directed to do so by the Board of Ethics, its staff may engage in communications necessary to conduct the investigation.
- (b) Where any public servant, contractor, or vendor, or the public servant's, contractor's or vendor's respective counsel, attempts to communicate with a member of the Board of Ethics regarding a pending investigation, the member shall report the substance of the communication to the Board, on the public record, at the next regular meeting of the Board.

(Code 1984, § 2-6-124; Ord. No. 43-06, § 1(2-6-124), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-124), eff. 8-31-2012)



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**Sec. 2-5-165. Conducting investigations; preliminary written legal analysis; notice of charges; scheduling hearing.**

- (a) The Board of Ethics shall dispose of an investigation and, if any, notice of charges, within 91 calendar days after its initiation. However, under extraordinary circumstances, as defined in Section 2-5-3 of this Code, the Board of Ethics may extend its time to conduct an investigation and issue notice of charges by not more than 91 additional days. In the event that the Board of Ethics extends its time to conduct an investigation, the Board shall notify, in writing, the public servant, contractor, or vendor who is the subject of the investigation initiated by the Board of the extension and the specific reasons therefor.
- (b) In accordance with administrative rules that are promulgated pursuant to Section 2-5-101 of this Code:
- (1) Within 14 calendar days of the initiation of an investigation by the Board of Ethics, the City Attorney from the Law Department, or outside counsel, who represents the Board shall provide the Board with a preliminary written legal analysis for the Board's review;
  - (2) Where the Board of Ethics determines that the issuance of a notice of charges is unwarranted, the investigation shall be closed and the public servant, contractor, or vendor who is the subject of an investigation that is initiated by the Board shall be notified, in writing, via first class and certified mail, that the investigation has been closed;
  - (3) Where the Board of Ethics determines that issuance of a notice of charges is warranted, the public servant, contractor, or vendor who is the subject of an investigation initiated by the Board shall be sent, via certified and first class mail, a notice of charges and be given the opportunity to submit a written response to the notice charges prior to the Board deciding whether to hold a hearing;
  - (4) The public servant, contractor, or vendor who is the subject of an investigation initiated by the Board of Ethics shall have the opportunity to submit to the Board a written response within 14 calendar days of receipt of notice of charges. Where the public servant, contractor, or vendor does not submit a written response within 14 days, the public servant, contractor, or vendor shall not be precluded either from submitting a written response later during the investigation, or from participating in any hearing which may be conducted regarding the notice of charges; and
  - (5) After receipt of the City Attorney, or outside counsel's, legal analysis, and the response, if any, from the public servant, contractor, or vendor who is the subject of an investigation initiated by the Board of Ethics, the Board shall review and consider the legal analysis and the response, if any, from the public servant, contractor, or vendor who is the subject of the investigation, and dispose of the investigation in accordance with Section 2-5-166 of this Code.

(Code 1984, § 2-6-125; Ord. No. 43-06, § 1(2-6-125), eff. 12-15-2006; Ord. No. 20-10, § 1(2-6-125), eff. 11-15-2010; Ord. No. 18-12, § 1(2-6-125), eff. 8-31-2012)

**Sec. 2-5-166. Dispose of notices of charges.**

After giving due consideration to an investigation in accordance with the time lines delineated in Section 2-5-165 of this Code, the Board of Ethics shall take any action or combination of actions, upon majority vote, which the Board deems appropriate in order to dispose of the notice of charges including, but not limited to, one or more of the following:

- (1) Close the investigation based on any of the following grounds:
  - a. The Board of Ethics has no jurisdiction over the matter; or
  - b. The investigation did not compile facts sufficient to constitute a violation of this article; or

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- (2) Determine that no violation of this article has occurred; or
  - (3) Determine that a violation of state or federal law may have occurred, and refer the matter to the appropriate governmental authorities for review; or
  - (4) Determine that the investigation has compiled facts sufficient to constitute a possible violation of this article and schedule a hearing, with proper notice, to determine whether a violation of this article has occurred; or
  - (5) Determine, on its own motion or upon request of the public servant against whom the investigation has been made, whether the investigation was initiated by a member of the Board of Ethics with knowledge of its falsity or with reckless disregard for its truth or falsity, and, if so, schedule a hearing in accordance with Section 2-5-169 of this Code to determine the reimbursement of reasonable attorney fees; or
  - (6) Refer the investigation to the Police Department for review and possible issuance of a misdemeanor violation in accordance with Section 2-5-4 of this Code and, where issued, for prosecution by the Law Department.

(Code 1984, § 2-6-126; Ord. No. 43-06, § 1(2-6-126), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-126), eff. 8-31-2012)

**Commentary**—Where the Board of Ethics has determined, after disposition of an investigation pursuant to Section 2-5-166, that the article has not been violated by the conduct investigated, the public servant against whom the investigation was made may be entitled to reasonable attorney fees incurred in the defense against the investigation, as provided for in Section 2-5-169, where the Board has also found that the public servant against whom the investigation was made acted in the good faith performance of the public servant's duties. In addition, where the Board of Ethics determines that the Board member who initiated the investigation did so to harass the public servant, contractor, or vendor, the Board may refer the matter to the City Council for removal of the Board member in accordance with Section 2-107(C) of the Charter.

To constitute harassment in violation of Section 2-5-163 of this Code, the Board of Ethics member must have initiated the investigation with knowledge of its falsity, or with reckless disregard of its truth or falsity. Beyond the determination of whether the conduct investigated constitutes a violation of the article, the Board of Ethics may make, upon its own determination or in response to a request by the public servant, contractor, or vendor against whom the investigation was made, the separate determination as to whether the investigation was initiated with knowledge of its falsity, or with reckless disregard for its truth or falsity.

### **Sec. 2-5-167. Hearing procedure; decision.**

All hearings shall be conducted in accordance with the procedures delineated in the administrative rules that are promulgated in accordance with Section 2-5-101 of this Code, including written findings of fact and conclusions of law as to whether a violation of this article has occurred. In its decision, the Board of Ethics may recommend the appropriate determinations that are delineated in Section 2-5-168 of this Code.

(Code 1984, § 2-6-127; Ord. No. 43-06, § 1(2-6-127), eff. 12-15-2006)

### **Sec. 2-5-168. Violations of article; Board of Ethics permitted to make public admonition and to refer findings; cumulative effect.**

- (a) 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 against an elective officer, or an appointee, regarding the violation. In addition, where, based upon an investigation, the Board of Ethics determines that there may be grounds for further investigation for possible forfeiture of office or removal under Section 2-107(B) or 2-107(C) of the

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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 Section 2-107(B) or 2-107(C) of the Charter.

- (b) 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 against a public servant other than an elective officer or an appointee, regarding the violation. In addition, 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 Charter and other laws, policies and procedures that are applicable to the position of the public servant and with the gravity of the offense.
- (c) Where the Board of Ethics finds that a decision of the Mayor, the City Council, the City Clerk, an appointee, a voting body, or other public servant was made in violation of this article, the Board may recommend to the Mayor, the City Council, the City Clerk, the appointee, the voting body, or other public servant that such decision be reviewed in accordance with the applicable provisions of the Charter and this Code. Upon such recommendation, the decision may be reviewed by the Mayor, the City Council, the City Clerk, the appointee, the voting body, or other public servant in accordance with the applicable provisions of the Charter, this Code, and any other applicable laws.
- (d) 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:
  - (1) Suspend the contractor or vendor where legally permissible; and
  - (2) Disqualify or debar the contractor or vendor from contracting or subcontracting with the City where legally permissible.
- (e) 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.

(Code 1984, § 2-6-128; Ord. No. 43-06, § 1(2-6-128), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-128), eff. 8-31-2012)

**Commentary**—Section 2-106.10 of the Charter directs that the code of governmental conduct enacted by ordinance shall contain appropriate penalties for violations of its provisions. Section 2-5-168 of this Code sets forth these potential penalties.

Section 2-5-168(a) of this Code establishes public admonition as a punishment for violation of the article by an elected official or appointee. In addition, information discovered by the Board of Ethics in the course of investigation of a complaint against an elective officer or appointee may reveal circumstances which may constitute the basis for forfeiture of or removal from office under Section 2-107(B) of the Charter. Inasmuch as this Charter section confers upon the City Council rather than the Board of Ethics the authority to decide whether the circumstances for forfeiture or removal from office exist, Section 2-5-168 of this Code provides that the Board of Ethics may refer a matter to the City Council for investigation and consideration where a Board investigation reveals a possible basis for forfeiture under the Charter or applicable law.

Likewise, Section 2-5-168(b) of this Code makes public admonition available to the Board of Ethics as a penalty for violation of the article by a public servant other than an elective officer or appointee, such as a City employee. It is also recognized that a violation of the article by such a public servant may constitute grounds for disciplinary action against the public servant. Although the Board of Ethics is not empowered by the Charter to impose discipline upon a public servant, the Board may refer a proven violation by the public servant to the appropriate City official and/or supervisor who has the authority to consider and impose discipline. Any disciplinary action based on a violation of this article must be consistent with the provisions of the Charter and any other laws, policies, or procedures that may apply to the public servant, such as the City's civil service rules or collective bargaining agreements.

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Section 2-5-168(c) of this Code recognizes that a decision which was made in violation of this article may warrant review by the appropriate public officials. Whether or not such decision may be subject to reconsideration or reversal will depend upon the facts and circumstances of the situation and the application of relevant law.

**Sec. 2-5-169. Reimbursement of reasonable attorney fees to a public servant.**

- (a) In accordance with Michigan common law and within the strictures of Subsections (b), (c) and (d) of this section, the Board of Ethics shall reimburse a public servant from the City's general fund for reasonable attorney fees which are incurred in the defense of an investigation conducted against the public servant under Section 2-5-161 of this Code where the Board determines that, based upon all factual findings from the hearing, the public servant:
  - (1) Acted in good faith performance of the public servant's duties; and
  - (2) Did not violate this article.
- (b) The maximum reimbursement for such attorney fees shall not be greater than 150 percent of the hourly rate that is established, pursuant to 18 USC 3006a(d), for the payment of appointed counsel for matters arising in the United States District Court for the Eastern District of Michigan.
- (c) When determining the hourly rate of attorney fees to be reimbursed to a public servant under Subsection (a) of this section, the Board of Ethics shall consider the following factors:
  - (1) The professional standing and experience of the attorney;
  - (2) The skill, time, and labor involved in defending the ethics notice of charges; and
  - (3) The complexity of the notice of charges.
- (d) Where the Board of Ethics determines that a public servant is entitled to reimbursement of attorney fees under Subsection (a) of this section, the administrative rules that are promulgated pursuant to Section 2-5-101 of this Code shall control the procedure for submission and review of relevant documentation.

(Code 1984, § 2-6-129; Ord. No. 43-06, § 1(2-6-129), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-129), eff. 8-31-2012)

**Commentary**—In spite of the salutary objectives of the article, a Board of Ethics member may attempt to misuse it by making unjustified, false or frivolous charges of violation of the article by public servants. A public servant may expend substantial time and monetary resources in defending against a notice of charges, including attorney fees. This expenditure of resources may be compounded where a public servant is the unwitting target of, and must defend against, more than one baseless investigation. In recognition of this potential, this provision requires that the Board of Ethics grant an application for reimbursement of reasonable attorney fees incurred for the defense of a notice of charges where the Board determines that the public servant acted in good faith in the performance of the public servant's duties and did not violate the article.

The authorization for the use of the City's general fund for this purpose is rooted in Michigan common law which recognizes the discretionary power of a municipality to appropriate funds for the necessary expenses incurred by a public servant in defending against notices of charges arising out of the good faith performance of official duties. *Messmore v Kracht*, 172 Mich 120; 137 NW 549 (1912). See also, *City of Warren v Dannis*, 136 Mich App 651; 357 NW2d 731 (1984); 1976 OAG, No 4947, pp 349-350 (March 24, 1976) (concluding in favor of city reimbursing a public official for attorney fees incurred in defending against misconduct charges where official acted in good faith in discharging official duties); *accord*, *Ellison v Reid*, 397 So2d 352 (Fla App Div 1 1981) (affirming use of public funds to pay legal expenses of municipal official defending against claim of ethical misconduct). The formula for attorney fee awards is adapted from the national rate which is used by the federal district courts to pay appointed counsel in such courts. The discretion of the Board of Ethics in

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determining the amount of attorney fees to be reimbursed must be exercised reasonably, in accordance with the criteria set forth in Subsection (c) of this section.

As indicated above, the reimbursement of attorney fees in defending against a claim of ethical misconduct is limited under Michigan law to public servants. As such, contractors and vendors are precluded from receiving reimbursement of attorney fees in defending against a claim of ethical misconduct.

**Secs. 2-5-170—2-5-190. Reserved.**