***Under KRS 65.003 all cities shall adopt, by ordinance, a code of ethics which shall apply to all elected officials, and if desired, the appointed officials and employees of the city. Each code of ethics shall include, but may not be limited to the following requirements:***

* ***Standards of conduct;***
* ***Requirements for financial disclosure;***
* ***Nepotism policy; and***
* ***Creation of an ethics board for enforcement of the code.***

***The Kentucky League of Cities model code of ethics is provided only for general informational purposes and to assist Kentucky cities in identifying issues to address in a local ethics ordinance. In addition to the above required elements, we have included optional provisions that the city may choose to include. The ordinance is not and should not be treated as legal advice. You should consult with your legal counsel before drafting or adopting any ordinance and before taking any action based on this sample.***

**KLC Model Code of Ethics (September 2017)**

City of \_\_\_\_\_\_\_\_\_\_\_\_

Ordinance No. \_\_\_\_\_\_

*An ordinance establishing a code of ethical conduct applicable to the officers and employees of the city and city agencies.*

**COMMENT:** The requirement that city employees be covered under the city code of ethics is optional, but we recommend that all persons working and serving within the city be covered.

**WHEREAS**, the General Assembly of the Commonwealth of Kentucky has enacted legislation requiring the city to enact and enforce a code of ethics governing the conduct of city officers and employees; and

**WHEREAS**, the officials of this city are committed to the operation of a city government that manifests the highest moral and ethical standards among its officers and employees and desires to comply with all requirements of the Commonwealth’s local government ethics law.

**NOW, THEREFORE**, be it ordained by the legislative body of the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Kentucky:

**SECTION 1.** Title. This ordinance shall be known and may be cited as the “City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Kentucky Code of Ethics.”

**COMMENT SECTION 2**: The central point of an ethics code is that city officers and employees should not prefer, over the public interest, their own interests or the interests of their family or business associates. The general rule is: If it looks to others as if you might be giving someone special treatment, or if it would look that way to others if they knew about the relationship, then you should not act with respect to that person or entity, and instead recuse yourself and withdraw from participation in the matter by following SECTION 7 below. It is important to give city residents confidence that their officers and employees are treating everyone the same, even when you believe that you can be totally impartial.

The findings will be specific to each city. Each city should develop findings that are important to their city. Below is an example.

**SECTION 2.** Findings. The legislative body of the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ finds and declares that:

1. Public office and employment of the city are public trusts.
2. The vitality and stability of the government of this city depends upon the public’s confidence in the integrity of its elected and appointed officers and employees. Whenever the public perceives a conflict between the private interests and public duties of a city officer or employee, that confidence is imperiled.
3. The government of this city has a duty to provide its citizens with standards by which they may determine whether public duties are being faithfully performed, and to make its officers and employees aware of the standards which the citizenry rightfully expects them to comply with while conducting their public duties.

**SECTION 3.**  Purpose and Authority.

1. It is the purpose of this ordinance to provide a method of assuring that standards of ethical conduct and financial disclosure requirements for officers and employees of the city shall be clearly established, uniform in their application, and enforceable, and to provide the officers and employees of the city with advice and information concerning potential conflicts of interest which might arise in the conduct of their public duties.
2. It is the further purpose of this ordinance to meet the requirements of KRS 65.003 as enacted by the 1994 Kentucky General Assembly and any amendments made subsequent to that date.
3. This ordinance is enacted under the power vested in the city by KRS 82.082 and pursuant to the requirements of KRS 65.003.

**COMMENT SECTION 4:** Definitions will be specific to each city ethics ordinance. Cities should make sure that all terms within their ethics ordinance are defined appropriately within this section.

**SECTION 4.**  Definitions. As used in this ordinance, unless the context clearly requires a different meaning:

1. “Business” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, professional service corporation, or any legal entity through which business is conducted for profit.
2. “Candidate” means any individual who seeks nomination or election to a city office. An individual is a candidate when the individual files a notification and declaration for nomination for office with the county clerk or the secretary of state, or is nominated for office by a political party, or files a declaration of intent to be a write-in candidate with the county clerk or secretary of state.
3. “City” refers to the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Kentucky.
4. “City agency” means any board, commission, authority, non-stock corporation, or other entity created, either individually or jointly, by this city.

(E) "Confidential information" means information obtained in the course of holding public office or employment, or as a contractor to the city, which is not available to members of the public and which the [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) is not authorized to disclose, except to designated individuals or bodies, including written and non-written information. When such information is also available through channels open to the public, [officers and employees](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) are not prohibited from disclosing the availability of those channels.

(F) "Consultant" means an independent contractor or professional person or entity engaged by the city or advising a city officer, and in a position to influence a city decision or action, or have access to confidential information.

**COMMENT SECTION 4 (G):** An employee of a large corporation may not know many of the customers or clients of his or her employer and should not be penalized for that understandable ignorance. For that reason, the "knows or has reason to know" language is included.

(G) "Customer or client" means:

1. Any person or entity to which a person or entity has supplied goods or services during the previous 24 months, having a total value greater than one thousand dollars ($1,000); or
2. Any person or entity to which an [officer or employee's](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) [outside employer or business](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC110) has supplied goods or services during the previous 24 months, having a total value greater than one thousand dollars ($1,000), but only if the officer or employee knows or has reason to know the outside employer or business supplied the goods or services.

**COMMENT SECTION 4 (H):** Many cities have decided to include a definition of “domestic partner” within their ordinance to include any person that is not married but in a committed relationship with a city officer or employee. This decision is based on the concept that many of the same issues that come up with blood family members or spouses are also issues for someone considered a “domestic partner.”

(H) "Domestic partner" is an adult, unrelated by blood, with which an unmarried or separated [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.

(I) “Employee” means any person, whether full-time, part-time, seasonal, or temporary, and whether paid or unpaid, who is employed or provides service to the city. The term “employee” shall not include any contractor or subcontractor or any of their employees.

(J) “Ethics Board” or “Board” means the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Ethics Board which is created and vested by this ordinance with the responsibility of enforcing the requirements of the city’s code of ethics.

(K) “Family member” means a spouse, domestic partner, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent or grandchild.

(L) “Immediate family member” means a 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.

(M) "Financial benefit" includes any money, service, license, permit, contract, authorization, loan, discount, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

(N) "Financial interest" is a relationship to something such that a direct or indirect financial benefit has been, will be, or might be received as a result of it.

(O) “Household" includes anyone whose primary residence is in the [officer or employee's](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) home, including non[relatives](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC112) who are not rent payers or servants.

(P) “Officer” means any person, whether full-time or part-time, and whether paid or unpaid, who is one of the following:

1. Mayor;

2. Legislative Body Member;

3. City Clerk;

4. City Manager;

5. City Administrator;

6. Police Chief;

7. Fire Chief;

8. Any other person that occupies a nonelected office created by pursuant to KRS 83A.080; or

9. A member of the governing body of any city agency who has been appointed to the governing body of the agency by the city.

(Q) “Official Act” means any legislative, administrative, appointive or discretionary act of any public official or employee of the city or any agency, board, committee or commission thereof.

(R) “Personal benefit" includes benefits other than those that are directly financially advantageous. These include [financial benefits](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC104) to [relatives](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC112), business associates, as well as non-financial benefits to these people and to oneself, including such things as reputation and the success of one's career.

(S) "Personal interest" means a relationship to something such that a personal benefit has been, will be, or might be obtained by certain action or inaction with respect to it.

(T) "Relative" means a spouse, child, stepchild, brother, sister, parent or stepparent, or a person claimed as a dependent on the [officer’s or employee's](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) latest individual state income tax return.

(U) "Subordinate" means another [official or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) over whose activities an official or employee has direction, supervision or control.

1. “Transaction” means any matter, including but not limited to, contracts, work or business with the city, the sale or purchase of real estate by the city, and any request for zoning amendments, variances, or special permits pending before the city, upon which a public officer or employee performs and official act or action.

**COMMENT SECTION 5**: Sometimes inaction benefits an official or his or her close associates; for example, when a code enforcement official fails to cite her brother for a zoning violation. That is why this subsection prohibits an official's inaction, as well as action, in certain circumstances. In such an instance, the enforcement official should ask someone else to handle the matter. Another example would include a legislative body that remains as part of a meeting and abstains. In that instance, the legislative body member’s vote will go with the majority, which could potentially result in an affirmative vote regarding an issue that is considered a conflict.

**STANDARDS OF CONDUCT**

**SECTION 5.** Conflicts of Interest in General**.** Every officer and employee of the city and every city agency shall comply with the following standards of conduct:

1. No officer or employee, or any immediate family member or any officer or employee, shall have an interest in a business or engage in any business, transaction, or activity which is in substantial conflict with the proper discharge of the officer’s or employee’s public duties.
2. No officer or employee shall intentionally use or attempt to use his or her official position with the city to secure unwarranted (or unsolicited) privileges or advantages for himself or herself or others.
3. No officer or employee shall intentionally take or fail to take any discretionary action, or agree to take or fail to take any discretionary action, or influence or attempt to influence any other officer or employee to take or fail to take any discretionary action, on any matter before the city in order to obtain a personal or financial benefit for any of the following:
   1. The officer or the employee.
   2. A family member.
   3. An outside employer.
   4. Any business in which the officer or employee, or any family member has a financial interest, including but not limited to:
      * 1. An [outside employer or business](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC110) of his or hers, or of his or her family member, or someone who works for such outside employer or business;
        2. A [customer or client](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC102); or
        3. A substantial debtor or creditor of his or hers, or of his or her family member.
   5. Any business with which the officer or employee or any family member is negotiating or seeking prospective employment or other business or professional relationship.
   6. A person or entity from whom the [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) has received an election campaign contribution of a total of more than two hundred dollars ($200) during the past election cycle (this amount includes contributions from a person's immediate family or business as well as contributions from an entity's owners, directors, or officers, as well as contributions to the [officer or employee's](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) party committee or noncandidate political committee).
   7. A nongovernmental civic group, social, charitable, or religious organization of which he or she (or his or her immediate family member) is an officer or director.
4. No officer or employee shall be deemed in violation of any provision in this section if, by reason of the officer’s or employee’s participation, vote, decision, action or inaction, no personal or financial benefit accrues to the officer or employee, a family member, an outside employer, or a business as defined in subsection (C)(4-7) of this section, as a member of any business occupation, profession, or other group, to any greater extent than any gain could reasonably be expected to accrue to any other member of the business, occupation, profession, or other group.

**COMMENT SECTION 6:** The following including the penalty is based on the statute KRS 61.252.

**SECTION 6**. Conflicts of Interests in Contracts.

1. Pursuant to KRS 61.252, no officer or employee of the city or any city agency shall directly or through others undertake, execute, hold, or enjoy, in whole or in part, any contract made, entered into, awarded, or granted by the city or a city agency, except as follows:
   1. The prohibition in subsection (A) of this section shall not apply to contracts entered into before an elected officer filed as a candidate for city office, before an appointed officer was appointed to a city or city agency office, or before an employee was hired by the city or a city agency. However, if any contract entered into by a city or city agency officer or employee before he or she became a candidate, was appointed to office, or was hired as an employee, is renewable after he or she becomes a candidate, assumes the appointed office, or is hired as an employee, then the prohibition in subsection (A) of this section shall apply to the renewal of the contract.
   2. The prohibition in subsection (A) of this section shall not apply if the contract is awarded after public notice and competitive bidding, unless the officer or employee is authorized to participate in establishing the contract specifications, awarding the contract, or managing the contract performance after the contract is awarded. If the officer or employee has any of the authorities as set forth in the preceding sentence, then the officer or employee shall have no interest in the contract, unless the requirements set forth in subpart 3 below are satisfied.
   3. The prohibition in subsection (A) of this section shall not apply in any case where the following requirements are satisfied:
      1. The specific nature of the contract transaction and the nature of the officer’s or employee’s interest in the contract are publicly disclosed at a meeting of the governing body of the city or city agency.
      2. The disclosure is made a part of the official record of the governing body of the city or city agency before the contract is executed.
      3. A finding is made by the governing body of the city or city agency that the contract with the officer or the employee is in the best interests of the public and the city or city agency before the contract is executed.
      4. The finding is made a part of the official record of the governing body of the city or city agency before the contract is executed.
2. Any violation of this section shall constitute a Class A misdemeanor, and upon conviction, the court may void any contract entered into in violation of this section. Additionally, violation of this section shall be grounds for removal from office or employment with the city in accordance with any applicable provisions of state law and ordinances, rules or regulations of the city.

**COMMENT SECTION 7:** Sections 165 and 237 of the Kentucky Constitution and KRS 61.080 establish specific prohibitions against holding incompatible offices. In addition to the specific offices made incompatible by the cited laws, instances of incompatibility may also arise under the common law. *Knuckles v. Board of Education of Bell County*, 114 S.W.2d 511, 514 (Ky. 1938). KRS 61.090 provides that the acceptance of an incompatible office operates to vacate the first office. Actually, entering upon the duties of the second office constitutes "acceptance" of the office. *Adams v. Commonwealth*, 268 S.W.2d 930, 932 (Ky. 1954). See Chapter 7 of the 2015 City Officials Legal Handbook for more information on what is an incompatible office.

**SECTION 7.** Incompatible Offices.

1. Pursuant to Section 165 of the Kentucky Constitution, no officer or employee of

the city may also be a state officer, deputy state officer or member of the General Assembly or may fill more than one (1) municipal office at the same time,

whether in the same or a different city.

1. Pursuant to KRS 61.080, no city officer may also hold a county office. In

addition, the statute also states that the following city and consolidated local

government offices are incompatible with any other public office:

1. Member of the legislative body of cities of the first class;
2. Mayor and member of the legislative council of a consolidated local government; and
3. Mayor and member of the legislative body in cities of the home rule class.
4. In addition to the Constitution and Statutory provisions, there are common law

incompatibilities that have been defined by the courts. City officers and

employment positions are deemed incompatible when one office or position of

employment was inherently inconsistent in function with the other when there

arises an implication that the duties and responsibilities of both cannot be

performed at the same time with a necessary degree of impartiality and honesty.

1. KRS 61.090 provides that the acceptance of an incompatible office operates to

vacate the first office.

**COMMENT SECTION 8:** In this section, "Refrain from acting on and discussing, formally or informally" means that the official should withdraw from any involvement with the matter, including conversations, appearances at meetings or portions of meetings concerned with the matter, and voting on the matter, except, of course, in a public referendum.

**SECTION 8.** Withdrawal from Participation.

1. An [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) must refrain from acting on or discussing, formally or informally, a matter before the city, if acting on the matter, or failing to act on the matter, may [personally](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC111) or [financially benefit](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC104) any of the persons or entities listed in Section 5(C) above. Such an officer or employee should join the public if the withdrawal occurs at a public meeting, or leave the room if it is a legally conducted closed meeting (executive session) under KRS 61.810 and KRS 61.815.
2. Withdrawal at a meeting requires the public announcement, on the record, of the reason for withdrawal.
3. Ongoing Conflict: An [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) whose outside employment or other outside activity or relationship can reasonably be expected to require more than sporadic withdrawal must resign or cease such outside employment or activity. An [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) should not begin employment or an activity or relationship that can reasonably be expected to require more than sporadic withdrawal. If a prospective [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) is in such a situation, he or she should not accept the position with the city.
4. Request to Withdraw: If an officer or appointed board member is requested to withdraw from participation in a matter for the reason that he or she has a conflict of interest, by:
   * 1. Another member;
     2. A party to the current matter; or
     3. Anyone else who may be affected by a decision relating to this matter, the member must decide whether to withdraw on the official record. If the member decides not to withdraw, the challenging member(s) may file a complaint with the ethics board.

**COMMENT SECTION 9**: The statute on local government ethics law does not require a prohibition on gifts. However, the inclusion of a gift policy in a city's ethics code has the effect of clearly advising officers and employees what is and is not acceptable.

Most ethics laws contain a provision prohibiting officers and employees from accepting gifts and favors. The reasons for such a restriction are obvious and need not be stated. Some ethics codes prohibit gifts above a specific value, e.g., $50, $100, etc. The purpose of this type of threshold is to allow small gifts, the receipt of which is not likely to sway or corrupt the officer or employee. Other ethics codes prohibit all gifts of any value on the theory that such a prohibition is easier to administer and creates a better appearance. There are a few ethics codes, e.g., the Kentucky Executive Branch Ethics Code, which do not prohibit gifts at all, but rely on mandatory disclosure to control the receipt of gifts and the potential for undue influence. The dollar amount limitations permitted within this section should be determined by each city based upon the standards of each city.

Several examples that can be used as guidance appear below.

**SECTION 9**. Receipt of Gifts.

No officer or employee of the city or any city agency shall directly, or indirectly through any other person or business, solicit or accept any gift having a fair market value of more than one hundred dollars ($100), whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence, or could reasonably be expected to influence the officer or employee in the performance of his or her public duties.

**OR**

**SECTION 9**. Receipt of Gifts.

1. No officer, or employee of the city or any city agency shall directly, or indirectly

through any other person or business, solicit or accept any gift without first notifying the city in writing of such gift.

1. Certain items are typically excluded from this provision. Examples of these items

include:

* 1. Gifts received from relatives.
  2. Gifts accepted on behalf of the city and transferred to the city.
  3. Reasonable travel and travel-related expenses, cost of admission, food and beverages, and entertainment furnished in connection with certain specified public events, appearances, ceremonies, economic development activities, or fact-finding trips related to official government business.
  4. Usual and customary loans made in the ordinary course of business.
  5. Awards, including certificates, plaques, and commemorative tokens presented in recognition of public service.
  6. Informational, promotional, and educational items.

**OR**

**SECTION 9**. Receipt of Gifts.

1. No officer, employee or appointee of the city shall, directly or indirectly, solicit any gift or accept or receive any gift having a value of seventy-five dollars ($75) or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence, or could reasonably be expected to influence the officer, employee or appointee in the performance of his or her official duties, or was intended as a reward for any official action.
2. Certain items are typically excluded from the prohibition. Examples of these items include:
   1. Gifts received from relatives.
   2. Gifts accepted on behalf of the city and transferred to the city.
   3. Reasonable travel and travel-related expenses, cost of admission, food and beverages, and entertainment furnished in connection with certain specified public events, appearances, ceremonies, economic development activities, or fact-finding trips related to official government business.
   4. Usual and customary loans made in the ordinary course of business.
   5. Awards, including certificates, plaques, and commemorative tokens presented in recognition of public service.
   6. Informational, promotional, and educational items.

**COMMENT SECTION 10:** Every city ethics ordinance should contain a complete prohibition against personal use of city equipment, personnel, funds, etc. If applicable, KRS 522.050 treats this type of abuse as a felony punishable with jail time.

**SECTION 10**. Use of City Property, Equipment and Personnel.

(A) No officer or employee of the city shall use or permit the use of an city time,

funds personnel, equipment or other personal or real property for the private use of any person, unless:

* 1. The use is specifically authorized by a stated city policy.
  2. The use is available to the general public, and then only to the extent and upon the terms that such use is available to the general public.

**COMMENT SECTION 11:**  This section sets out the requirements for the employment of family members. The statutes do not forbid the hiring of family members, but do require that each city have a policy on the subject. This is something that each city needs to determine based on its particular needs. Variations of this section are listed below.

**SECTION 11**. Nepotism Prohibited.

(A) No officer or employee of the city or a city agency shall advocate, recommend

or cause the employment, appointment, promotion, transfer or advancement of a family member to an office or position of employment with the city or a city agency.

(B) No officer or employee of the city or a city agency shall supervise or manage

the work of a family member.

1. No officer or employee shall participate in any action relating to the

employment or discipline of a family member, except that this prohibition shall not prevent an elected or appointed officer from voting on or participating in the development of a budget which includes compensation for a family member, provided that the family member is included only as a member of a class of persons or a group, and the family member benefits to no greater extent than any other similarly situated member of the class or group.

(D) The prohibitions in this section shall not apply to any relationship or situation

that would violate the prohibition, but which existed prior to (insert the

effective date of the ordinance).

**OR**

**SECTION 11**. Nepotism Prohibited.

1. No family member of any elected or appointed city officer or city employee shall

be appointed to any office or hired as an employee of the city.

1. The prohibitions in this section shall not apply to any relationship or situation

that would violate the prohibition, but which existed prior to (insert the effective date of the ordinance).

**OR**

**SECTION 11**. Nepotism Prohibited.

1. No family member of any elected or appointed city officer, who has any authority

to make any decision regarding the employment, appointment, promotion, transfer, discipline, or dismissal of any officer or employee at any level of city government, shall be appointed to any office or position of employment with the city.

1. The prohibitions in this section shall not apply to any relationship or situation

that would violate the prohibition, but which existed prior to (insert the effective date of the ordinance).

**COMMENT SECTION 12**. This section is included to prevent another abuse of office. The most common form of this abuse is also known as bribery, or accepting money to promote another’s interest. Bribery is specifically addressed in KRS 521.020.

**SECTION 12**: Representation of Interests Before City Government.

1. No officer or employee of the city or any city agency shall represent any person,

group or business, other than the city, in connection with any cause, proceeding, application or other matter pending before the city or any city agency.

(B) Nothing in this section shall prohibit an employee from representing another

employee or employees where the representation is within the context of official labor union or similar representational responsibilities.

(C) Nothing in this section shall prohibit any officer or employee from representing

himself or herself in matters concerning his or her own interests.

(D) No elected officer shall be prohibited by this section from making any inquiry

for information on behalf of a constituent, if no compensation, reward or other thing of value is promised to, given to, or accepted by the officer, whether directly or indirectly, in return for the inquiry.

**COMMENT SECTION 13:** This is a relatively simple provision intended to prevent officers and employees from disclosing or using information gained in the course of performing their public duties for their own personal financial benefit, or for the benefit of another private person. Misuse of confidential information is specifically addressed in KRS 522.040.

**SECTION 13.** Misuse of Confidential Information.

No officer or employee of the city or any city agency shall intentionally use or disclose information acquired in the course of his or her official duties, if the primary purpose of the use or disclosure is to further his or her personal financial interest of that of another person or business. Information shall be deemed confidential, if it is not subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.872 to 61.884, at the time of its use or disclosure.

**COMMENT SECTION 14**: Political solicitation of subordinates by an officer fosters the appearance, if not the reality, of coercion. The phrase "may not *knowingly* request" in this section means that neither an officer nor a campaign committee is required to remove the names of municipal officers from voter registration mailing lists. However, a targeted mailing to municipal officials is prohibited.

Similarly, candidates are barred from soliciting from appointed officials and employees who may fear reprisal, such as being fired, if they refuse to aid the candidate's campaign, even if they do not currently work under that candidate.

Note that this code does not restrict voluntary political contributions or political activity by any officer or employee.

**SECTION 14**. Political Solicitation.

An officer, employee, or municipal candidate may not knowingly request, or authorize

anyone else to request, that any [subordinate](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC113) or potential future subordinate participate, or not participate, in any political activity, including the making of a campaign contribution. Nor may he or she engage in any political activity for the city, while on duty, or in uniform, using city funds, supplies, vehicles, or facilities, in uniform, or during any period of time during which he or she is normally expected to perform services for the city, for which compensation is paid.

**COMMENT SECTION 15**: Patronage involves the most basic conflict of interest in government: the conflict between holding on to power and acting in the public interest. A city government based on patronage cannot have a truly ethical environment, because most of its officers and employees are there on the basis of a quid pro quo/special consideration relationship, which is inconsistent with ethics.

**SECTION 15**. Patronage.

No [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) may promise an appointment or the use of his or her influence to obtain an appointment to any position as a reward for any political activity or contribution.

**COMMENT SECTION 16**: This, like many of the provisions, is optional. Keep in mind that outside employment does not only lead to conflicts of interest as defined in this code, but can also interfere with doing one's job by affecting the officer’s or employee's time, energy, and focus. Volunteers are expected to have other jobs, and it may not be advisable to prevent low-paid employees from having evening, weekend, or holiday jobs, but many cities have rules limiting the amount and type of outside employment. Such provisions should include procedural requirements – for example: applying for formal, written permission from one's supervisor or department head (including disclosure of any officers, employees, or contractors involved) and the written acceptance of limitations on time and place of outside employment.

Specifically, in regard to police officers, KRS 95.015 and KRS 61.310 address outside employment restrictions. These statutes clearly authorize a police officer to obtain private employment provided that the employment is after hours and so long as it does not interfere with his or her official duties as a police officer. However, OAG 81-358 and *Puckett v. Miller, Ky.*, 821 S.W.2d 791 (1992), state that a city can prevent an officer from working in an establishment that sells alcoholic beverages.

**SECTION 16.** Outside Employment.

* 1. An officer or employee shall not accept any employment or enter into any contracts that result in a conflict of interest with his or her duties as an officer or employee of the city.
  2. An employee of the city may be self-employed or may take occasional or part- time jobs if, in the opinion of his or her supervisor and the executive authority, there is no conflict with working hours, the employee's efficiency in his or her city work, or other interest of the city.
  3. Employees wishing to take off-duty employment shall have the written approval of their supervisor and the executive authority.
  4. Employees or officers holding management level positions shall notify the executive authority prior to creating, contracting with, or being employed by any agency or business firm other than the city for their written approval.
  5. City employment shall remain the first priority and if at any time the outside

employment interferes with an employee's job requirements or performance for the city, the employee shall be required to modify the conditions of the outside employment or terminate either the off-duty employment or his or her city employment.

**COMMENT SECTION 17**: This issue does not typically present a problem for city governments, particularly small city governments.

**SECTION 17.**  Post-Employment Restriction.

No officer or employee of the city or any city agency shall appear before the city or any city agency or receive compensation for services rendered on behalf of any person in relation to any particular matter with respect to any matter on which the officer or employee personally worked while in the service of the city or city agency for a period of one (1) year after the termination of the officer's or employee's service with the city or city agency.

**COMMENT SECTION 18**: Ethics codes typically address the issue of compensation for speeches, appearances, etc., in a separate provision. The receipt of this type of compensation is usually not an issue in small cities.

**SECTION 18.** Fees and Honoraria.

An officer or employee shall not accept any compensation or honorarium in consideration for an appearance, speech, or article unless the appearance, speech or article is both related to the officer's or employee's employment or activities outside of municipal service and is unrelated to the officer's or employee's service with the city.

**SECTION 19**. Endorsements.

No [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) in his or her official capacity may publicly endorse products or services. However, this does not prohibit an officer or employee from answering inquiries by other governmental officials, consumer organizations, or product information services regarding products or services.

**COMMENT SECTION 20**: A principal reason why ethics programs are ineffective is that officers and employees feel they can get away with unethical conduct because no one will turn them in. Instead of having a culture based on ethics, their city has a culture based on loyalty. People in such a city ignore conflicts of interest, because they feel protected.

### SECTION 20. Complicity with or Knowledge of Others' Violations.

### No officer or employee may, directly or indirectly, induce, encourage, or aid anyone to violate any provision of this code. If an [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) suspects that someone has violated this code, he or she is required to report it to the Ethics Board pursuant to Section 36 of this ordinance.

**COMMENT SECTION 21**: A common way for officials to intimidate residents, employees and other officers who speak out and to prevent others from similarly speaking out is to use their positions of respect to falsely attack people who lack such positions, and thereby destroy their reputation and the legitimacy of their arguments, so that opposition from that individual and others will lessen. This form of misuse of office is central to undermining free debate as well as citizen oversight of executive and legislative actions.

### SECTION 21. Falsely Impugning Reputation.

### An [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) may not falsely impugn the reputation of a city resident, employee or another officer of the city. If an [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) believes his or her accusation to be true, and then learns that it was false, even in part, he or she should apologize in the same forum the accusations were made. A failure to apologize within a reasonable period of time after learning of the falseness of the accusations will create the presumption that the conduct was fully intentional.

**COMMENT SECTION 22**: It is impossible to conduct business effectively when members do not attend meetings. In fact, it can make quorums difficult and, thereby, undermine the functioning of the legislative body. If an officer, city board or commission member has health problems or has ongoing scheduling problems, the responsible thing to do is resign. If circumstances change in the future, the member can ask to be appointed when the next position opens up, or can run for reelection.

**SECTION 22**. Meeting Attendance.

All elected city officers and members of city boards and commissions are expected to attend their meetings. It is a violation of this code to miss more than one-third (1/3) of the meetings in a twelve (12) month period.

**FINANCIAL DISCLOSURE**

**COMMENT SECTIONS 23-28:** Annual financial disclosure reveals potential conflicts of interest before they arise and thus alerts the officer - and the citizenry - to those potential conflicts. Annual disclosure thereby provides a check on transactional disclosure and protects officers by identifying potential ethical pitfalls, which the official can then take steps to avoid.

Financial disclosure must be as comprehensive as possible to reveal effectively any potential conflicts of interest to the public. But disclosure requirements must also balance the rights of the officer against the public disclosure necessary to guard against conflicts of interest. Since the objective of disclosure is not to determine a person's net worth, categories of value usually are sufficient to determine potential conflicts while avoiding being unnecessarily intrusive.

The financial disclosure requirement will likely be the most controversial element of the city's ethics code and, consequently, the most difficult to construct.

**COMMENT SECTION 23**: The recommendation that financial disclosure requirements should be applied to members of planning and zoning commissions and boards of adjustment can be controversial, since these persons are strictly "volunteer" officials in the overwhelming majority of Kentucky cities. However, the decisions made by these types of board members can have a major impact on property and business values and therefore the potential for conflict of interest is great. The bottom line, however, is that KRS 65.003 leaves the decision whether or not to apply financial disclosure requirements to any nonelected (appointed) officers or employees to each city, while requiring disclosure by elected officials and candidates for elected city office. Tailor section (C) to coincide with the boards and commissions that you currently have in your city.

**SECTION 23**. Who Must File.

1. The following classes of officers and employees of the city and city agencies

shall file an annual statement of financial interests with the Ethics Board:

1. Elected city officers.
2. Candidates for elected office.
3. [Officers and employees](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) who hold policymaking positions, including members of municipal boards, such as ethics boards, planning and zoning boards, boards of adjustment, code enforcement boards, economic development boards, and parks and recreation boards.
4. Officers or employees whose job descriptions or whose actual duties involve:
5. The negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, variances, special permits, or licenses;
6. The purchase, sale, rental, or lease of real property, personal property, or services, or a contract for any of these; and
7. The obtaining of grants of money or loans.

**COMMENT SECTIONS 24 AND 25**: The ethics ordinance should include filing procedures for the financial disclosure statements. Statements should be filed annually on a form developed by the Ethics Board or by regulations promulgated by the enforcement agent no later than the date specified by the ordinance, with a provision for an extension of the deadline for justifiable reasons. Candidates for elected city office should be required to file within a specified period after the filing date or the date of nomination. New officers and employees should be required to file their initial statements within a specific period after the date of appointment or employment.

**SECTION 24**. When to File Statements and Amended Statements.

1. The initial statement of financial interests required by this section shall be filed

with the Ethics Board, or the administrative official designated as the custodian of its records by the Ethics Board no later than \_\_\_\_\_ p.m. \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_. All subsequent statements of financial interest shall be filed no later than \_\_\_\_\_ p.m. \_\_\_\_\_\_\_\_\_\_\_\_\_ each year, provided that:

* 1. An officer or employee newly appointed to fill an office or position of employment with the city or a city agency shall file his or her initial statement no later than thirty (30) days after the date of the appointment.
  2. A candidate for city office shall file his or her initial statement no later than thirty (30) days after the date on which the person becomes a candidate for elected office.

1. The Ethics Board may grant a reasonable extension of time for filing a statement

of financial interests for good cause shown.

1. In the event there is a material change in any information contained in a financial

statement that has been filed with the Board, the officer or employee shall, no later than thirty (30) days after becoming aware of the material change, file an amended statement with the Board.

**SECTION 25.** Form of the Statement of Financial Interests.

The statement of financial interests shall be filed on a form prescribed by the Ethics Board, or the administrative official designated by the Ethics Board (Board). The Board, or the designated administrative official, shall deliver a copy of the form to each officer and employee required to file the statement, by first class mail, email or hand delivery, no later than \_\_\_\_\_\_\_\_\_\_\_\_\_ of each year. The failure of the Board, or the designated administrative official, to deliver a copy of the form to any officer or employee shall not relieve the officer or employee of the obligation to file the statement.

**COMMENT SECTION 26**: KRS 65.003 requires the annual financial disclosure statements to be filed "with the person or group responsible for enforcement of the code of ethics." This should not, however, prevent the statements from being filed with and maintained by the city clerk, so long as the enforcement agent has full access to and ultimate control over the statements. The enforcement agent should, however, be designated the "official custodian" of the records for Kentucky Open Records Act purposes.

**SECTION 26.** Control and Maintenance of the Statements of Financial Interests.

(A) The Ethics Board shall be the "official custodian" of the statements of financial interests and shall have control over the maintenance of the statements of financial interests. The statements of financial interests shall be maintained by the Board, or the administrative official designated by the Board as the “custodian” of public documents, available for public inspection immediately upon filing.

(B) A statement of financial interests shall be retained by the Board or the designated administrative official pursuant to the Kentucky Department of Libraries and Archives schedule as follows:

1. Upon the expiration of two (2) years after a person ceases to be an officer or employee of the city or a city agency, the Board shall cause to be destroyed any statements of financial interests or copies of those statements filed by the person.
2. Upon the expiration of two (2) years after any election at which a candidate for elected city office was not elected or nominated, the Board shall cause to be destroyed any statements of financial interests or copies of those statements filed by the person.

**COMMENT SECTION 27**: The financial disclosure requirement should be narrowly drawn to require disclosure only of information necessary to determine whether there is a real potential for conflict. Nothing in the example below requires the disclosure of specific dollar amounts or the names of individual clients or customers of businesses listed as sources of income.

**SECTION 27**. Contents of the Financial Interests Statement.

(A) The statement of financial interests shall include the following information for the preceding calendar year:

1. The name, current business address, business telephone number, and home address of the filer.
2. The title of the filer's office, office sought, or position of employment.
3. The occupation of the filer and the filer's spouse or domestic partner.
4. Information that identifies each source of income of the filer and the filer’s immediate family members exceeding five thousand dollars ($5,000) during the preceding calendar year, and the nature of the income (e.g. salary, commission, dividends, retirement fund distribution, etc.).
5. The name and address of any business located within the state in which the filer or any member of the filer’s immediate family had at any time during the preceding calendar year an interest of ten thousand dollars ($10,000) at fair market value or five percent (5%) ownership interest or more.
6. The name and address of any business located outside of the state, if the business has engaged in any business transactions with the city during the past three (3) years, or which is anticipated to engage in any business transactions with the city, in which the filer or any member of the filer's immediate family had at any time during the preceding calendar year an interest of ten thousand dollars ($10,000) at fair market value or five percent (5%) ownership interest or more.
7. A designation as commercial, residential, or rural, and the location of all real property within the county, other than the filer's primary residence, in which the filer or any member of the filer's immediate family had during the preceding calendar year an interest of ten thousand dollars ($10,000) or more.
8. Each source by name and address of gifts or honoraria having an aggregate fair market value of one hundred dollars ($100) or more from any single source, excluding gifts received from family members, received by the filer or any member of the filer's immediate family during the preceding calendar year.
9. The name and address of any creditor owed more than ten thousand dollars ($10,000), except debts arising from the purchase of a primary residence or the purchase of consumer goods which are bought or used primarily for person, family or household purposes.

(B) Nothing in this section shall be construed to require any officer or employee to disclose any specific dollar amounts nor the names of individual clients or customers of businesses listed as sources of income.

**SECTION 28**. Noncompliance with Filing Requirement.

1. The Ethics Board, or the designated administrative official, shall notify by certified

mail each person required to file a statement of financial interests who fails to file the statement by the due date, files an incomplete statement, or files a statement in a form other than that prescribed by the Board. The notice shall specify the type of failure or delinquency, shall establish a date by which the failure or delinquency shall be remedied, and shall advise the person of the penalties for a violation.

1. Any person who fails or refuses to file the statement or who fails or refuses to remedy a deficiency in the filing identified in the notice under subsection (A) within the time established in the notice shall be guilty of a civil offense and shall be subject to a civil fine imposed by the Board in an amount not to exceed twenty-five dollars ($25) per day, up to a maximum civil fine of five hundred dollars ($500). Any civil fine imposed by the Board under this section may be recovered by the city in a civil action in the nature of debt if the offender fails or refuses to pay the penalty within a prescribed period of time.
2. Any person who intentionally files a statement of financial interests which he or she knows to contain false information or intentionally omits required information shall be guilty of a Class A misdemeanor.

**ENFORCEMENT**

COMMENT SECTION 29: Five is not a magic number for an Ethics Board. In large cities, if there is a lot of activity, it would be best to have a larger number of members, and then allow, say, five-member panels for proceedings, and three-member panels for advisory opinions. When there is little activity, it is often difficult to get a quorum at ethics board meetings, so it is best to keep the number of members low.

The restriction on the political make-up of the Board aims to strengthen both the perception and the reality of a Board that is nonpartisan. Ethics Boards must not become political footballs, because this will undermine trust in them and deter people from filing complaints or seeking advisory opinions, and from having faith in the Board’s determinations.

The terms of office of Board members should be staggered, to provide continuity in the work and philosophy of the Board. Cities may wish to increase or decrease the length of the term of office or establish a different year of service than the calendar year. However, terms of office should be sufficiently long to ensure that the members acquire expertise, but not so long as to discourage people from serving on the Board. In addition, ethics board members should not be allowed to become entrenched on the board; the model code therefore contains a term limitation. However, the model does provide that interested, experienced members may return to the board after a term off.

In addition, smaller cities may choose to form joint or regional ethics boards. Since, in smaller cities, many politically active residents have personal biases and relationships with those most likely to be brought before an ethics board; a regional ethics board can provide a truly neutral, independent solution. The decisions of a regional ethics board will demand more respect and make people more certain that ethical matters are not being decided based on local loyalties.

**SECTION 29.** Ethics Board Created.

1. There is hereby created an Ethics Board which shall have the authorities,

duties, and responsibilities as set forth in this ordinance to enforce the provisions of this ordinance.

1. The Ethics Board shall consist of five (5) members who shall be appointed by the

executive authority of the city, subject to the approval of the legislative body (*if different from the executive authority).* The initial members of the Ethics Board shall be appointed within sixty (60) days of the effective date of this ordinance. The members shall serve for a term of three (3) years; except that with respect to the members initially appointed, one (1) member shall be appointed for a term of one (1) year, two (2) members shall be appointed for a term of two (2) years, and two (2) members shall be appointed for a term of three (3) years. Thereafter, all appointments shall be for a term of three (3) years. No more than three (3) of the members shall be of the same political party.

1. An Ethics Board member will serve until his or her successor has been appointed, in the same manner as the original appointment. Consecutive service on the Ethics Board may not exceed two full terms, except that a one-term alternate member may thereafter serve two terms as a regular member, and a two-term alternate member may thereafter serve one term as a regular member. In addition, once an Ethics Board member has not served on the Ethics Board for one full term, they may be appointed to return to the Board.
2. No member of the Ethics Board shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the city or any city agency. No member of the Ethics Board may be, or have been within the three (3) years prior to appointment, an [officer or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109), consultant or contractor of the city; an officer in a political party or political committee; a candidate or an active member of the campaign of a candidate for any office within the Board’s jurisdiction; or a lobbyist. Nor should neither a member nor any member of his or her immediate family, have, within the three (3) years prior to appointment, sought any special benefits from the city, directly or indirectly. An Ethics Board member or staff member, or a member of his or her immediate family, may not, directly or indirectly, seek any special benefits from the city, make campaign contributions, nor participate in any way in the campaign of a candidate for any office within the Board’s jurisdiction, or of an individual currently within the Board's jurisdiction.
3. Each member of the Ethics Board shall have been a resident of the city for at least one (1) year prior to the date of the appointment and shall reside in the city throughout the term in office. The members of the Ethics Board shall be chosen by their known and consistent reputation for integrity and their knowledge of local government affairs.
4. A member of the Ethics Board may be removed by the executive authority,

subject to the approval of the legislative body *(if different from the executive authority)* for misconduct, inability, or willful neglect of duties. Before any member of the Board is removed from office under this section, the member shall be afforded the opportunity for a hearing before the executive authority and the legislative body *(if different from the executive authority).*

1. Vacancies on the Ethics Board shall be filled within sixty (60) days by the

executive authority, subject to the approval of the legislative body *(if different from the executive authority).* If a vacancy is not filled by the executive authority within sixty (60) days, the remaining members of the Board shall fill the vacancy. All vacancies shall be filled for the remainder of the unexpired term.

1. Members of the Ethics Board shall serve without compensation, unless

otherwise approved by the legislative body, but shall be reimbursed for all necessary and reasonable expenses incurred in the performance of their duties.

1. The Ethics Board shall, upon the initial appointment of its members, and annually

thereafter, elect a chairperson from among the membership. The chairperson shall be the presiding officer and a full voting member of the Board.

1. Meetings of the Ethics Board shall be held, as necessary, upon the call of the

chairperson or at the written request of a majority of the members.

1. The presence of three (3) or more members shall constitute a quorum and the

affirmative vote of three (3) or more members shall be necessary for any official action to be taken. Any member of the Ethics Board who has a conflict of interest with respect to any matter to be considered by the Board shall disclose the nature of the conflict, shall disqualify him or herself from voting on the matter, and shall not be counted for purposes of establishing a quorum.

1. Minutes shall be kept for all proceedings of the Ethics Board and the vote of each

member on any issue decided by the Board shall be recorded in the minutes.

**SECTION 30.**  Alternate Members.

The executive authority of the city, with the approval of the legislative body *(if different than the executive authority)* may appoint two (2) alternate members of the Ethics Board who may be called upon to serve when any regular member of the Board is unable to discharge his or her duties. An alternate member shall be appointed for a term of one (1) year. Alternate members shall meet all qualifications and be subject to all of the requirements of this ordinance that apply to regular members.

**SECTION 31.** Facilities and Staff.

Within the limits of the funds appropriated by the legislative body in the annual budget, the city shall provide the Ethics Board, either directly or by contract or agreement, with the facilities, materials, supplies, and staff needed for the conduct of its business.

**SECTION 32.** Initial Meeting.

At its first meeting each January of the calendar year, the Ethics Board will elect a chair and a vice-chair from among its regular members. A majority of the regular members is required for the Board to take any action. The chair or a majority of the regular members may call a meeting of the Board.

**SECTION 33.**  Power and Duties of the Ethics Board.

The Ethics Board shall have the following powers and duties:

1. To initiate on its own motion, receive and investigate complaints, hold hearings,

and make findings of fact and determinations with regard to alleged violations of the provisions of this ordinance.

1. To issue orders in connection with its investigations and hearings requiring

persons to submit in writing and under oath reports and answers to questions that are relevant to the proceedings and to order testimony to be taken by deposition before any individual designated by the Board who has the power to administer oaths.

1. To administer oaths and to issue orders requiring the attendance and testimony

of witnesses and the production of documentary evidence relating to an investigation or hearing being conducted by the Board.

1. To refer any information concerning violations of this ordinance to the

executive authority of the city, the city legislative body, the governing body of any city agency, the county attorney, or other appropriate person or body, as necessary.

1. To render advisory opinions to city and city agency officers and employees

regarding whether a given set of facts and circumstances would constitute a violation of any provision of this ordinance.

1. To enforce the provisions of this ordinance with regard to all officers and

employees of the city and city agencies who are subject to its terms by issuing appropriate orders and imposing penalties authorized by this ordinance.

1. To control and maintain all statements of financial interests that are required to

be filed by this ordinance and to ensure that the statements are available for public inspection in accordance with the requirements of this ordinance and the Kentucky Open Records Act.

1. To adopt rules and regulations and to take other actions, as necessary, to

implement the provisions of this ordinance, provided that the rules, regulations, and actions are not in conflict with the provisions of this ordinance or any state or federal law.

1. To provide training and education on the city ethics code to officials and

employees.

1. To prepare and submit an annual report and any recommended changes to this

code to the legislative body; and to develop and submit any reports regarding the conduct of its business that may be required by the executive authority or legislative body of the city.

1. The Ethics Board along with the city clerk will annually review the list

of [officials and employees](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) required to file annual disclosure statements, to determine whether the lists are complete and accurate. Within ninety (90) days after it has been formed, and by February 1 each year thereafter, the Ethics Board along with the city clerk must create a list of the names and offices, or positions, of all officials and employees and others required to file annual disclosure statements pursuant to Section 23 (this should correspond to the “Who Must File” section) of this code; and notify all such persons of their obligation to file an annual disclosure statement.

1. The Ethics Board will prepare forms for complaints and for financial disclosure

statements, and will make these forms available at the city clerk's office and on the city's website, for easy downloading.

1. By June 15 of each year, the Ethics Board must review all annual financial

disclosure statements filed with it to determine whether any person required to file such a statement has failed to file it, has filed a deficient statement, or has filed a statement that reveals a possible or potential violation of this code. If the Board determines that an annual or transactional disclosure statement is deficient or reveals a possible or potential violation of this code, the Board will notify the person in writing of the deficiency or possible or potential violation, and of the penalties for failure to comply with this code.

**COMMENT SECTION 34**: Without training and education, the ethics code is pointless. It is important that city officials and employees are aware of what is expected of them and have information readily available to them by way of the city website.

**SECTION 34**. Training and Education.

The Ethics Board will, within one (1) year after its passage, make this code, and explanations of its provisions (including information on how to fill out all forms and statements), available (including, but not limited to, on the city website) to all [officials and employees](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109), candidates and [consultants](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC101), and to municipal residents and to all persons doing business or interested in doing business with the city, and will develop educational materials and a required educational program for the officials and employees of the city regarding the provisions of this code. The educational program must begin within 18 months after this code goes into effect. In addition, the Ethics Board will hold an annual workshop for new and experienced officials and employees to discuss this code, its values and goals, its enforcement, and the ways in which it has affected their work and the working of the city government.

**Section 35**. Annual Reports and Annual Review of Ethics Code.

1. The Ethics Board must prepare and submit an annual report to the legislative

body, summarizing the activities, decisions, and advisory opinions of the Board. The report may also recommend changes to the text or administration of this code. The report must be submitted no later than October 31 of each year, covering to the year ended August 31, and must be filed with the City Clerk and made available on the city website.

1. The Ethics Board will periodically (no less than every five (5) years) review this

code, the enforcement of the code, and the Board's rules, regulations, and administrative procedures to determine whether they promote integrity, public confidence, and participation in city government, and whether they set forth clear and enforceable, common sense standards of conduct.

**SECTION 36**. Filing and Investigation of Complaints.

1. All complaints alleging any violation of the provisions of this ordinance shall

be submitted to the Ethics Board, or the administrative official designated by the Ethics Board. All complaints shall be in writing, signed by the complainant, and shall meet any other requirements established by the Board. The Board shall acknowledge receipt of a complaint to the complainant within ten (10) working days from the date of receipt. The Board shall forward within ten (10) working days to each officer or employee of the city or city agency who is the subject of the complaint a copy of the complaint and a general statement of the applicable provisions of this ordinance.

1. The Ethics Board may, on its own initiative, determine through an inquiry into

informal allegations or information provided directly to the Board, by referral, in the public news media, or otherwise that a violation of this code may exist, and prepare a complaint of its own. The Ethics Board may also amend a complaint that has been filed with it by adding further allegations, by adding respondents involved in the same conduct, directly or indirectly, by action or inaction, or by deleting allegations that would not constitute a violation of this code, have been made against persons or entities not covered by this code, or do not appear to be supported by the facts. The Ethics Board may also consolidate complaints where the allegations are materially related. Amended complaints must be sent to the complainant and respondent by the Ethics Board.

1. Within thirty (30) days of the receipt of a proper complaint, the Ethics Board

shall conduct a preliminary inquiry concerning the allegations contained in the complaint. The Board shall afford a person who is the subject of the complaint an opportunity to respond to the allegations in the complaint. The person shall have the right to be represented by counsel, to appear and be heard under oath, and to offer evidence in response to the allegations.

1. The person who is the subject of the complaint (respondent) may file with the Ethics Board a response to the complaint within thirty (30) days after his or her receipt of the complaint. The response, if any, must be sent to the person filing the original complaint (complainant) by the Ethics Board within five (5) days after its filing. Within fifteen (15) days after receipt, the complainant may also file with the Ethics Board a response to the respondent’s response, which the Ethics Board must send to the respondent within five (5) days after its filing.
2. Extensions of time to any of the time limitations specified in this section may be granted by the Ethics Board upon a vote of the majority of the members. If no

meeting can be held before such time limit runs out, the chair may extend the limit until the following meeting. The Ethics Board must give written notice of any extension(s) of time to the respondent and the complainant.

**COMMENT SECTION 36 (F):** Confidentiality during an investigation is important to protect innocent respondents, as well as to depoliticize the process. Complaints are sometimes filed for the express purpose of embarrassing, harassing, or taking revenge on public officials, often during an election season. No one can stop people from making public accusations, but sadly, when accusations become official proceedings, they are taken more seriously by the press as well as by city residents. It is important that the proceedings themselves remain confidential until a finding of probable cause has been made, and that an Ethics Board be clear that even such a finding is far from an actual finding of a violation. It should be emphasized that confidentiality here refers solely to the proceedings themselves, including their existence, not to the underlying accusations. A resident can tell the world that an official is benefiting from a city contract (whether or not this is true; defamation laws deal with false accusations), but not that the Ethics Board is investigating a complaint that makes this accusation.

1. All proceedings and records relating to a preliminary inquiry being conducted by

the Ethics Board shall be confidential until a final determination is made by the Board, except:

1. The Board may turn over to the Commonwealth's attorney or county attorney evidence which may be used in criminal proceedings.

2. If the complainant or alleged violator publicly discloses the existence of a preliminary inquiry, the Board may publicly confirm the existence of the inquiry, and, at its discretion, make public any documents which were issued to either party.

1. The Board shall make a determination based on its preliminary inquiry whether

the complaint is within its jurisdiction and, if so, whether it alleges a minimal factual basis to constitute a violation of this ordinance. If the Board concludes that the complaint is outside of its jurisdiction, frivolous or without factual basis, the Board shall immediately terminate the inquiry, reduce the conclusion to writing, and transmit a copy of its decision to the complainant and to all officers or employees against whom the complaint was filed.

1. If the Ethics Board concludes, based upon its preliminary inquiry, that the

complaint is within its jurisdiction and contains allegations sufficient to establish a minimal factual basis to constitute a violation, the Board shall notify the officer or employee who is the subject of the complaint and may initiate a hearing to determine whether there has been a violation.

**COMMENT SECTION 36 (I):** The reason complainants are not permitted to withdraw their complaint is to prevent respondents from pressuring them to do so. Once a possible violation has been brought to the Ethics Board's attention, it is not a proceeding of complainant against respondent, but an ethics issue for the city to determine.

1. If a complaint is accepted or prepared pursuant to subsection (A), the Ethics

Board must conduct an investigation. From this point on, the complainant may

not withdraw his or her complaint, although he or she may request that the

Ethics Board either make a finding of no probable cause or no violation.

(J) In conducting an investigation, the Ethics Board may administer oaths or

affirmations, subpoena witnesses, compel their attendance, and require the production of any books or records it deems relevant and material. The Police Department and all city agencies, bodies, officials, and employees are required to respond fully and truthfully to all inquiries and cooperate with all requests of the Ethics Board or its agents relating to an investigation. It is a violation of this code for any [official or employee](http://www.cityethics.org/content/full-text-model-ethics-code#0.1_TOC109) to deny access to information requested by the Ethics Board in the course of an investigation or a public hearing, except to the extent that such denial is required by federal, state, or local law.

(K) Nothing in this section may be construed to permit the Ethics Board to conduct

an investigation of itself or of any of its members or staff. If the Ethics Board receives a complaint alleging that the Board or any of its members or staff has violated any provision of this code, or any other law, the Board must promptly transmit to the legislative body a copy of the complaint.

(L) Any person who knowingly files with the Board a false complaint alleging a violation of any provision of this ordinance by an officer or employee of the city or any city agency shall be guilty of a Class A misdemeanor.

**SECTION 37.**  Notice of Hearings.

If the Ethics Board determines that a hearing regarding allegations contained in the complaint is necessary, the Board shall issue an order setting the matter for a hearing within thirty (30) days of the date the order is issued, unless the alleged violator petitions for and the Board consents to a later date. The order setting the matter for hearing, along with a copy of any pertinent regulations of the Board relating to the hearing shall be sent to the alleged violator within twenty-four (24) hours of the time the order setting a hearing is issued.

**SECTION 38.**  Hearing Procedure.

1. The Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence

shall not apply to hearings conducted by the Ethics Board; however, the hearings shall be conducted in accordance with this section and in accordance with any additional rules and regulations adopted by the Board so as to afford all parties the full range of due process rights required by the nature of the proceedings.

1. Prior to the commencement of the hearing, the respondent, or his or her

representative, shall have a reasonable opportunity to examine all documents and records obtained or prepared by the Board in connection with the matter to be heard. The Board shall inform the alleged violator, or his or her representative, of any exculpatory evidence it its possession.

(C) All testimony in a Board hearing shall be taken under oath, administered by

the presiding officer. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, to submit evidence, and to be represented by counsel. All witnesses shall have the right to be represented by counsel.

1. Any person whose name is mentioned during the hearing and who may be

adversely affected thereby may appear personally before the Board, with or without counsel, to give a statement regarding the adverse mention, or may file a written statement regarding the adverse mention for incorporation into the record of the proceeding.

1. All hearings of the Ethics Board shall be public, unless the members vote to go into executive session in accordance with KRS 61.810.
2. After the conclusion of the hearing, the Ethics Board shall, as soon as practicable, begin deliberations in executive session for the purpose of reviewing the evidence before it and making a determination whether a violation of this ordinance has been proven. Within thirty (30) days after completion of the hearing, the Board shall issue a written report of its findings and conclusions.
3. If the Board concludes in its report that no violation of this ordinance has

occurred, it shall immediately send written notice of this determination to the officer or employee who was the subject of the complaint and to the party who filed the complaint.

1. If the Board concludes in its report that in consideration of the evidence

produced at the hearing there is clear and convincing proof of a violation of this ordinance, the Board shall within fifteen (15) days:

1. Issue an order requiring the violator to cease and desist the violation.
2. In writing, publicly reprimand the violator for the violations and provide a copy of the reprimand to the executive authority and governing body *(if different than the executive authority)* of the city or city agency with which the violator serves.
3. In writing, recommend to the executive authority and the governing body (*if different than the executive authority*) that the violator be sanctioned as recommended by the Board, which may include a recommendation for discipline or dismissal, or removal from office.
4. Issue an order requiring the violator to pay a civil penalty of not more than one thousand dollars ($1,000).
5. Refer evidence of criminal violations of this ordinance or state laws to the county attorney or commonwealth attorney of the jurisdiction for prosecution.

**SECTION 39.**  Appeals.

Any person who is found guilty of a violation of any provision of this ordinance by the Ethics Board may appeal the finding to the circuit court of the county within thirty (30) days after the date of the final action by the Ethics Board by filing a petition with the court against the Board. The Board shall transmit to the clerk of the court all evidence considered by the Board at the public hearing.

**SECTION 40.**  Limitation of Actions.

Except when the period of limitation is otherwise established by state law, an action for a violation of this ordinance must be brought within one (1) year after the violation is discovered.

**COMMENT SECTION 41**: City officers and employees, as well as many residents, may have occasion to take advantage of the Ethics Board's or Ethics Officer's advice, which is by far the Ethics Board's most important responsibility. It is very important for local government officials and employees, whenever they are uncertain as to whether they should proceed with a matter, to immediately seek advice. This will prevent unethical conduct from occurring due to a lack of knowledge or understanding, and will create a series of precedents to guide officers and employees in the future.

**SECTION 41.** Advisory Opinions.

1. The Ethics Board may render advisory opinions concerning matters under its

jurisdiction, based upon real or hypothetical facts and circumstances, upon its own initiative, or when requested by any officer or employee of the city or a city agency who is covered by this ordinance.

1. An advisory opinion shall be requested in writing and shall state relevant facts

and ask specific questions. The request for an advisory opinion shall remain confidential unless confidentiality is waived, in writing, by the requestor.

1. The Board may adopt regulations, consistent with the Kentucky Open Records

Law, to establish criteria under which it will issue confidential advisory opinions. All other advisory opinions shall be public documents, except that before an advisory opinion is made public, it shall be modified so that the identity of any person associated with the opinion shall not be revealed.

(D) The confidentiality of an advisory opinion may be waived either:

* + 1. In writing by the person who requested the opinion.
    2. By majority vote of the members of the Board, if a person makes or purports to make public the substance or any portion of an advisory opinion requested by or on behalf of the person. The Board may vote to make public the advisory opinion request and related materials.

(E) A written advisory opinion issued by the Board shall be binding on the Board in

any subsequent proceeding concerning the facts and circumstances of the particular case if no intervening facts or circumstances arise which would change the opinion of the Board if they had existed at the time the opinion was rendered. However, if any fact determined by the Board to be material was omitted or misstated in the request for an opinion, the Board shall not be bound by the opinion.

(F) A written advisory opinion issued by the Board shall be admissible in the defense of any criminal prosecution or civil proceeding for violations of this ordinance for actions taken in reliance on that opinion.

1. Advisory opinions will be indexed and maintained on file by the Ethics Board,

the city clerk and will also be available on the city website, with unnecessary financial and personal details redacted. Officers, employees, and businesses should be notified about advisory opinions that may directly affect their conduct.

**SECTION 42.**  Reprisals Against Persons Disclosing Violations Prohibited.

1. No officer or employee of the city or any city agency shall subject to reprisal,

or directly or indirectly use, or threaten to use, any official authority or influence in any manner whatsoever which tends to discourage, restrain, deter, prevent, interfere with, coerce, or discriminate against any person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Ethics Board or any other agency or officer of the city or the Commonwealth any facts or information relative to an actual or suspected violation of this ordinance.

(B) This section shall not be construed as:

1. Prohibiting disciplinary or punitive action if an officer or employee of the city or any city agency discloses information which he or she knows:
   1. To be false or which he or she discloses with reckless disregard for its truth or falsity.
   2. To be exempt from required disclosure under the provisions of the Kentucky Open Records Act, KRS 61.870 to 61.884.
   3. Is confidential under any other provision of law.

**SECTION 43.** Penalties.

1. Except when another penalty is specifically set forth in this ordinance, any officer

or employee of the city or any city agency who is found by the Ethics Board to have violated any provision of this ordinance shall be deemed guilty of a civil offense and may be subject to a civil fine imposed by the Ethics Board not to exceed one thousand dollars ($1,000), which may be recovered by the city in a civil action in the nature of debt if the offender fails to pay the penalty within a prescribed period of time.

1. In addition to all other penalties which may be imposed under this ordinance,

any officer or employee of the city or any city agency who is found by the Ethics Board to have violated any provision of this ordinance shall forfeit to the city or the city agency an amount equal to the economic benefit or gain which the officer or employee is determined by the Board to have realized as a result of the violation. The amount of any forfeiture may be recovered by the city in a civil action in the nature of debt, if the offender fails to pay the amount of the forfeiture within a prescribed period of time.

1. In addition to all other penalties which may be imposed under this

ordinance, a finding by the Ethics Board that an officer or employee of the city or any city agency is guilty of a violation of this ordinance shall be sufficient cause for removal, suspension, demotion, or other disciplinary action by the executive authority of the city or city agency, or by any other officer or agency having the power of removal or discipline. Any action to remove or discipline any officer or employee for a violation of this ordinance shall be taken in accordance with all applicable ordinances and regulations of the city and all applicable laws of the Commonwealth.

**SECTION 44.** Severability.

If any provision of this ordinance is deemed by a court of competent jurisdiction to be unenforceable or unconstitutional, the remaining provision of this ordinance shall continue in full force and effect.

**SECTION 45.** Conflicting Ordinances Repealed.

All other ordinances and parts of ordinances in conflict with this ordinance are hereby repealed to the extent of the conflict.

**SECTION 46**. Effective Date.

This ordinance shall take full force and effect immediately upon publication as required by KRS 83A.060.

Given first reading on the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

Given second reading and duly enacted by the legislative body of the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City Clerk