

Discussion Items July 18, 2024

Draft Ethics Standards

Definitions

Agency: Means every department, office, board, commission, or committee of the City.

Appointed official: Means the Deputy Mayor, Director of Personnel, City Controller, City Engineer, the head of the Department of Public Works, the Superintendent of the Department of Parks and Recreation, the Chief of the Police Department, the Chief of the Fire Department, the Building Commissioner, the head of the Department of Redevelopment or any executive branch official appointed directly by the Mayor. [A member of the public has suggested that not all these position titles match the titles provided in city code. Suggest that Dan review these as he drafts the ordinance.]

Confidential information: Means information obtained by reason of the official position of an elected official, officer, or employee, and that:

- An agency is prohibited from disclosing under IC 5-14-3-4(a) unless access to the records is specifically authorized by a state or federal statute or is ordered by a court under the rules of discovery;
- An agency has the discretion not to disclose under IC 5-14-3-4(b) if the appropriate agency has exercised its discretion to keep the information confidential; or
- Is not in a public record, but if it were, would be confidential.

Direct Line of Supervision: A person is in the direct line of supervision of ~~an elected officer or employee~~ another person if that supervising person ~~the elected officer or employee~~ is in a position to affect the terms and conditions of the individual's employment, including making decisions about work assignments, compensation, grievances, advancement or performance evaluation.

The term does not include the responsibilities of an executive, legislative body, or fiscal body of a municipality, as provided by law, to make decisions regarding salary ordinances, budgets or personnel policies of the municipality.

The term is not limited to a direct supervisor-subordinate situation and may include situations in which the elected officer or employee serves in a supervisory capacity in the same department as the individual even though the individual does not report directly to the elected official or employee if the elected officer or employee can affect the terms and conditions of the individual's employment.

For purposes of this section, the Mayor and Deputy Mayor are not considered to be in the direct line of supervision of each employee of the City of Muncie. However, the Deputy Mayor is considered to be within the direct line of supervision of the Mayor, and each appointed head of an executive department are considered to be within the direct line of supervision of the Mayor and Deputy Mayor.

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Elected official: Means the Mayor, a member of the Common Council of the City of Muncie, the City Clerk or the City Judge.

Employed or Employee: Means an individual who is employed by a unit on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an elected office.

Honorarium: Means a payment of money or anything of value, directly or indirectly, to a public servant or to any other person on his or her behalf, as consideration for a speech, address, or other oral presentation

Immediate family member: Means any of the following:

- The spouse of an elected official, officer, or employee.
- A child, stepchild, or adoptee of an elected official, officer, or employee who is
 - unemancipated; and
 - less than eighteen (18) years of age.
- An individual who receives more than 50% of his or her support from an elected official, officer, or employee.

Officer: Means a natural person appointed to an office or position in any agency within the City.

On duty: Means the time period when an employee or appointed official is working during his or her normal scheduled hours, during overtime hours when he or she is working, or during an period of time when the employee or appointed official is paid to be on call to perform work duties, if needed.

Particular matter: Includes, but is not limited to, the following:

- an application;
- a business transaction;
- a claim;
- a contract;
- a determination;
- an enforcement proceeding;
- an investigation;
- a judicial proceeding;
- a lawsuit;
- a license;
- an economic development project; or
- a public works project.

Political activity: Means activities including, but not limited to, the following:

- Demonstrating,
- Counting or recounting votes (unless part of regularly assigned duties),

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- Circulating petitions,
- Soliciting votes,
- Soliciting contributions,
- Conducting or participating in opinion polls,
- Fundraising for a political campaign, party, or organization.

Relative: Means a spouse, parent or stepparent, child or stepchild, brother, sister, stepbrother, stepsister, niece, nephew, aunt, uncle, daughter-in-law, son-in-law, brother-in-law, or sister-in-law.

An adopted child of an individual is treated as a natural child of the individual. The terms “brother” and “sister” include a brother or sister by half blood.

Whistleblower protection

This issue will be addressed in the section of the code concerning enforcement.

Gifts, food, drink, entertainment, and travel expenses

[Question for committee: A member of the public has suggested that there should be a reporting and recordkeeping requirement. There is currently no reporting or recordkeeping requirement in this draft, but I’m not sure that we have specifically discussed it.]

- No elected official, appointed official, officer, or employee nor their immediate family members shall knowingly solicit, accept, or receive any gift, favor, service, entertainment, food, drink, travel expenses, or registration fees from a person who has a business relationship with the elected official, appointed official, officer, or employee’s agency or is seeking to influence an action by the elected official, appointed official, officer, or employee in his or her official capacity.
- The following shall not be subject to this rule:
 - Gifts, favors, services, entertainment, food, drink, travel expenses, or registration fees from public agencies or institutions.
 - Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:
 - The event is a reception or other gathering for public officials that is not arranged to solicit agency procurement of goods or services;
 - The elected official, appointed official, officer, or employee is giving a speech or participating in a presentation in his or her official capacity; or
 - The meeting has a formal educational program that the elected official, appointed official, officer, or employee is attending to assist him or her in performing official duties.
 - Mementos or souvenirs of nominal value.

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- Gifts, favors, services, entertainment, food, drink, or travel expenses from relatives, or a person with whom the elected official, appointed official, officer, or employee has an ongoing social relationship, so long as:
 - The gifts or other items are not deducted as a business expense; and
 - The gift giver is not seeking to influence an action by an elected official, appointed official, officer, or employee in that person's official capacity.
- Political contributions that are reported in accordance with applicable law and not solicited in violation of [this ethics code].
- Light refreshments offered to an elected official, appointed official, officer, or employee conducting official city business while the elected official, appointed official, officer, or employee is at the workplace of a person who:
 - Has a business relationship; or
 - Seeks to influence official action with the elected official, appointed official, officer, or employee's agency.
- Discount and other promotional programs as follows:
 - Offered through the city personnel department;
 - Government employee discounts widely offered and advertised;
 - Public discount programs not related to the elected official, appointed official, officer, or employee's employment; or
 - Offered as a benefit of a professional organization membership.
- No elected official, appointed official, officer, or employee shall accept an honorarium for any activity that may be considered part of his or her official duties.
 - Honoraria may be accepted on behalf of the City of Muncie, but must immediately be submitted to the City Controller.
 - In no case may an elected official, appointed official, officer, or employee accept an honorarium from someone who has a business relationship or seeks to influence an official action by the elected official, appointed official, officer, or employee's agency.

Political activity and patronage

Right to engage in political activity

- An elected official, appointed official, officer, or employee is generally free to engage in political activity, subject to limits in specific situations.

Prohibition of use of city funds or property for political activity

- No elected official, appointed official, officer, or employee shall use or permit the use of funds or property under his/her official control, direction or custody, for use in political activity.

Political activity prohibited when on duty

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- No appointed official or employee shall engage in political activity when on duty.

Restrictions on solicitation of political contributions

- Appointed officials and employees shall not solicit political contributions at any time from:
 - persons or business entities whom the appointed official or employee knows to have a business relationship with the appointed official or employee's agency; or
 - employees within the direct line of supervision of the appointed official or employee.
- Elected officials shall not solicit political contributions at any time from:
 - persons or business entities whom the elected official knows to have a business relationship with the City; or
 - appointed officials, officers, or employees.

Appointee attendance requirements

- No appointee to a board, commission, or committee of the City shall fail to attend more than one third of the meetings of the board, commission, or committee to which the appointee is appointed within a twelve-month period.
- For boards, commissions, or committees that allow members to attend meetings virtually, no appointee shall attend more than twenty percent (20%) of meetings virtually within a twelve-month period.
- Exceptions: This requirement shall not be applicable to appointees serving on a board, commission, or committee of the City that has appointee attendance requirements specified in City or state codes.

Employment and post-employment restrictions

Right to post-service employment

- An elected official, appointed official, officer, or employee is generally free to seek employment with any employer, including self-employment, after their city service ends, subject to limits in specific situations.

Limits on post-service representation of employers or clients before the city

- A former elected official, appointed official, officer, or employee may not represent an employer, client, or any person in a particular matter with the city if the former elected official, appointed official, officer, or employee personally and substantially participated in the matter as an elected official, appointed official, officer, or employee.

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- This prohibition applies even if they receive no compensation for providing representation.

Limits on post-service employment

- For one year after leaving city service, a former elected official, appointed official, officer, or employee may not accept employment or compensation from an employer or client if the former elected official, appointed official, officer, or employee was:
 - Engaged in the negotiation or administration of one (1) or more contracts with that employer or client on behalf of the city or an agency; and
 - In a position to make a discretionary decision affecting the:
 - Outcome of the negotiation; or
 - Nature of the administration.

Limits on use and disclosure of confidential information

- A former elected official, appointed official, officer, or employee may not divulge confidential information acquired during their city service except as permitted or required by law or court order.
- No former elected official, appointed official, officer, or employee shall disclose or use any confidential information acquired during their city service for the immediate or anticipated gain or benefit of the former elected official, appointed official, officer, employee, or any other person.

Nepotism

[Question for an attorney: Do we need to include/recommend any changes to the current nepotism ordinance to avoid potential conflict between the ethics code and the nepotism ordinance?]

Employment of Relatives

- (a) Individuals who are relatives may not be employed by the City of Muncie if the employment results in one (1) relative being in the direct line of supervision of the other relative.

[Question for the committee: A member of the public has pointed out that the Handbook for Non-bargaining Unit Employees prohibits hiring someone into a position that would result in either the direct or indirect line of supervision. Should we consider similar language?]

- (b) This section shall not apply to an individual who was employed by the City of Muncie on July 1, 2012, unless that individual has a break in employment with the City of Muncie.

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- (c) If an individual is employed by a municipality on the date the individual's relative begins serving a term of an elected office of the municipality, the individual may maintain the individual's position or rank. However, the individual may not be promoted to a position, or be promoted to a position that is not within the merit ranks in the case of an individual who is a member of the police or fire department, if the promotion results in a violation of this section.
- (d) This section does not abrogate or affect an employment contract with the City of Muncie that an individual is a party to and is in effect on the date the individual's relative begins serving a term of an elected office of the City of Muncie.

Contracting with the City of Muncie

[Question for an attorney: Does "contract for the procurement of goods and services or a contract for public works" in paragraph (a) below cover every contract entered into by the City or one of its agencies? A member of the public has suggested that contracts by the City to work on the facilities of a third-party (e.g. a nonprofit) would not be covered by this section.]

[Question for the committee: Should this section be revised to cover employees in addition to elected officials and appointed officials?]

[Question for an attorney: Does this section overlap or conflict with the later section on "Conflicts of interest in contracts" in any way that will cause problems?]

- (a) The City of Muncie may not enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with an individual who is an elected official or appointed official, or a business entity that is wholly or partially owned by an elected official or appointed official.
- (b) The City of Muncie may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with an individual who is a relative of an elected official or appointed official, or a business entity that is wholly or partially owned by a relative of an elected official or appointed official, only if the requirements of this subsection (c) below are satisfied and the elected official does not violate Indiana Code § 35-44.1-1-4.
- (c) The City of Muncie may enter into a contract or renew a contract with an individual or business entity described in subsection (b) above if:
 - 1. The elected official or appointed official makes a full disclosure, which must:
 - a. Be in writing;
 - b. Describe the contract or purchase to be made;

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- c. Describe the relationship that the elected official or appointed official has to the individual or business entity that contracts or purchases;
 - d. Be affirmed under penalty of perjury;
 - e. Be submitted to the Common Council of the City of Muncie and be accepted by the Common Council in a public meeting prior to final action on the contract or purchase;
 - f. Be submitted to the Board of Public Works and Safety and be accepted by the Board of Public Works and Safety in a public meeting prior to final action on the contract or purchase; and
 - g. Be filed, not later than fifteen (15) days after final action on the contract or purchase, with:
 - i. The state board of accounts;
 - ii. The City Clerk; and
 - iii. The Delaware County Clerk;
2. The appropriate department or agency of the City:
- a. Makes a certified statement that the contract amount or purchase price was the lowest amount or price bid or offered; or
 - b. Makes a certified statement of the reasons why the vendor or contractor was selected.

Disclosure requirements for entities that do business with the City of Muncie

This issue will be addressed in the section of the code concerning enforcement.

[Question for the committee: Have we addressed this sufficiently in the draft regarding enforcement?]

Publication of contracts for goods and services

This issue will be addressed in the section of the code concerning enforcement.

[Question for the committee: Have we addressed this sufficiently in the draft regarding enforcement?]

Additional or excess compensation

An Elected Official or employee of the City shall not solicit or receive compensation:

- (1) For the sale or lease of any property or service to a person with a business relationship with the Elected Official or an employee's department or agency that substantially exceeds the amount that the Elected Official or employee would charge in the ordinary course of business; or
- (2) For the performance of official duties other than as provided by law.

Conflicts of interest

Conflicts of interest in decisions and voting

- An elected official, appointed official, officer, or employee may not participate in any decision or vote, or any matter relating to that decision or vote, if the elected official, appointed official, officer, or employee has knowledge that any of the following has a financial interest in the outcome of the matter:
 - The elected official, appointed official, officer, or employee;
 - A member of the immediate family of the elected official, appointed official, officer, or employee;
 - A business organization in which the elected official, appointed official, officer, or employee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
 - Any person or organization with whom the elected official, appointed official, officer, or employee is negotiating or has an arrangement concerning prospective employment.
- An appointed official, officer, or employee who identifies a potential conflict of interest shall notify the person's immediate supervisor and/or appointing authority in writing and then do either of the following:
 - Seek an advisory opinion from the Muncie Ethics Commission or
 - File a written disclosure statement with the Muncie Ethics Commission within seven (7) days of the identification of the potential conflict.
- An elected official who identifies a potential conflict of interest shall do either of the following:
 - Seek an advisory opinion from the Muncie Ethics Commission or
 - File a written disclosure statement with the Muncie Ethics Commission within seven (7) days of the identification of the potential conflict.
- To seek an advisory opinion from the Muncie Ethics Commission the person must file a written description detailing the nature and circumstances of the particular matter and making full disclosure of any financial interest in the matter. The commission shall:
 - Direct the person's immediate supervisor and/or appointing authority to assign the particular matter to another person and implement all necessary procedures to screen the elected official, appointed official, officer, or employee from involvement in the matter; or
 - Make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services the city expects from the elected official, appointed official, officer, or employee.

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- Such a written determination shall constitute conclusive proof that it is not a violation for the elected official, appointed official, officer, or employee who sought the advisory opinion to participate in the particular matter.
- The written determination shall be filed with the person's immediate supervisor and/or appointing authority.
- A written disclosure statement filed with the Muncie Ethics Commission must:
 - Include a detailed description of the conflict of interest;
 - Include a description and affirmation of the screen established by the elected official, immediate supervisor, or appointing authority;
 - Be signed by:
 - The elected official, appointed official, officer, or employee who identifies the conflict of interest; and
 - The immediate supervisor or chair of the appointing authority if the person is not an elected official.
 - Include a copy of the disclosure provided to the immediate supervisor and/or appointing authority.

Conflicts of interest in contracts

[See comment in section above "Contracting with the City of Muncie."

- An elected official, appointed official, officer, or employee may not knowingly have a financial interest in a contract made by the city or an agency.
- Exceptions: the prohibition above does not apply to an elected official, appointed official, officer, or employee who:
 - Does not participate in or have contracting responsibility for the city or applicable agency; and
 - Files a written statement with the Muncie Ethics Commission before the contract is executed. The written statement shall include:
 - An affirmation that the elected official, appointed official, officer, or employee does not participate in or have contracting responsibility for the city or applicable agency;
 - An affirmation that the contract was made in compliance with all applicable purchasing ordinances and statutes;
 - A statement making full disclosure of the related financial interests

Disclosure and use of confidential information

- An elected official, officer, or employee may not divulge confidential information except as permitted or required by law or court order.
- No elected official, officer, or employee shall disclose or use any confidential information for the immediate or anticipated gain or benefit of the elected official, officer, employee, or any other person.

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Use of city property

- No elected official, appointed official, officer, or employee shall use or permit the use of his/her official position, funds or property under his/her official control, direction or custody, for a purpose which is primarily for the private benefit of the elected official, officer, employee or any other person.
- Nothing herein shall prevent:
 - the private use of property that is available on equal terms to the public generally (such as park facilities), or
 - the use of property in accordance with City policy in the conduct of official business, or
 - the use of vehicles and other equipment by off-duty employees in compliance with documented agency rules or policy.

Training requirements

This issue will be addressed in the section of the code concerning enforcement.

Ghost employment

An Elected Official or employee of the City shall not:

- (1) Engage in work other than the performance of official duties during work hours;
- (2) Be assigned any duties not related to the operation of the City;
- (3) Intentionally fail to assign an employee any duties related to the operation of the City;
- (4) Accept any form of compensation or property from the City knowing that he/she has not been assigned any duties to perform for the entity; or
- (5) Accept any form of compensation or property from the City for the performance of duties not related to the operation of the City;

Duty to report violation by another

- No person covered by this ethics code, who has information about a violation of this code by another, shall fail to report such violation to the Muncie Ethics Commission.

Complicity with violation by another

- No person covered by this ethics code shall induce, encourage, or aid, either directly or indirectly, anyone to violate this ethics code.