

**Minutes of the Meeting of the Ethics Ordinance Drafting Committee
Monday, February 8, 2021**

Zoom meeting called to order at 6:58 p.m.

Committee Members Present: Jan Pemberton, Brian Geraghty, Rob Squiers, John Clark, Joe Ghanem,

Committee Members Not Present: Not Applicable

Guests Present: Danielle Gehlert, Harry Kurtz, Steve Poloni

Unanimously approved the Minutes of the January 11, 2021 meeting.

Squiers presented proposed updates to the Draft Ethics Ordinance dated February 8, 2021, which was previously circulated to committee members. This was accomplished in an interactive format with exchange among the committee members at various points.

Squiers prefaced the review by stating that the draft appears to have achieved content related goals. Accordingly, the modifications have shifted toward tightening up language, clarification of ambiguous clauses, eliminating redundancy and ensuring consistency. The review covered the modifications which included: condensing the "Purpose" section, adding County and City laws (charter, work rules, contracts and rules) to the list of laws to which officials and employees are bound to uphold, changing as applicable "should" and "may" to "shall" and "must", adding a definition of loan, cross-referencing certain definitions within other definitions to add context, ensuring defined words or phrases are used consistently throughout the document, adding "training and seminars" to the list of exempted gratuities, adding description to the prohibition against councilmembers from encroaching on administrative responsibilities, adding to the list of prohibited practices the solicitation of loans from vendors and employees, expanding the protocol for addressing resident gifts or donations, (Geraghty) clarifying clauses within the social media section including adding language requiring compliance with the Social Media clauses and a definition of attribution, providing the Board of Ethics increased latitude to accommodate both after-the-fact complaints and proactive requests for ethical guidance, eliminating the City Attorney as an ex-officio member of the Board of Ethics, establishing additional qualification and disqualification criteria for Board of Ethics members and establishing a mechanism for Board of Ethics member termination and replacement.

The Committee discussed the status of ethics forms in development. The committee has created a draft complaint form for allegations of "after-the-fact" ethical issues and a separate form for proactive ethical guidance determinations. The complaint form requires notarization and contains a warning against false or reckless accusations. The guidance form presently contains a notarization requirement but that requirement will be further studied. Initial, annual and transactional conflict forms were discussed. The initial and annual forms will likely be one form and based on the disclosure language within the ordinance. The transactional form will likely be a separate, brief form. It was noted that Grosse Pointe Park will be publishing its ethics forms imminently. The committee tabled further development of forms until it had the opportunity to study the Grosse Pointe Park forms. The committee acknowledged that the eventual Board of Ethics was likely to modify or create forms as its needs and experiences dictated.

During New Business, Geraghty commented that while the draft ordinance draws heavily from Grosse Pointe Park and Birmingham, the final product will be from many sources including Ann Arbor, Chicago, Seattle, Merriam-Webster and others. Geraghty stated he had read over twenty ethics ordinances, the Michigan Model Ethics Ordinance published by the Attorney General, and other sources.

Pemberton presented the distinguishing characteristics of an Ethics Committee versus an Ethics Commission. The committee concluded that the Board of Ethics, as it is developing, is tantamount to an Ethics Commission.

In Public Comment, Gehlert raised four issues:

1. **The applicability of the Open Meetings Act as to the committee's communications, and, specifically, the communications among the committee members.** Squiers responded that this topic was addressed at the previous meeting and reflected in the minutes and stated that since the committee has not been empowered to exercise or perform governmental or proprietary authority, it is not subject to the OMA. Squiers stated further support is found in 1997 Attorney General Opinion No. 6935. (AG concluded that a committee consisting of two board of educator members along with school district staff, parents and students was not subject to the OMA when it gathered information, reviewed existing policy and made recommendations to the board of education regarding eligibility standards for athletic participation. The committee was not given authority to alter existing policy or create new policy and decisions regarding the policy would be made by the board of education in an open meeting after the board evaluated the committee's recommendations. Gehlert was informed this AG opinion was referenced in the previous meeting during the OMA discussion. Squiers stating that in spite of not being subject to the OMA, meeting minutes have been published and drafts presented at each meeting have been circulated. The final draft formally presented to the Council will be a public document.
2. **Protocol for Board of Ethics members running for elective office, specifically, what time frame must they either resign or be terminated.** Geraghty responded stating that the operative date was when the Member's application for elected office was accepted by the County clerk, which is typically subject to a deadline approximately three months in advance of the election.
3. **Concerns about frivolous or excessive ethics complaints, tying up the notary in City Hall.** Geraghty responded that there was no requirement that a City notary had to notarize the complaint. Further, the notary requirement ensures that the identity of the complainant is known. Squiers added that the draft complaint form contains language warning against false or reckless accusations and the threat of a fine.
4. **Concerns that the ordinance would prohibit family members from employment.** Squiers responded that the ordinance doesn't prohibit family relationships either as employees, vendors, etc. The ordinance sets forth requirements for pre-disclosure and the establishment of mechanisms to ensure that those relationships are segregated from decision making processes.

Guests Harry Kurtz and Steve Poloni commended the committee on its work.

The next meeting was scheduled for 7:00 p.m. on Tuesday, March 16, 2021.

The meeting was adjourned at 7:55 p.m.