

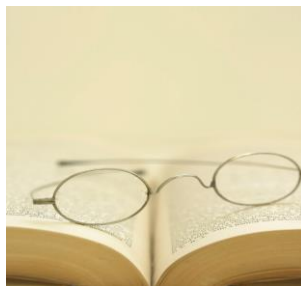


# How to Create a City of Ethics

Andrea Shindlebower Main  
Kentucky League of Cities  
October 4, 2017



## Ethics Chapter 10 2017 City Officials Handbook





## Purpose

- Ethics ordinance is a written guide to what is acceptable within the city
- However, keep in mind that perception is also very powerful
  - Media
  - Kid on your shoulder
  - Golden rule



## Identifying Ethical Dilemmas

- Why?
  - Protect the Public Trust
- How?
  - Avoid Wrongdoing
    - the Appearance of Wrongdoing
  - Avoid Conflicts of Interest
  - Disclose Potential Conflicts
  - Consider Self Disqualification





## Identifying Ethical Dilemmas

- **How to make the best decision:**
  - Introduce the test
    - Media test, golden rule and/or kid test
  - What are the facts?
    - Sometimes it helps to gather more information
  - What is the law? Is this covered in statute, ordinance or policy?
    - But remember that this is the minimum standard of behavior



## Identifying Ethical Issues

- **Ask yourself these questions:**
  - What is the legitimacy of what we are doing?
  - Does it withstand the scrutiny of the public?
  - Priority should be given to so called “public sector” values:
    - **Trustworthiness, Responsibility, Respect, Compassion and Fairness**





## Identifying Ethical Issues

- **Ask yourself these questions (cont.):**
  - What decision promotes the public good?
    - Sometimes there doesn't seem to be a good or correct answer, in this case we should look to promote the public good
    - What is good for our citizens as a whole, even if it comes at the expense of what we want or what our friends want
  - Make your decision...



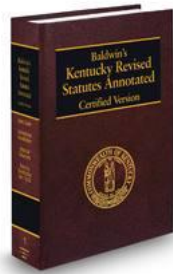
## Officer and Employee Ethics

- a. Establish Standards of Conduct
- b. Provide Clear Guidance
- c. Promote Public Confidence
- d. Enhance Accountability
- e. Fair and Effective Administration



# Statutory Language

## KRS 65.003



## Procedural Considerations

- Enactment by Ordinance
- Ethics Ordinance may be Amended, but not Repealed
- Copy to Department for Local Government (DLG)





## Drafting a Local Ethics Ordinance

- Required
  - Standards of Conduct
  - Requirement for Financial Disclosure Statements
  - Employment of Family Members
  - Enforcement of Code of Ethics



## City Application of Code of Ethics

In regards to a city, who does the code of ethics apply to?

- Must apply to:
  - Elected officers
- Can also apply to:
  - Appointed officers
  - Employees





## Interlocal Agreement

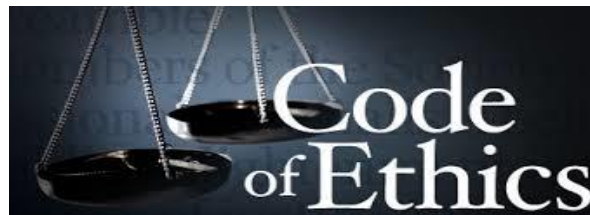
- KRS 65.003(2)



- Who Can Enter into Agreement?
- Why an Interlocal Agreement?
- Requirement for Single Ethics Code
- Submit to DLG for approval -  
[https://kydlgweb.ky.gov/Legal/16\\_EthicsSearch.cfm](https://kydlgweb.ky.gov/Legal/16_EthicsSearch.cfm)



## KLC Model Ordinance



Section numbers listed in this presentation coincide with the KLC Model Code of Ethics Ordinance dated September 2017



## Legal Requirements

- Whereas clause
  - Whereas the General Assembly of the Commonwealth of Kentucky has enacted legislation requiring this city to enact and enforce a code of ethics
- Title
  - Section 1
- Findings / Purpose and Authority
  - Section 2 and 3
  - Summary of the city's legislative goals
  - Provides insight to the motivations behind the code



## Definitions

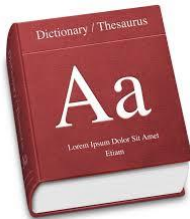
- Section 4
- Clear and concise definition of terms used throughout the ordinance
  - Domestic partner
    - *Example:* Adult, unrelated by blood, with which an unmarried or separated officer or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.
  - Household
    - *Example:* Anyone whose primary residence is in the officer or employee's home, including non-relatives who are not rent payers or servants.





## Definitions

- Clear and concise (cont.)
  - Family member
    - *Example:* Spouse, domestic partner, parent, step-parent, child, step-child, brother, step-brother, sister, step-sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent or grandchild.
  - Immediate Family Member
    - *Example:* Spouse, domestic partner, a child or step-child who is not emancipated and who resides in the officer's or employee's household, or a person claimed by the officer or employee, or the officer's or employee's spouse, as a dependent for tax purposes.



## Standards of Conduct

- Standards of Conduct must be included
- Does not state specifically what they should be
  - **Examples** throughout presentation
- Must be applied to all elected officials
- Can also apply to city employees, board and commission members



## Standards of Conduct



- What should be considered?
  - They should guide the decisions and actions of those subject
  - Will they be general, specific or a combination of both
  - Cover all situations?
  - Be clear and concise with intentions



## Standards of Conduct



- Conflicts of Interest
- Section 5
  - In General
    - They should guide the decisions and actions of those subject
    - Language that states that action or inaction that provides a benefit to the officer or employee or a family member, business, client or consultant of the officer or employee



- Example of “inaction”
- Code enforcement officer notices that his brother’s yard is in violation of the code enforcement ordinance. He gives him a verbal warning.



## Standards of Conduct

- Conflicts of Interest in Contracts
- Section 6
  - KRS 61.252
    - Contracts
    - Business Interest
    - Privileges or Advantages
    - Direct or Indirect Financial or Personal Involvement
    - Exceptions
      - Before becoming employee or candidate
      - Bid
      - Finding made in open meeting



**KLC**

The city has decided to improve the land surrounding the city hall by completing an extensive landscape project. The only landscaping business in town is owned by a council member.

Should the city contract with the council member's landscaping company?

**KLC**

The city clerk's spouse is an employee at the local bank that the city has decided to use.

Does the clerk have a conflict of interest?





## Standards of Conduct



- **Incompatible Offices**
- Section 7
- Information from the Attorney General's Office on Conflict of Interest and Incompatible Offices can be found at:

[https://ag.ky.gov/civil/civil-enviro/opinions/Documents/conflicts\\_of\\_interest.pdf](https://ag.ky.gov/civil/civil-enviro/opinions/Documents/conflicts_of_interest.pdf)



## Incompatible Offices

- Three types of incompatibility
  - Constitutional (Ky Const. § 165)
  - Statutory (KRS 61.080)
  - Common Law (determined by court of law)





## Incompatible Offices

- Const. § 165 prohibits city officers from holding the following offices:
  - State office or deputy state office
    - 1) *Judges of District and Circuit Courts and clerks*
    - 2) *School Board Members*
  - Member of the General Assembly
  - More than one city office, whether the offices are in same or different cities.



## Incompatible Offices

- Statutory Incompatibility – KRS 61.080 repeats the prohibitions of the Constitution and adds:
  - An individual cannot occupy a city office and a county office at the same time. County offices include the following:
    - *County Judge Executive*
    - *Sheriff and Deputies*
    - *Magistrates or County Commissioners*
    - *Jailers and Deputies*
    - *County Election Commissioner*
    - *Coroner*
    - *County Dog Warden*



## Incompatible Offices

- Common Law incompatibility most often is found where:
  - One position has the power of appointment to or removal from the other
    - *Ex – Council member cannot be city clerk*
  - One position has supervisory authority over the other
    - *Ex – mayor cannot also be an employee of the city*
  - When one position has review authority over the other
    - *Ex- would be a member of the legislative body and a planning and zoning commission.*



## Standards of Conduct

- Withdrawal from Participation
- Section 8
  - Conflict of Interest
  - Procedure
    - Remove yourself
  - Ongoing Conflict
  - Request to Withdraw





A council member has a lawsuit against the city.  
The council is going into executive session to  
discuss the lawsuit.

Should the council member involved in the lawsuit  
withdraw from participation in that part of the  
meeting?



## Standards of Conduct

- Receipt of Gifts
- Section 9
  - Purpose
  - To Prohibit or Not to Prohibit?
  - Exclusions







## Standards of Conduct

- Use of City Property, Equipment and Personnel
- Section 10
  - Complete Prohibition for Personal Use
  - KRS 522.020 treats this type of abuse as a felony



The city is paving several city streets. One of the residents who has been a large contributor to the mayor's campaign asks if they could pave his driveway as they are going past his house. The cost will be very little.

What should the mayor do?

What if the mayor allows him to pay the cost of paving?

**KLC**

A city employee “borrows” city equipment for use on his own property. He does it on the weekend when it won’t be needed and will have it back by Monday morning.

Is this ok?

**KLC**

## Nepotism

- Webster's “favoritism shown to a relative.”
- Black’s Law Dictionary “bestowal of patronage by public officers in appointing others to positions by reason of blood or marital relationship to appointing authority.”



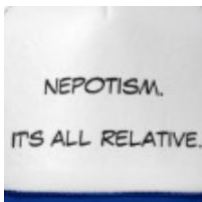


## Nepotism

- Section 11
- Which Relatives are Covered?
  - Immediate
  - Extended
  - Defined in the definitions section
- How Stringent Should the Policy Be?
  - City Organization and Structure
  - Size of City



Can the wife of the mayor also serve on city council?





## Standards of Conduct

- Representation of Persons or Interest Before City Government
- Section 12
  - Compensation



A constituent has offered a city council member free eggs to get an ordinance passed that allows chickens within the city limits.

Is there any problem with this?





The mayor's best friend from high school owns a company that does business with the city. He also owns a house boat and has invited the mayor to go on a weekend trip.

Is it ok if the mayor goes?



## Standards of Conduct

- Misuse of Confidential Information
- Section 13
  - Disclosure of Information
    - Personal Financial Benefit
    - Financial Benefit of Another





The city has just finished conducting a closed session to discuss the sale of city property to a large business wanting to locate within the city. One of the council members owns property immediately adjacent to the city owned property the business is considering purchasing. A day later, the council member contacts the business about purchasing his property rather than the city's property for a cheaper price.

Is this ok?



## Standards of Conduct

- Political Solicitation
- Section 14
  - Candidates cannot solicit from appointed officials and employees
  - No restriction on voluntary contributions
  - In city uniforms
  - Using city equipment





## Standards of Conduct

- Patronage
- Section 15
  - Prevents any officer or employee from using their influence to obtain an appointment as a reward for political activity or contribution.



Current mayor tells a police officer that he will promote him to police chief if the mayor is re-elected and the officer contributes \$1000 to his campaign fund.





## Standards of Conduct

- Restriction of Off-Duty or Outside Employment
- Section 16
  - Conflict of Interest
    - Working Hours
    - Vendor for the City?
    - Written Approval
    - First Priority
    - Personnel Policy

**PRIOR  
APPROVAL  
REQUIRED**



## Standards of Conduct

- Restriction of Off-Duty or Outside Employment
  - Police and Fire
    - KRS 95.015
    - Members of the police and fire departments, except when on duty, shall not be restrained from exercising their rights and privileges or from entering into any endeavor enjoyed by all other citizens of the city in which they reside.
    - KRS 61.310
    - A peace officer may, while in office, and during hours other than regular or scheduled duty hours, act in any private employment as guard or watchman or in any other similar or private employment.
    - Puckett case (821 SW 2d 791)
    - Employment can be restricted in places which sell alcoholic beverages.





## Standards of Conduct

- Fees and Honoraria
- Section 18
  - Compensation for Speeches, Articles or Appearances
- Part of Office or Employment
- Does Not Apply if Unrelated to Office or Employment



The mayor who has recently written a book on customer service has been asked to speak at a national conference and will be paid \$2000 for her appearance.

Is this ok?





A council member has been invited to attend (and represent the city) at an awards luncheon held by a local non-profit organization.



Can the council member accept their offer to pay for their lunch?



## Standards of Conduct

- Endorsements
- Section 19
  - Not in your official capacity
    - Products or services





## Standards of Conduct

- Complicity with or Knowledge of Others' Violations
- Section 20
  - If you know of a violation of the ethics code you must report it!

**Speak  
Up!**



## Standards of Conduct

- Falsely Impugning Reputation
- Section 21
  - Cannot spread lies about another person
  - Exception for something that you thought was accurate
  - Apology

“A lie can travel  
halfway around the  
world while the truth  
is putting on its  
shoes.”

*Mark Twain*



## Standards of Conduct

- Meeting Attendance
- Section 22
  - How many meetings can someone miss?
  - Excuses?
  - Meeting attendance issues
    - Quorum
    - Voluntary resignation



"Woohoo, everybody made the meeting!"



## Financial Disclosure

- Section 23
- Financial Disclosure Must Apply:
  - All Elected Officials
  - All Candidates for Elected City Office
- Financial Disclosure Should Apply:
  - Members of Planning and Zoning Commissions
  - Board of Adjustment Members
  - Officers and Employees:
    - Involved in contracts
    - Involved in purchasing
    - Involved in obtaining grants or loans



## Financial Disclosure

- When to File
- Section 24
  - Initial statements
    - Set out date in ordinance
    - Annually
  - After a new appointment or position is obtained
  - Whenever there is a material change
  - Allow for extensions for good cause



## Financial Disclosure

- Form
- Section 25
  - Ethics Board should create a form or have someone create the form
    - Sample form
  - Deliver to everyone that is required to file





## Financial Disclosure

- Control and Maintenance of the Form
- Section 26
  - Ethics Board required to control and maintain
  - City Clerk
  - How long to be maintained?
    - KDLA Record Retention Schedule
      - <http://kdla.ky.gov/records/retentionschedules/Documents/Local%20Records%20Schedules/LocalGovernmentGeneralRecordsRetentionSchedule.pdf>
    - Two years after term of office or employment has ended



## Financial Disclosure

- What Information Should be Disclosed
- Section 27
  - Name
  - Business Address and Phone
  - Home Address
  - Office to be Sought
  - Occupations of Filer and Spouse
    - Domestic partner





## Financial Disclosure

- What Should be Disclosed
  - Source of Income for Filer and Immediate Family Members
    - Over a certain \$ amount
  - Name and Address of Business Organizations
    - \$\_\_\_\_\_; or \_\_\_\_\_ Percent Ownership Interest
  - Location of Real Property in the City
    - Over a certain \$\_\_\_\_\_
  - Gifts or Honoraria
    - Over a certain \$\_\_\_\_\_
  - Creditors
    - Over a certain \$\_\_\_\_\_
  - **Specific \$ Amounts and Information on Clients or Customers NOT to be Disclosed**



## Financial Disclosure

- Penalties
- Section 28
  - Noncompliance with Filing Requirement
    - Wrong Form
    - Incomplete Form
    - Not Filed
  - False Statement





## Enforcement

- Creation of the Ethics Board
- Section 29
  - Individual or Group Enforcement
    - Independent From Class of Persons Subject to Ethics
      - Individual
        - » Cost Effective
        - » Abuse of the Process
        - » Biased and Uneven Enforcement
      - Group
        - » Reduces Influence of Partisan Politics
        - » Balanced Views
        - » Odd Number of Members
        - » Terms should be staggered
        - » Term Limits



## Enforcement

- Considerations:
  - Who will make the appointments?
    - ❖ Form of Government?
  - Terms of Members
    - ❖ What if the term expires?
  - Alternate Members
    - ❖ To fill in for regular members when they cannot discharge their duties







## Enforcement

- Facilities and Staff
- Section 31
  - Are they going to have a place to meet?
  - Regular meeting schedule?
    - Special meeting
    - Minutes
  - Legislative body should appropriate funds for materials and supplies
    - Mailings
    - Attorney for hearings
  - Will they be allowed to use any staff?



## Enforcement

- Initial Meeting
- Section 32
  - As soon as possible at the beginning of every year
    - Who calls the meeting
      - Chair
      - Majority of the members of the ethics board
      - Set out date in Ethics ordinance
    - Select a chair and vice chair
    - Go over the ethics ordinance
    - Open Meeting





## Enforcement

- Power and Duties of the Ethics Board
- Section 33
  - Investigate complaints
  - Issue orders
  - Refer violations to appropriate authority
  - Render advisory opinions
  - Enforce the ethics code
  - Control and maintain financial disclosure statements – compliance
  - Provide training and education
  - Submit annual reports
  - Prepare necessary forms
    - Complaint Form
    - Financial Disclosure



## Enforcement

- Training and Education
- Section 34
  - Awareness of Code of Ethics
    - Elected Officials
    - Appointed Officials
    - Boards and Commissions
    - Employees





## Enforcement

- Training and Education
  - Website
    - Complaint form
    - Code Of Ethics Ordinance
    - Ethics information and articles



## Enforcement

- Annual Reports
- Section 35
  - Report to the appropriate authority
    - Activities
    - Decisions
    - Advisory Opinions
- Annual Review of the Ethics Code
  - Recommend changes to the code to the legislative body





## Enforcement

- Filing and Investigation of Complaints
- Sections 36-40
  - Creation of a complaint form
    - Sample form
  - Must have a clear process in place
  - Deadlines

**COMPLAINT**

TO:	NAME	ADDRESS	CITY	STATE	ZIP
WHOSE FAULT:	WINE	GRAPES	OTHER		
DESIRED OUTCOME:	RESCUE	EXPLANATION	RESTITUTION	OTHER	
COMPLAINANT:					ANONYMOUS



## Enforcement

- Filing and Investigation of Complaints (cont.)
  - Confidentiality – Open Records
    - Until the investigation is complete the complaint is confidential
  - Open Meetings
    - Meetings to investigate will start in open session and move to closed session to discuss the complaint if it falls under an exception





## Enforcement

- Filing and Investigation of Complaints (cont.)
  - Withdrawal
    - Prevent pressure by someone to withdraw
    - Prevents filing of false complaints



## Enforcement

- Filing and Investigation of Complaints (cont.)
  - Hearing Procedures (Due Process)
    - Notice of Hearing
    - Hearing Procedure
    - Appeals
    - Limitation of Action
  - False Complaints
    - Penalty

*No person shall be deprived of life, liberty, or property, without due process of law;*



## Enforcement

- Advisory Opinions
- Section 41
  - Uncertain about a decision
  - Real or Hypothetical Facts
  - Defense
  - Binding on any subsequent proceeding
    - Same facts or circumstances



## Enforcement

- Advisory Opinions
  - Maintained
    - Redacted
    - File with Ethics Board and City Clerk
    - On the website for easy access
    - Notify those that may be affected by the opinion
  - Sample form





## Enforcement

- Reprisals Against Persons Disclosing Violations Prohibited
- Section 42
  - Protects those that disclose a violation
  - No protection for false accusations



## Enforcement

- Penalties
- Section 43
  - Criminal, Civil or Both
  - Criminal - KRS 83A.065(2)
    - Misdemeanor
    - Violation
    - No Designation
    - Enforced by District Court





## Enforcement

- Penalties
- Section 43
  - Civil
  - KRS 83A.065(4)
    - Alternative or in conjunction with criminal penalty
    - Fine to be paid within certain amount of time
    - Enforcement by city attorney in court of appropriate jurisdiction
  - Injunctions and Abatement Orders
    - KRS 83A.065(8)
      - City attorney files petition



CEASE  
and  
DESIST



## Enforcement

- Other Penalties
  - Removal
    - KRS 83A.040(9)
  - Adverse Employment Action
    - Demotion, suspension or termination
    - Action must be taken by proper authority in conformance with KRS
    - Personnel Policies







## Penalty for Noncompliance

- KRS 65.003(6)
  - Copy to DLG
  - Suspension Services or Payments



## KLC Certified City of Ethics Program



- Model Ethics Ordinance
  - updated **September 2017**
- Can provide training on your city's specific ordinance
- If program guidelines are met your city can be designated as a "Certified City of Ethics"

**KLC**

- Beaver Dam
- Bowling Green
- Fort Wright
- Franklin
- Glasgow
- Hodgenville
- Jeffersontown
- Madisonville
- Mayfield
- Meadow Vale
- Muldraugh
- Plantation
- Richmond
- Sadieville
- Shepherdsville
- West Buechel

**KLC**

For Questions on Ethics  
or  
More Information on the  
KLC Certified City of Ethics  
Program...

[http://www.klc.org/news/2408/Aspire\\_to\\_become\\_a\\_KLC\\_Certified\\_City\\_of\\_Ethics](http://www.klc.org/news/2408/Aspire_to_become_a_KLC_Certified_City_of_Ethics)

[ashindlebower@klc.org](mailto:ashindlebower@klc.org)

800-876-4552

859-977-3785