



Blueprint for Ethics

Sly James Administration Transition Team

May 2011

Blueprint for Ethics

A. Current Status and Issues

The current practices of the City's Ethics policies and procedures were summarized in a performance audit, "City's Efforts to Encourage Ethical Conduct," dated February 2011 conducted by the City Auditor's Office (the "Audit"). The Audit's Findings and Recommendations note that "[w]hile the city has many of the basic elements recommended for an effective ethics program, it needs to strengthen and augment these tools."¹ The Audit further noted that many of the tools were rarely updated, including the Code of Ethics, and rarely used. In essence, the current practices relating to Ethics policies and procedures are out of date and need to be revised.

B. Vision, Goals and Measurable Outcomes

The vision of the Sly James Administration is to make Ethics a visible and continuing priority. This can be accomplished in a number of ways involving major and minor changes to the current policies and procedures. This Blueprint for Ethics will address recommendations for improving the ethical conduct and climate at City Hall.

1. Code of Ethics (Sec. 2-1011 et seq.)

One major component of the Blueprint for Ethics involves the revision of the Code of Ethics (Sec. 2-1011 et seq. of the Code of Ordinances of Kansas City, MO). In July 2010, the City Council directed the Interim City Manager to review the City's Code of Ethics and make recommendations for revision.² At the time of this report, the Interim City Manager was completing his report, however a summary page was provided by the Interim City Manager's office. The summary concluded the following:

¹ Performance Audit City's Efforts to Encourage Ethical Conduct, February 2011, City' Auditor's Office, Page 7.

² Committee Substitute for Resolution No. 100531, July 1, 2010.

Summary

A review of the Kansas City Code of Ethics finds that the content of the City's code is in line with that of "best practice" codes of ethics nationwide, though some minor provisions should be added in order to enhance public perception of how the City conducts its affairs. Moreover, the code should be updated in order to enhance clarity and improve comprehension among employees and elected officials.³

The City's Code of Ethics was first enacted in 1964 and, until the Interim City Manager's current review, had not been comprehensively reviewed since the 1990s.⁴ A comparison of the City's Code of Ethics to that of other cities and model codes revealed many instances in which the City could and should make revisions and additions to the Code of Ethics. Because the Code of Ethics is 47 years old and has seen only one comprehensive review, it is recommended that the current Code of Ethics be replaced with a newly adopted Code of Ethics. As noted by Mark Davies in his article "Enacting a Local Ethics Law – Part I: Code of Ethics," "[t]he code of ethics must be understandable, comprehensive and sensible and must be tailored to the particular municipality."⁵ Many provisions of the Kansas City, MO Code of Ethics have not been revised since the 1960s and would benefit from better organization, clearer language, and more current ethics provisions.

While this Blueprint on Ethics is not intended to outline every provision that might be considered in a new Code of Ethics, it does provide certain recommendations with respect to those provisions that should be considered. Those provisions include, among other things, restating the policy and purpose of the Code of Ethics, adopting a general standards of conduct provision, expanding the conflict of interest provision, revising the acceptance of gifts provision to reduce the amount of the gift that may be accepted, expanding the definition of relative and immediate family members to include domestic partners, siblings, parents and their spouses, and including the nepotism policy within the Code of Ethics.⁶

³ Summary of the Interim City Manager's Report as requested by the City Council in Committee Substitute for Resolution No. 100531, July 1, 2010.

⁴ Committee Substitute for Resolution No. 100531, July 1, 2010.

⁵ Mark Davies, "Enacting a Local Ethics Law – Part I: Code of Ethics," *Municipal Lawyer*, Summer 2007, Vol. 21, No. 3, Page 3.

a. Declaration of Policy and Purpose

The current ethics policy contains a declaration of policy and purpose section, however, it could benefit from a clearer and concise restatement. City Ethics, a non-profit organization founded in 2000, has developed a Model Ethics Code.⁷ The Model Ethics Code provides the following example of a declaration of policy and purpose:

The purposes of this ethics code are:

- (a) To establish standards of ethical conduct - especially those dealing with conflicts between personal interests and those of the city - for city officials, employees, consultants, candidates, and those who do business with the city;*
- (b) To provide clear guidance with respect to such standards by clarifying which acts are allowed and which are not;*
- (c) To promote public confidence in the integrity of our city's governance and administration;*
- (d) To provide for the consideration of potential ethical problems before they arise, to minimize unwarranted suspicion and to enhance the accountability of our city's government to city residents; and*
- (e) To provide for the fair and effective administration and enforcement of this code.⁸*

b. Standards of Conduct

In addition to a policy and purpose statement, many ethics codes include standards of conduct. The New Haven, CT, Code of Ethics includes a section entitled “Standards of conduct”.⁹ The standards are separate from the traditional prohibitions against conflicts of interest and serve as a general statement on the conduct of public officials and municipal employees. The following provisions are included within the New Haven Code of Ethics and it is recommended that a similar Standards of Conduct section be included in a new Code of Ethics:

⁷ www.cityethics.org. City Ethics notes that “Its purpose is to provide a centralized location for information and resources for all forms of local government ethics programs.”

⁸ www.cityethics.org.

⁹ New Haven, Connecticut, Code of Ordinances, Title III – Code of General Ordinances, Chapter 12 5/8 – Ethics in Local Government, Section 4. (The New Haven, CT Ethics Code is cited in the Model Ethics Code found at www.cityethics.org.)

- (a) The professional and personal conduct of public officials and municipal employees shall avoid impropriety and even the appearance of impropriety.*
- (b) Public officials and municipal employees shall refrain from abusive conduct, personal charges, or affronts upon the character, motives, or intents of other public officials or municipal employees, or of members of the general public.*
- (c) Recognizing the value of boards, and commission, and task forces in the public policy decision-making process, public officials and municipal employees shall refrain from using their public positions to improperly influence the proceedings, deliberations, decision, actions, or administration of any board, commission, or task force.*
- (d) Public officials and municipal employees shall represent the policies and positions of the city government to the best of their abilities when designated as delegates for such purpose. When representing their own individual opinions or personal position, public officials and municipal employees shall state explicitly that the opinions or positions are their own and not the opinion or position of the city or of any administrative or other body within the city government, and shall not cause or allow such an inference to occur.*
- (e) Public officials and municipal employees shall avoid any action or activity that constitutes or gives rise to a conflict of interest.*
- (f) Public officials shall not interfere or seek to interfere with the duties or responsibilities of other public officials or municipal employees over whom they do not have supervisory authority and responsibility.¹⁰*

The “Standards of Conduct” section of the City of New Haven Ethics in Local Government also includes within this section provisions on recusal and prohibitions against giving special treatment or consideration to a person or group. Similar provisions are found within the Kansas City, MO Code of Ethics Sec. 2-1015(d) and Section 2-1014 (c), respectively. The Model Code of Ethics has each of these as separate sections.¹¹ For clarity purposes, it is recommended that a recusal provision be separate from the general standards of conduct.

¹⁰ New Haven, Connecticut, Code of Ordinances, Title III – Code of General Ordinances, Chapter 12 5/8 – Ethics in Local Government, Section 4, (b), (c), (e) – (i). (The New Haven, CT Ethics Code is cited in the Model Ethics Code found at www.cityethics.org.)

¹¹ Model Ethics Code, Sections 100 (3) and (5) www.cityethics.org.

c. Conflict of Interest

The current Conflict of Interest provision in the Kansas City, MO Code of Ethics generally states that “[n]o council member, employee or member of any board or commission shall engage in any business or transact or have a financial interest or other personal interest which is incompatible with the proper discharge of his official duties in the public interest or would tend to impair his independence, judgment or action in the performance of his official duties.”¹² The remaining three subsections in Section 2-1015 prohibit the use of confidential information, prohibit participation where there is a financial or private interest, and require disqualification.¹³ The Conflict of Interest provision of the Model Ethics Code is much more detailed.

1. Conflict of Interest

a. An official or employee may not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows, or has reason to believe, may result in a personal or financial benefit, not shared with a substantial segment of the city's population, for any of the following persons or entities (no group of government employees may be considered "a substantial segment" for the purposes of this provision):

- 1) himself or herself;*
- 2) a member of his or her household, including a domestic partner and his or her dependents, or the employer or business of any of these people;*
- 3) a sibling or step-sibling, step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;*
- 4) an outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who works for such outside employer or business;*
- 5) a customer or client;*
- 6) a person or entity from whom the official or employee has received an election campaign contribution of more than \$200 in the aggregate during*

¹² Section 2-1015(a).

¹³ Sections 2-1015(b)-(d).

the past election cycle (this amount includes contributions from a person's immediate family or business as well as contributions from an entity's owners, directors, or officers, as well as contributions to the official or employee's party town committee or non-candidate political committee);

- 7) *a substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner; or*
- 8) *a nongovernmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer or director.*

It is recommended that a new Conflict of Interest provision include at least subsections 1) – 4) and possibly more.

d. Gifts

Section 2-1017 of the Kansas City, MO Code of Ethics generally prohibits the acceptance of gifts valued at more than \$200. The Missouri Ethics Commission requires that gifts in the amount of \$200 or more be disclosed on the Personal Financial Disclosure Statement. In comparison to other Codes of Ethics, \$200 is high.¹⁴ It is recommended that Section 2-1017 Acceptance of gifts be revised to define “gift” as follows:

Gift means a payment, loan, advance, forbearance, rendering of services, deposit of money, or anything of value, unless consideration of equal or greater value is received therefore. "Gift" shall not include:

- (1) A political contribution otherwise reported as required by law;*
- (2) Services provided without compensation by persons volunteering their time;*
- (3) A commercially reasonable loan made on terms not more favorable than loans made in the ordinary course of business;*
- (4) A gift to a public official or municipal employee from a member of his immediate family, unless said family member makes the gift with the intent*

¹⁴ See Model Ethics Code, www.cityethics.org; City of New Haven, Connecticut, Code of Ordinances, Section 12 5/8-2; Jackson County Missouri Code Sec. 902.19

of influencing a discretionary public action in which the donor or other person receives or expects to have a financial or personal interest; or

(5) Food or beverage or both, consumed on a single occasion, the cost of which is less than fifty dollars (\$50.00) per person on a single occasion, not more than once in any thirty-day period.

(6) Promotional or complimentary tickets or entrance to events sponsored by a non-profit organization, provided that the value of said ticket, tickets or entry fee does not exceed one hundred dollars (\$100.00) per event per sponsoring organization.¹⁵

Thus, the new provision would address both limits on gifts and when a gift requires disclosure.

e. Definition of Relative

Section 2-1011-5 of the Kansas City, MO Code of Ethics defines “Relative” as “the spouse or the minor child of an elected official, board member or employee.” This definition appears unnecessarily narrow. It is recommended that the definition of “Relative” be revised to include not only the spouse or minor child, but also, “the domestic partner; parent, step-parent, brother or sister, or the parent, step-parent, brother or sister of the spouse; the child, step-child, or the child or step-child’s spouse or domestic partner.”¹⁶

f. Nepotism

The City’s Nepotism policy is found in the Human Resource Rules and Regulations Section 7.6 and reads as follows:

SECTION 7.6 NEPOTISM

Relatives of City employees may be employed at the City; however, all applicants will be considered on the basis of his/her qualifications, skills and ability to perform the required work.

¹⁵ Taken from City of New Haven, Connecticut, Code of Ordinances, Section 12 5/8-2.

¹⁶ See e.g. Model Ethics Code, Section 111, www.cityethics.org; City of New Haven, Connecticut, Code of Ordinances, Section 12 5/8-3.

- a. An appointing authority, or any person who exercises jurisdiction or control over an appointing authority, shall not advocate for or appoint, employ, promote or advance his/her relative in or to any position in the classified service, or otherwise participate in the selection/hiring process.
- b. An appointing authority shall not appoint, employ, supervise, either directly or indirectly, or promote or advance a relative of any appointing authority if such action has been advocated in violation of this rule.
- c. Relative is defined, for the purpose of this rule, as any relative within the fourth degree, either by blood relationship or marriage. For the purposes of this section, step and in-law relations are considered equivalent to full blood relations.

First degree – child, parents, spouse

Second degree – grandchild, brother/sister, grand-parents,

Third degree - great grandchild, niece/nephew, aunt/uncle, great grandparents

Fourth Degree – great-great grandchild, grand niece/nephew, first cousin, great aunt/uncle, great-great grandparents,

Each department director is responsible for his/her department's compliance with and adherence to this rule.

It is recommended that the Nepotism provision be included within the Code of Ethics, and possibly revised as follows:

1. Nepotism

- a. *No official or employee may appoint or hire his or her spouse or domestic partner, child or step-child, sibling or step-sibling, parent, or member of his or her household for any type of employment, including by contract (unless competitively bid), with the city.*
- b. *No official or employee may supervise or be in a direct line of supervision over his or her spouse or domestic partner, child or step-child, sibling or step-sibling, parent, or member of his or her household. If an official or employee comes into a direct line of supervision over one of these persons, he or she will have six months to come into compliance or to obtain a waiver.¹⁷*

¹⁷ Model Ethics Code, www.cityethics.org, Section 13

This revision would prohibit supervision of a relative, which is not explicitly prohibited in the Human Resources Rules and Regulations.

g. Other Provisions to Consider

In addition to the provision listed above, a new Code of Ethics might include the following:

- (1) *Misuse of municipal resources: A municipal officer or employee shall not use municipal letterhead, personnel, equipment, supplies, or resources for a non-governmental purpose nor to engage in personal or private activities during times when he or she is required to work for the municipality.*
- (2) *Political solicitation of subordinates: A municipal officer or employee shall not knowingly request or knowingly authorize anyone else to request any subordinate of the officer or employee to participate in an election campaign or contribute to a political committee.¹⁸*
- (3) *Inducement of others: A municipal officer or employee shall not induce or aid another officer or employee of the municipality to violate any of the provisions of this Code of Ethics.¹⁹*

2. Special Commission to Review All Ethics Policies and Practices

Adopting a new Code of Ethics requires the cooperation and collaboration of, at least, the City Council, the City Manager’s and City Attorney’s Offices. Because the Code of Ethics is only one component in the ethical policies and practices of the City, a substantive review of all of the elements might benefit from a separate review by a special commission consisting of representatives from the Mayor’s Office, City departments, City Council, business and community leaders, and citizens charged with the duty of conducting a comprehensive review of all of the existing and possible components of ethics practices including campaign finance provisions; procurement and contracting practices; ethics training; and all other elements that fall not just within conflicts of interest but within an all encompassing ethics program.

Once a new Code of Ethics is adopted, it is imperative that it be periodically reviewed and that all ethics-related materials, including the Ethics Handbook, be revised. The Audit

¹⁸ If this provision is included in a revised Code of Ethics, the Commission will need to consider departments that have a unionized workforce and ensure that any provision does not inadvertently prohibit acceptable union activities. Adjustments to the model language may need to be considered.

¹⁹ Mark Davies, “Enacting a Local Ethics Law – Part I: Code of Ethics, *Municipal Lawyer*, Summer 2007, Vol. 21, No. 3, Pages 5-6.

recommended that the Code of Ethics should be reviewed at least every three years by the City Manager.²⁰ This time frame appears reasonable.

3. Municipal Officials and Officers Ethics Commission.

On additional item to consider is whether the role of the Municipal Officials and Officers Ethics Commission should be expanded to include the duty to recommend revisions to the Code of Ethics. The Model Ethics Code²¹ as well as the ethics code for the City of New Haven, CT, include within the duties of the ethics commission the duty to recommend revisions to the code of ethics. An independent board that investigates and hears possible violations of the Code of Ethics would possibly be in a better position to determine what revisions are necessary. Additionally, ethics training is often conducted or provided by the ethics commission. Currently, the Municipal Officers Ethics Commission does not have its own staff. If the expansion of the role of the Commission is considered, then the need for additional staffing should also be examined.

4. Additional Recommendations

a. Mission Statement

In order to set a “tone at the top”, it is recommended that the City and/or Mayor’s Office adopt a Vision, Mission and Values Statement that includes a commitment to ethics and ethical behavior. For example:

As elected public officials and employees of Kansas City, MO, we strive to serve the public interest; respect the Constitution and laws of the United States of America and the State of Missouri; demonstrate personal integrity; promote an ethical organization and strive for professional excellence.²²

In addition to a global statement from the top, each department should adopt a mission statement or canon of ethics that is specific to that department. For example, the Development Services division of the City Planning and Development Department currently has a Canon of Ethics.

²⁰ Page 8.

²¹ www.cityethics.org

²² Adapted from the bullet points of the American Society for Public Administration Code of Ethics, which is described by the Model Ethics Code, www.cityethics.org, as an aspirational ethics code.

b. Legislative, Rules and Ethics Committee

Prior to 2007, a standing committee of the City Council existed that was known as the Legislative, Rules and Ethics Committee. Currently, it is referred to as the Legislative Committee. Establishing a standing committee of the City Council whose role it is to hear ethics related matters would be a key element in promoting a message that ethics is a priority in the Sly James Administration. Thus, it is recommended that ethics be included in one of the standing committees of the City Council.

c. Ethics Webpage

A webpage should be created that provides easily accessible information to City officials and employees as well as the public regarding the Code of Ethics, the ethics hotline and other ethics related information.

d. Additional Recommendations of the Audit

In addition to periodic revision to the Code of Ethics, the Audit made additional recommendations that should be considered as part of the substantive and comprehensive review of the City's policies and practices. Some may need to be altered based upon final recommendations of the special commission, but many should be implemented in the interim.²³ They are:

1. Providing ethics training and updates to employees, contract employees, elected officials, and members of boards and commissions as often as required by ordinance.²⁴
2. Ensuring the Committee on Administrative Service Ethics meets regularly and fulfills its responsibilities.²⁵
3. Promoting the use of the city's ethics hotline to the public.
4. Ensuring information on whistleblower protection is included in the city's ethics-related materials and training.

²³ Audit, Page 16.

²⁴ As noted in the Audit, ethics training is required annually by the Code of Ordinances, Sec. 2-86(b) and updates to elected officials are to be given every six months according to Section 2-1012.5(e).

²⁵ AR No. 1-14 outlines the responsibilities.

5. Communicating frequently with employees about ethical expectations and improve accessibility to the city's ethics-related materials.
6. Publicly promoting the city's ethical standards and expectations and its commitment to being an ethical organization.

C. Timelines

1. Code of Ethics; Special Commission; Municipal Officers and Ethics Commission

Within the first 30 days, a special commission should be appointed to conduct a comprehensive and substantive review of the City's Ethics policies and practices that would include drafting a new Code of Ethics, with a draft of a new Code of Ethics submitted to the Mayor's Office within 90 days. The work of the special commission could continue beyond the initial drafting of the new Code of Ethics to review other policies and practices that relate to ethics. The special commission could remain in existence for a significant period of time or a new or existing body could be put in place to continue the work. Any changes to the duties of the Municipal Officers and Ethics Commission would likely be addressed during and immediately after the drafting of a new Code of Ethics.

2. Ethics Webpage

Within the first 90 days, the Mayor's Office can work with other City departments, including information technology to develop a webpage that provides helpful information relating to ethics and links to the Code of Ethics and other ethics-related information for not only City employees and but also the general public.