

TO: The Honorable Mayor and City Council

FROM: The Law Department

DATE: June 24, 2019

SUBJECT:

Ethical Standards for the City's Officers and Employees.

PURPOSE:

To restate, modernize, and reorganize provisions of the City Code pertaining to the ethical standards of the City's officers and employees.

BACKGROUND:

Chapter 2, Article III, Division 2 of the City Code is comprised of several ordinances that collectively establish a variety of ethical standards for the City's officers and employees. Many of these standards derive from Illinois statutes, including the Illinois Municipal Code, the Public Officer Prohibited Activities Act, and the State Officials and Employees Ethics Act, while others derive from common law principles. Over time, as previous City Council made changes to this Division to conform to changes in State law or to meet heightened public standards, some of the Division's provisions began to conflict with others. Additionally, the mechanism for adjudicating alleged ethics violations involving elected officials -- an ethics commission -- has not been constituted for nearly 20 years.

In order to address these shortcomings, the Law Department reviewed ethics ordinances from neighboring political subdivisions as well as recent changes in Illinois law and developed a new ethics ordinance for the City that it proposes that the Council codify as a new Chapter 15 of the City Code. The proposed ordinance is based heavily on an ethics ordinance adopted by DuPage County in 2012, but is adapted to conform to a municipal form of government.

DISCUSSION:

The proposed revisions do not significantly impact the substance of the City's ethical standards: conduct currently prohibited will remain prohibited, while rules regarding conflicts of interest have been amplified and clarified.

The most significant changes involve the structural and procedural mechanisms involved in administering and enforcing the rules. These changes are summarized as follows:

New Ethics Officers:

Ethics Advisor

The Ethics Advisor is an attorney whose primary role is to provide advice and guidance to City officers and employees on the application and interpretation of the Ethics Ordinance. Though the Mayor and City Council could designate the Corporation Counsel as the City's Ethics Advisor, the ordinance contemplates an outside attorney serving in this capacity – both for

consistency of opinions and independence. The Ethics Advisor will review compliance with the annual training requirement and assist with the training itself when necessary.

Investigator General

The Investigator General (IG) is an attorney who serves as both an investigator and a prosecutor for ethics violations. The IG receives complaints and investigates alleged violations of the Ethics Ordinances. Upon the completion of an investigation, the IG may close the case, settle the matter with the respondent, or seek leave of the Ethics Commission to bring a formal complaint.

Ethics Commission

The Ethics Commission consists of 5 members and meets at least quarterly. Its primary function is to develop the content of the annual ethics training, and when necessary, to authorize and adjudicate formal complaints brought by the IG. After conducting a hearing, if the Commission finds a violation of the ordinance, it may impose a fine and recommend discipline of an officer or an employee.

Ultimate Jurisdictional Authority

The Ultimate Jurisdictional Authority or UJA is a term borrowed from the State Officials and Employees Ethics Act and essentially is the person responsible for acting on the recommendations of the Ethics Commission or to whom a person subject to the ordinance must answer to. The Mayor is the UJA for all City employees as well as for members of the City's boards and commissions. The City Council serves as the UJA for the Mayor and any of its members.

New Investigative Procedures:

Jurisdictional Analysis

When the IG receives a written complaint of an alleged violation of the ordinance, the IG must first determine whether the allegation actually touches on the subject matter of the ordinance or whether the person is subject to the provisions of the ordinance. For example, the IG may receive a complaint that an employee is habitually late to work – in this instance, though the employee may be subject to discipline, his bad conduct does not constitute an ethics violation. In another instance, the IG may receive a report regarding unethical conduct of an employee of another taxing body. In both cases, the IG does not have authority to conduct an investigation, but must, to the extent possible, refer the complainant to the proper authority. The IG must also notify the complainant and the chairman of the ethics commission in writing that the IG is closing the investigation at this stage.

If the IG finds jurisdiction exists, then the IG must notify the person subject to the complaint (the "respondent") and the respondent's UJA of the complaint. The respondent then has 30 days to submit a written response to the allegations.

Preliminary Investigation

The IG must promptly begin a preliminary investigation to determine whether reasonable cause exists to determine whether a violation has actually occurred. As part of the

investigation, the IG may compel testimony under oath, after first advising any person of their right to (1) refuse to provide self-incriminating testimony; (2) retain an attorney at his or her sole option and expense; and (3) to have such attorney or, if required by any collective bargaining agreement, union representative, present during any interview. At the conclusion of the preliminary investigation, the IG files a summary report outlining the IG's findings. At that time, if the IG believes a violation to have occurred, the IG may seek leave of the Ethics Commission to bring formal charges. The IG may decline to seek formal charges, but instead, include in his or her report a recommendation to the ULA for appropriate disciplinary action.

New Complaint and Hearing Procedures:

Formal Complaint and Hearing

If the Ethics Commission grants the IG leave to file a formal complaint, then the IG must demonstrate, at a hearing before the Ethics Commission that the respondent violated the ethics ordinance based on a preponderance of evidence (more likely than not) standard. Hearings are closed to the public, as required by the Open Meetings Act, the Commission must maintain a verbatim record of the proceedings. It may, but is not required to, retain the services of a court reporter. Within 45 days of the hearing, the Commission shall issue its findings in writing along with any recommendation for sanctions or imposition of a fine. If the Commission finds a violation, the Respondent may petition the Commission to reconsider its finding.

Sanctions

Since the Ethics Commission is not the employer of any of the City's officers or employees, it may not impose adverse employment actions nor require any City officer or employer to implement such a sanction. The Commission, upon a finding of a violation, can make recommendations to an officer or employee's UJA as to what actions it believes are appropriate to remedy the wrongdoing. It is then up to the UJA to implement the recommendations. Independent of any recommendations regarding an officer or employee's employment, the Commission can impose a fine of up to \$5,000 upon a finding of a violation which shall be mandatory and not subject to reduction by the employee's UJA. Additionally, the Ethics Commission (or the IG) may refer a violation to the corporation counsel for prosecution as a misdemeanor.

Effect of an Intergovernmental Agreement:

The proposed ordinance specifically contemplates the possibility of the City entering into an intergovernmental agreement with another entity to "share" the other entity's Investigator General, Ethics Advisor, and Ethics Commission (collectively "Ethics Officers"). While the ordinance provides for the selection of these officers in the absence of an IGA, an IGA does help ensure that the Ethics Officers will act independently.

Changes Since Initial Presentation to COW

Following the Ordinance's initial presentation to the Council, the Law Department reviewed the proposed ordinance with the County's Ethics Adviser as well as additional outside counsel As

a result of those discussions, the Law Department is proposing minor changes to the final ordinance.

Many changes are non-substantive and address minor issues, such as clarifying that the Human Resources Department, rather than the Ethics Commission, is responsible for education and training on the ordinance or reorganize provisions (e.g. the confidentiality provisions regarding the investigator general that were formerly contained in Sec. 15-344(b) are now found in Sec. 15-243.) Other changes are intended to provide a "brighter" line to identify situations where officers must recuse themselves from deliberations. These revisions also exempt temporary and seasonal staff members from the mandatory ethics training requirements.

While they will still be required to abide by all of the provisions of the Ordinance, employees covered by collective bargaining agreements will not be subject to the investigatory provisions set forth in the Ethics Ordinance, rather the disciplinary procedures set forth in each of those agreements will control over the provisions in the Ethics Ordinance.

Finally, the effective date of the Ordinance will be September 1, 2019, which will allow sufficient time for the DuPage County Board to consider and approve an IGA for shared enforcement of this ordinance. Additionally, the ordinance provides that the 6-month report on the feasibility of local limitations on political contributions be delivered to the Rules, Administrations, and Procedures Committee, as it is now the committee with jurisdiction over ethics matters.

IMPACT STATEMENT:

As noted above, this proposal does not substantively change the ethical responsibilities of the City's officers or employees. Rather, it sets forth those responsibilities more clearly than the does the existing Code and it establishes appropriate administration and enforcement mechanisms that do not currently exist. Depending on how the City decides to administer the ordinance, the cost to the City should be negligible.

The ordinance also requires the City's administrative staff to report to the RAP Committee within six months on possible options for the City to limit political contributions to elected City officers and candidates for City office generally, or from entities doing business with the City. The report shall include an estimation of the costs associated with enforcing the regulations.

RECOMMENDATIONS:

That the Council approve this Ordinance consistent with the provisions set forth in the most recent revisions to Exhibit A.



CITY OF AURORA, ILLINOIS

ORDINANCE NO. _____
DATE OF PASSAGE _____

An Ordinance amending Chapter 2, Article III, Division 2 of the Code of the City of Aurora pertaining to the ethical standards of the City's officers and employees and creating Chapter 15 of the Code of the City of Aurora restating and amplifying those standards.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, Chapter 2, Article III, Division 2 of the Code of the City of Aurora (City Code) sets forth ethical standards applicable to the City's Officer's and employees; and

WHEREAS, these standards are derived from or authorized by various provisions of Illinois law including, but not limited to the Illinois Municipal Code, the Public Officers Prohibited Activities Act, and the State Officials and Employees Ethics Act as well as by principles of common law; and

WHEREAS, the City Council finds it appropriate to review these standards and implement appropriate mechanisms to ensure that those subject to such standards are aware of their obligations and conduct the business of the City in an ethical manner; and

WHEREAS, City Council finds that recodification of the City's ethical standards into a new chapter of the City Code will provide clarity as to those standards and the administrative and enforcement mechanisms essential to ensuring that the City's officers and employees adhere to them;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Aurora, Illinois, as follows: that the provisions set forth in Exhibit A to this Ordinance shall be and hereby are adopted and shall be codified as Chapter 15 of the City Code; and further

ORDINANCE NO. _____
DATE OF PASSAGE _____

BE IT ORDAINED, that the provisions set forth in Exhibit B of this Ordinance shall be and hereby are adopted as amendments to Chapter 2, Article III and Division 2 of the Code; and further

BE IT ORDAINED, that within six (6) months of the effective date of this Ordinance, Administrative staff shall report to the Rules, Administration and Procedures Committee on possible options for the City to limit political contributions to elected City officers and candidates for City office generally or from entities doing business with the City. The report shall include an estimation of the costs associated with enforcing the regulations; and further

BE IT ORDAINED, that any Ordinance, resolution, or motion, or portion thereof that conflicts with this Ordinance, shall be and hereby is repealed; and further

BE IT ORDAINED, that this Ordinance shall become effective on September 1, 2019.