

TO: Mayor and City Council

FROM: Richard J. Veenstra
Corporation Counsel

DATE: September 14, 2023

SUBJECT:

The disclosure of economic interests and outside employment by officers and employees under City Ordinance.

PURPOSE:

To improve transparency related to the economic interest statements filed by City officers and employees, reduce duplicative administrative requirements, and to modernize City policy with respect to outside employment.

BACKGROUND:

In 1984, Illinois "sunshine" laws that applied to local governments were very different than they are today.

At the time, the Illinois Governmental Ethics Act required the City's elected officials and employees paid over \$35,000 (\$98,000 in 2023 dollars) to annually file a limited statement of economic interest with the county clerk. Although the universe of those covered by the disclosure requirements grew over the years, the information that the statute required covered persons to disclose remained largely unchanged until 2021. Under State law, covered officers and employees were required to:

- Disclose ownership interests in entities doing business with the City if their ownership interest exceeded \$5,000 or they received dividends over \$1,200 in the preceding year;
- List the name of any professional organization the official was an officer, director, associate, partner, proprietor, or served in any advisory capacity and earned income therefrom over \$1,200 in the preceding year;
- Identify entities to which the official rendered professional services in an amount over \$5,000 in the preceding year;
- List assets from which the official realized a capital gain of over \$5,000 in the preceding year,
- Identify any governmental action (e.g. zoning relief) for which the official petitioned the City for in the preceding year;
- Identify any entity doing business with the City that the official received income of more than \$1,200 from in the preceding year;

- Identify any other governmental entities that employed the official; and
- Disclose gifts valued at over \$500 received in the previous year.

As is the case today, county clerks served as the repository for annual disclosures. Separately, the Illinois Election Code required annual (rather than quarterly) disclosure of campaign contributions to be filed with the State Board of Elections and the local county clerk.

Reports filed under the Illinois Governmental Ethics Act and the Election Code were open for public inspection at the county clerk's office. However, a requestor was required to complete a form that contained their name, address, occupation, and reason for the request before they could obtain a copy. The county clerk was then required to notify the official or the political committee that their reports had been examined and by whom. There were no state prohibitions on the acceptance or solicitation of gifts from certain persons as were later enacted by the Gift Ban Act and eventually made part of the State Officials and Employees Ethics Act. The Supreme Court had not yet concluded that most political patronage was unconstitutional and the State did not yet require municipalities to prohibit their employees from engaging in certain political activity on compensated time.

In August of 1984, the City Council adopted Ordinance O84-4298. The new ordinance prescribed ethical standards for City officers and employees, required annual disclosures of their economic interests, and required that employees obtain permission in order to undertake any outside employment.

In enacting these requirements, the City Council intended that City officers and employees "conduct the affairs of the City with integrity and impartiality, without allowing prejudice, favoritism, or the opportunity for personal gain to influence their decisions or actions or interfere with serving the public interest."

Even though O84-4298 used the same model for allowing public access to disclosure reports as the contemporary versions of the Governmental Ethics Act and the Election Code did, it meant persons interested in disclosures of Aurora officials to visit City Hall rather than traveling to Geneva, and thus provided a more "local" option for them.

Aside from slight modification following a recodification of the Code of Ordinances in the early 1990s, the provisions originally enacted by O84-4298 remained unchanged for 35 years. They remain codified as Sec. 2-184 and Sec. 2-185. In 2019, the City Council replaced much of the original language of O84-4298 with what is now Chapter 15 of the Code of Ordinances and in doing so clarified and amplified many of the obligations the Code required of City officers and employees.

Left largely unchanged by the 2019 amendments was O84-4298's requirement that the City's elected officials and many of its employees annually disclose their economic interests on forms filed with the City Clerk (in addition to those disclosures required by the Illinois Governmental Ethics Act).

The changes the City Council adopted in 2019 recognized the statutory distinction between gifts and lawful campaign contributions and removed obsolete language rendered unenforceable by the Freedom of Information Act. Because the City's disclosure requirements captured a broader range of economic interests than those in the Governmental Ethics Act, the City Council did not evaluate the continued need to maintain them. Similarly, the Council did not consider whether to amend the Code's provisions regarding outside employment by City employees.

Effective January 1, 2022, and in response to public concerns regarding governmental transparency, the Illinois General Assembly amended the Illinois Governmental Ethics Act to require broader disclosure of the economic interests of public officers and employees. These changes eliminated nearly all of the perceived "gaps" between the disclosures required by state law and those required by local ordinance.

There are currently four "gaps" between what Illinois law (both the Governmental Ethics Act and the Election Code) requires officers and employees to disclose and what the City Code requires:

- City officers and employees are required to disclose whether they own or operate businesses within the City;
- City officers and employees are required to disclose outside employment, including employment for which they are not compensated;
- City officers and employees must specifically identify their involvement in "city-funded" organizations; and
- City officers and employees must disclose the receipt of gifts in excess of \$150 or loan forgiveness in excess of \$100 from entities doing business with the City -- though the receipt of either from certain sources became prohibited by law with the passage of the original Gift Ban Act in 1997.

In addition to recent legislation narrowing the "gap" between required disclosures, since the enactment of Ordinance O84-4298, the public's access to economic interest information has increased significantly. The disclosures that previously required a trip to the county seat and the filling out of paperwork to view are now freely accessible online to members of the public.

Even prior to the General Assembly's amendment of the Governmental Ethics Act, the Law Department frequently received questions as to the continued need for Aurora to maintain its own disclosure requirement.

In 2023, 154 city officials were required to disclose their economic interests under the Governmental Ethics Act. 94 of the 154 were required to also disclose their economic interests under local ordinance. Only 24 employees were required only to disclose their economic interests under local ordinance by virtue of the inclusion of their job title in the Executive Pay

Plan. These positions included training and project managers, management assistants and office coordinators, and other positions that are properly exempt from the hourly requirements of the Federal Labor Standards Act, but do not carry the requisite administrative or decisional authority to fall under the scope of the Governmental Ethics Act's requirements.

With more than 118 officers and employees presently subject to disclosure under the City Code, the reporting process -- though somewhat streamlined through the use of DocuSign -- is still manual, cumbersome, and time consuming. Given the broader disclosure obligations under Governmental Ethics Act, changes to the law with respect to the acceptance of gifts by public officials, and the Election Code requiring disclosure of some contributions within 48 hours of receipt, there is a strong argument that the City process is unnecessary and obsolete.

Moreover, from January 1, 2021, to the date of this memo, the City has received a total of eight (8) FOIA requests for its local forms, six (6) of which were made in 2022 ahead of a statewide primary election involving one of the City's elected officials.

Since August, the Rules, Administration, and Procedures Committee has discussed improving and modernizing the City's local reporting process. The attached Ordinance reflects the result of those discussions as well as modernization of the City's policy with respect to outside employment of City employees.

DISCUSSION:

In lieu of the existing process, the City proposes to include as part of its existing Open Data Portal, a transparency page that will:

1. Provide direct links to the County Clerk's website where the public may search the statements of economic interest required by the Governmental Ethics Act; and
2. Provide direct links to the governmental website that maintains campaign disclosure reports filed by a candidate political committee on behalf of any City Officer or Employee;

In lieu of an annual local disclosure requirement, persons already required to report under the Governmental Ethics Act would be required to electronically make quarterly disclosures of:

- Any employment other than their official position with the City;
- Whether their outside employer is a contractor or otherwise provides services to the City.
- Whether their outside employer receives any financial assistance from the City
- The existence of a political committee authorized by the officer or employee to accept political contributions on their behalf as a candidate or holder of public office;

The information disclosed by each covered person would be available for review by the public through the Open Data Portal.

With respect to the regulation of outside occupations or employment, at a minimum, all personnel who seek to engage in an outside occupation or employment must notify their department head and human resources director of their intent to work outside of the City. Unless this work interferes with or is otherwise incompatible with their official duties, further permission is not required.

In the case of department heads, assistant department heads, the heads and assistant heads of departmental divisions and subdivisions, and key staff in the mayor's office and office of the aldermen, the review of proposed outside employment is more extensive. Further, outside employment requires express approval by the mayor, or in the case of an employee in the office of the aldermen, but a person designated by the RAP Committee.

The definition of "outside occupation or employment" is modernized and subject to various exemptions for leadership positions in various professional, charitable, fraternal, political organizations and for military service.

The amendatory language pertaining to outside employment will become effective on January 1, 2024 and the amendatory language pertaining to disclosure obligations will become effective on May 1, 2024 to ensure that City staff has time to build out the systems necessary to implement these changes and to provide training on them.

IMPACT STATEMENT:

Approval of this ordinance should significantly reduce time and resources spent administering an obsolete and duplicative local disclosure process while replace it with a modern and far more accessible process.

RECOMMENDATIONS:

That the City Council approve this Ordinance.

cc: Rules, Administration, and Procedures Committee



CITY OF AURORA, ILLINOIS

ORDINANCE NO. _____
DATE OF PASSAGE _____

An Ordinance amending Sections 2-184 and 2-185 of the Code of Ordinances Pertaining to Outside Occupations and the Disclosure of Economic Interests and Campaign Contributions.

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, in August of 1984, the City Council adopted Ordinance O84-4298 prescribing ethical standards for City officers and employees, requiring certain persons to make annual disclosures of their economic interests, and requiring that employees obtain permission in order to undertake any outside employment; and

WHEREAS, in enacting these requirements, the City Council intended that City officers and employees "conduct the affairs of the City with integrity and impartiality, without allowing prejudice, favoritism, or the opportunity for personal gain to influence their decisions or actions or interfere with serving the public interest;" and

WHEREAS, since the City Council's enactment of Ordinance O84-4298, Illinois law with respect to the required disclosure of economic interests by certain public officer and employees, the reporting of political campaign contributions, the prohibition of gifts from certain sources, and other ethical obligations has substantially evolved; and

WHEREAS, as a result of the evolution of Illinois law, various provisions of Ordinance O84-4298, including those now set forth in Sec. 2-185 of the Code of Ordinances, have become duplicative of statutory obligations or rendered obsolete due to improvements in technology; and

WHEREAS, Ordinance O84-4298's regulation of outside occupations and employment now set forth in Sec. 2-184 of the Code of Ordinances requires revision to comply with

ORDINANCE NO. _____
DATE OF PASSAGE _____

changes in state law and to better clarify the circumstances under which an employee may engage in outside occupations or employment; and
WHEREAS, the City Council finds that the goals of Ordinance O84-4298 will be better served if Sections 2-184 and 2-185 are amended as set forth in Exhibit A of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Aurora, Illinois, as follows:

Section 1. That effective January 1, 2024, Section 2-184 of the Code of Ordinances shall be and hereby is amended as set forth in Exhibit A. All departments of the city shall render such assistance to the chief human resources officer as may be necessary to ensure the timely implementation of this Section.

Section 2. That effective May 1, 2024, Section 2-185 of the Code of Ordinances shall be and hereby is amended as set forth in Exhibit A. All departments of the city shall render such assistance to the city clerk as may be necessary to ensure the timely implementation of this Section.

Section 3. That the heads of the departments of information technology, law, and the mayor's office of community affairs shall be and hereby are directed to devote such time and resources as may be required to implement the provisions of this Ordinance on the schedule herein provided.

Section 4. That this Ordinance shall become effective upon its approval.