

BOARD OF
ETHICS
BY LAWS

Sec. 2-106.5. One Year Post-Employment Prohibition.

Subject to state law, for one (1) year after employment with the City, a Public Servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body or receive compensation for any services in connection with any matter in which he or she was directly concerned, personally participated, actively considered or acquired knowledge while working for the City.

Subject to state law, for a period of one (1) year after employment with the City, a Public Servant shall not accept employment with any person or company that did business with the City during the former Public Servant's tenure if that Public Servant was in any way involved in the award or management of that contract or the employment would require the sharing of confidential information.

Sec. 2-106.6. Contracts Voidable and Rescindable.

The City's Purchasing Department shall amend its standard contract form to include language which provides that City contracts shall be voidable or rescindable at the discretion of the Mayor or Inspector General at any time if a Public Servant who is a party to the contract has an interest in such contract and fails to disclose such interest. Such contract shall also be voidable or rescindable if a lobbyist or employee of the contracting party offers a prohibited gift, gratuity, honoraria or payment to a Public Servant in relation to the contract. A fine shall be assessed to the contractor in the event of a violation of this section of the Charter. If applicable, the actions of the contractor, and its representative lobbyist or employee, shall be referred to the appropriate prosecuting authorities.

Sec. 2-106.7. Campaign Activities Using City Property Or During Working Hours.

Appointees, appointive officers and employees are prohibited from engaging in campaign activities using City property or engaging in such activity during working hours.

The Mayor, City Council members and City Clerk are prohibited from soliciting appointees, appointive officers and employees to work on political campaign activities using City property or during working hours.

Sec. 2-106.8. Board of Ethics, Application, Appointment, Qualifications and Terms.

The independent Board of Ethics shall consist of seven (7) members who are City residents and not elective officers, appointees or employees of the City at any time during their board membership.

The members of the Board of Ethics shall be selected as follows:

1. Three (3) who shall be appointed by the City Council;
2. Three (3) who shall be appointed by the Mayor; and
3. One (1) who shall be jointly appointed by the Mayor and City Council.

Such appointments shall be made after applications are received, reviewed and interviews conducted. Members shall serve for a term of five (5) years, up to two (2) consecutive terms not to exceed 10 years. Such terms shall be staggered. Members of the Board of Ethics are subject to removal for cause.

Sec. 2-106.9. Powers and Duties.

The Board of Ethics shall:

1. Issue advisory opinions regarding the meaning and application of provisions of the Charter, city ordinances or other laws or regulations establishing standards of conduct for Public Servants. Advisory opinions shall be rendered upon written request by a Public Servant regarding his or her own actions. The advisory opinions shall not disclose the identity of the Public Servant concerned.
2. Receive and resolve complaints arising under the Ethics Ordinance. The Board of Ethics shall be authorized by ordinance to conduct investigations on its own initiative, subpoena witnesses, administer oaths, take testimony, require the production of evidence relevant to a matter under investigation, appoint independent counsel when necessary, and to perform other functions essential to ensure the integrity of City government.
3. Prepare an annual report for submission to the Mayor and City Council. Consistent with state law, the Board of Ethics may recommend improvements in the standards of conduct to ensure the ethical behavior of City elective officers, appointees and employees, or in the organization and procedures related to the administration and enforcement of those standards.
4. Provide mandatory training for the Mayor, City Council, Clerk, appointive officers and appointees and employees who exercise significant authority in the execution of his or her official duties.
5. Provide training for all other appointees and employees including those subject to Article 6, Chapter 4 of this Charter.
6. Issue penalties for violations of this section of the Charter, as consistent with state law.

Sec. 2-106.10. Cooperation in Investigations; Obstruction.

It shall be the duty of every Public Servant, contractor and subcontractor and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the Board of Ethics in any investigation pursuant to this article.

Any Public Servant who willfully and without justification or excuse obstructs an investigation of the Board of Ethics by withholding documents or testimony is subject to forfeiture of office, discipline, debarment or any other applicable penalty.

The requirements under this section shall be incorporated into all City contracts, where legally necessary for application and enforcement.

Sec. 2-106.11. Violations and Penalties.

1. Any intentional, willfully negligent or grossly negligent violation of sections 2-106.1 through 2-106.10 and 2-106.14 of the Charter shall subject the violator to any one or more of the following:
 - a. Public admonishment issued by Board of Ethics;
 - b. If an employee, a recommendation that he or she be reviewed for disciplinary action;
 - c. If an elective or appointive officer, a recommendation to the City Council for removal or forfeiture proceedings;

- d. Administrative sanction assessed by the Board of Ethics in an amount and to the extent allowed by law; and
 - e. Prosecution by the City's Law Department in a court of jurisdiction and, upon conviction, to a fine and/or imprisonment up to the maximum allowed by law, whether the official or employee is elected or appointed, paid or unpaid. Nothing in this section shall be interpreted to conflict with state law.
2. With regard to violations by contractors, in addition to the remedies in paragraph (1), the Board of Ethics may recommend to the City's Purchasing Director one or more of the following:
- a. Suspension of a contractor;
 - b. Disqualification or debarment from contracting or subcontracting with the City;
 - c. Administrative sanction assessed by the Board of Ethics. Subject to any relevant state law, such fine shall be determined by considering the amount of damages incurred by the City as a result of the subject violation; and/or
 - d. Prosecution by the City's Law Department in a court of jurisdiction and, upon conviction, a fine for each violation and imprisonment up to the amount and time allowed by law, respectively. Nothing in this section shall be interpreted to conflict with state law.

All penalties associated with this section of the Charter are in addition to the civil and criminal penalties available to the City under applicable law.

Sec. 2-106.12. Meetings.

All meetings of the Board of Ethics shall be subject to the Michigan Open Meetings Act MCL 15.261, *et al.*, and open to the public unless an individual involved in the matter to be addressed requests in writing that the meeting be closed, or unless otherwise provided by ordinance and consistent with state law.

Sec. 2-106.13. Funding.

The City shall annually appropriate funds sufficient to enable the Board of Ethics to perform its duties. Funding shall be in accordance with section 8-214 (Proportional Funding for Oversight Agencies).

Sec. 2-106.14. Campaign Finance Reports.

Every elective officer or candidate for election shall make public their campaign contributions and expenditures by filing a report or reports thereof as required by state law.

COMMENTARY: *These new sections 2-106.1 to 2-106.14 replace section 2-106 of the 1997 Charter which: (1) prohibited public officers from using their office for private gain; (2) required "reasonable disclosure of financial interests held by any elective officer, appointee, or employee" under certain circumstance; and (3) generally prohibited actions which create an appearance of impropriety, all of which were to be implemented by ordinance. This new section is a more comprehensive regulation of the ethical behavior expected of elected officials, appointees and employees.*

Section 2-106.1(2)(b) is intended to prohibit the inappropriate use or disclosure of confidential information. Nothing in this section is intended to prohibit a relevant Public Servant from using such information to perform their job duties.

CHARTER PROVISION AND ETHICS ORDINANCE

Detroit City Charter, Section 2-106 Standards of Conduct

2. An independent Board of Ethics is created. The Board of Ethics shall consist of seven (7) members:

A. Seven (7) members of the public:

1. Three (3) who shall be appointed by the City Council;
2. Three (3) who shall be appointed by the Mayor; and
3. One (1) who shall be jointly appointed by the Mayor and City Council;

B. None of the Board members shall be removed by the respective appointing authority except for cause;

C. The term of membership of the Board shall be five (5) years, and not more than two (2) members' terms shall expire in any one (1) year;

D. Each appointee may serve a maximum of two (2) consecutive five-year terms, not to exceed a total of ten (10) years.

Public members of the Board shall be residents of the City who are not elective officers, appointees, or employees of the City at any time during their Board membership. Members shall serve without compensation.

ETHICS ORDINANCE

DIVISION 3.

STANDARDS OF CONDUCT

Sec. 2-6-61. Engaging in official duties for private gain prohibited.

A public servant shall not engage in any act or omission in the discharge of his or her official duties for private gain.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-62. Use of confidential information for private gain prohibited.

A public servant shall not use confidential information that is acquired in the course of his or her employment for private gain.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-63. Disclosure of confidential information prohibited.

Except as authorized by law, a public servant shall not knowingly disclose to a third party confidential information that is acquired in the course of his or her employment.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-64. Use of city resources for commercial gain prohibited.

A public servant shall not use any city-owned real or personal property, city funds, city personnel, or any other tangible city resource for commercial gain.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-65. Incompatible employment or rendering services prohibited.

A public servant shall not engage in or accept employment, or render services, for a private or public interest where such employment or service is incompatible with the discharge of the public servant's official duties for the city, or where such employment or service is reasonably expected to impair the public servants independence on judgment or action in the discharge of his or her official duties for the city.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-66. Representation of private person, business or organization prohibited; exceptions.*

A public servant shall not act as an agent, attorney, or representative for another person, business or organization in any matter that is pending before a city agency, **except that:**

(1) A public servant may represent another person, business or organization before a City agency where such representation is a required part of the public servant's official duties; or

(2) A public servant who is an uncompensated member of a City board, commission, or other voting body may act as an agent, attorney, or representative for another person, business or organization in a matter that is pending before a City agency, other than the board, commission, or other voting body on which he or she is a member; or

(3) A public servant who is compensated by the City may act as an agent, attorney or representative for another person, business, or organization in a matter that is pending before a City board, commission or other voting body, other than the board, commission or other voting body on which he or she serves as an appointee or as an employee, or under a personal services contract, as long as he or she does so: (a) without compensation; and (b) on his or her leave time; and (c) for appointees, in accordance with Chapter 13, Article V, of this Code; or (d) for non-union employees, in accordance with Chapter 13, Article V, of this Code and the City's Civil Service Rules; or (e) for union employees, in accordance with his or her respective union contract and the City's civil Service Rules; or (f) for individuals who provide services to the City of Detroit pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

(Ord. No. 22-00, B 1, 8-2-00; Ord. No. 43-06, B 1, 11-17-06)

***Commentary - In general, there is an inherently high risk for the presence of a conflict of interest 1) where a public servant receives compensation from both the City and a person who, or an organization which, the public servant represents before a City agency, or 2) where an uncompensated member of a City board, commission, or other body wishes to represent a person or organization before the same board, commission or voting body on which he or she serves. At the same time, it is important to recognize that a public servant should be allowed to voluntarily commit his or her time to serving the public good, and that, as a volunteer, an uncompensated member of a City board, commission, or other body needs to earn a living.**

There is a recognized interest in permitting a public servant who receives compensation from the City to voluntarily serve the community without compensation by appearing before a City agency on behalf of another. Such a policy serves, in part, to protect the public servant's rights to freedom of speech and freedom of association. For these reasons, this section is intended to eliminate the potential for creating such conflict. Accordingly, this section expressly permits a public servant to engage in uncompensated volunteer service to the community within the applicable legal and regulatory guidelines.

There is a parallel interest in permitting an uncompensated member of a City board, commission or other body to represent a person or organization before a different City agency. This section also permits an uncompensated member of a board, commission, or other voting body to represent non-City interests for compensation so long as it is not before the same board, commission or voting body on which he or she serves. This policy encourages the most highly qualified individuals to serve the City in uncompensated positions while allowing these individuals to earn their livelihood.

For purposes of clarification, any action taken under this section must conform to any other applicable provision of this article. In addition, any action taken under this section must conform to other applicable laws, rules, and regulations.

Sec. 2-6-67. Self-interested regulation prohibited.

A public servant shall not make a loan of public funds, grant a subsidy, fix a rate, issue a license, permit or certificate, or otherwise regulate, supervise or participate in a decision that pertains to an entity in which the public servant, or a member of his or her immediate family, has an ownership interest.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-68. Improper use of official position prohibited.*

A public servant shall not use his or her official position in violation of federal or state law, or to obtain a private gain for the public servant in return for improperly influencing a decision of the Mayor, of the City Council, of the City Clerk, or of a member of a city authority, board, commission, committee, council or group, or other City agency.

(Ord. No. 22-00, § 1, 8-2-00)

***Commentary** - This provision prohibits a public servant from using his or her official position in violation of federal or state law, such as the state law prohibiting bribery, being MCL 750.118; MSA 28.1287(8); the state law regulating conflicts of interest pertaining to public contracts involving public servants under the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.310 et seq; MSA 4.1700(30) et seq; the state law regulating political campaign organizations under the Michigan Campaign Finance Act, being MCL 169.201; MSA 4.1703(1) et seq; and the provisions of the Michigan Gaming Control & Revenue Act prohibiting a government official from soliciting or knowingly accepting anything of value or benefit from a casino licensee in return for influencing official action (see MCL 432.218(2)(c) and (d); MSA 18.969(218)(2)(c) and (d)).

This section also prohibits a public servant from accepting a private gain for the purpose of the exercise by the public servant of improper influence upon a decision by another public servant, namely the Mayor, the City Council, the City Clerk, or a member

of a city authority, board, commission, committee, council, or other city agency. The provision covers all authorities, boards, commissions and committees established by state law, the Detroit City Charter or the Detroit City Code, including such City entities as the board of zoning appeals, the Detroit city planning commission, the Detroit building authority, the Detroit historic district commission, and the board of assessors, as well as advisory task forces that are responsible for assisting in the formulation of public policy.

Improper influence as used in this section refers to 1) any action that would constitute a violation of federal or state laws, or this article, regulating the conduct of public officials; or 2) facts, events or circumstances which give rise to an appearance of impropriety in official conduct, when such facts, events or circumstances are considered objectively according to a reasonable person standard.

The prohibition in the article is not intended to prevent a public servant from giving advice or seeking information as a necessary part of the public servant's duties, or from communicating with a city agency in the ordinary course of the city's business. Nor is this prohibition intended to chill a public servant's free speech rights under the First Amendment to the United States Constitution or under Article I, Section 5 of the 1963 Michigan Constitution where the public servant is expressing his or her views to another city public servant or before a city agency in a nonofficial capacity.

Sec. 2-6-69. Solicitation or acceptance of promissory note, written loan agreement, or monetary payment, from an individual or an entity that is providing service to, or receiving tax abatements, credits or exemptions from, the City prohibited; exceptions.*

(a) A public servant who, in the course of his or her duties, exercises significant authority, as defined in Section 2-6-3 of this Code, over the solicitation, negotiation, approval, amendment, performance or renewal of a City contract shall not solicit or accept a promissory note, written loan agreement, or monetary payment:

(1) From a contractor, as defined by Section 2-6-3 of this Code, that is providing services to the City, or from a known subcontractor of a contractor that is providing services to the City; or

(2) From an individual who is an agent of a contractor, as defined by Section 2-6-3 of this Code, or of a known subcontractor of a contractor, as defined by Section 2-6-3 of this Code, that is providing services to the City; or

(3) From an immediate family member, as defined in Section 2-6-3 of this Code, of a contractor, as defined by Section 2-6-3 of this Code, or of a known subcontractor of a contractor, as defined by Section 2-6-3 of this Code, that is providing services to the City.

(b) A public servant who, in the course of his or her duties, exercises significant authority, as defined in Section 2-6-3 of this Code, over the solicitation,

negotiation, approval, amendment, performance or renewal of a City contract shall not solicit or accept a promissory note, written loan agreement, or monetary payment:

(1) From a bidder that was not selected to perform services for the City under a contract, or from a known subcontractor of a bidder that was not selected to perform services for the City under a contract; or

(2) From an individual who is an agent of a bidder that was not selected to perform services for the City under a contract, or from a known subcontractor of a bidder that was not selected to perform services for the City under a contract; or

(3) From an immediate family member, as defined in Section 2-6-3 of this Code, of a bidder that was not selected to perform services for the City under a contract, or from a known subcontractor of a bidder that was not selected to perform services for the City under a contract.

(c) A public servant who, in the course of his or her duties, exercises significant authority, as defined in Section 2-6-3 of this Code, over the purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or development agreement with respect to any real property, shall not solicit or accept a promissory note, written loan agreement, or monetary payment:

(1) From a developer, as defined in Section 2-6-3 of this Code, that is seeking, or sought, tax incentives from the City or that has been provided tax abatements, credits, or exemptions from the City; or

(2) From an individual who is an agent of a developer, as defined in Section 2-6-3 of this Code, that is seeking, or sought, tax incentives from the City or has been provided tax abatements, credits, or exemptions from the City; or

(3) From an immediate family member, as defined in Section 2-6-3 of this Code, of a developer, as defined in Section 2-6-3 of this Code, that is seeking, or sought, tax incentives from the City or has been provided tax abatements, credits, or exemptions from the City.

(d) A public servant who, in the course of his or her duties, exercises significant authority, as defined in Section 2-6-3 of this Code, over the purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or development agreement with respect to any real property, shall not solicit or accept a promissory note, written loan agreement, or monetary payment:

(1) From a bidder or a solicitor of a proposal for the development of real property that was not selected by the City; or

(2) From an individual who is an agent of a bidder or a solicitor of a proposal for the development of real property that was not selected by the City; or

(3) From an immediate family member, as defined in Section 2-6-3 of this Code, of a bidder or a solicitor for a development agreement that was not selected by the City.

(e) The prohibitions in Subsections (a), (b), (c), and (d) of this section shall not apply when a public servant enters into a promissory note, or written loan agreement, at a rate or a term, which is available to the general public:

(1) With a financial institution or its affiliates, or a consumer credit finance institution or its affiliates, that are providing services, through a contract, to the City; or

(2) With a financial institution that is a depositor, through a contract, of any City funds.

(Ord. No. 43-06, § 1, (11-17-07))

***Commentary - In general, there is perception by the public and a potential for conflict of interest where 1) a public servant solicits or accepts a loan or a promissory note with a City contractor that is not in business of providing consumer credit or loans to the general public, and is not a chartered financial or lending institution under the laws of the State of Michigan, and 2) a public servant solicits or accepts a loan or a promissory note with a developer which is not in business of providing consumer credit or loans to the general public that is received or is seeking an official action from the City such land sales, leases, tax abatements, tax credits, and/or exemptions from taxes. Therefore, this section expressly prohibits public servants from soliciting or accepting a loan or a promissory note from a contractor, an agent of a contractor, or an immediate family member of a contractor with the City of Detroit.**

It is a conflict of interest for a public servant having significant contract authority in the areas of solicitation, negotiation, approval, amendment, performance or renewal of a City contract to solicit or accept a loan or a promissory note with a City contractor. Likewise, it is a conflict of interest for a public servant having significant authority over purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement or development agreement with respect to any real property to solicit or accept a loan or a promissory note with a City contractor or developer.

In addition, this section prohibits such conduct by the known subcontractor of a contractor, by the agent of a known subcontractor of a contractor, or by the immediate family member of a known subcontractor of a contractor. Further, this section prohibits public servants from soliciting or accepting a loan or a promissory note from a developer seeking an official City action from the City in form of

incentives and/or real property, or an agent of a developer seeking an official City action from the City in form of incentives and/or real property, or an immediate family member of a developer seeking an official City action from the City in form of incentives and/or real property.

Under Section 2-6-69(e), a public servant is not in violation of this section where he or she enters into a loan or a promissory note at a rate or term available to the general public with financial institution or its affiliates, or consumer credit finance institution or its affiliates, which have contracts with the City or having City funds on deposit through a contract with the City. For the purposes of public servant's understanding of this section, proper and customary forms of consumer loans are considered to be, but are not limited to, home mortgages, home equity loans, car loans, credit card cash advances, business loans, student loans, home rehabilitation loans, and government loans processed through a financial institution having a contract with the City where the public servant has qualified under the conditions of the government loan program.

Sec. 2-6-70. Mayor, City Council Members, and City Clerk prohibited from influencing decisions to fill any civil service position with immediate family members or relatives.

The Mayor, City Council Members, and the City Clerk shall not influence any decision to fill any civil service position with 1) the Mayor, a City Council Member, or the City Clerk's immediate family member, as defined in Section 2-6-3 of this Code, or 2) the Mayor, a City Council Member, or the City Clerk's relative, as defined in Section 2-6-3 of this Code.

(Ord. No. 43-06, B 1, (11-17-07)

Secs. 2-6-71 -- 2-6-90. Reserved.

CHARTER PROVISION AND ETHICS ORDINANCE

Detroit City Charter, Section 2-106 Standards of Conduct

1. The use of public office for private gain is prohibited. The City Council shall implement this prohibition by ordinance, consistent with state law. The ordinance shall contain appropriate penalties for violations of its provisions. The ordinance shall provide for the reasonable disclosure of substantial financial interests held by any elective officer, appointee, or employee who regularly exercises significant authority over the solicitation, negotiation, approval, amendment, performance or renewal of city contracts, and in real property which is the subject of a governmental decision by the City or any agency of the City. The ordinance shall prohibit actions by elective officers, appointees, or employees, which create the appearance of impropriety.

2. An independent Board of Ethics is created. The Board of Ethics shall consist of seven (7) members:

A. Seven (7) members of the public:

1. Three (3) who shall be appointed by the City Council;

2. Three (3) who shall be appointed by the Mayor; and

3. One (1) who shall be jointly appointed by the Mayor and City Council;

B. None of the Board members shall be removed by the respective appointing authority except for cause;

C. The term of membership of the Board shall be five (5) years, and not more than two (2) members' terms shall expire in any one (1) year;

D. Each appointee may serve a maximum of two (2) consecutive five-year terms, not to exceed a total of ten (10) years.

Public members of the Board shall be residents of the City who are not elective officers, appointees, or employees of the City at any time during their Board membership. Members shall serve without compensation. All City elective officers, appointees, and employees shall be available for consultation with the Board of Ethics, as it deems necessary. The Board of Ethics shall issue advisory opinions regarding the meaning and application of provisions of the Charter, city ordinances or other laws or regulations establishing standards of conduct for elective officers, appointees, or employees. Advisory opinions shall be rendered upon written request by an elective officer, appointee, or employee. Advisory opinions shall be published by the Board annually in a report to the Mayor and City Council. The opinions shall not disclose the identity of the elective officers, appointees, or employees concerned.

All meetings of the Board shall be open to the public, unless an individual involved in the matter to be addressed requests in writing that the meeting be closed, or unless otherwise provided by ordinance.

Consistent with state law, the Board of Ethics may recommend improvements in the standards of conduct to ensure the ethical behavior of city elective officers, appointees, and employees, or in the organization and procedures related to the administration and enforcement of those standards. The Board of Ethics shall be authorized by ordinance to conduct investigations on its own initiative, subpoena witnesses, administer oaths, take testimony, require the production of evidence relevant to a matter under investigation, appoint independent counsel when necessary, and to perform other functions essential to ensure the integrity of City government. The Board shall establish its rules and procedures, in accordance with section 2-111 of this Charter. Funds sufficient to enable the Board to perform its duties shall be appropriated annually.

3. Campaign finance reports. Every elective officer or candidate for election shall make public campaign contributions and expenditures by filing a report or reports thereof as required by state law.

(Amendment of 11-7-00)

Detroit Code, Article VI Ethics

ARTICLE VI. ETHICS

DIVISION 1. GENERALLY

Sec. 2-6-1. Statement of Purpose.*

Public service is a public trust. A position of public trust should never be used for private gain as defined in section 2-6-3 of this Code. In order to promote public confidence in public servants, to preserve the integrity of city government, and to establish clear disclosure requirements and standards of conduct for all public servants of the City of Detroit, the City of Detroit enacts this article which shall be liberally construed so as to avoid even the appearance of impropriety by its public servants so that the public interest is protected.

(Ord. No. 22-00, § 1, 8-2-00)

***Commentary** - This article is adopted in compliance with the directive of Section 2-106 of the 1997 Detroit City Charter, entitled "Standards of Conduct," that the City Council shall enact an article implementing its provisions. Furthermore, a review of the best practices of the federal, state and municipal governments reveal that most jurisdictions have enacted codes governing the standards of conduct for elected and appointed public officials as well as employees.

The integrity of City government and public trust and confidence in public officers and employees require that public servants be independent, impartial and responsible to the People; that government decisions and policy be made within the proper channels of the governmental system; and that public office not be used for personal gain. The purpose of this article is to establish guidelines for ethical standards of conduct for all City government officials and employees by defining those acts or actions that are incompatible with the best interests of the City and by mandating disclosure by public servants of private financial or other interests in matters affecting the City.

Although the article addresses the subject matters set forth in section 2-106, it cannot by its terms and provisions specifically address every conceivable circumstance, situation or

question that may raise an ethical consideration in the course of City government. Of course, every situation or issue arising under the article must be evaluated based on its individual merits. However, the article is intended to declare integrity in governmental decision making, operations and processes as a fundamental value and policy of city government to which all public servants in city government should strive to adhere at all times. To underscore the paramount importance of this policy, the article should be liberally construed so as to fully protect the public interest, and to effectuate the directive of section 2-106 that the article shall prohibit actions by elective officers, appointees or employees which create the appearance of impropriety.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-2. Construction.

This article shall be construed in conformity with state law including state law regulating conflicts of interest pertaining to public contracts involving public servants under the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.310, et seq.; MSA 4.1700(30) et seq. and contributions to political campaign organizations under the Michigan Campaign Finance Act, being MCL 169.201 et seq.; MSA 4.1703(1) et seq.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-3. Definitions.*

For purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section:

Agency means any department, office, multi-member body, or other organization of City government.

Appointee means one who holds either a compensated or an uncompensated position as referred to in Section 2-105 of the 1997 Detroit City Charter, including an individual who is appointed by the Mayor, the City Council, the City Clerk, or a department, division or commission head.

Appointive office means a position held by an appointee that is compensated as referred to in Section 2-105 of the 1997 Detroit City Charter.

Basic living expenses means shelter, utilities, and all other costs directly related to the maintenance of the common household of the common residence of the domestic partners and any other cost, such as medical care, where some or all of the cost is paid as a benefit because a person is another person's domestic partner.

City means the City of Detroit.

City Clerk means the City Clerk of the City of Detroit as referred to in section 3-103 of the 1997 Detroit City Charter.

City Council means the legislative body of the City of Detroit.

Commercial gain means the use by a public servant of any City of Detroit resource including, but not limited to, the City's time, equipment, facilities, supplies or staff, which results or is intended to result in income, as defined in the United States Internal Revenue Code, being 26 USC 1 et seq., to the public servant.

Confidential information means information that has been obtained by a public servant in the course of acting as a public servant, that is not available to members of the public pursuant to the Michigan Freedom of Information Act, being MCL 15.231 et seq., or pursuant to other law, regulation policy or procedure recognized by law, and that the public servant is unauthorized to disclose, including:

(1) Any written information, whether in document or in electronic form, which could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public service disclosing the information is permitted by such authority to make disclosure; and

(2) Any non-written information, which if written, could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public servant disclosing the information is permitted by such authority to make disclosure; and

(3) Information which was obtained in the course of or by means of a written or electronic record or oral report of a lawful executive or closed session, whether or not the disclosure of the information would violate State Law, unless the public servant disclosing the information is authorized by State Law to make disclosure, or unless the public servant disclosing the information has been properly authorized to make disclosure pursuant to an applicable law, regulation, policy or procedure, except that when such information is available through channels which are open to the public, this provision does not prohibit public servants from disclosing the availability of those channels.

Contractor means a party who, or which, seeks to enter, or enters, into a contract with the City for the delivery of goods or services, but does not mean one who seeks to enter, or enters, into a personal services contract, as defined in this section, with the City.

Decision means:

(1) A determination, action, vote, or other disposition upon a motion, proposal, recommendation, resolution, or ordinance by Members of the City Council or of a governing body of a City agency; or

(2) A determination, action or other disposition taken by the Mayor, the City Clerk, or a City agency in the performance of their public duties.

Developer means a party whose occupation or business involves real property and who, or which, seeks to enter, or enters, into an agreement with the City regarding real property.

Domestic partner means one (1) of two (2) adults who, (1) have a common residence; and (2) agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership; and (3) are not married or are not a member of another domestic partnership; and (4) are not related by blood in a way that would prevent them from being married to each other in this state; and (5) are at least eighteen (18) years of age; and (6) have chosen to share one another's lives in an intimate and committed relationship of mutual caring; and (7) are capable of consenting to the domestic partnership.

Exercises significant authority means having the ability to influence the outcome of a decision on behalf of the City of Detroit government in the course of the performance of a public servants duties and responsibilities.

Extraordinary circumstances means circumstances which, due to the unavailability of information that is critical to disposition by the Board of Ethics of an advisory opinion request or of a complaint, have prevented the Board from completing its investigation.

Have a common residence means that both domestic partners share the same residence. Two (2) people can have a common residence even if one (1) or both have additional residences, or if both domestic partners do not possess legal title to the common residence domestic partners do not cease to have a common residence if one leaves the common residence but intends to return to.

Immediate family means:

- (1) A public servant's spouse; or
- (2) A public servant's domestic partner; or
- (3) An individual claimed by a public servant or a public servant's spouse as a dependent under the Unites States Internal Revenue Code, being 26 USC 1 et seq.; or
- (4) An individual who lives in the household of a public servant.

In-kind means goods or services but does not mean money.

Joint responsibility means that each domestic partner agrees to provide for the other partner's basic living expenses if the partner is unable to provide for himself or herself.

Mayor means the mayor of the City of Detroit.

Ownership interest means a financial or pecuniary interest that a public servant has in the affairs of 1) any business entity in which the public servant or a member of his or her immediate family is an officer, director, member, or employee; 2) any business entity in which the public servant or a member of his or her immediate family controls, or directly or indirectly owns, in excess of five (5%) percent of the total stock or an interest totaling fifty thousand dollars (\$50,000.00) or more in value; or 3) any person or business entity with whom the public servant has a contract.

Personal services contract means a contract for the retention of an individual to perform services on behalf of the City of Detroit for a fixed period and for fixed compensation.

Private gain means any benefit which is accepted or received by a public servant, or is perceived by a reasonable person to be accepted or received by a public servant, as remuneration for the purpose of improperly influencing an official action in a specific manner or for refraining from the performance of an official action in a specific manner, or as inducement for the public servant to act in favor of some interest other than in the public interest. To clarify, unless the above standard is violated, the following types of benefits, monetary payments or reimbursements, gifts, awards or emoluments are permissible to be received by a public servant.

- (1) Payment of salaries, compensation or employee benefits to a public servant by the City, or the payment of salaries, compensation or employee benefits to a public servant by an

employer or business other than the City pursuant to a contract where the payment is unrelated to the public servant's status as a public servant;

(2) Authorized reimbursement by the City to a public servant of actual and necessary expenses incurred by the public servant;

(3) Fees, expenses or income, including those resulting from outside employment, which are permitted to be earned by, or reimbursed to, a public servant in accordance with this code and with city policies, rules or regulations;

(4) Campaign or political contributions which are made and reported by a public servant in accordance with state law;

(5) Admission or registration fee, travel expenses, entertainment, meals or refreshments (a) that are furnished to a public servant by the sponsor(s) of an event, appearance or ceremony which is related to official City business in connection with such an event, appearance or ceremony and to which one (1) or more members of the public are invited, or (b) that are furnished to a public servant in connection with a speaking engagement, teaching, or the provision of assistance to an organization or another governmental entity as long as the city does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity;

(6) Admission, regardless of value, to a charitable or civic event to which a public servant is invited in his or her official representative; capacity as a public servant where any admission or other fees required of all persons attending the event are waived or paid for the public servant by a party other than the city or the public servant;

(7) An award publicly presented to a public servant by an individual or by a non-governmental entity or organization in recognition of public service, acts of heroism, or crime solving;

(8) An award, gift or other token of recognition presented to a public servant by representatives of a governmental body or political subdivision who are acting in their official capacities;

(9) A gift received from a public servant's relative or immediate family member, provided that the relative or immediate family member is not acting as a third party's intermediary or an agent in an attempt to circumvent this article;

(10) A registration fee for a seminar or other informational conference that a public servant attends in a capacity other than as a speaker, panelist, or moderator, where such registration fee that is charged for the public servant's attendance is waived or paid for the public servant by a party other than the city or the public servant;

(11) Expenses or gratuities, including but not limited to admission fees, lodging, meals or transportation, that are paid for a public servant and are related to the public servant's participation at a seminar, conference, speaking engagement or presentation in his or her official capacity as a speaker, panelist or moderator where such expenses or gratuities are waived or paid for, as the case may be, by a party other than the city or the public servant, provided that, within five (5) business days after the conclusion of the seminar, conference, speaking engagement or presentation, such public servant files with the City Clerk a statement which contains the following information for each expense that is paid for or waived or for each gratuity that is provided: (a) a description of the expense or of the gratuity; (b) the amount of the expense or of

the gratuity; (c) the date that the expense was incurred or that the gratuity was received; (d) the date that the expense was paid or waived, or that the gratuity was received; and (e) the name and address of the party who paid or waived the expense or who provided the gratuity;

(12) Meals or beverages provided to the public servant by an individual or by a non-governmental organization during a meeting related to official city business;

(13) Anything of value, regardless of the value, presented to or received by a public servant on behalf of the city where, pursuant to the applicable provisions of the 1997 Detroit City Charter and this Code, the thing of value is offered to, and accepted by, the city;

(14) A gift to a public servant that either is returned to the donor or is donated to the city or to a charitable organization within thirty (30) days of the public servant's receipt of the gift, provided that the public servant does not claim the donation as a charitable contribution for tax purposes;

(15) Complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials that are received by a public servant;

(16) Compensation paid to a public servant for a published work, which did not involve the use of the city's time, equipment, facilities, supplies, staff or other resources where the payment is arranged or paid for by the publisher of the work;

(17) Compensation paid to a public servant for a published work, which did involve the use of the city's time, equipment, facilities, supplies, staff or other resources where the payment of the compensation to the public servant is lawfully authorized by a representative of the city who is empowered to authorize such compensation;

(18) Receipt by the public servant of anything of value, where the payment, gift or other transfer of value is unrelated to, and does not arise from, a public servant's holding or having held a public position, and where the activity or occasion for which the payment, gift or other transfer of value given does not involve the use of the city's time, equipment, facilities, supplies, staff or other resources in any manner or degree that is not available to the general public;

(19) Hospitality that is extended to a public servant by an individual, or by an organization, for a purpose unrelated to the official business of the City, including a gift of food, beverage, or lodging; and

(20) Receipt by a public servant of a devise, bequest or inheritance.

Public servant means the Mayor, members of the City Council, the City Clerk, any member of any City agency, board, commission, or other voting body that is established by the 1997 Detroit City Charter or by this Code, and any appointee, any employee, or any individual who provides services to the City of Detroit within or outside of its offices or facilities pursuant to a personal services contract.

Relative means a person who is related to a public servant as spouse or as any of the following, whether by marriage, blood or adoption: parent, child, brother, sister, uncle, aunt, nephew, niece, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, brother-in-law, or sister-in-law.

Voting body means the City Council and any other City authority, board, commission, committee, council or group, regardless of whether its function is legislative, administrative, quasi-administrative, or quasi-judicial or any combination thereof, which, in order to take any official action, even where the action is advisory, must act as a body on the basis of a vote of some or all of its members.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 43-06, § 1, 11-17-06)

***Commentary - Domestic Partner:** The inclusion of “domestic partner” relationships in the scope of coverage of this article is based on the reality that there are certain close personal, often intimate relationships involving non-married public servants which are tantamount or equivalent to the personal relationships which exist between legally married spouses. The potential for public servants to be influenced by or on behalf of partners involved with them in such “domestic partner” relationships or arrangements is just as real as the potential for public servants to be influenced by or on behalf of spouses in legal marriages or family members. This article does not adopt any position regarding the propriety of such non-marital relationships among domestic partners. However, for purposes of implementing standards for the conduct of public servants in the performance of their job duties for the City of Detroit, the article does attempt to include within its reach all public servants.

The definition of domestic partner included in this section is modeled on the definition of domestic partner contained in Division 2.5 of the Family Code, Article 9 of Chapter 1, Part 5 of Division 5 of Title 2 of the Government Code, and Section 1261 of the Health and Safety Code of the State of California, relating to the domestic partners.

Private Gain: Section 2-106 of the 1997 Detroit City Charter expressly prohibits the use of public office for private gain. Accordingly, a major provision in this article is the prohibition against a public servant’s acceptance or receipt of private gain as compensation for 1) the taking of an official action in a specific manner by the public servant (for example, a particular decision or vote in a specific manner), or reframing from the taking of an official action, as the result of an improper influence by another party; or 2) incentive or inducement for the public servant to act in favor of an interest other than the public interest. In the interest of maintaining honesty, integrity and impartiality in government, the goal of this provision is to ensure that public servants conduct government business in a manner that enhances public confidence and respect for city government, and places paramount importance on the public interest, rather than a public servant’s own personal interest or the private interest of a third party.

Improper influence upon a public servant’s official actions refers to 1) any action that would constitute a violation of federal or state laws regulating the conduct of public officials, such as state law prohibiting the acceptance by any executive, legislative or judicial officer of a bribe (Section 18 of the Michigan Penal Code, being MCL 750.118; or 2) facts, events or circumstances which give rise to an appearance of impropriety in the taking of an official action by a public servant, when such facts, events or circumstances are considered objectively according to a reasonable person standard.

What constitutes private gain to a public servant may take many shapes and forms and may vary depending upon the facts and circumstances of a situation. Therefore, the above definition of private gain does not attempt to enumerate all forms or types of tangible economic gain, or circumstances or situations from which a public servant may derive tangible economic gain for himself or herself. Rather than attempt to list what is private gain that may not be

accepted in all circumstances, the article attempts to illustrate for public servants the circumstances or types of remuneration, emoluments, gratuities or other items that a public servant may accept without violation of this article. The listing set forth in this section is based on the most typical situations, which confront city public servants. However, this is not an exhaustive list, and there may be other types of economic benefit to a public servant that are permissible under this article.

Questions about what is permissible under this article should be directed to the Board of Ethics created by section 2-106 of the 1997 Detroit City Charter, in accordance with the procedures set forth in section 2-6-101 of this article regarding advisory opinions.

Secs. 2-6-4--2-6-30. Reserved.

DIVISION 2. DISCLOSURE REQUIREMENTS

Sec. 2-6-31. Disclosure of interest in real and personal property.*

(a) In accordance with subsections (b) or (c) of this section, a public servant who exercises significant authority in the course of his or her duties over a decision by the city regarding the purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or development agreement with respect to any real property, or the purchase, sale, or lease of any personal property, shall disclose any ownership interest that he or she, or his or her immediate family, has concerning such real or personal property.

(b) Where the circumstances in subsection (a) of this section exist, prior to a decision regarding such real or personal property that is made by the Mayor, the City Clerk, an appointee, an employee, or individual who provides services to the city pursuant to a personal services contract, disclosure of an ownership interest therein shall be made on a form that shall be created by the law department, made available at the office of the City Clerk and at each city department and agency, and filed upon completion at the office of the City Clerk and with the respective city department director or agency head. Upon filing, the City Clerk shall transmit the completed form to the City Council, which shall refer a copy of the form to the respective department director or agency head. Where the City Council takes action on an item that relates to such disclosure, following the action taken, the form shall be published in the Journal of the City Council.

(c) Where the circumstances in subsection (a) of this section exist, prior to a decision regarding such real or personal property that is made by the City Council or by an authority, board, commission or agency of the city, such written disclosure shall be made a part of the minutes of the body on which the member who is making the disclosure serves. Immediately thereafter, the relevant portions of the minutes of such body shall be transcribed and attached to the form that shall be created by the law department, made available at the office of the City Clerk, and filed upon completion at the office of the City Clerk. Upon the filing of the completed form, the City Clerk shall transmit the form to the City Council for publication in the Journal of the City Council.

(Ord. No. 22-00, § 1, 8-2-00)

***Commentary** - This provision implements the directive of Section 2-106 of the 1997 Detroit City Charter that this article shall provide for the reasonable disclosure of a substantial financial

interest held by any public servant in real property that is the subject of a governmental decision by the city or any agency of the city over which the public servant exercises significant authority in the performance of his or her duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.310 et seq; MSA 4.1700(30) et seq.

Sec. 2-6-32. Disclosure of interest in city contracts.*

(a) In accordance with subsections (b) or (c) of this section, a public servant who exercises significant authority in the course of his or her duties over the solicitation, negotiation, approval, amendment, performance or renewal of a city contract shall disclose any ownership interest that he or she, or his or her immediate family, has concerning such city contract.

(b) Where the circumstances in subsection (a) of this section exist, prior to a decision regarding such city contract that is made by the Mayor, the City Clerk, an appointee, an employee, or individual who provides services to the city pursuant to a personal services contract, such disclosure of an ownership interest therein shall be made on a form that shall be created by the law department, made available at the office of the City Clerk and at each city department and agency, and filed upon completion at the office of the City Clerk and with the respective city department director or agency head. Upon filing, the City Clerk shall transmit the completed form to the City Council, which shall refer a copy of the form to the respective department director or agency head. Where the City Council takes action on an item that relates to such disclosure, following the action taken, the form shall be published in the Journal of the City Council.

(c) Where the circumstances in subsection (a) of this section exist, prior to a decision that is made by the City Council or by an authority, board, commission or agency of the city regarding such city contract, such written disclosure shall be made a part of the minutes of the body on which the member who is making the disclosure serves. Immediately thereafter, the relevant portions of the minutes of such body shall be transcribed and attached to the form that shall be created by the law department, made available at the office of the City Clerk, and filed upon completion at the office of the City Clerk. Upon the filing of the completed form, the City Clerk shall transmit the form to the City Council for publication in the journal of the City Council.

(Ord. No. 22-00, B 1, 8-2-00)

***Commentary** - This provision implements the directive of Section 2-106 of the 1997 Detroit City Charter that this article shall provide for the reasonable disclosure of a substantial financial interest held by any public servant in a contract with the city where the public servant exercises significant authority over the solicitation, negotiation, approval, amendment, performance or renewal of such city contract in the performance of his or her duties.

Sec. 2-6-33. Disclosure of campaign contributions and expenditures.

In accordance with section 2-106(3) of the 1997 Detroit City Charter, the Mayor, members of the City Council, the City Clerk and candidates for election shall make campaign contributions and expenditures public by filing the appropriate report(s) as required by the Michigan Campaign Finance Act, being MCL 169.201 et seq; MSA 4.1703(1) et seq.

(Ord. No. 22-00, B 1, 8-2-00)

Sec. 2-6-34. Appointees required to disclose relationship as immediate family member, or relative, of the Mayor, a City Council Member, or the City Clerk.

Within thirty (30) days of enactment of this section, or within thirty (30) days of appointment, whichever is earlier, each public servant, who 1) is an appointee and an immediate family member, as defined in Section 2-6-3 of this Code, of the Mayor, a City Council Member or the City Clerk, or 2) is an appointee and a relative, as defined in Section 2-6-3 of this Code, of the Mayor, a City Council Member or the City Clerk, shall disclose the relationship on a form that shall be created by the Law Department and made available at the Office of the City Clerk, at each City department and each City agency, and filed upon completion at the Office of the Board of Ethics.

(Ord. No. 43-06, § 1, 11-17-06)

Secs. 2-6-35 - 2-6-60. Reserved.

DIVISION 3. STANDARDS OF CONDUCT

Sec. 2-6-61. Engaging in official duties for private gain prohibited.

A public servant shall not engage in any act or omission in the discharge of his or her official duties for private gain.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-62. Use of confidential information for private gain prohibited.

A public servant shall not use confidential information that is acquired in the course of his or her employment for private gain.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-63. Disclosure of confidential information prohibited.

Except as authorized by law, a public servant shall not knowingly disclose to a third party confidential information that is acquired in the course of his or her employment.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-64. Use of city resources for commercial gain prohibited.

A public servant shall not use any city-owned real or personal property, city funds, city personnel, or any other tangible city resource for commercial gain.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-65. Incompatible employment or rendering services prohibited.

A public servant shall not engage in or accept employment, or render services, for a private or public interest where such employment or service is incompatible with the discharge of the public servant's official duties for the city, or where such employment or service is reasonably expected to impair the public servant's independence on judgment or action in the discharge of his or her official duties for the city.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-66. Representation of private person, business or organization prohibited; exceptions.*

A public servant shall not act as an agent, attorney, or representative for another person, business or organization in any matter that is pending before a city agency, except that:

(1) A public servant may represent another person, business or organization before a City agency where such representation is a required part of the public servant's official duties; or

(2) A public servant who is an uncompensated member of a City board, commission, or other voting body may act as an agent, attorney, or representative for another person, business or organization in a matter that is pending before a City agency, other than the board, commission, or other voting body on which he or she is a member; or

(3) A public servant who is compensated by the City may act as an agent, attorney or representative for another person, business, or organization in a matter that is pending before a City board, commission or other voting body, other than the board, commission or other voting body on which he or she serves as an appointee or as an employee, or under a personal services contract, as long as he or she does so: (a) without compensation; and (b) on his or her leave time; and (c) for appointees, in accordance with Chapter 13, Article V, of this Code; or (d) for non-union employees, in accordance with Chapter 13, Article V, of this Code and the City's Civil Service Rules; or (e) for union employees, in accordance with his or her respective union contract and the City's civil Service Rules; or (f) for individuals who provide services to the City of Detroit pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 43-06, § 1, 11-17-06)

***Commentary** - In general, there is an inherently high risk for the presence of a conflict of interest 1) where a public servant receives compensation from both the City and a person who, or an organization which, the public servant represents before a City agency, or 2) where an uncompensated member of a City board, commission, or other body wishes to represent a person or organization before the same board, commission or voting body on which he or she serves. At the same time, it is important to recognize that a public servant should be allowed to voluntarily commit his or her time to serving the public good, and that, as a volunteer, an uncompensated member of a City board, commission, or other body needs to earn a living.

There is a recognized interest in permitting a public servant who receives compensation from the City to voluntarily serve the community without compensation by appearing before a City agency on behalf of another. Such a policy serves, in part, to protect the public servant's rights to freedom of speech and freedom of association. For these reasons, this section is intended to eliminate the potential for creating such conflict. Accordingly, this section expressly permits a public servant to engage in uncompensated volunteer service to the community within the applicable legal and regulatory guidelines.

There is a parallel interest in permitting an uncompensated member of a City board, commission or other body to represent a person or organization before a different City agency. This section also permits an uncompensated member of a board, commission, or other voting body to represent non-City interests for compensation so long as it is not before the same board,

commission or voting body on which he or she serves. This policy encourages the most highly qualified individuals to serve the City in uncompensated positions while allowing these individuals to earn their livelihood.

For purposes of clarification, any action taken under this section must conform to any other applicable provision of this article. In addition, any action taken under this section must conform to other applicable laws, rules, and regulations.

Sec. 2-6-67. Self-interested regulation prohibited.

A public servant shall not make a loan of public funds, grant a subsidy, fix a rate, issue a license, permit or certificate, or otherwise regulate, supervise or participate in a decision that pertains to an entity in which the public servant, or a member of his or her immediate family, has an ownership interest.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-68. Improper use of official position prohibited.*

A public servant shall not use his or her official position in violation of federal or state law, or to obtain a private gain for the public servant in return for improperly influencing a decision of the Mayor, of the City Council, of the City Clerk, or of a member of a city authority, board, commission, committee, council or group, or other City agency.

(Ord. No. 22-00, § 1, 8-2-00)

***Commentary** - This provision prohibits a public servant from using his or her official position in violation of federal or state law, such as the state law prohibiting bribery, being MCL 750.118; MSA 28.1287(8); the state law regulating conflicts of interest pertaining to public contracts involving public servants under the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.310 et seq; MSA 4.1700(30) et seq; the state law regulating political campaign organizations under the Michigan Campaign Finance Act, being MCL 169.201; MSA 4.1703(1) et seq; and the provisions of the Michigan Gaming Control & Revenue Act prohibiting a government official from soliciting or knowingly accepting anything of value or benefit from a casino licensee in return for influencing official action (see MCL 432.218(2)(c) and (d); MSA 18.969(218)(2)(c) and (d)).

This section also prohibits a public servant from accepting a private gain for the purpose of the exercise by the public servant of improper influence upon a decision by another public servant, namely the Mayor, the City Council, the City Clerk, or a member of a city authority, board, commission, committee, council, or other city agency. The provision covers all authorities, boards, commissions and committees established by state law, the Detroit City Charter or the Detroit City Code, including such City entities as the board of zoning appeals, the Detroit city planning commission, the Detroit building authority, the Detroit historic district commission, and the board of assessors, as well as advisory task forces that are responsible for assisting in the formulation of public policy.

Improper influence as used in this section refers to 1) any action that would constitute a violation of federal or state laws, or this article, regulating the conduct of public officials; or 2) facts, events or circumstances which give rise to an appearance of impropriety in official

conduct, when such facts, events or circumstances are considered objectively according to a reasonable person standard.

The prohibition in the article is not intended to prevent a public servant from giving advice or seeking information as a necessary part of the public servant's duties, or from communicating with a city agency in the ordinary course of the city's business. Nor is this prohibition intended to chill a public servant's free speech rights under the First Amendment to the United States Constitution or under Article I, Section 5 of the 1963 Michigan Constitution where the public servant is expressing his or her views to another city public servant or before a city agency in a nonofficial capacity.

Sec. 2-6-69. Solicitation or acceptance of promissory note, written loan agreement, or monetary payment, from an individual or an entity that is providing service to, or receiving tax abatements, credits or exemptions from, the City prohibited; exceptions.*

(a) A public servant who, in the course of his or her duties, exercises significant authority, as defined in Section 2-6-3 of this Code, over the solicitation, negotiation, approval, amendment, performance or renewal of a City contract shall not solicit or accept a promissory note, written loan agreement, or monetary payment:

(1) From a contractor, as defined by Section 2-6-3 of this Code, that is providing services to the City, or from a known subcontractor of a contractor that is providing services to the City; or

(2) From an individual who is an agent of a contractor, as defined by Section 2-6-3 of this Code, or of a known subcontractor of a contractor, as defined by Section 2-6-3 of this Code, that is providing services to the City; or

(3) From an immediate family member, as defined in Section 2-6-3 of this Code, of a contractor, as defined by Section 2-6-3 of this Code, or of a known subcontractor of a contractor, as defined by Section 2-6-3 of this Code, that is providing services to the City.

(b) A public servant who, in the course of his or her duties, exercises significant authority, as defined in Section 2-6-3 of this Code, over the solicitation, negotiation, approval, amendment, performance or renewal of a City contract shall not solicit or accept a promissory note, written loan agreement, or monetary payment:

(1) From a bidder that was not selected to perform services for the City under a contract, or from a known subcontractor of a bidder that was not selected to perform services for the City under a contract; or

(2) From an individual who is an agent of a bidder that was not selected to perform services for the City under a contract, or from a known subcontractor of a bidder that was not selected to perform services for the City under a contract; or

(3) From an immediate family member, as defined in Section 2-6-3 of this Code, of a bidder that was not selected to perform services for the City under a contract, or from a known subcontractor of a bidder that was not selected to perform services for the City under a contract.

(c) A public servant who, in the course of his or her duties, exercises significant authority, as defined in Section 2-6-3 of this Code, over the purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or development agreement with respect to any real property, shall not solicit or accept a promissory note, written loan agreement, or monetary payment:

(1) From a developer, as defined in Section 2-6-3 of this Code, that is seeking, or sought, tax incentives from the City or that has been provided tax abatements, credits, or exemptions from the City; or

(2) From an individual who is an agent of a developer, as defined in Section 2-6-3 of this Code, that is seeking, or sought, tax incentives from the City or has been provided tax abatements, credits, or exemptions from the City; or

(3) From an immediate family member, as defined in Section 2-6-3 of this Code, of a developer, as defined in Section 2-6-3 of this Code, that is seeking, or sought, tax incentives from the City or has been provided tax abatements, credits, or exemptions from the City.

(d) A public servant who, in the course of his or her duties, exercises significant authority, as defined in Section 2-6-3 of this Code, over the purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or development agreement with respect to any real property, shall not solicit or accept a promissory note, written loan agreement, or monetary payment:

(1) From a bidder or a solicitor of a proposal for the development of real property that was not selected by the City; or

(2) From an individual who is an agent of a bidder or a solicitor of a proposal for the development of real property that was not selected by the City; or

(3) From an immediate family member, as defined in Section 2-6-3 of this Code, of a bidder or a solicitor for a development agreement that was not selected by the City.

(e) The prohibitions in Subsections (a), (b), (c), and (d) of this section shall not apply when a public servant enters into a promissory note, or written loan agreement, at a rate or a term, which is available to the general public:

(1) With a financial institution or its affiliates, or a consumer credit finance institution or its affiliates, that are providing services, through a contract, to the City; or

(2) With a financial institution that is a depositor, through a contract, of any City funds.

(Ord. No. 43-06, § 1, (11-17-07))

***Commentary** - In general, there is perception by the public and a potential for conflict of interest where 1) a public servant solicits or accepts a loan or a promissory note with a City contractor that is not in business of providing consumer credit or loans to the general public, and

is not a chartered financial or lending institution under the laws of the State of Michigan, and 2) a public servant solicits or accepts a loan or a promissory note with a developer which is not in business of providing consumer credit or loans to the general public that is received or is seeking an official action from the City such land sales, leases, tax abatements, tax credits, and/or exemptions from taxes. Therefore, this section expressly prohibits public servants from soliciting or accepting a loan or a promissory note from a contractor, an agent of a contractor, or an immediate family member of a contractor with the City of Detroit.

It is a conflict of interest for a public servant having significant contract authority in the areas of solicitation, negotiation, approval, amendment, performance or renewal of a City contract to solicit or accept a loan or a promissory note with a City contractor. Likewise, it is a conflict of interest for a public servant having significant authority over purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement or development agreement with respect to any real property to solicit or accept a loan or a promissory note with a City contractor or developer.

In addition, this section prohibits such conduct by the known subcontractor of a contractor, by the agent of a known subcontractor of a contractor, or by the immediate family member of a known subcontractor of a contractor. Further, this section prohibits public servants from soliciting or accepting a loan or a promissory note from a developer seeking an official City action from the City in form of incentives and/or real property, or an agent of a developer seeking an official City action from the City in form of incentives and/or real property, or an immediate family member of a developer seeking an official City action from the City in form of incentives and/or real property.

Under Section 2-6-69(e), a public servant is not in violation of this section where he or she enters into a loan or a promissory note at a rate or term available to the general public with financial institution or its affiliates, or consumer credit finance institution or its affiliates, which have contracts with the City or having City funds on deposit through a contract with the City. For the purposes of public servant's understanding of this section, proper and customary forms of consumer loans are considered to be, but are not limited to, home mortgages, home equity loans, car loans, credit card cash advances, business loans, student loans, home rehabilitation loans, and government loans processed through a financial institution having a contract with the City where the public servant has qualified under the conditions of the government loan program.

Sec. 2-6-70. Mayor, City Council Members, and City Clerk prohibited from influencing decisions to fill any civil service position with immediate family members or relatives.

The Mayor, City Council Members, and the City Clerk shall not influence any decision to fill any civil service position with 1) the Mayor, a City Council Member, or the City Clerk's immediate family member, as defined in Section 2-6-3 of this Code, or 2) the Mayor, a City Council Member, or the City Clerk's relative, as defined in Section 2-6-3 of this Code.

(Ord. No. 43-06, § 1, (11-17-07)

Secs. 2-6-71 -- 2-6-90. Reserved.

DIVISION 4. BOARD OF ETHICS

Subdivision A. In General

Sec. 2-6-91. Charter independence; duties; promulgation of rules.

(a) The City of Detroit Board of Ethics is an independent body that was created by section 2-106(2) of the 1997 Detroit City Charter for the following purposes:

(1) To render advisory opinions regarding the meaning and application of provisions of the 1997 Detroit City Charter, this article, and other laws or regulations which pertain to disclosure requirements and standards of conduct for public servants;

(2) To adjudicate and dispose of complaints in order to ensure the integrity of the city government, through the subpoenaing of witnesses, the administering of oaths, the taking of testimony, compulsion of the production of relevant evidence, and, when necessary, the appointment of independent counsel; and

(3) To conduct investigations and, where appropriate, issue notice of charges in order to ensure the integrity of City government, through the subpoenaing of witnesses, the administering of oaths, the taking of testimony, compulsion of the production of relevant evidence, and, when necessary, the appointment of independent counsel; and

(4) To recommend a) improvements in the disclosure requirements that are found in Division II of this article, and the standards of conduct that are found in Division III of this article, and b) improvements in the administration and enforcement thereof, in order to promote an ethical environment within city government, and to ensure the ethical behavior of public servants.

(b) In accordance with Section 2-111 of the 1997 Detroit City Charter, the Board of Ethics shall promulgate administrative rules to perform its duties as set forth in the 1997 Detroit City Charter and this article. Whenever this article is amended, the Board shall not take action, which requires the promulgation of any new administrative rule, until the rule has been properly promulgated under Section 2-111 of the 1997 Detroit City Charter.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-92. Limitations on Board's authority.

The Board does not have the authority to reverse or otherwise modify a prior decision of the Mayor, the City Council, the City Clerk, appointee, or other public servant.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-93. Composition of Board of Ethics; qualifications for members; terms; removal for cause; filling of vacancies.

(a) In accordance with section 2-106(2) of the 1997 Detroit City Charter, the seven (7)-member board of ethics shall consist of:

(1) Three (3) members of the public who shall be appointed by the Mayor;

(2) Three (3) members of the public who shall be appointed by the City Council;

(3) One (1) member of the public who shall be jointly appointed by the Mayor and the City Council.

(b) In accordance with section 2-106(2) of the 1997 Detroit City Charter, members of the Board of Ethics shall be residents of the City who are not elective officers, appointees or employees of the City at any time during their Board membership, and shall serve without compensation. Members of the Board shall not be an immediate family member or a relative of the Mayor, the deputy mayor, the City Clerk, or a member of the City Council.

(c) In accordance with section 2-106(2) of the 1997 Detroit City Charter, all members of the Board of Ethics shall be restricted to a maximum of two (2) consecutive terms or to ten (10) years. Except for the initial terms that are delineated in subsection (d) of this section and the filling of vacancies under subsection (e) of this section, the terms for all members of the board shall be five (5) years.

(d) The initial terms for the members of the board of ethics shall be:

(1) Two (2) years for one (1) member who is appointed under subsection (a)(1) of this section; (2) Two (2) years for one (1) member who is appointed under subsection (a)(2) of this section; (3) Three (3) years for one (1) member who is appointed under subsection (a)(1) of this section; (4) Three (3) years for one (1) member who is appointed under subsection (a)(2) of this section; (5) Four (4) years for one (1) member who is appointed under subsection (a)(1) of this section; (6) Four (4) years for one (1) member who is appointed under subsection (a)(2) of this section; and (7) Five (5) years for the member who is appointed under subsection (a)(3) of this section.

(e) The members of the Board of Ethics are subject to removal for cause, pursuant to section 2-107(3) of the 1997 Detroit City Charter, by the appointing authority. Where a member of the board resigns or is removed for cause, the appointing authority shall appoint another individual to serve the remainder of the term.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 4-01, § 1, 3-14-01)

Sec. 2-6-94. Limitations on local political activity by Board Members.*

While a member of the Board of Ethics, a Board member shall not:

(1) Be a candidate for the office of Mayor, City Council, or the City Clerk;

(2) Be a campaign treasurer, campaign manager or officer, or participate in a committee for the campaign of a candidate for the office of Mayor, City Council or City Clerk;

(3) Make a monetary or an in-kind contribution to, or expenditure for, a political campaign that is in excess of one hundred dollars (\$100.00) for a candidate for the office of Mayor, City Council or City Clerk; or

(4) Solicit votes, or raise monetary or in-kind contributions, for a candidate for the office of Mayor, City Council or City Clerk.

(Ord. No. 43-06, § 1, 11-17-06)

***Commentary** - Members of the Board of Ethics are appointed by the Mayor, the City Council, or the Mayor and the City Council jointly and they can be removed for cause under Section 2-106(2)(b) of the 1997 Detroit City Charter. However, they should not be placed in a position where they feel that they must be beholden to the authority who appointed him or her. Therefore, this section ensures that members of the Board of Ethics are able to operate without feeling obligated or pressured to take sides during election cycles for the offices of Mayor, City Council, and the City Clerk.

The members of the Board of Ethics hold unique positions in City government as they are the only positions in City government to have jurisdiction over both the Executive and Legislative Branches of City government, including the Mayor, City Council Members, and the City Clerk. This section will help to ensure the independence of the Board of Ethics that is enshrined in Section 2-106(2) of the 1997 Detroit City Charter.

Sec. 2-6-95. Resources and staffing.

(a) A sufficient annual appropriation shall be provided to enable the Board of Ethics to perform its duties as set forth in the 1997 Detroit City Charter and this article, including hiring adequate staff.

(b) The Corporation Counsel shall assign legal counsel from the City of Detroit Law Department who shall provide representation and advice to the Board on legal matters. The Board may refer a matter to the City attorney from the Law Department who represents the Board, or, when necessary, to outside counsel, for appropriate action. Upon completion of review and consideration, the City attorney shall report his or her findings to the Board. Any retention of outside counsel on behalf of the Board of Ethics shall be governed by the provisions of Section 6-408 of the 1997 Detroit City Charter.

(Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-96. Each City agency to cooperate and assist.

As needed, each City agency shall cooperate in gathering information to assist the Board of Ethics in performing its duties.

(Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-97. Information provided to Board to remain confidential.

Members of the Board of Ethics or any public servant who have access to any confidential information that is related to the functions or activities of the Board are prohibited from divulging such information to any person who is not authorized to possess the information.

(Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-98. Annual report.

(a) On or before April 1st of each year, the Board of Ethics shall issue simultaneously to the Mayor and to each member of the City Council a report that contains:

(1) An analysis of all activities of the Board including the number of advisory opinions requested and the number issued, and the number of complaints filed and the disposition thereof during the preceding calendar year;

(2) A compilation of opinions that have been issued during the preceding calendar year; and

(3) The Board's recommendations, if any, a) for improvement of the disclosure requirements that are found in Division II of this article, and of the standards of conduct that are found in Division III of this article, and b) for improvement of the administration and enforcement thereof.

(b) In addition, a copy of this annual report shall be submitted to the City Clerk, each department director, each agency head, and the Municipal Reference Library.

(Ord. No. 43-06, § 1, 11-17-06)

Secs. 2-6-99 – 2-9-100. Reserved.

Subdivision B. Advisory Opinions.

Sec. 2-6-101. Opinion request; requirements for filing .*

(a) A public servant, a former public servant, or an applicant or candidate to be a public servant may request an advisory opinion from the board of ethics regarding the application of the disclosure requirements that are found in Division II of this article, or of the standards of conduct that are found in Division III of this article, regarding the public servant's own conduct.

(b) A request for an advisory opinion shall be addressed to the Board of Ethics, shall be submitted in writing, shall set forth the facts and circumstances upon which the opinion is sought, and shall be signed by the public servant who is making the request.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 43-06, § 1, 11-17-06)

***Commentary** - Section 2-106 of the 1997 Detroit City Charter requires that the Board of Ethics issue advisory opinions regarding the meaning and application of the charter, City ordinances or other laws or regulations establishing standards of conduct for public servants. Aside from this charter mandate, Section 2-6-101(a) of the article arises out of the recognition that public servants can best conform their official conduct to the ethical standards set forth in this article if they understand these standards and how they apply in the everyday conduct of governmental business. Accordingly, it is the policy of this article to promote the submission by public servants of questions and issues they may have concerning the content and application of this article to the Board of Ethics for advisory opinions where necessary.

Sec. 2-6-102. Identity of public servant, former public servant, or an applicant or a candidate to be a public servant requesting opinion to remain confidential; waiver of confidentiality.

(a) The identity of a public servant, former public servant, or an applicant or a candidate to be a public servant who requests an advisory ethics opinion is confidential, and any information that reveals the identity of the requestor of the opinion request is likewise confidential, where such disclosure of the information could lead to the disclosure of the identity of the public servant, former public servant, or applicant or candidate to be a public servant requesting the advisory opinion.

(b) A public servant, former public servant, or an applicant or a candidate to be a public servant who requests an advisory opinion and makes, or purports to make, his or her identity public is deemed to have waived the confidentiality of the request for an advisory opinion.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-103. Board precluded from taking action where request made in good faith, concerns past or current conduct, and public servant has conformed his or her conduct to advisory opinion.

Where a public servant's request for an advisory opinion regarding his or her prospective conduct 1) is made in good faith and 2) includes past or current conduct, and 3) the public servant conforms his or her conduct to the advisory opinion that was issued by the Board of Ethics to the public servant, the Board is precluded from taking any action regarding any complaint that is filed under Subdivision C of this division, or is precluded from conducting any investigation that may take place under Subdivision D of this division.

(Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-104. Disposition of opinion requests.

(a) The Board of Ethics shall dispose of an opinion request within ninety-one (91) days after its receipt of such request. However, under extraordinary circumstances, as defined in Section 2-6-3 of this Code, the Board may extend its time to respond to a specific request by not more than thirty-five (35) additional days. In the event the Board extends its time to respond to a request, the Board shall notify, in writing, the requester of the extension and of the specific reasons therefore.

(b) The Board of Ethics shall dispose of a request for an advisory opinion in one (1) of the following ways:

(1) Deny the request where the request does not relate to this article; or

(2) Decline to issue an advisory opinion where the Board determines that the request does not merit review by the Board; or

(3) Decline to issue an advisory opinion where the Board determines that the request concerns past or current conduct, which is more appropriately addressed by the filing of a complaint or by the conducting of an investigation; or

(4) Issue an advisory opinion in response to the request.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 43-06, § 1, 11-17-06)

***Commentary** - Section 2-6-104 (b) recognizes the discretion the Board of Ethics has in addressing advisory opinion requests in the manner that it deems appropriate. In particular, the Board has discretion to decline to issue an advisory opinion where the request does not actually relate to the subject matter of the article, or where the Board determines that the request does not otherwise merit review by the Board, such as where the Board determines that the request is frivolous in nature, or where the Board determines that the request was not made in good faith, or where the request does not present sufficient facts or information to enable the Board to formulate appropriate advice.

Secs. 2-6-105--2-6-110. Reserved.

Subdivision C. Complaints.

Sec. 2-6-111. Complaint; contents thereof; limitation of action.

(a) Except for members of the Board of Ethics, any person may file a complaint with the Board of Ethics where the person believes that a public servant may have violated this article.

(b) A complaint shall be made in writing on a form that is created by the Law Department and prescribed by the Board of Ethics, shall specify the provision(s) of this article alleged to have been violated and the facts alleged to constitute the violation, and shall be signed by the person who is making the complaint and sworn to in the presence of a notary public.

(c) Such a complaint shall be filed within one hundred eighty-two (182) days from the date that the complainant(s) knew or should have known of the action that is alleged to be a violation of this article, and in no event shall the Board of Ethics consider a complaint which has been filed more than two (2) years after a violation of this article is alleged to have occurred.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-112. Retaliation and harassment prohibited.*

(a) It shall be a violation of this article for any public servant to retaliate against any individual who files a complaint with the board of ethics on the basis that the individual has filed the complaint.

(b) It shall be a violation of this article for an individual to use this article to harass a public servant by filing a complaint with knowledge of its falsity or with reckless disregard for its truth or falsity.

(Ord. No. 22-00, § 1, 8-2-00)

***Commentary** - Section 2-6-112(A) arises out of the recognition that the entire public as well as all public servants must be vigilant in promoting and safeguarding ethical practices in the conduct of government business. As a mechanism for the enforcement of the article's provisions, Section 2-6-111 allows any person or member of the public as well as any public servant to file a complaint with the board of ethics where the person believes that a public servant has violated this article. Not only will the availability of the complaint procedure serve as a vehicle for enforcement of the article's code of conduct, but it is also intended to serve as a substantial deterrent to conduct or practices, which violate the article. In furtherance of this policy, and the fundamental goal of integrity in government, individuals must be immune from fear of retaliation for filing of legitimate complaints asserting violation of the article. Accordingly, section 2-6-112(A) prohibits retaliation against an individual who files a complaint against a public servant with the board of ethics.

Section 2-6-112(B) arises out of the parallel recognition that, despite the salutary objectives of the article, some individuals may nevertheless attempt to misuse and abuse its enforcement provisions for improper or bad faith motivations that have as their goal the infliction of harm or damage upon other public servants and their reputations. Accordingly, section 2-6-112(B) prohibits use of the article's complaint procedure for the purpose of harassment of another public servant. For purposes of this article, harassment is defined as the assertion by an individual of a false or frivolous complaint of violation of this article by a public servant where the person making the complaint knows of the falsity of the assertion or makes the false assertion with a reckless disregard for its truth or falsity, that is, has no reasonable basis for believing in the truthfulness of the complaint.

Sec. 2-6-113. Communications with the Board regarding a complaint in the absence of the complainant, respondent, or his or her respective counsel, prohibited; exception; reporting substance of prohibited communication.

(a) After a complaint has been filed and during its pendency before the Board of Ethics, no member of the Board may communicate regarding the complaint directly or indirectly with any complainant, respondent, or his or her respective counsel, in the absence of the opposing party, except that:

(1) The members of the Board may discuss the complaint with their staff, and may obtain legal advice from the Law Department or, when necessary, from outside counsel;

(2) The members of the Board may discuss the complaint at a lawfully conducted meeting; and

(3) When directed to do so by the Board, its staff members may engage in communications necessary to investigate a complaint.

(b) Where any complainant or respondent, or his or her respective counsel, attempts to communicate with a member of the Board of Ethics regarding a pending complaint in the absence of the opposing party, the Board member shall report the substance of the communication to the Board on the public record at the next regular meeting of the Board.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-114. Running of limitations of action; adjudicating complaints.

(a) No action may be taken by the Board of Ethics on any complaint which is filed later than one hundred eighty-two (182) days from the date that the complainant(s) knew or should have known of the action that is alleged to be a violation of this article, and in no event shall the Board consider a complaint which has been filed more than two (2) years after a violation of this article is alleged to have occurred.

(b) In accordance with administrative rules that are promulgated pursuant to Section 2-6-91 of this Code:

(1) The staff of the Board shall acknowledge its receipt to the complainant(s), and forward the complaint simultaneously to each member of the Board, the public servant who is complained against, and the City attorney from the Law Department who represents the Board;

(2) The City attorney from the Law Department, or outside counsel, who represents the Board shall provide the Board with a preliminary written legal analysis of the complaint;

(3) The public servant who is complained against shall have the opportunity to submit a written response to the complaint prior to the Board deciding whether to hold a hearing;

(4) After receipt of the City attorney's analysis, the Board shall review and consider the complaint and the City attorney's analysis, and, if a hearing is to be held, shall set a date certain for the hearing to take place.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-115. Disposition of complaints.

(a) The Board of Ethics shall dispose of a complaint within ninety-one (91) calendar days after its receipt. However, under extraordinary circumstances, as defined in section 2-6-3 of this Code, the Board may extend its time to respond to a specific complaint by not more than twenty-eight (28) additional days. In the event the Board extends its time to respond to a complaint, the Board shall notify, in writing, the complainant(s) and the public servant of the extension and of the specific reasons therefore.

(b) After giving due consideration to a complaint in accordance with the time-lines delineated in subsection (a) of this section, the Board of Ethics shall take any action or combination of actions, upon majority vote, which the body deems appropriate in order to dispose of a complaint including, but not limited to, one or more of the following:

(1) Dismiss the complaint based on any of the following grounds:

(i) The Board has no jurisdiction over the matter; or

(ii) The complaint does not allege facts sufficient to constitute a violation of this article;
or

(iii) The complainant has failed to cooperate in the Board's review and consideration of the complaint; or

(iv) The complaint is defective in a manner which results in the Board being unable to make any sound determination; or

(2) Determine that no violation of this article has occurred; or

(3) Determine that further information must be obtained in order for the Board to determine whether the complaint alleges fact sufficient to constitute a violation of the article or whether a violation of this article has occurred; and

(i) Conduct its own investigation with respect to any alleged violation; or

(ii) Request the city attorney to investigate the complaint and report all findings back to the Board; or

(4) Determine that a violation of state or federal law may have occurred, and refer the matter to the appropriate governmental authorities for review; or

(5) Determine that the complaint alleges facts sufficient to constitute a violation of this article and that the board will conduct a hearing with proper notice to determine whether a violation of this article has occurred; or

(6) Determine, on its own motion or upon request of the party who has had the complaint filed against him or her, whether the complaint was filed with knowledge of its falsity or with reckless disregard for its truth or falsity.

(c) Where a hearing is held, the Board shall issue written findings of fact and conclusions of law as to whether a violation of this article has occurred. In its decision, the board may recommend the appropriate determinations that are delineated in section 2-6-116 of this Code.

(Ord. No. 22-00, § 1, 8-2-00)

***Commentary** - Where the Board of Ethics has determined, after disposition of a complaint pursuant to section 2-6-115, that the article has been violated by the conduct complained of, the public servant against whom the complaint was made may 1) be entitled to reasonable attorney fees incurred in the defense against the complaint, as provided for in section 2-6-117, where the Board has also found that the public servant against whom the complaint was filed acted in the good faith performance of his or her duties, 2) file a complaint against the original complainant for violation of the prohibition at section 2-6-112(b) against use of the article for harassment, and/or 3) file a civil action for defamation against the original complainant.

To constitute harassment in violation of section 2-6-112 of this article, the complainant must have filed the complaint with knowledge of its falsity or with reckless disregard of its truth or falsity. Beyond the determination of whether the conduct complained of constitutes a violation of the article, the board may, upon its own determination or in response to a request by the public servant against whom the complaint was filed, make the separate determination as to whether the complaint was filed with knowledge of its falsity or with reckless disregard for its truth or falsity

Sec. 2-6-116. Violations of article; board permitted to make public admonition and to refer findings; cumulative effect.*

(a) In the event the Board of Ethics determines that a violation of this article has occurred, the board may adopt a resolution of public admonition against the Mayor, a City

Council member, the City Clerk, or an appointee regarding the violation. In addition, where, based upon an investigation arising from a complaint, the Board of Ethics determines that there may be grounds for further investigation for possible forfeiture of or removal from office under sections 2-107(2) of the 1997 Detroit City Charter and applicable Law, the matter may be referred by the Board to the City Council for consideration of forfeiture or removal proceedings in accordance with section 2-107(2) of the 1997 Detroit City Charter.

(b) In the event the Board of Ethics determines that a violation of this article has occurred, the Board may adopt a resolution of public admonition against a public servant other than the Mayor, a City Council member, the City Clerk or an appointee regarding the violation. In addition, where the Board of Ethics determines that a violation of this article by such public servant may present grounds for disciplinary action, the matter may be referred by the Board to such public servant's supervisor with a recommendation that the public servant's conduct be reviewed for disciplinary action. Any such disciplinary action must be carried out in accordance with the provisions of the 1997 Detroit City Charter and other laws, policies and procedures that are applicable to the position of the public servant and with the gravity of the offense.

(c) Where the Board of Ethics finds that a decision of the Mayor, the City Council, the City Clerk, an appointee, or other public servant was made in violation of this article, the Board may recommend to the Mayor, the City Council, the City Clerk, an appointee, or other public servant that such decision be reviewed in accordance with the applicable provisions of the 1997 Detroit City Charter and this Code. Upon such recommendation, the decision may be reviewed by the Mayor, the City Council, the City Clerk, appointee, or other public servant in accordance with the applicable provisions of the 1997 Detroit City Charter, this Code, and any other applicable laws.

(d) Where the Board of Ethics determines that an existing city contract has been entered into in violation of the provisions of this article, after such determination and recommendation from the board, the city may void or seek termination of the contract where legally permissible.

(e) The invocation of one (1) subsection of this section does not preclude the application of any other subsection of this section or of any other applicable laws or policies.

(Ord. No. 22-00, § 1, 8-2-00)

***Commentary** - Section 2-106 of the 1997 Detroit City Charter directs that the code of governmental conduct enacted by the City Council in ordinance form shall contain appropriate penalties for violations of its provisions. Section 2-6-116 sets forth these potential penalties.

Section 2-6-116(A) of the article establishes public admonition as a punishment for violation of the article by an elected official or appointee. In addition, information discovered by the board in the course of investigation of a complaint against an elected official or appointee may reveal circumstances, which may constitute the basis for forfeiture of or removal from office under section 2-107(2) of the 1997 Detroit City Charter. Inasmuch as this Charter section confers upon the City Council rather than the Board of Ethics the authority to decide whether the circumstances for forfeiture or removal from office exist, section 2-6-116 of the article provides that the Board may refer a matter to the City Council for investigation and consideration where a board investigation reveals a possible basis for forfeiture under the charter or applicable law.

Section 2-6-116(B) likewise makes public admonition available to the Board of Ethics as a penalty for violation of the article by a public servant other than an elected official or appointee, such as a city employee. It is also recognized that a violation of the article by such a public servant may constitute grounds for disciplinary action against the public servant. Although the Board of Ethics is not empowered by the Charter to impose discipline upon a public servant, the Board may refer a proven violation by the public servant to the appropriate city official and/or supervisor who has the authority to consider and impose discipline. Any disciplinary action based on a violation of this article must be consistent with the provisions of the charter and any other laws, policies or procedures that may apply to the public servant, such as the City's civil service rules or collective bargaining agreements.

Section 2-6-116(c) recognizes that a decision which was made in violation of this article may warrant review by the appropriate public officials. Whether or not such decision may be subject to reconsideration or reversal will depend upon the facts and circumstances of the situation and the application of relevant law.

Sec. 2-6-117. Reimbursement of reasonable attorney fees to a public servant.*

(a) In accordance with Michigan common law and within the structures of subsections (b), (c) and (d) of this section, the Board of Ethics shall reimburse a public servant from the City's general funds for reasonable attorney fees which are incurred in the defense of a complaint filed against him or her under section 2-6-111 of this Code where the Board determines that, based upon all factual findings from the hearing, the public servant 1) acted in the good faith performance of his or her duties, and 2) did not violate this article.

(b) The maximum reimbursement for such attorney fees shall not be greater than one hundred fifty percent (150%) of the hourly rate that is established, pursuant to 18 U.S.C. § 3006A(d), for the payment of appointed counsel for matters arising in the United States District Court for the Eastern District of Michigan.

(c) When determining the hourly rate of attorney fees to be reimbursed to a public servant under subsection (A) of this section, the Board shall consider the following factors: 1) the professional standing and experience of the attorney; 2) the skill, time, and labor involved in defending the ethics complaint; and 3) the complexity of the complaint.

(d) Where the Board of Ethics determines that a public servant is entitled to reimbursement of attorney fees under subsection (a) of this section, the administrative rules that are promulgated pursuant to section 2-6-91 of this Code shall control the procedure for submission and review of relevant documentation.

(Ord. No. 22-00, § 1, 8-2-00)

***Commentary** - In spite of the salutary objectives of the article, some individuals may attempt to misuse it by making unjustified, false or frivolous charges of violation of the article by public servants. A public servant may expend substantial time and monetary resources in defending against a complaint, including attorney fees. This expenditure of resources may be compounded where a public servant is the unwitting target of and must defend against more than one baseless complaint. In recognition of this potential, this provision requires that the Board of Ethics grant an application for reimbursement of reasonable attorney fees incurred for the defense of a complaint where the Board determines that the public servant acted in good faith in the performance of his or her duties and did not violate the article.

The authorization for the use of the City's general funds for this purpose is rooted in Michigan common law which recognizes the discretionary power of a municipality to appropriate funds for the necessary expenses incurred by a public servant in defending against complaints arising out of the good faith performance of official duties. *Messmore v. Kracht*, 172 Mich 120; 137 NW 549 (1912). See also, *City of Warren v. Dannis*, 136 Mich App 651; 357 NW2d 731 (1984); 1976 OAG, No. 4947, pp 349-350 (March 24, 1976) (concluding in favor of city reimbursing a public official for attorney fees incurred in defending against misconduct charges where official acted in good faith in discharging official duties); accord, *Ellison v Reid*, 397 So2d 352 (Fla App Div 1 1981) (affirming use of public funds to pay legal expenses of municipal official defending against claim of ethical misconduct).

The formula for attorney fee awards is adapted from the national rate which is used by the federal district courts to pay appointed counsel in such courts. The discretion of the Board in determining the amount of attorney fees to be reimbursed must be exercised reasonably, according to the criteria set forth in subsection (c) of this section.

(Ord. No. 22-00, § 1, 8-2-00)

Secs. 2-6-118--2-6-120. Reserved.

Subdivision D. Investigations and Notices of Charges.

Sec. 2-6-121. Authority; contents thereof; procedure; notice to public servant.

(a) The Board of Ethics is authorized to conduct investigations, on its own initiative, regarding a Board Member's perceived violation of the disclosure requirements that are found in Division II of this article, or the standards of conduct that are found in Division III of this article.

(b) An investigation may be initiated by a member of the Board who raises the matter at a Board meeting, but, in order for the investigation to proceed, the Board must approve the investigation at the same or subsequent Board meeting, by a three-fourths (3/4th) vote of Board members serving.

(c) Where the Board initiates an investigation, the public servant who is the subject of the investigation shall be sent, via first class and certified mail, a written notice 1) that an investigation has been authorized and is taking place, and 2) which contains a summary of the basis for the possible violation(s).

(Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-122. Running of limitations of action.

(a) No action may be taken by the Board of Ethics on any investigation, which is initiated by a member of the Board, where one hundred eighty-two (182) days have passed from the date that the member of the Board of Ethics raises an alleged violation of this article at a Board meeting.

(b) In no event shall the Board of Ethics conduct an investigation more than two (2) years after a violation of this article is alleged to have occurred.

(Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-123. Harassment prohibited; removal from Board.*

(a) It shall be a violation of this article for a member of the Board of Ethics to harass, through the initiation of an investigation, against any public servant by conducting an investigation with knowledge of its falsity or with reckless disregard for its truth or falsity.

(b) In the event that a member of the Board of Ethics violates Subsection (a) of this section, the member is subject to removal, in accordance with Section 2-107(3) of the 1997 Detroit City Charter, by the authority who appointed the member, whether the Mayor, the City Council, or the Mayor and City Council jointly.

(Ord. No. 43-06, § 1, 11-17-06)

***Commentary** - Section 2-6-123(a) arises out of the recognition that the entire public, as well as all public servants, must be vigilant in promoting and safeguarding ethical practices in the conduct of government business. As a mechanism for the enforcement of the article's provisions, Section 2-6-121 allows a member of the Board of Ethics to initiate an investigation where the member raises the issue that a public servant has violated this article. Not only will the availability of the investigation process serve as a vehicle for enforcement of the article's code of conduct, but it is also intended to serve as a substantial deterrent to conduct or practices, which violate the article. In furtherance of this policy, and the fundamental goal of integrity in government, public servants must be immune from fear of harassment under this article. Accordingly, Section 2-6-123(a) arises out of the recognition that, despite the salutary objectives of the article, the Board of Ethics may nevertheless attempt to misuse and abuse its enforcement provisions for improper or bad faith motivations that have as their goal the infliction of harm or damage upon other public servants and their reputations. Accordingly, Section 2-6-123(a) prohibits use of the article's investigation process for the purpose of harassment of public servants. For purposes of this article, harassment is defined as the assertion by a member of the Board of Ethics of a false or frivolous allegation of violation of this article where the member of the Board making the allegation knows of the falsity of the assertion or makes the false assertion with a reckless disregard for its truth or falsity, that is, has no reasonable basis for believing in the truthfulness of the allegation.

Section 2-6-123(b) applies 1) where a member of the Board of Ethics uses his or her position to harass a public servant by raising an allegation of an ethics violation, under this article, at a meeting of the Board of Ethics, with knowledge of its falsity or with reckless disregard for its truth or falsity, or 2) where members of the Board of Ethics use their positions to harass a public servant by voting to proceed with an ethics investigation, under this article, at a meeting of the Board of Ethics, with knowledge of its falsity or with reckless disregard for its truth or falsity, by a three-fourths (3/4th) vote of Board members serving.

Sec. 2-6-124. Communications with the Board regarding an investigation prohibited; exceptions; reporting substance of prohibited communication.

(a) After an investigation has been initiated and during its pendency before the Board of Ethics, no member of the Board may communicate regarding the investigation directly or indirectly with the public servant who is the subject of the investigation, or his or her respective counsel, except that:

(1) The members of the Board may discuss the investigation with their staff, and may obtain legal advice from the Law Department or, when necessary, from outside counsel;

(2) The members of the Board may discuss the investigation at a lawfully conducted meeting; and

(3) When directed to do so by the Board, its staff members may engage in communications necessary to conduct the investigation.

(b) Where any public servant, or his or her respective counsel, attempts to communicate with a member of the Board of Ethics regarding a pending investigation, the Board member shall report the substance of the communication to the Board, on the public record, at the next regular meeting of the Board.

(Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-125. Conducting investigations; preliminary written legal analysis; notice of charges; scheduling hearing.

(a) The Board of Ethics shall dispose of an investigation and, if any, notice of charges, within ninety-one (91) calendar days after its initiation. However, under extraordinary circumstances, as defined in Section 2-6-3 of this Code, the Board may extend its time to conduct an investigation and issue notice of charges by not more than twenty-eight (28) additional days. In the event that the Board extends its time to conduct an investigation, the Board shall notify, in writing, the public servant who is the subject of the investigation initiated by the Board of the extension and the specific reasons therefore.

(b) In accordance with administrative rules that are promulgated pursuant to Section 2-6-91 of this Code:

(1) Within fourteen (14) calendar days of the initiation of an investigation by the Board, the City attorney from the Law Department, or outside counsel, who represents the Board shall provide the Board with a preliminary written legal analysis for the Board's review;

(2) Where the Board determines that the issuance of a notice of charges is unwarranted, the investigation shall be closed and the public servant who is the subject of an investigation that is initiated by the Board shall be notified, in writing, via first class and certified mail, that the investigation has been closed;

(3) Where the Board determines that issuance of a notice of charges is warranted, the public servant who is the subject of an investigation initiated by the Board shall be sent, via certified and first class mail, a notice of charges and be given the opportunity to submit a written response to the notice charges prior to the Board deciding whether to hold a hearing;

(4) The public servant who is the subject of an investigation initiated by the Board of Ethics shall have the opportunity to submit to the Board a written response within fourteen (14) calendar days of receipt of notice of charges. Where the public servant does not submit a written response within (14) days, the public servant shall not be precluded either from submitting a written response later during the investigation, or from participating in any hearing which may be conducted regarding the notice of charges; and

(5) After receipt of the City attorney, or outside counsel's, legal analysis, and the response, if any, from the public servant who is the subject of an investigation initiated by the Board, the Board shall review and consider the legal analysis and the response, if any, from the public servant who is the subject of the investigation, and dispose of the investigation in accordance with Section 2-6-126 of this Code.

(Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-126. Disposition of notices of charges.*

After giving due consideration to an investigation in accordance with the time lines delineated in Section 2-6-125 of this Code, the Board of Ethics shall take any action or combination of actions, upon majority vote, which the body deems appropriate in order to dispose of the notice of charges including, but not limited to, one or more of the following:

- (1) Close the investigation based on any of the following grounds:
 - (a) The Board has no jurisdiction over the matter; or
 - (b) The investigation did not compile facts sufficient to constitute a violation of this article; or
- (2) Determine that no violation of this article has occurred; or
- (3) Determine that a violation of state or federal law may have occurred, and refer the matter to the appropriate governmental authorities for review; or
- (4) Determine that the investigation has compiled facts sufficient to constitute a possible violation of this article and schedule a hearing, with proper notice, to determine whether a violation of this article has occurred; or
- (5) Determine, on its own motion or upon request of the public servant who has had the investigation made against him or her, whether the investigation was initiated by a member of the Board with knowledge of its falsity or with reckless disregard for its truth or falsity, and, if

so, schedule a hearing in accordance with Section 2-6-129 of this Code to determine the reimbursement of reasonable attorney fees.

(Ord. No. 43-06, § 1, 11-17-06)

***Commentary** - Where the Board of Ethics has determined, after disposition of an investigation pursuant to Section 2-6-126, that the article has not been violated by the conduct investigated, the public servant against whom the investigation was made may be entitled to reasonable attorney fees incurred in the defense against the investigation, as provided for in Section 2-6-129, where the Board has also found that the public servant against whom the investigation was made acted in the good faith performance of his or her duties. In addition, where the Board determines that the Board member who initiated the investigation did so to harass the public servant, the Board may refer the matter to the City Council for removal of the Board member in accordance with Section 2-107(3) of the 1997 Detroit City Charter.

To constitute harassment in violation of Section 2-6-123 of this article, the Board member must have initiated the investigation with knowledge of its falsity or with reckless disregard of its truth or falsity. Beyond the determination of whether the conduct investigated constitutes a violation of the article, the Board may make, upon its own determination or in response to a request by the public servant against whom the investigation was made, the separate determination as to whether the investigation was initiated with knowledge of its falsity or with reckless disregard for its truth or falsity.

Sec. 2-6-127. Hearing procedures; decision.

All hearings shall be conducted in accordance with the procedures delineated in the administrative rules that are promulgated in accordance with Section 2-6-91 of this Code, including written findings of fact and conclusions of law as to whether a violation of this article has occurred. In its decision, the Board may recommend the appropriate determinations that are delineated in Section 2-6-128 of this Code.

(Ord. No. 43-06, § 1, 11-17-06)

Sec. 2-6-128. Violations of article; Board permitted to make public admonition and to refer findings; cumulative effect. *

(a) In the event the Board of Ethics determines that a violation of this article has occurred, the Board may adopt a resolution of public admonition against the Mayor, a City Council Member, the City Clerk, or an appointee regarding the violation. In addition, where, based upon an investigation, the Board of Ethics determines that there may be grounds for further investigation for possible forfeiture of office or removal under Section 2-107(2) or Section 2-107(3) of the 1997 Detroit City Charter and applicable law, the matter may be referred by the Board to the City Council for consideration of forfeiture or removal proceedings in accordance with Section 2-107(2) or Section 2-107(3) of the 1997 Detroit City Charter.

(b) In the event the Board of Ethics determines that a violation of this article has occurred, the Board may adopt a resolution of public admonition against a public servant other

than the Mayor, a City Council Member, the City Clerk or an appointee regarding the violation. In addition, where the Board of Ethics determines that a violation of this article by such public servant may present grounds for disciplinary action, the matter may be referred by the Board to such public servant's supervisor with a recommendation that the public servant's conduct be reviewed for disciplinary action. Any such disciplinary action must be carried out in accordance with the provisions of the 1997 Detroit City Charter and other laws, policies and procedures that are applicable to the position of the public servant and with the gravity of the offense.

(c) Where the Board of Ethics finds that a decision of the Mayor, the City Council, the City Clerk, an appointee, or other public servant was made in violation of this article, the Board may recommend to the Mayor, the City Council, the City Clerk, an appointee, or other public servant that such decision be reviewed in accordance with the applicable provisions of the 1997 Detroit City Charter and this Code. Upon such recommendation, the decision may be reviewed by the Mayor, the City Council, the City Clerk, an appointee, or other public servant in accordance with the applicable provisions of the 1997 Detroit City Charter, this Code, and any other applicable laws.

(d) Where the Board of Ethics determines that an existing City contract has been entered into in violation of the provisions of this article, after such determination and recommendation from the Board, the City may void or seek termination of the contract where legally permissible, or may file a civil action, where approved by the Mayor, to recover lost monies.

(e) The invocation of one subsection of this section does not preclude the application of any other subsection of this section or of any other applicable laws or policies.

(Ord. No. 43-06, § 1, 11-17-06)

***Commentary** - Section 2-106 of the 1997 Detroit City Charter directs that the code of governmental conduct enacted by the City Council in ordinance form shall contain appropriate penalties for violations of its provisions. Section 2-6-128 sets forth these potential penalties.

Section 2-6-128(a) establishes public admonition as a punishment for violation of the article by an elected official or appointee. In addition, information discovered by the Board in the course of investigation of a complaint against an elected official or appointee may reveal circumstances, which may constitute the basis for forfeiture of or removal from office under Section 2-107(2) of the 1997 Detroit City Charter. Inasmuch as this charter section confers upon the City Council rather than the Board of Ethics the authority to decide whether the circumstances for forfeiture or removal from office exist, Section 2-6-128 provides that the Board may refer a matter to the City Council for investigation and consideration where a Board investigation reveals a possible basis for forfeiture under the charter or applicable law.

Likewise, Section 2-6-128(b) makes public admonition available to the Board of Ethics as a penalty for violation of the article by a public servant other than an elected official or appointee, such as a City employee. It is also recognized that a violation of the article by such a public servant may constitute grounds for disciplinary action against the public servant. Although the Board of Ethics is not empowered by the charter to impose discipline upon a public

servant, the Board may refer a proven violation by the public servant to the appropriate City official and/or supervisor who has the authority to consider and impose discipline. Any disciplinary action based on a violation of this article must be consistent with the provisions of the charter and any other laws, policies or procedures that may apply to the public servant, such as the City's civil service rules or collective bargaining agreements.

Section 2-6-128(c) recognizes that a decision, which was made in violation of this article, may warrant review by the appropriate public officials. Whether or not such decision may be subject to reconsideration or reversal will depend upon the facts and circumstances of the situation and the application of relevant law.

Sec. 2-6-129. Reimbursement of reasonable attorney fees to a public servant.*

(a) In accordance with Michigan common law and within the strictures of Subsections (b), (c) and (d) of this section, the Board of Ethics shall reimburse a public servant from the City's general funds for reasonable attorney fees which are incurred in the defense of an investigation conducted against him or her under Section 2-6-121 of this Code where the Board determines that, based upon all factual findings from the hearing, the public servant 1) acted in the good faith performance of his or her duties, and 2) did not violate this article.

(b) The maximum reimbursement for such attorney fees shall not be greater than one hundred fifty percent (150%) of the hourly rate that is established, pursuant to 18 U.S.C. § 3006a(d), for the payment of appointed counsel for matters arising in the United States District Court for the Eastern District of Michigan.

(c) When determining the hourly rate of attorney fees to be reimbursed to a public servant under Subsection (a) of this section, the Board shall consider the following factors: 1) the professional standing and experience of the attorney; 2) the skill, time, and labor involved in defending the ethics notice of charges; and 3) the complexity of the notice of charges.

(d) Where the Board of Ethics determines that a public servant is entitled to reimbursement of attorney fees under Subsection (a) of this section, the administrative rules that are promulgated pursuant to Section 2-6-91 of this Code shall control the procedure for submission and review of relevant documentation.

(Ord. No. 43-06, § 1, 11-17-06)

***Commentary** - In spite of the salutary objectives of the article, a Board member may attempt to misuse it by making unjustified, false or frivolous charges of violation of the article by public servants. A public servant may expend substantial time and monetary resources in defending against a notice of charges, including attorney fees. This expenditure of resources may be compounded where a public servant is the unwitting target of, and must defend against, more than one baseless investigation. In recognition of this potential, this provision requires that the Board of Ethics grant an application for reimbursement of reasonable attorney fees incurred for the defense of a notice of charges where the Board determines that the public servant acted in good faith in the performance of his or her duties and did not violate the article.

The authorization for the use of the City's general funds for this purpose is rooted in Michigan common law which recognizes the discretionary power of a municipality to appropriate funds for the necessary expenses incurred by a public servant in defending against notices of charges arising out of the good faith performance of official duties. *Messmore v Kracht*, 172 Mich 120; 137 NW 549 (1912). See also, *City of Warren v Dannis*, 136 Mich App 651; 357 NW 2d 731 (1984); 1976 OAG, No 4947, pp 349-350 (March 24, 1976) (concluding in favor of city reimbursing a public official for attorney fees incurred in defending against misconduct charges where official acted in good faith in discharging official duties); *accord*, *Ellison v Reid*, 397 So 2d 352 (Fla App Div 1 1981)(affirming use of public funds to pay legal expenses of municipal official defending against claim of ethical misconduct).

The formula for attorney fee awards is adapted from the national rate which is used by the federal district courts to pay appointed counsel in such courts. The discretion of the Board in determining the amount of attorney fees to be reimbursed must be exercised reasonably, according to the criteria set forth in Subsection (c) of this section.

Sec. 2-6-130. Reserved.