

Committee on Ordinances

Present - Councilor Francis Dwyer - Presiding

8/21/90

5:42 p.m.

1 C. Gyr

2 C. Goomer

3 C. Russell

4 C. Walsh 5:45 p.m.

5 Mayn 5:52 p.m.

6 C. Myers 5:56 p.m.

C. Dwyer

General request of C. Johnson  
re make presentation

R. Higley  
564 Huron Ave.

obtained outside legal  
counsel - Vernon W. Vance Jr.  
Esq. Pres. Board of Adm.

Vernon W. Vance, Esq.

101 0

New town

- Obtained his legal opinion  
Is it in accord or conflict  
w/ state law?

If it's not in conflict, then City  
can adopt ordinance on its own, w/o  
Home Rule petition process.

First issue we look at was for  
consistency w/ state law.

\*

Code of conduct follows C-268<sup>th</sup> M.G.L.  
but 10 day pay enforcement inconsistent

\*

Also \$500.00 fine vs. \$300.00 could  
be inconsistent.

No civil rights problem w/ this proposed  
Code of Conduct.

Have pointed out language problems.

C.268B allows cities to decide for  
themselves how to handle employees.

City of Marlboro had such an  
ordinance on financial disclosure  
but later repealed by Home Rule

\* Powers and Duties of Election Commission are expanded beyond their scope, beyond regarding Home Rule

zoning Ordinance

Recommended Home Rule process to ensure proper mechanism.

No constitutional problem at all.

Suggested a full review prior to adoption by the Ethics Commission.

Mayor                      Que. are differences such that our proposal would be better than 268th

Brian LeClair  
Hershey SE.

These proposals were reviewed as a favor to us by the legal counsel to the State Ethics

Cynthia McCullough  
Cohen  
Jeffrey  
L.A.

Committee  
Noah Berger  
Paul Walker  
Kegel  
Common Cause / Ethics  
Cheng  
L.A.

Commission  
These would bring actions of city  
officials into the open as a SunShine  
Law.

Paul Walker  
237 Brattle St.  
(Bd. of Directors  
Common Cause)

Supports proposal  
much work gone into this  
Maybe later on we may  
want an Ethics Board.

Noah Berger  
E.D. CCA

Wonderful opportunity for  
Cambridge.  
There is a sense of confidence  
in leadership throughout  
Massachusetts.

Mike Curb  
24 Prescott St

Supports proposal with changes  
- Code of Conduct pg-13; appeal  
individuals hired: police  
ret control and Inspectional  
Services people

- Penalty: Incorporate c. 268<sup>A</sup> procedure
- Financial Interest pg. 9
  - Debt related language should be more precise

Alex Steinberg  
2 Clinton St.

Supports proposed w/ change

Code of Conduct pg. 6 (b)  
change presumption to 1/3 group  
assembly

pg. (b2) define ~~some~~ safe harbor  
interest rate - use better definition

pg. 8 - Conflict of Interest  
8<sup>A</sup> 1/3 vote or amend remove  
conflict of interest language  
eliminate grants and land deals  
from sitting on Cost Control  
Planning Board?

pg. 9 section 9<sup>A</sup> and 10 (bus employment  
also in 10<sup>A</sup> second section - delete  
shld be restriction on job employment

Section 14 Forms by City Council  
cover everyone

Increase penalties to \$5,000.

Ch. 26 Revisions:

Pg. 8 - include spouse as well  
as candidate

Pg. 9 section 3 - revise sub section.  
start on 6th line, no exclusions.

Pg. 11 - Yes  
section 8 - revise order;  
18a 10 " "  
add new section 5 also  
include filing full state  
and federal tax returns.  
Forms shall be in city official  
and employees not at every  
person who does business w/  
city

James McDevitt  
75- Grinnwald St.

Here as an individual

Statement of Intent:

pg. 8 - disclosure  
section

Thwart of this ordinance  
is perception that some  
city officials are corrupt.  
This will hurt city people  
who work hard at doing  
their job.

People will be less able  
to do their job.

May 11

Concerned w/ people & threaten  
public employees.

C. Meyer

Qu. # of people effected  
by this ordinance.

C. Duchay

Qu. some private practice  
work and concern.

J. Mc Donitt

Code of Conduct pg 8.  
does not understand language  
"in a January word and committee"

J. Connors

Do not drive people out  
of government

would recommend these petitions  
remain in committee @  
this time

C. Overton

City Clerk to receive, collect  
data.

7:16 P.M. Disclosure of Beneficial Interest

May 14

why (but Board not include  
and remove Benoit)

Brian L. Cain

Spoke in favor of the  
proposal wld allow  
disclosure of interest by  
debtors.

Mr. Bennett  
24 Bennett St.

"

Noah Berger

"

This should help people reject  
those in government.

Hopes C/C wld consider  
comment of Connors / McDaniels

Mary W

Renan in Committee

C. Russell

Adj. 7:24 PM.

Committee on Ordinances

Present - Councillor Francis Duchay

5/22/90  
6 P.M.

- ① C. Walsh
- ② C. Russell
- ③ C. Sullivan
- ④ C. Cyr
- ⑤ C. Myers
- ⑥ C. Toomey
- ⑦ C. Reever 6:30 P.M.
- ⑧ Mayor 6:32 P.M.

C. Duchay

Agreed to continue discussion on 3 ethics ordinances. Declined documents forwarded to C/C last Friday

C. Walsh

Ques. if outside counsel is recommending these ordinances go through "Home Rule" process

C. Myers

Supports ordinance as amended. Very important.

C. Lynn

Quer. comments by atty. Juries  
re: "conditionally suspect"

U. Vance, Esq.

Suggests statement of interests of  
a candidate shd be w/in this  
rule.

C. Duchay

Hard to believe State Legislature  
is going to divide this.

U. Vance

C/C shd be vulnerable in  
some areas. i.e. powers of Election  
Commission to get involved here  
it's inevitable that you will  
have some law suits in this  
area.

C. Cooney

Wld you add to this at all

Atty. Vance

no, I think my previous memo  
addresses our concerns.

C. Cooney

Quer. differences from Ethics  
law C. 268<sup>A</sup>

Atty. Vance

Met in conventional price in zoning amendment, not done before

C. Gorman

Ques. why not disclose personal income tax ~~and~~ return

Atty. Vance

These are very personal and sensitive issues, and don't feel I should make policy judgement.

C. Gorman

I think this legislation is very flawed

Moved acceptance of amendment and code of conduct

C. Walsh

In some say returns both state and federal be included w/in code of conduct

Mayor

Ques. whether or not she should vote on issues regarding Polovoid due to husband's position and ideological opinions.

Ques. becomes value of stock or value of interest which could be achieved by voting for a zone change

C. Myers

Does this affect fund raising for city events.

Ques. pay raise should be OK

C. Walsh

would like c/c to have some to frame questions and forward same to C. Soler

1st two amendments remain in committee subject to call of chair

NEXT MEETING ~~6/27/90~~

Disclosure of Beneficial Interest to full c/c sat 7:15 p.m.

DWYER & COLLORA  
ATTORNEYS AT LAW  
400 ATLANTIC AVENUE  
BOSTON, MASSACHUSETTS 02110

(617) 357-9202  
Telecopier # (617) 357-6866

THOMAS E. DWYER, JR.  
MICHAEL A. COLLORA  
KATHY B. WEINMAN  
MARK A. McCUE  
WILLIAM H. KETTLEWELL  
JODY L. NEWMAN  
MEAGHAN E. BARRETT

Of Counsel  
THOMAS E. DWYER

March 21, 1990

William H. Walsh  
Councillor  
City of Cambridge  
City Hall  
Cambridge, MA 02139

Dear Councillor Walsh:

Pursuant to your request, I have reviewed the three proposed ordinances currently before the Ordinance Committee of the Cambridge City Council. My analysis, as set forth below, compels me to conclude that each of these ordinances raise very serious constitutional as well as other legal questions.

Our state constitution lays out very clearly the powers of cities and towns. The authority of municipalities to enact ordinances is limited by the Home Rule Amendment, Article 89 of the Amendments to the Constitution of the Commonwealth. Municipalities may not regulate, in any respect, in particular areas, and regulation in other areas is only permitted to the extent the proposed municipal ordinance is not inconsistent with state law.

**Municipal Ordinances May Not Be Inconsistent With State Law.**

"Any city or town may, by the adoption, amendment or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it which is not inconsistent with the constitution or laws enacted by the general court in conformity with the powers reserved to the general court by section eight, and which is not denied, either expressly or by clear implication, to the city of town by its charter" [emphasis supplied].

In determining whether an ordinance is inconsistent with any law enacted by the legislature, one must analyze whether the legislative purpose and provisions of a state law would be frustrated by the provisions of the local ordinance.

M.G.L. c.268A, commonly referred to as the conflict of interest law, regulates, in a comprehensive manner, the conduct of public officials and employees. It contains provisions applicable to state, county and municipal employees and officials, and even contains provisions specifically and solely for municipal officials and employees. This statute prohibits virtually all municipal employees, from receiving gifts or anything of value to influence or induce employees in their public job, or any official act; (Sections 2 and 3), from receiving outside compensation or acting as attorney in certain matters (Section 17), from participating in certain matters in which the employee has a financial interest (Section 19); from having a financial interest in certain contracts made by municipal agencies (Section 20). Former municipal employees and partners of municipal employees are prohibited from acting as an agent or attorney in certain particular matters in which the employee has participated (Section 18). Section 21 of c. 268A provides that violations of the above provisions may permit a municipality to avoid, rescind or cancel municipal action taken which was substantially influenced by the unlawful conduct.

As is evident, the state conflict of interest law is all encompassing and comprehensive in regulating the conduct of all state, county and municipal employees and officials. It provides for all of the necessary safeguards to ensure against conflicts which might compromise the integrity of our state and local governments.

Section 23 of M.G.L. c.268A sets forth standards of conduct for state, county and municipal employees, and permits state, county and municipal agencies to establish and enforce additional standards of conduct. However, as the State Ethics Commission stated in Levite v. Cambridge Rent Control Board, Middlesex Superior Court, Civil No. 83-5124, Brief of State Ethics Commission, Amicus Curiae, "Regulations or other code of conduct guidelines must be consistent with the purposes of G.L. c.268A, §23". Section 23(c)(d) provides that

"Any activity specifically exempted from any of the prohibitions in any other section of this chapter shall also be exempt from the provisions of this section".

Many of the provisions of c.268A are partially duplicated by the proposed ordinances in a manner which is often inconsistent with the similar provision of M.G.L. c.268A. For example, Section 19 of c.268A, (this is but one of many examples), while containing a prohibition against participating in particular matters where an employee has a financial interest, specifically provides that no violation shall exist if the employee notifies his appointing official of the potential conflict, and receives a written determination from the appointing official that the employee's interest is not substantial as to affect his integrity

in the matter. However, while the Proposed Code of Conduct for City Officials prohibits the activity described in c.268A, §19, it does not permit the municipal employee the opportunity provided by state law to make full disclosure and avoid the violation. This proposal, as with many others, invites litigation by virtually every city employee, at tremendous legal expense to the city with little likelihood of success by the city in any such suit.

**A municipality may not enact ordinances which are inconsistent with the comprehensive and detailed prohibitions and requirements found in c.268A. In my opinion, the proposed ordinances are inconsistent in many respects with this statute and is therefore constitutionally suspect under the Home Rule Amendment.**

#### Limitations on Municipal Regulation

In addition to requiring that any ordinance enacted by a municipality not be inconsistent with state law, the Home Rule Amendment absolutely prohibits municipal action on certain subjects.

"Nothing in this article shall be deemed to grant to any city or town the power to (1) regulate elections [other than for adoption of city or town charter]; (2) to levy assess and collect taxes; (3) to borrow money or to pledge the credit of the city and town; (4) to dispose of park land; (5) to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power; or (6) to define and provide for the punishment of a felony or to impose imprisonment as a punishment for any violation of law; provided, however, that the foregoing enumerated powers may be granted by the general court in conformity with the constitution and with the powers reserved to the general court by section eight...;" Art. 89, §7.

Thus, §7 bars municipalities from regulating elections, other than charter elections. Furthermore, in Anderson v. City of Boston, 376 Mass. 178 (1978), the Supreme Judicial Court concluded that M.G.L. c.55, which regulates all state and local elections, was so comprehensive as to compel the conclusion that the legislature "intended to preclude the exercise of any local power or function on the same subject because otherwise the legislative purpose of that statute would be frustrated." Anderson, at 185, quoting Bloom v. Worcester, 363 Mass. 136 (1973).

Proposed Ordinance 26 contains detailed requirements relative to candidates and political contributions. **It is my opinion that such provisions, which deal with election activities, may not pass constitutional muster under the Home Rule Amendment.**

§7(5), as cited above, provides yet another limitation on the type of ordinances which municipalities may enact. It prohibits municipalities from enacting civil laws governing civil relationships except as incidental to the exercise of an independent municipal power. "... a municipal civil law regulating a civil relationship is permissible... only as an incident to the exercise of some independent, individual component of the municipal police power. To construe §7(5) otherwise might give it a very narrow range of application." Marshall House Inc. v. Rent Review and Grievance Board of Brookline, 357 Mass. 709, 718 (1970). While municipalities may regulate zoning, requiring zoning applicants to disclose the names of their attorneys, engineers, architects and virtually every other individual or firm who has participated in a project or who holds a de minimis interest in a project is an unnecessary and perhaps unconstitutional intrusion into private relationships, and provides no relevant information for the purpose of making appropriate decisions based on zoning concerns. It appears that the regulation of these private relationships is the goal of this ordinance, rather than incidental to another independent local power, and may therefore be prohibited under the Home Rule Amendment.

#### Due Process Considerations

It is my opinion that several provisions contained in the proposed ordinances give rise to a serious challenge on due process grounds. These provisions, as with many others in these proposed ordinances, are unconstitutionally vague and overbroad. They fail to provide city employees with clear guidance as to what precise conduct might be criminal or might subject the employee to dismissal from their employment. As the United States Supreme Court has observed "[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes." Lanzetta v. New Jersey, 306 U.S. 451, 453 (1938).

I am particularly concerned about language found in the proposed Code of Conduct for Public Officials, which provides for the imposition of criminal penalties. Section 4 entitled Offering, Receiving and Soliciting Gifts, Favors states:

"(b) No person shall give or offer to give to any official, employee, or City contractor, or to the spouse or child of any of them, and none of them shall accept, anything of value, including, but not limited to, a gift, a loan, a

favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any official, employee or City contractor concerning the business of the City would be directly or indirectly influenced thereby. There shall be a presumption that any such city official who, having received such a gift, loan, favor or promise and who then acts or fails to act so as to benefit the donor, lender or promisor, has done so on the basis of such an understanding." [emphasis supplied].

Defining a crime on the basis of a vague and implicit understanding between individuals and creating the presumption that this crime has been committed is abhorrent to due process and fairness considerations.

Another example of questionable language pursuant to due process requirements is Section 5, entitled the Solicitation or Receipt of Money for Advice or Assistance, which provides that

No official or employee, city contractor, or the spouse or minor child of any of them, shall solicit or accept any money or other thing of value including, but not limited to gifts, loans, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee or the spouse of an official or employee from accepting compensation for services wholly unrelated to the official's or employee's knowledge, discretion or authority concerning their City duties and responsibilities and rendered as part of the official's or employee's non-City employment, occupation or profession.

The exception to violating the provision is entirely dependent upon the services being wholly unrelated to one's knowledge, discretion and authority. It is virtually impossible to discern what might be wholly unrelated to the general knowledge one acquires after years of public service. **This language, as is the case with much of the language of this ordinance, is so vague and overbroad as to render it constitutionally suspect.**

Further questionable provisions under due process requirements include (1) the application of 4(c) in the Code of Conduct for City Officials, to a person who has any economic interest in any business entity in the City. Such an application is overly broad and vague and absolutely incapable of enforcement. This language could literally apply to every citizen of Cambridge who is impacted by the taxes paid by every business in our city, (2) the language of Section 26-3(d)(iii) requiring reporting persons to disclose creditors who do business

with the City of Cambridge. To hold individuals liable for failure to disclose information which they would not have access to and would have no knowledge of is unduly burdensome and overly broad.

#### Additional Issues Concerning Proposed Zoning Ordinance

The authority of local government to regulate the use of private property through zoning measures derives from state and municipal police power. "In order to be valid, zoning must be a reasonable exercise of the police power... As is true of other ordinances, when a zoning law infringes upon a protected liberty, it must be narrowly drawn and must further a sufficiently substantial government interest ." Massachusetts Practice, Chapter 17, §610.

M.G.L. c.40A provides the enabling language for the adoption of zoning ordinances and by-laws, and sets forth significant procedural requirements for the adoption of zoning ordinances. The authority of localities to enact zoning ordinances pursuant to the police power is not unlimited. Objectives for which zoning ordinances have been adopted include lessening of street congestion; health conservation; securing safety from fire and other dangers; provision of adequate light and air; prevention of overcrowding of land; avoidance of undue concentration of population. See MacNeil v. Avon, 435 N.E.2d 1043, 386 Mass. 339 (1982). It is quite evident that the proposed ordinance is wholly unlike ordinances typically enacted under a municipality's zoning authority. **It is my opinion that there is a serious question as to whether the proposed zoning ordinance is a proper exercise of the city's zoning power.**

Local zoning regulations which create a diminution in value of the property may constitute an unlawful taking of property. Certainly, the inability to obtain zoning relief has a substantial impact on the value of property.

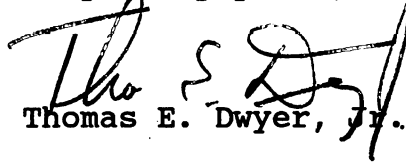
#### Conclusion

It is my opinion that there are significant constitutional as well as other legal questions concerning the validity of the three proposed ordinances. I further note that much of the activity prohibited by these ordinances, to the extent subject to permissible regulation, is covered by state statutes such as G.L. c.268A, and that these ordinances would be incapable of enforcement without a significant commitment of financial and other resources on the part of the city.

William H. Walsh  
March 21, 1990  
Page 7

If you have any further questions, please advise.

Very truly yours,



Thomas E. Dwyer, Jr.

TED, JR./las



RECEIVED BY  
SECTION OF CITY CLERK  
**CITY OF CAMBRIDGE**  
1990 MAR 21 PM 5:16  
362 GREEN STREET, CAMBRIDGE MASSACHUSETTS 02139 • TEL. 498-9087  
CAMBRIDGE MA.

BOARD OF  
ELECTION COMMISSIONERS

EDWARD J. SAMP, JR.  
SONDRA SCHEIR  
ARTIS B. SPEARS  
DARLEEN GONDOLA BONISLAWSKI  
Commissioners

TERESA S. NEIGHBOR  
Executive Director

To: Ordinance Committee, Cambridge City Council  
From: Board of Election Commissioners  
Date: March 21, 1990  
Subject: Proposed Ethics Ordinance

The Board of Election Commissioners wishes to go on record as having no objection to the role described for the Commission in the proposed "Ethics Ordinance" being reviewed by the Ordinance Committee of the Cambridge City Council. Based on its review of the "Code of Conduct" and the amended "Chapter 26," the Commission understands its role to be administrative and clerical and to exclude judicial responsibilities, similar to the role it exercises in overseeing the municipal Campaign Political Finance Reports.

Should the City Council approve the Ordinance and confirm the Commission's role as administrator, it is assumed that adequate provisions will be made for the Commission's additional administrative and clerical duties.

As a final matter, the Commission would request the Ordinance Committee to submit a fully amended version of the Ordinance to the Board for review before submitting it to the City Council for final adoption.

*Edward J. Samp, Jr.*  
*Sondra Scheir*  
*Artis B. Spears*  
*Darleen Gondola Bonislowski*



# CITY OF CAMBRIDGE

Office of the City Solicitor  
City Hall

795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

(617) 498-9020

Russell B. Higley  
City Solicitor

Donald A. Drisdell  
Deputy City Solicitor

Michael C. Costello  
Assistant City Solicitor

Birge Albright  
Legal Counsel

Gail S. Gabriel  
Legal Counsel

Joseph M. Kaigler  
Legal Counsel

Diane Wynshaw-Boris  
Legal Counsel

Edward J. O'Connell  
Legal Counsel

March 26, 1990

Mr. Joseph E. Connarton  
City Clerk  
City Hall  
795 Massachusetts Avenue  
Cambridge, MA 02139

Re: Proposed Cambridge Code of Conduct for City Officials

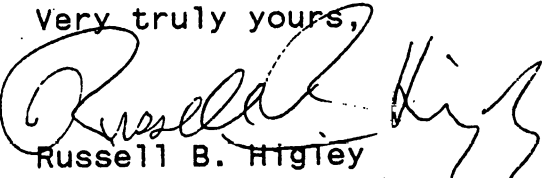
Dear Mr. Connarton:

I am enclosing a memorandum from Attorney Verne W. Vance of the law firm of Foley, Hoag & Eliot. This memorandum was prepared by Mr. Vance in response to a question asked by Mayor Wolf at the Ordinance Committee hearing on the referenced proposed ordinance.

Would you kindly forward this memorandum to the members of the Ordinance Committee for their review in connection with further deliberations regarding this proposed ordinance.

Thank you for your assistance in this matter.

Very truly yours,

  
Russell B. Higley

RBH/dad

CDDC-8  
3/23/90

MEMORANDUM

TO: City Solicitor Russell Higley  
Assistant City Solicitor Donald Drisdell

FROM: Verne W. Vance, Jr.

RE: Response To Mayor Wolf's Question As To What Coverage  
The Proposed Cambridge Code of Conduct For City Officials  
Would Add to the Coverage of Municipal Employees Under  
Massachusetts General Laws Chapter 268A

---

At the Cambridge City Council hearing on March 20 on the package of proposed conflict-of-interest and financial disclosure ordinances, Mayor Alice Wolf asked what the proposed Cambridge Code of Conduct for City Officials would add to the existing conflict-of-interest provisions concerning municipal employees in Massachusetts General Laws Chapter 268A. I have carefully examined both statutes in order to provide a response to Mayor Wolf.

In general, the proposed Cambridge Code of Conduct for City Officials is an elaboration and extension of the basic conflict-of-interest provisions concerning municipal officials in Chapter 268A. The proposed Cambridge ordinance would make the Chapter 268A prohibitions somewhat more extensive and more detailed. It would expand some of the enforcement mechanisms of Chapter 268A and would omit some of the vehicles by which a municipal official or employee can protect himself or herself against possible conflict-of-interest violations. The principal respects in which

the proposed Cambridge ordinance differs from Chapter 268A are as follows (the numbers refer to the numbered paragraphs of the proposed Cambridge Code of Conduct ordinance):

1. In paragraph 1 the proposed Cambridge ordinance includes definitions of certain terms that do not appear in Chapter 268A and defines some terms that appear in Chapter 268A differently than the definition in Chapter 268A. The difference in definitions has, in some provisions, an effect on who is covered by the particular provision. For example, Chapter 268A applies various provisions to the "immediate family" of an employee, which is defined as "the employee and his spouse, and their parents, children, brothers and sisters." The Cambridge ordinance uses the term "relative", which is defined as "a person who is related to an official or employee as spouse, as a descendant of any grandparent of any such official or employee whether by the whole- or half-blood or by adoption, or as spouse of any of the foregoing." This definition is broader than the definition of the term "immediate family" in Chapter 268A.

2. In paragraph 2 the proposed Cambridge ordinance includes a provision that "officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City." Nothing like this provision appears in Chapter 268A. However, it is not clear to me what, if any, obligations this adds for City officials and employees to those that are specifically set forth in the balance of the proposed ordinance.

3. Paragraph 3 on improper influence is quite comparable to Chapter 268A, Section 19. In one respect the Cambridge provision is somewhat narrower than Chapter 268A, Section 19. Whereas Section 19 of Chapter 268A prohibits any participation by a municipal employee in a particular City matter in which he, his immediate family or partner or any business in which he is involved has a financial interest, paragraph 3 of the Cambridge ordinance only prohibits the official or employee from making, or attempting to influence, any City decision in which the official or employee, but not anyone else, has any economic interest. However, the more limited coverage of the proposed Cambridge ordinance is not legally significant, as paragraph 17 of the proposed Cambridge ordinance provides that in the event of any "inconsistency of this ordinance with any other state law, the provision of broadest or most strict coverage shall control." Thus, the broader coverage of Chapter 268A would control here.

4. Paragraph 4(a) of the Cambridge ordinance prohibits giving to, or accepting by, any official or employee or the spouse or child of any of them, any "anonymous gift". This does not appear to be covered by anything in Chapter 268A. What this particular paragraph is seeking to deal with is unclear because, presumably, if a gift is truly "anonymous" the recipient cannot be improperly influenced by the unknown giver. It would be useful to have further explanation from the proponents of the ordinance as to what the precise purpose of this provision is.

3. Paragraph 3 on improper influence is quite comparable to Chapter 268A, Section 19. In one respect the Cambridge provision is somewhat narrower than Chapter 268A, Section 19. Whereas Section 19 of Chapter 268A prohibits any participation by a municipal employee in a particular City matter in which he, his immediate family or partner or any business in which he is involved has a financial interest, paragraph 3 of the Cambridge ordinance only prohibits the official or employee from making, or attempting to influence, any City decision in which the official or employee, but not anyone else, has any economic interest. However, the more limited coverage of the proposed Cambridge ordinance is not legally significant, as paragraph 17 of the proposed Cambridge ordinance provides that in the event of any "inconsistency of this ordinance with any other state law, the provision of broadest or most strict coverage shall control." Thus, the broader coverage of Chapter 268A would control here.

4. Paragraph 4(a) of the Cambridge ordinance prohibits giving to, or accepting by, any official or employee or the spouse or child of any of them, any "anonymous gift". This does not appear to be covered by anything in Chapter 268A. What this particular paragraph is seeking to deal with is unclear because, presumably, if a gift is truly "anonymous" the recipient cannot be improperly influenced by the unknown giver. It would be useful to have further explanation from the proponents of the ordinance as to what the precise purpose of this provision is.

Paragraph 4(b) deals with similar subject matter to Chapter 268A, §3. Although the language of the two ordinances differs in certain respects, the basic thrust of the ordinance -- to prohibit giving or offering to, or acceptance by, any city official, employee or city contractor, or his or her spouse or child of anything of value in exchange for favorable action or influence thereon -- is in substance the same. Chapter 268A only applies to offers of matters of substantial value to a municipal employee or to any person selected to be such an employee, whereas the Cambridge ordinance encompasses also "City contractors," as well as the "spouse or child" of a city official, employee or contractor. Thus the coverage is broader than Chapter 268A.

Paragraph 4(c) also relates to material in Chapter 268A, Section 3. The Cambridge ordinance prohibits any person with an economic interest in a business entity or other enterprise doing business with the City from giving to any city employee or official whose decision may substantially affect such business, or to the sibling, spouse or child of such employee, and prohibits them from accepting, any gift of cash or services. Again, the coverage of the Cambridge provision is substantially similar to that of Chapter 268A but is broader with respect to the persons who are covered. The Cambridge ordinance also includes certain exemptions and other matters of detail not included in Chapter 268A.

5. Paragraph 5 prohibiting City officials and employees, City contractors and their spouses and minor children from soliciting or accepting anything of value in return for advice or assistance concerning City business covers a subject that does not appear to be covered by Chapter 268A.

6. Paragraph 6 prohibiting unauthorized use of City property is not covered by Chapter 268A.

7. Paragraph 7 prohibiting the disclosure of confidential information obtained while in the employ of the City is basically covered by Section 23C of Chapter 268A.

8. The prohibition in paragraph 8 against an official or employee making, or participating in the making of, a governmental decision on any matter in which the official or employee has an economic interest is quite similar to a prohibition in Chapter 268A, Section 19(a), except that the Cambridge provision only applies to economic interests of the official or employee whereas that in Chapter 268A also applies to those of the employee's immediate family or partner or a business organization in which he holds certain positions. Again, per paragraph 17 of the proposed Cambridge ordinances the broader provision of Chapter 268A would control, although it is worth noting that that broader provision also includes the requirement that the official or employee have "knowledge" of the financial interest. That "knowledge" requirement does not appear in the Cambridge ordinance.

9. Paragraph 9 of the Cambridge ordinance prohibits employees or elected officials from representing, or having an economic interest in representation of, any person other than the City in any proceeding before a City agency or in any judicial or administrative proceeding in which such person has an interest adverse to that of the City. This is somewhat similar to Chapter 268A, Section 17(c), prohibiting a municipal employee from acting as agent or attorney for anyone other than the City in prosecuting any claim against the City or as agent or attorney for anyone in connection with any matter in which the City is a party or has a direct and substantial interest. The language of the Cambridge ordinance on this appears to be somewhat broader.

10. Paragraph 10 of the Cambridge ordinance applies certain restrictions during the post-employment period on former City officials or employees. Those restrictions are quite similar to corresponding restrictions in Chapter 268A, Section 18.

11. Paragraph 11 of the Cambridge ordinance is a broad prohibition against any employee or elected official, or his or her spouse, having any financial interest in any contract, work or business of the City or the sale to the City of various articles. This provision covers somewhat similar material as Chapter 268A, Section 20, but is broader, particularly in including the municipal employee's spouse in the prohibition.

12. Paragraph 12 of the Cambridge ordinance prohibiting inducements for the award of a City subcontract is not covered in Chapter 268A.

13. Paragraph 13 concerning employment of relatives in a City agency where a City employee works or over which he has supervision is not covered in Chapter 268A.

14. Paragraph 14 prohibiting City Councilors from making loans or providing other financial benefits to certain City officials is not covered in Chapter 268A.

15. Paragraph 15 on penalties differs in certain respects from the provisions on penalties in Chapter 268A. Subparagraph (c) is a provision requiring all City contracts to include a clause for termination in the event of a violation of the ordinance, which does not appear in Chapter 268A. Subparagraph (d) is similar to a provision in Chapter 268A but differs in one significant respect. Whereas Chapter 268A provides that actions taken in violation of the law shall be grounds for voiding the action, i.e., a basis for the City to act to avoid the transaction, 15(d) of the Cambridge ordinance provides that such actions are void as a matter of law and that this voiding can only be rescinded by an affirmative vote of at least 6 members of the City Council. Subparagraph (e) provides that 10 registered voters of the City may act to enforce the provisions of the Cambridge ordinance, which is an enforcement mechanism that does not appear in Chapter 268A.

Finally, the fines for violation of the Cambridge ordinance and for violation of Chapter 268 differ in certain respects. However, if Chapter 268A remains in effect for the City of

Cambridge, together with the proposed special ordinance, prosecution could always be instituted under whichever statute was most favorable and penalties sought accordingly.

The foregoing are the significant differences between Chapter 268A and the proposed Cambridge ordinance. As indicated, in various respects the Cambridge ordinance goes beyond Chapter 268A and includes some specific subjects that are not included within Chapter 268A.

CDDC-8  
3/23/90

M E M O R A N D U M

TO: City Solicitor Russell Higley  
Assistant City Solicitor Donald Drisdell

FROM: Verne W. Vance, Jr.

RE: Response To Mayor Wolf's Question As To What Coverage  
The Proposed Cambridge Code of Conduct For City Officials  
Would Add to the Coverage of Municipal Employees Under  
Massachusetts General Laws Chapter 268A

---

At the Cambridge City Council hearing on March 20 on the package of proposed conflict-of-interest and financial disclosure ordinances, Mayor Alice Wolf asked what the proposed Cambridge Code of Conduct for City Officials would add to the existing conflict-of-interest provisions concerning municipal employees in Massachusetts General Laws Chapter 268A. I have carefully examined both statutes in order to provide a response to Mayor Wolf.

In general, the proposed Cambridge Code of Conduct for City Officials is an elaboration and extension of the basic conflict-of-interest provisions concerning municipal officials in Chapter 268A. The proposed Cambridge ordinance would make the Chapter 268A prohibitions somewhat more extensive and more detailed. It would expand some of the enforcement mechanisms of Chapter 268A and would omit some of the vehicles by which a municipal official or employee can protect himself or herself against possible conflict-of-interest violations. The principal respects in which

the proposed Cambridge ordinance differs from Chapter 268A are as follows (the numbers refer to the numbered paragraphs of the proposed Cambridge Code of Conduct ordinance):

1. In paragraph 1 the proposed Cambridge ordinance includes definitions of certain terms that do not appear in Chapter 268A and defines some terms that appear in Chapter 268A differently than the definition in Chapter 268A. The difference in definitions has, in some provisions, an effect on who is covered by the particular provision. For example, Chapter 268A applies various provisions to the "immediate family" of an employee, which is defined as "the employee and his spouse, and their parents, children, brothers and sisters." The Cambridge ordinance uses the term "relative", which is defined as "a person who is related to an official or employee as spouse, as a descendant of any grandparent of any such official or employee whether by the whole- or half-blood or by adoption, or as spouse of any of the foregoing." This definition is broader than the definition of the term "immediate family" in Chapter 268A.

2. In paragraph 2 the proposed Cambridge ordinance includes a provision that "officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City." Nothing like this provision appears in Chapter 268A. However, it is not clear to me what, if any, obligations this adds for City officials and employees to those that are specifically set forth in the balance of the proposed ordinance.

3. Paragraph 3 on improper influence is quite comparable to Chapter 268A, Section 19. In one respect the Cambridge provision is somewhat narrower than Chapter 268A, Section 19. Whereas Section 19 of Chapter 268A prohibits any participation by a municipal employee in a particular City matter in which he, his immediate family or partner or any business in which he is involved has a financial interest, paragraph 3 of the Cambridge ordinance only prohibits the official or employee from making, or attempting to influence, any City decision in which the official or employee, but not anyone else, has any economic interest. However, the more limited coverage of the proposed Cambridge ordinance is not legally significant, as paragraph 17 of the proposed Cambridge ordinance provides that in the event of any "inconsistency of this ordinance with any other state law, the provision of broadest or most strict coverage shall control." Thus, the broader coverage of Chapter 268A would control here.

4. Paragraph 4(a) of the Cambridge ordinance prohibits giving to, or accepting by, any official or employee or the spouse or child of any of them, any "anonymous gift". This does not appear to be covered by anything in Chapter 268A. What this particular paragraph is seeking to deal with is unclear because, presumably, if a gift is truly "anonymous" the recipient cannot be improperly influenced by the unknown giver. It would be useful to have further explanation from the proponents of the ordinance as to what the precise purpose of this provision is.

Paragraph 4(b) deals with similar subject matter to Chapter 268A, §3. Although the language of the two ordinances differs in certain respects, the basic thrust of the ordinance -- to prohibit giving or offering to, or acceptance by, any city official, employee or city contractor, or his or her spouse or child of anything of value in exchange for favorable action or influence thereon -- is in substance the same. Chapter 268A only applies to offers of matters of substantial value to a municipal employee or to any person selected to be such an employee, whereas the Cambridge ordinance encompasses also "City contractors," as well as the "spouse or child" of a city official, employee or contractor. Thus the coverage is broader than Chapter 268A.

Paragraph 4(c) also relates to material in Chapter 268A, Section 3. The Cambridge ordinance prohibits any person with an economic interest in a business entity or other enterprise doing business with the City from giving to any city employee or official whose decision may substantially affect such business, or to the sibling, spouse or child of such employee, and prohibits them from accepting, any gift of cash or services. Again, the coverage of the Cambridge provision is substantially similar to that of Chapter 268A but is broader with respect to the persons who are covered. The Cambridge ordinance also includes certain exemptions and other matters of detail not included in Chapter 268A.

5. Paragraph 5 prohibiting City officials and employees, City contractors and their spouses and minor children from soliciting or accepting anything of value in return for advice or assistance concerning City business covers a subject that does not appear to be covered by Chapter 268A.

6. Paragraph 6 prohibiting unauthorized use of City property is not covered by Chapter 268A.

7. Paragraph 7 prohibiting the disclosure of confidential information obtained while in the employ of the City is basically covered by Section 23C of Chapter 268A.

8. The prohibition in paragraph 8 against an official or employee making, or participating in the making of, a governmental decision on any matter in which the official or employee has an economic interest is quite similar to a prohibition in Chapter 268A, Section 19(a), except that the Cambridge provision only applies to economic interests of the official or employee whereas that in Chapter 268A also applies to those of the employee's immediate family or partner or a business organization in which he holds certain positions. Again, per paragraph 17 of the proposed Cambridge ordinances the broader provision of Chapter 268A would control, although it is worth noting that that broader provision also includes the requirement that the official or employee have "knowledge" of the financial interest. That "knowledge" requirement does not appear in the Cambridge ordinance.

9. Paragraph 9 of the Cambridge ordinance prohibits employees or elected officials from representing, or having an economic interest in representation of, any person other than the City in any proceeding before a City agency or in any judicial or administrative proceeding in which such person has an interest adverse to that of the City. This is somewhat similar to Chapter 268A, Section 17(c), prohibiting a municipal employee from acting as agent or attorney for anyone other than the City in prosecuting any claim against the City or as agent or attorney for anyone in connection with any matter in which the City is a party or has a direct and substantial interest. The language of the Cambridge ordinance on this appears to be somewhat broader.

10. Paragraph 10 of the Cambridge ordinance applies certain restrictions during the post-employment period on former City officials or employees. Those restrictions are quite similar to corresponding restrictions in Chapter 268A, Section 18.

11. Paragraph 11 of the Cambridge ordinance is a broad prohibition against any employee or elected official, or his or her spouse, having any financial interest in any contract, work or business of the City or the sale to the City of various articles. This provision covers somewhat similar material as Chapter 268A, Section 20, but is broader, particularly in including the municipal employee's spouse in the prohibition.

12. Paragraph 12 of the Cambridge ordinance prohibiting inducements for the award of a City subcontract is not covered in Chapter 268A.

13. Paragraph 13 concerning employment of relatives in a City agency where a City employee works or over which he has supervision is not covered in Chapter 268A.

14. Paragraph 14 prohibiting City Councilors from making loans or providing other financial benefits to certain City officials is not covered in Chapter 268A.

15. Paragraph 15 on penalties differs in certain respects from the provisions on penalties in Chapter 268A. Subparagraph (c) is a provision requiring all City contracts to include a clause for termination in the event of a violation of the ordinance, which does not appear in Chapter 268A. Subparagraph (d) is similar to a provision in Chapter 268A but differs in one significant respect. Whereas Chapter 268A provides that actions taken in violation of the law shall be grounds for voiding the action, i.e., a basis for the City to act to avoid the transaction, 15(d) of the Cambridge ordinance provides that such actions are void as a matter of law and that this voiding can only be rescinded by an affirmative vote of at least 6 members of the City Council. Subparagraph (e) provides that 10 registered voters of the City may act to enforce the provisions of the Cambridge ordinance, which is an enforcement mechanism that does not appear in Chapter 268A.

Finally, the fines for violation of the Cambridge ordinance and for violation of Chapter 268 differ in certain respects. However, if Chapter 268A remains in effect for the City of

Cambridge, together with the proposed special ordinance, prosecution could always be instituted under whichever statute was most favorable and penalties sought accordingly.

The foregoing are the significant differences between Chapter 268A and the proposed Cambridge ordinance. As indicated, in various respects the Cambridge ordinance goes beyond Chapter 268A and includes some specific subjects that are not included within Chapter 268A.

LAW DEPARTMENT

'90 MAR 26 AM 9 17



# CITY OF CAMBRIDGE

Office of the City Solicitor  
City Hall

795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

(617) 498-9020

Russell B. Higley  
City Solicitor

Donald A. Drisdell  
Deputy City Solicitor

Michael C. Costello  
Assistant City Solicitor

Birge Albright  
Legal Counsel

Gail S. Gabriel  
Legal Counsel

Joseph M. Kaigler  
Legal Counsel

Diane Wynshaw-Boris  
Legal Counsel

Edward J. O'Connell  
Legal Counsel

March 26, 1990

Mr. Joseph E. Connarton  
City Clerk  
City Hall  
795 Massachusetts Avenue  
Cambridge, MA 02139

Re: Proposed Cambridge Code of Conduct for City Officials

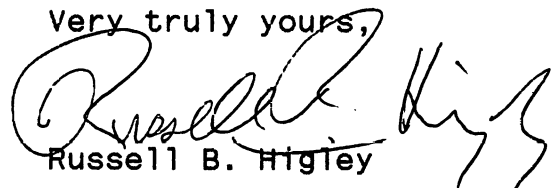
Dear Mr. Connarton:

I am enclosing a memorandum from Attorney Verne W. Vance of the law firm of Foley, Hoag & Eliot. This memorandum was prepared by Mr. Vance in response to a question asked by Mayor Wolf at the Ordinance Committee hearing on the referenced proposed ordinance.

Would you kindly forward this memorandum to the members of the Ordinance Committee for their review in connection with further deliberations regarding this proposed ordinance.

Thank you for your assistance in this matter.

Very truly yours,

  
Russell B. Higley

RBH/dad

# 1.

REPORTS FROM CITY OFFICIALS

Communication received from Russell B. Higley,  
City Solicitor, transmitting a communication  
regarding the proposed amendment to the  
Municipal Code of the City of Cambridge  
relative to the Code of Conduct of City Officials.

In City Council,

April 23, 1990

*Referred to the  
petition*

//



# CITY OF CAMBRIDGE

Russell B. Higley  
City Solicitor

Donald A. Drisdell  
Deputy City Solicitor

Michael C. Costello  
Assistant City Solicitor

Birge Albright  
Legal Counsel

Office of the City Solicitor  
City Hall

795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

(617) 498-9020

Gail S. Gabriel  
Legal Counsel

Joseph M. Kaigler  
Legal Counsel

Diane Wynshaw-Boris  
Legal Counsel

Edward J. O'Connell  
Legal Counsel

March 21, 1990

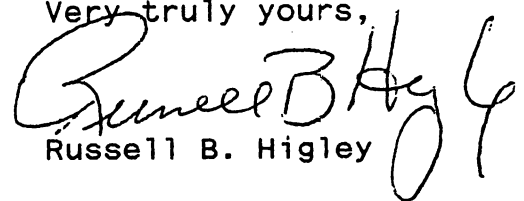
Francis Duehay, Chairman  
Cambridge City Council  
Committee on Ordinances  
City Hall  
795 Massachusetts Avenue  
Cambridge, MA 02139

Re: Code of Conduct for City Officials  
Statements of Interests by City Officials  
Disclosure of Beneficial Interests

Dear Chairman:

Please find attached an opinion prepared by Attorney Verne Vance of the law firm of Foley, Hoag & Eliot regarding the above-referenced proposed ordinances. I have reviewed this opinion and concur in its conclusions and recommendations.

Very truly yours,

  
Russell B. Higley

rbh/dad

M E M O R A N D U M

TO: Donald Drisdell, Esq.  
FROM: Verne W. Vance, Jr.  
RE: Preliminary Analysis of Proposed New Cambridge  
Conflict of Interest Ordinances

---

At your request we have reviewed the proposed new Cambridge conflict of interest ordinances relating to the City's zoning ordinance, code of conduct for municipal officials, and statement of interests of municipal officials. We have examined these proposed ordinances in terms of their validity under state law and have considered the possibility that all or some parts of them may be adopted only through the process of a Home Rule petition to the General Court. We have also considered whether any of the proposed ordinances presents any substantive constitutional problems under either the Federal or State Constitutions and have also pointed out what appear to be some language problems in the proposed ordinances and suggested some language changes.

As we explained to you, in view of the limited time we have had for review of the proposed ordinances and in view of the fact that further changes to these proposals are in the works our conclusions are necessarily preliminary at this time.

Validity of the Proposed  
Ordinances Under State Law

Under the broad scope of authority accorded to local government under the Massachusetts Constitution, a Massachusetts municipality may adopt any by-law or ordinance which is not inconsistent with the Constitution or laws of the Commonwealth. To apply that principle, the courts use "the same process of ascertaining legislative intent as that applied . . . in Federal preemption cases and in . . . cases involving inconsistent local ordinances." Amherst v. Attorney General, 398 Mass. 793, 796-97 (1986). In applying that test, "The legislative intent to preclude local action must be clear." Bloom v. Worcester, 363 Mass. 136, 155 (1973). If such intent is not clear, that intent may be inferred if legislation deals with a subject comprehensively. Id. A local enactment must prevent the achievement of a clearly identifiable purpose of state legislation in order to be struck down as inconsistent with that state legislation. Wendell v. Attorney General, 394 Mass. 518, 524 (1985). Merely "[t]he existence of legislation on a subject . . . is not necessarily a bar to the enactment of local ordinances and by-laws exercising powers or functions with respect to the same subject. If the State legislative purpose can be achieved in the face of a local ordinance or by-law on the same subject, the local ordinance or by-law is not inconsistent with the state legislation." Bloom v. Worcester, supra at 156. Further, "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given

considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, supra at 154. In addition, any ordinance has the benefit of the general presumption of the validity of an ordinance. Thus the foregoing places a significant burden on any party seeking to invalidate a local ordinance as being repugnant to State law.

Two Massachusetts statutes deal quite comprehensively with conflicts of interest by public employees, Massachusetts General Laws chapters 268A and 268B. Chapter 268A is an extensive code of conduct for public officials and employees which by its terms applies to public officials and employees at the state, county and municipal levels. Chapter 268B is a statute requiring comprehensive financial disclosure by public officials and employees at the state and county levels but does not apply to public officials or employees at the municipal level. Thus, the initial general inquiry with respect to the proposed Cambridge ordinances is whether any of them in whole or in part is inconsistent with, or preempted by, the provisions of either Chapter 268A, which does apply to municipal officials and employees, or Chapter 268B, which specifically does not so apply.

#### The Proposed Code of Conduct for City Officials

Of the three proposed ordinances the subject matter of this one is that which is most closely covered by an existing state statute, Chapter 268A.

The proposed Cambridge code of conduct could be regarded as supplementary to Chapter 268A and, to the extent that it is

broader or more strict than that statute, could be regarded as simply carrying out more fully the basic purpose behind Chapter 268A. On the other hand, Chapter 268A also draws lines between prohibited and non-prohibited conduct and provides procedural means whereby a public employee or official, including municipal employees or officials, can obtain a measure of assurance as to whether certain conduct violates the statute. These measures include the right to seek a legal opinion from the State Ethics Commission and from the city solicitor or town counsel and certain other protective procedures which apply to the conduct prohibitions in Chapter 268A.

To the extent that the proposed Cambridge code of conduct goes beyond, or is in any significant respect different from Chapter 268A, the protections for public officials built into Chapter 268A would not be effective and the Cambridge ordinance might thereby undermine one purpose of the state statute, i.e., to give municipal officials and employees a means of ascertaining whether their conduct violates the statute and thereby bringing it in line with the statute. The imposition of somewhat different requirements in the Cambridge ordinance could undermine this, particularly since the Cambridge ordinance does not itself build in the procedural means whereby a public official can protect himself against certain charges of illegal conduct. On balance, we think there is a solid case that the proposed Cambridge code of conduct is inconsistent in some significant respects with the comprehensive legislative scheme of Chapter 268A and thus may

require a Home Rule petition adopted by the General Court to  
enable Cambridge to adopt the proposed Code of Conduct.

In general the proposed Code of Conduct appears to present no substantive constitutional problems and the proposed ordinance statute appears to fall within substantive constitutional limits.

We have the following specific concerns and questions with respect to the language of the proposed code-of-conduct ordinance. The comments are related to the numbered paragraphs of the proposed ordinance.

1. Definitions.

(d) In the fourth line we believe the word "provided" should be inserted between the words "services to".

(h) The definition of "economic interest", unlike that of "financial interest", includes no dollar minimum. Is this intended and appropriate? What is the particular purpose of using the somewhat similar terms "economic interest" and "financial interest"? The statute might be improved if only the concept of "financial interest" as defined were used.

(k) In the "provided, however" language, should not the exclusion take account of the issuance of an ownership interest in exchange for the provision of services fairly valued. Further, should the provision concerning shares of stock be limited to shares registered on a securities exchange or should they also include shares sold over the counter?

(l) The definition of "gift" in this ordinance is different from the definition of the term "gift" in the ordinance on Statements of Interests. Unless there is a meaningful substantive

reason for different definitions, it would be preferable for the definitions of "gift" to be the same in both related ordinances.

(n) The inclusion of the term "veto" in "legislative action" seems inappropriate. We have never heard the term "veto" used in relation to action by a legislative body.

(q) The definition of "person" in this ordinance is different than the definition of the same term in the ordinance on Statements of Interests. Again, unless there is a significant substantive reason for the different definitions, it would be preferable for the definitions to be the same.

(s) The definition of "relative" in this statute is different from the definition of "family member" in the statute on Statements of Interests. Why should similar terms have different definitions? To the extent possible, consistent terms should be used and should be defined them consistently.

2. Fiduciary duty. It is appropriate to impose the status of a fiduciary on every employee at every level of city government? In general, employees are not regarded as fiduciaries and we question whether, for example, a public works employee should be regarded as having a fiduciary duty to the municipality which employs him or her. Chapter 268A does not include this broad fiduciary duty provision.

3. Improper influence. This appears to be a non-sentence, i.e., the wording does not seem to convey a sentence or coherent thought. This language badly needs clarification. Also, the section uses a term called "governmental decision or action". That appears to be an important concept but is not defined in the

statute. Perhaps consideration should be given to providing such a definition.

4. Offering, receiving and soliciting gifts, favors.

(a) Why is the gift issue limited to an "anonymous gift"? Should "anonymous" be defined?

(b) While the key term "gift" is defined, another key term "favor" is not defined. Should it be? In the last sentence, should the word "rebuttable" not be inserted to make clear that this is a presumption as to which an opportunity for rebuttal is available? It also seems that the word "city" can be deleted prior to the word "official" in the last sentence.

(c) It is not clear what (c) adds to (b). In the second line the phrase "conducting business in" should be changed to "doing business with". Should the phrase "a City service or regulatory transaction" be defined?

(d) What is prohibited in this section should be compared with the definition of "gift" in the ordinance on Statements of Interests.

5. Solicitation or receipt of money for advice or assistance.

At the beginning of this sentence the prohibition extends to a "minor child." Later in the "provided, however" section the reference is only to the employee or the spouse but not to the "minor child." It appears that such a reference to a minor child should be added.

7. Use or disclosure of confidential information.

We wonder about the definition of "confidential information" in the last sentence. The problem is that what may not be

obtained pursuant to the Massachusetts Public Records Act is certain "public records" or documents, not "information."

8. Conflicts of interest.

(a) Should the phrase "governmental decision" be defined? In the fourth line, the phrase "material economic interest" is somewhat unclear. It appears that what may be intended is what is defined in the ordinance as a "financial interest." If so, it would be better to use that phrase. In the next to last line, the ordinance would be clarified if the words "by an official or employee having any such an interest" would be inserted after the words "and commissions."

(b) Again, we suggest using the phrase "financial interest" rather than the phrase "economic interest." Also in that section, a clarification may be needed as to what role a member required to abstain from voting plays in determining the required vote on the item. In other words, if the member is counted for purposes of a quorum, is the member also counted for purposes of determining whether the item is carried by a majority of those present and voting if the official cannot vote?

9. Representation of other persons.

(a) In this provision, we think that wherever the phrase "elected official or employee" appears it should be changed to read "employee or elected official." That would make it clear that the phrase "elected" does not modify the term employee. In the next to last line the word "other" should be inserted between the words "any person."

(b) Should the words "represent or" be inserted after the word "may" in the first line?

(c) We wonder about the need for the last sentence. It seems a bit vague and may not be necessary in light of paragraph 8(a).

10. Post-employment restrictions.

(a) In the third line it appears that the word "of" should be "or". In the beginning of the fifth line the words "or participated personally and substantially" should be set off by commas for clarity and the words "on behalf of the City" should be inserted following that phrase.

(b) Should the term "business transaction" in the fourth line be defined? In the phrase beginning "provided, however," should not the word "former" be inserted in front of the words "official or employee"? It also appears that the word "such" could be substituted for the words "the subject matter of the" and that the words "or subject matter" could be deleted. In the next to last line "such transaction" could be substituted for "a contract", and the last line should read "be permanent as to such transaction."

11. Interest in City business.

The first part of this provision should read "No employee or elected official or his or her spouse". In the sixth and seventh lines the words "in the sale to the City of any property or services" would be more appropriate.

12. Contract inducements.

Should the word "favor" be included? In the third line the word "City" should be inserted before the word "contractor". We think some further drafting is required on this paragraph because the provision to be quite unclear.

13. Employment of relatives.

(b) Should the phrase "contract management authority" be defined? In the third line the phrase "or has contracts with" should be set off by commas and perhaps adding at the end the words "with respect to any City contract with any person employing, or having contracts with any relative of such official or employee" would make the provision clearer.

15. Penalties.

(a) For elected officials, after "civil service law" there should be added the words "and state election laws."

(b) Chapter 40, section 21 permits fines of up to \$300 per offense. What is the authority for \$500? Of course, a Home Rule petition could authorize the \$500 fine.

(e) This provision for citizen enforcement seems dubious and is certainly a provision that would require approval via a Home Rule petition to the General Court.

In this ordinance you may wish to consider inserting similar provisions from Chapter 268A concerning the right to legal opinions from the city solicitor and other means for resolving and avoiding potential violations of this ordinance.

The Proposed Ordinance on Statements of Interests

This proposed ordinance appears to be patterned in large part after Chapter 268B of the Massachusetts General Laws. However, the question of inconsistency or preemption is different than with the proposed Code of Conduct ordinance. Whereas the Code of Conduct ordinance posed possible problems of inconsistency with certain aspects of Chapter 268A because that chapter applies expressly to municipal officials and employees, Chapter 268B does not so apply. Therefore, the preemption question relating to the Statements of Interests ordinance does not involve any express inconsistency but involves whether 268B should be read as an expression of intent by the General Court that the requirements of that statute should not, for some unstated policy reason, be applied to municipal officials and employees. One might argue for such an inference on the basis that the General Court did apply 268A to municipal employees and officials as it chose not to apply the requirements of Chapter 268B to those officials but limited the applicability of that statute to state and county employees. We have not been able to find anything that sets forth the reasons why the General Court did not apply 268B to municipal employees, it may be that the General Court felt that this further step in dealing with conflict of interest matters was particularly important for employees of the state and county levels but was content to leave anything further on the subject to action by each municipality at the local level.

On March 20 I spoke with Michael Hogan, mayor of the City of Marlborough, concerning the financial disclosure law which that city adopted several years ago and recently repealed. Michael

told me that the law was adopted as a financial disclosure law, apparently paralleling Chapter 268B, and was done through the home rule petition process. One possible reason for it being done was that the Marlborough ordinance provided for filing the financial disclosure statements with the State Ethics Commission. In fact, Michael advised, for its financial disclosure Marlborough used State Ethics Commission forms, which enabled persons who were both state and city employees to use the same forms and the same filings for the financial disclosure. After unsuccessful attempts at repeal the Marlborough financial disclosure ordinance was finally repealed about a year and a half ago. The repeal was also effected by means of a Home Rule petition.

The principal difference between Chapter 268B and the Marlborough financial disclosure ordinance, on the one hand, and the proposed Cambridge financial disclosure ordinance, on the other, appears to be the provision that the Cambridge filing requirements be administered by the Cambridge Election Commission whereas that for Chapter 268B and the City of Marlborough were administered by the State Ethics Commission. The provision in the Cambridge ordinance that its filing be requirements administered by the election commission does suggest one basis for requiring Cambridge to go through the home rule petition route. That is because it appears that the powers given to the Cambridge Election Commission by Chapter 239 of the Acts of 1921 are limited to matters relating the election process itself and the new powers under the financial disclosure ordinance would go well beyond that process. While financial disclosure of candidates for public

office does relate to powers over elections of the election commissioners, the filing requirements with respect to non-elected employees and officials and businesses doing business with the city do appear to be outside the powers conferred on the election commission by the state statute establishing that commission. Thus, to ensure that conferring the powers under the financial disclosure ordinance on the election commission would be legal and valid, utilization of the home rule petition route, as the city of Marlborough did for a somewhat different reason, would appear to be the prudent course of action.

We see no legal problems with the basic substance of the ordinance, which largely tracks the provisions of Chapter 268B which the Supreme Judicial Court advised were legal and valid in its Opinion of the Justices, 375 Mass. 794 (1978).

Here are our comments on specific provisions of that proposed ordinance:

Section 26-1. Definitions.

(b) Why are governments and governmental agencies included in the definition of "business"? Such entities are not included in the definition of "business" in Chapter 268B and it is not clear why they are included here. The latest amendment indicates the the entire definitions of "business" has been deleted. Is that intended?

(c) The Cambridge ordinance uses the term "family member", whereas Chapter 268B uses the term "immediate family"? Why the difference. Again, (c) includes within the associations covered

"an elected or appointed governmental official". That again seems questionable and seems worth looking at further.

(d) To make the language parallel the word "leasing" should be changed to "lease".

(h) The Cambridge ordinance defines "family member" to include, in addition to those included under "immediate family" in 268B, a "sibling" of the reporting person. Is that appropriate?

(l) The fourth part of this definition includes "any employee of a municipal body whose salary exceeds that of any of the foregoing." While this appears to be intended to impose a limitation on employees covered (and should do so), it doesn't appear to do so because among "the foregoing" are "the executive or administrative head or heads, whether elected or appointed, compensated or uncompensated." Thus, as long as any of "the foregoing" are "uncompensated," any municipal employee has a salary which exceeds that of the uncompensated officials. This definition generally goes beyond the reporting persons covered by Chapter 268B, which again underscores the desirability of going the route of the home rule petition.

(o) In the second line the words "or business" should be inserted after the word "person".

Section 26-2. Administration.

(a) The words "of receipt of such request" should be added at the end of that section to make clear what the sixty day period begin to run.

Section 26-3. Statements of Interests.

(a) Should this requirement apply to a candidate where the apparent candidate does not in fact submit nomination papers and thus ceases to be a candidate? Note that Chapter 268B only requires filing by such a person in the event that he does file nomination papers or move forward to be a candidate on a sticker or write in basis but not if he is not a candidate at all.

Section 26-4.

Subsection (b) appears to be all that is left of this section. Is that correct?

Section 26-5. Enforcement.

These enforcement provisions are broad enough that they probably require use of a Home Rule petition. The ten-citizen provision is particularly troubling, as noted above in the Code of Conduct.

(b) Should not this also include a city "official" who is covered by the ordinance? If it includes elected officials, then the words "and the state election laws" should probably be added at the end.

(c) We have the same question about the \$500 fine which was raised re: the Code of Conduct ordinance. Again, a Home Rule petition seems indicated.

Zoning Ordinance.

While the proposed zoning amendment concerning disclosure of beneficial interest is unusual in a zoning ordinance, it does not seem actually inconsistent with any provision of the State Zoning Enabling Act, Chapter 40A, and is at least not inconsistent with the basic land use regulatory purpose of that chapter. Thus,

there appears to be no manifest conflict between the proposed amendment and applicable state law. However, since it appears advisable to proceed with Home Rule petition on the other two proposed ordinances, it may be advantageous to include this as part of the Home Rule petition package.

Here are specific comments:

Section \_\_-2. Definitions.

1. The definition of "Applicant" seems to be overly broad. The effect of such a broad definition, combined with the requirement in Section \_\_-4 that the "Applicant" must file the statement of all beneficial interests, would mean that every person with such an interest, as well as the "authorized agent" of any person with such a beneficial interest, must file the statement showing all the beneficial interests in a particular project. It seems to us that the purpose of the ordinance would be adequately served if the proponent corporation, partnership, individual or whatever of the project filed a statement showing all the beneficial interests without the need for every person having such an interest to file the statement, a statement which many of them would probably not have the knowledge to file. Furthermore, in the definition of the term "Applicant" the phrase "legal or equitable" interest is used rather than the basic term "beneficial" interest. For clarity and consistency, the words "legal or equitable" should be changed to "beneficial".

2. In the definition of "beneficial interest" it is not clear what the words "or discretionary" and intended to encompass. We also wonder whether it is necessary to use the words "direct or

indirect." Those words are rather vague and it would be preferable to define as precisely as possible just what interests are intended to be covered.

6. The definition of "zoning relief" appears to be broader than what is ordinarily meant by zoning, i.e., "demolition permit" or other relief that may be granted by the Cambridge Historic Commission is not ordinarily regarded as "zoning relief." However, for purposes of an ordinance, the council can define the term as it wishes if it sees legitimate policy reasons for doing so.

Section \_\_-3. In the fourth line from the top on page 3 the words "square feet" should be inserted after the 10,000 figure.

Section \_\_-4.

1. In the third line, it may be appropriate to change the words "shall grant" to "may grant". Zoning relief is generally discretionary and the word "may" is more consistent with that concept than the word "shall." See also, in connection with this provision, our comment above on the definition of the word "Applicant." On page 4, line 5, the term "firms and personal corporations" is used. Perhaps that should be a term that is defined in the ordinance. In the sentence beginning "The provisions of this section shall not apply to an owner" we suggest that the following revised language may be more appropriate:

"The provisions of this section shall not require disclosure of the name and address of any Person whose only Beneficial Interest consists of stock or any other form of ownership interest of a corporation, partnership or trust, of which is available for sale to the public on a listed securities exchange or on a regulated over the counter market, if such Person holds less than one

percent of the total stock or other ownership interest of such corporation, partnership, or trust."

Section \_\_-5. Do you wish to make such "Disclosure Statements" available to the public free of charge or do you wish to provide that the City can impose a reasonable charge for copies of such Disclosure Statements?

Section \_\_-6. The language of this section is very confusing. The language of this section should be carefully re-thought and re-drafted in terms of what is desired.

Section \_\_-7.

1. At the top of page 6 in the first line we suggest changing the word "zoning" to "this ordinance." In the second line the words "of such violation" can be deleted. The provision in this section about notification to any person who has previously notified the Commissioner of Inspectional Services of his or her desire to receive such notices seems a little unrealistic without a provision in the statute for informing all such persons of the right to receive such notices if they so advise the Commissioner. It may be desirable to include this in the ordinance. This section again is an example of the difficulty of defining "Applicant" to include all persons who have a beneficial interest in the project.

2. In the first line the word "Person" should be changed to "Applicant" since it is only an Applicant under Section \_\_-4 (1) who is obligated to file the disclosure statement. In paragraph 2, the word "willfully" in the second line should be moved from out of that line and placed before the word "false" in the third

line. That placement matches the wording in Chapter 268, Section 1A, on perjury to which this section refers. We question the second sentence and suggest that at least the first part of it be deleted. We don't think it is necessary or appropriate to suggest that the Commissioner of Inspectional Services cannot take appropriate action until after a court of competent jurisdiction has determined that the false statement on a material matter has been willfully filed. What is appropriate is for the Commissioner of Inspectional Services to make that initial determination, then take the measures to seek to remedy the matter and if those measures are not successful, to consider the other available remedies and then prosecute them as with any other zoning violation.

Finally, with respect to all three of these proposed new ordinances, we suggest that the city seek a review and comments on the ordinances by the State Ethics Commission, which is established as the state's expert body on conflict of interest legislation and enforcement. We think that it is fairly clear that in any event the Home Rule petition route should be utilized for the legislation on the Code of Conduct and financial disclosure ordinances. Thus, it would probably make sense to send all three proposed ordinance changes through the Home Rule petition route, although it may not be legally required for the change in the zoning ordinance.



SUMMARY OF COMMENTS  
PROPOSED AMENDMENTS  
CITY OF CAMBRIDGE  
May 16, 1990

General Comments

Mr. Verne W. Vance, Jr.  
Foley, Hoag & Eliot

Mr. Thomas Dwyer, Esq.

Others

Provision

The Home Rule petition route should be utilized to enact the Code of Conduct and the financial disclosure ordinances without conflicts with existing statutes. Although not legally required, a Home Rule petition makes sense for the zoning ordinance as well. The City should seek review and comments from the State Ethics Commission.

All three ordinances are constitutionally suspect.

Generally, these ordinances create disincentives to work in the public sector. They imply that public employees are corrupt when cases of fraud and corruption are rare. Public positions are already less desirable because of the amount of intrusion into personal lives and the lower salaries. Being forced to submit vital information for review by outsiders will adversely affect the motivation toward public service.

The following recommendations applying to all three ordinances were made

- to include higher officials with the Police and Fire Department, all commissions and boards, and even police officers, rent control employees and inspectional services employees;

Provision

Mr. Verne W. Vance, Jr.  
Foley, Hoag & Eliot

Mr. Thomas Dwyer, Esq.

Others

- to add the license commission where appropriate;
- to establish a municipal ethics board.

Various speakers disagreed on whether it is necessary to seek review from the State Ethics Board because a member of the Board has already seen proposals informally.

Code of Conduct

Mr. Verne W. Vance, Jr.

Foley, Hoag & Eliot

Mr. Thomas Dwyer, Esq.

Others

Provision

Generally, the Code of Conduct legitimately supplements the requirements of M.G.L.A. c. 268A, but where the ordinance is broader and stricter than the statute, the ordinance impermissibly omits a procedure by which an official may determine whether conduct is a violation. The Code of Conduct implicates no substantive constitutional problems.

Generally, the state conflict of interest statute regulates this subject matter comprehensively. The Code of Conduct is impermissibly inconsistent because unlike the statute, it does not provide a means to certify that employee's interest is not substantial as to affect his or her integrity.

Specifically, the following considerations were noted:

- §1 - unclear difference between "economic interest" and "financial interest" (h); "relative" and "family member" (s);
  - add "provided" after "services" in §1(d);
  - consider adding provision for over-the-counter stock and for ownership interests in exchange for services in §1(k);
  - definitions of "gift" (l) and "person" (q) differ from those used in the financial disclosure ordinance;
  - use of "veto" in §1(n) is inappropriate;
- §2 - not appropriate to make every employee a fiduciary;
- §3 - language is incoherent;
  - definition of "governmental decision or action"?
- §4 - define "anonymous" in (a) and "favor" in (b);
  - make the presumption in (b) rebuttable;
  - delete "city" from (b);
  - entire §4(c) may be superfluous;

Mr. Verne W. Vance, Jr.

- §4 - entire section is vague and overbroad and fails to provide clear guidance on what behavior is criminal;
  - it is vague to describe a crime in terms of "implicit understanding";

- §4 - change the presumption to "strong scrutiny";

Definitions

Fiduciary Duty §2

Improper Influence §3

Offering, Receiving, and Soliciting Gifts and Favors §4

Provision

Foley, Hoag & Eliot

Mr. Thomas Dwyer, Esq.

Others

- |    |  |   |  |  |  |
|----|--|---|--|--|--|
|    |  | - change "conducting business in" to "doing business with" (c);   |  | - the presumption is abhorrent to "due process";                           |  |
|    |  | - define "city service or regulatory transaction" in (c);   |  | - "economic interest" is vague and incapable of enforcement"               |  |
| 5  | <u>Solicitation or Receipt of Money for Advice or Assistance</u> | \$5 - add reference to minor child after "provided, however";   |  | \$5 - the clause starting with "provided, however" is vague and overbroad; |  |
| 7  | <u>Confidential Information</u>                                  | \$7 - define "confidential information";  |  |  |  |
| 8  | <u>Conflicts of Interest</u>                                     | \$8 - define "governmental decision" and clarify "material economic interest" (i.e. "financial interest?"); |  |  | \$8 - clause referring to "advisory boards" in (a) is vague;                             |
|    |  | - clarify "participation on advisory boards and commissions";   |  |  | - add provision barring tenants and landlords from the rent control and planning boards; |
|    |  | - determine number of votes needed to pass an action when one member must abstain;                          |  |  |  |
| 9  | <u>Representation of Other Persons</u>                           | \$9 - rephrase "elected official or employee";  |  |  | \$9 - add "spouse";  |
|    |  | - insert "other" before "person" in last line of (a);   |  |  |  |
|    |  | - insert "represent or" before "may" in first line of (b);  |  |  |  |
|    |  | - delete last sentence of (c) as superfluous and vague;   |  |  |  |
| 10 | <u>Post-employment Restrictions</u>                              | \$10 - insert "on behalf of the city" in (a) after "personally and substantially";                          |  |  | \$10- add "spouse";  |
|    |  | - change "of" to "or" in (a);   |  |  |  |
|    |  | - define "business transaction" in (b);   |  |  |  |
|    |  | - insert "former" before "officer or employee";   |  |  |  |
|    |  | - replace "the subject matter of the" with "such";  |  |  |  |
|    |  | - substitute "such transaction" for "a contract";   |  |  |  |
| 11 | <u>Financial Interest in City Business</u>                       | \$11 - add "employee" to 1st line;  |  |  |  |
|    |  | - rephrase "sale of any article";   |  |  |  |
| 12 | <u>Contract Inducements</u>                                      | \$12 - include "favor";   |  |  |  |
|    |  | - consider redrafting entire paragraph for clarity;   |  |  |  |

Mr. Verne W. Vance, Jr.

Foley, Hoag & Eliot

Mr. Thomas Dwyer, Esq.

Others

Provision

13 Employment of Relatives §13 - define "contract management authority";  
- rephrase last line of (b);

14 Favors by City  
Councillors

15 Penalties

§15 - insert "and state election laws" after  
"civil service law";  
- \$300 is the statutory limit for fines;  
- citizen enforcement is dubious.

§14- expand to include all  
employees;

§15- modify penalties to incorporate  
M.G.L.A. c. 268A provisions.

Statement of Interests

<u>Provision</u>	Mr. Verne W. Vance, Jr. <u>Foley, Hoag &amp; Eliot</u>	Mr. Thomas Dwyer, Esq.	<u>Others</u>
	<p>Generally, the financial disclosure ordinance may be inconsistent with M.G.L.A. c. 268A because the statute does not require financial disclosures from municipal officials and employees. If the General Court intended to free such persons of this duty, a Home Rule petition would still permit passage of the ordinance. Furthermore, a Home Rule petition may be necessary to augment the powers of the Cambridge Election Commission so that it may administer the files of non-elected officials and businesses.</p> <p>Some provisions of note are:</p>	<p>This provision deals with election activities and is therefore barred by Art. 89, §7 of the Constitution and M.G.L.A. ch. 55.</p>	
§26-1 <u>Definitions</u>	<p>§26-1(b) reconsider including governments and governmental agencies in the definition of "business" (not in c. 268A);</p> <p>(c) consider replacing "family member" with "immediate family" as in the statute; omit "an elected or appointed governmental official"</p> <p>(d) change "leasing" to "lease";</p> <p>(h) consider omitting a sibling from the definition of "family member";</p> <p>(l) rephrase "the foregoing" in (iv) in light of "uncompensated" in (ii);</p> <p>(o) insert "or business" after "person".</p>		
§26-2 <u>Administration</u>	<p>§26-2(a) add "of receipt of such request" at the end of this section.</p>		
§26-3 <u>Statements of Interests</u>	<p>§26-3(a) consider whether this requirement is necessary if the candidate drops out before submitting nomination papers</p>	<p>§26-3(d)(iii) - one cannot disclose all creditors doing business with the City because such</p>	<p>§26-3(a) add "spouse" after "candidate";</p> <p>(d)(iii) remove "provided,</p>
<p>(a) candidates</p> <p>(d) content of statement</p>			

Provision

Mr. Verne W. Vance, Jr.

Foley, Hoag & Eliot

Mr. Thomas Dwyer, Esq.

Others

(the statute does not require it);

information is not always  
available.

however" clause;  
(d)(viii) remove "provided,  
however" clause  
- add a section requiring a  
full disclosure of federal  
tax returns.

\$26-4 Powers and Duties  
of the Commission

\$26-4(b) is this the only remaining section?

\$26-5 Enforcement

\$26-5 these provisions are broad enough to  
require a Home Rule petition;  
(b) consider including "official" and  
adding "and the state election laws:  
to the end;  
(c) the statutory limit for fines is \$300.

Zoning Ordinance

Mr. Verne W. Vance, Jr.

Foley, Hoag & Eliot

Mr. Thomas Dwyer, Esq.

Others

Provision

This amendment is unusual but does not seem inconsistent with the Zoning Enabling Act. It is probably advisable to include it as part of the Home Rule petition

Disclosure of all parties involved in a rezoning project is an unconstitutional intrusion into private relationships because the goal of the statute is the regulation of these relationships and not legitimate zoning. It is questionable whether the amendment is a proper exercise of zoning power. The amendment may constitute an unlawful taking.

-2 Definitions

§\_\_-2: Applicant - definition overly broad in light of §\_\_-4; restrict definition to primary proponent of the project; replace "legal or equitable" with "beneficial";

Beneficial

Interest - "discretionary" and "direct or indirect" are vague;

Zoning

Relief - consider reason for defining this term more broadly than usual;

Applicability

§\_\_-3: insert "square feet" after "10,000";

Disclosure Statements

§\_\_-4: change "shall grant" to "may grant"; possibly define "firms and personal corporations"; rephrase last sentence of subsection 2, using recommended language;

Public Records

§\_\_-5: consider imposing reasonable charge for copy of disclosure statement;

Updating Disclosure

§\_\_-6: language is confusing;

Statements

Penalties

§\_\_-7.1. change "zoning" in first line to "this ordinance"; delete "of such violation"; provision concerning notification from Commissioner of Inspectional Services seems unrealistic; note definition of "Applicant";  
.2. change "Person" to "Applicant"; move "willfully" so that it proceeds "false"; reconsider second sentence.

July 10, 1990

Amendment to Proposed Ordinance:  
Code of Conduct for City Officials

Explanation

1. Section Numbers have been revised to the City's decimal system.
2. Section 2.66.010(d), line 4: Add "provided" after "services". FH&E Comment
3. Section 2.66.010(k), line 10: Add after "member", "or purchased by the contribution of services, unrelated to duties with the City, which services have been fairly valued" and line 14 delete from "such" to "amended" and substitute the following: "if the corporation has more than 100 stock holders" FH&E Comment
4. Section 2.66.010(l): delete and substitute the following: "Gift" means a delivery of goods, payment, entertainment, subscription, advance services or anything of value, unless consideration of equal or greater value is received. If items are furnished or services are rendered for less than the fair market value, the difference between the fair market value and the price shall be treated as a gift. "Gift" shall not include a political contribution reported as required by law, a commercially reasonable loan made in the ordinary course of business, anything of value received by inheritance or a gift received from a family member or from a relative within the third degree of consanguinity of the reporting person or of the reporting person's spouse or from the spouse of any such relative. FH&E Comment
5. Section 2.66.101(i) reworded to exempt certain volunteers.
6. Section 2.66.010(n), line 3: Change "veto" to "disapproval". FH&E Comment
7. Section 2.66.010(q): delete and substitute the following: "Person means a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons." FH&E Comment
8. Add Section 2.66.010(t): "Favor" means an act, omission, arrangement or other matter which would, in the opinion of a reasonable person, create a moral obligation on the part of the person benefited." FH&E Comment

9. Section 2.66.030, line 4: Add "to influence or effect" before "any City ...".and modified to make clear city council can vote on own pay raises. FH&E Comment
10. Section 2.66.040, page 6, line 3: Add "rebuttable" before "presumption" and line 4, delete "city". FH&E Comment
11. Section 2.66.070, lines 8 and 9: Replace with the following:  
 "that is not made available to the general public on request or could not be obtained by obtaining documents available pursuant to the Massachusetts Public Records Act, as amended." FH&E Comment
12. Section 2.66.080(a), line 4: Change "material economic" to "financial" and line 7, add "by an official or employee having any such interest" before "where". FH&E Comment
13. Section 2.66.080(b), line 2: Change "economic" to "financial".  
 Participation in discussion or debate has been precluded as well as counting for a quorum. FH&E Comment  
 Consistency with state law
14. Section 2.66.100(a) and (b) language clarified.
15. Section 2.66.110(a), line 3: Change "of" to "or", and line 7 add: "on behalf of the City" after "employment". FH&E Comment
16. Section 2.66.090, Substitute "employee or elected official" for "elected official or employee" throughout; line 11 of (a): add "other" before "person"; line 1 of (b): add "represent or" before "have". FH&E Comment
17. Section 2.66.110(b), line 6: Add "former" before "official"; line 7 and 8: substitute "such" for "the subject matter ... subject."; line 10: substitute "such transaction" for "a contract"; line 11: substitute "such" for "that contract"; and Section - 1.8(b) line 8: Add "such member shall not be counted for the purpose of determining a majority" after "quorum." FH&E Comment
18. Section 2.66.110, line 1: Add "employee or" before "elected"; line 2: substitute "his or her spouse" for "their spouses"; line 6: substitute "to the City of any property or service" for "any article". FH&E Comment

19. Section 2.66.120, line 1: Add "favor" before "gift"; line 3: Add "City" before "contractor". FH&E Comment
20. Section 2.66.130(b), line 5: Add at the end: "with respect to any City contract with any person employing, or having contracts with any relative of such official or employee." FH&E Comment
21. Section \_\_\_ - 1.15, \_\_\_ - 1.16 and \_\_\_ - 1.17 renumber to 2.66.160, 2.66.170 and 2.66.180 and add the following new section 2.66.150: (a) Any city employee, official or board or commission member shall be entitled to the opinion of the city solicitor upon any question arising under this ordinance relating to the duties, responsibilities and interests of such person. All requests for such opinions by a subordinate municipal employee shall be made in confidence directly to the city manager who shall in turn request in confidence such opinion of the city solicitor on behalf of such person, and all constitutional officers, members of boards or commissions and chief officers or heads of municipal agencies may make direct confidential requests for such opinions on their own account. The city solicitor shall file such opinion in writing with the city clerk and such opinion shall be a matter of public record; however, no opinion will be rendered by the city solicitor except upon the submission of detailed existing facts which raise a question of actual or prospective violation of any provision of this ordinance.
- (b) Any person who acts in reliance on an opinion of the city solicitor shall be exempt from the penalties provided herein if they have made a good faith disclosure of all material facts related to the opinion.
22. Section 2.66.160, in (a), line 4: Add "and state election laws" after "law; in (b): change "\$500" to "\$300". FH&E Comment

July 11, 1990

Be It ordained by the City Council of the City of Cambridge, as follows:

The Code of the City of Cambridge is hereby amended by adding the new chapter:

CHAPTER 2.66  
CODE OF CONDUCT FOR CITY OFFICIALS

The Municipal Code of Cambridge is hereby amended by adding a new Chapter 2.66 entitled "Governmental Ethics" as follows:

2.66.010 Definitions. Whenever used in this chapter, the following terms shall have the following meanings:

- (a) "Administrative action" means a decision on, or proposal, consideration, enactment or making of any rule, regulation, or other official non-ministerial action or non-action by any executive department, or by any official or employee of an executive department, on any matter.
- (b) "Agency" means the City Council, any committee or other subdivision thereof, any City department or other administrative unit, commission, board, or other division of the government of the City.
- (c) "City" means the City of Cambridge.
- (d) "City contractor" means any person (including his agents or employees acting within the scope of their employment) who is paid from the City treasury or pursuant to City Ordinance, for goods or services provided to any City agency, regardless of the nature of the relationship of such individual to the City for purposes other than this chapter.

(e) "Compensation" means money, anything of value or other pecuniary benefit received or to be received in return for, or as reimbursement for, goods or services rendered or to be rendered.

(f) "Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

(g) "Doing business" means any one or any combination of sales, purchases, leases or contracts to, from, or with the City or any City agency in an amount in excess of \$5,000 in any twelve consecutive months.

(h) "Economic interest" means any interest valued or capable of valuation in monetary terms; provided, that "economic interest" is subject to the same exclusions as "financial interest."

(i) "Employee" means an individual (1) compensated by the City of Cambridge or any City agency, whether part-time or full-time, whether as common law employee or independent contractor and whether appointed or elected or (2) serving on any board or commission of the City, whether or not compensated.

(j) "Expenditure" means a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

(k) "Financial interest" means (i) any interest with a cost or present value (determined using a discount rate of 8% compounded annually) in excess of \$5,000; or (ii) any interest representing more than 1% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, business, trust, or any legal entity organized for profit; provided, however, financial interest shall not include (a) any ownership through purchase at fair market value, gift by a family member or purchased by the contribution of services, unrelated to duties with the City, which services have been fairly valued or inheritance of less than 1% (by value or voting power) of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if the corporation has more than 100 stock holders; (b) the authorized compensation paid to an official or employee for his office or employment; (c) any economic benefit provided equally to all residents of the City.

(1) "Gift" means a delivery of goods, payment, entertainment, subscription, advance services or anything of value, unless consideration of equal or greater value is received. If items are furnished or services are rendered for less than the fair market value, the difference between the fair market value and the price shall be treated as a gift. "Gift" shall not include a political contribution

reported as required by law, a commercially reasonable loan made in the ordinary course of business, anything of value received by inheritance or a gift received from a family member or from a relative within the third degree of consanguinity of the reporting person or of the reporting person's spouse or from the spouse of any such relative.

(m) "Legislation" means ordinances, resolutions, amendments, nominations, appointments, reports and any other matters pending or proposed in the City Council or a committee or other subdivision thereof, including any other matter which may be the subject of Council action.

(n) "Legislative action" means the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, disapproval or other official action or non-action on any ordinance, resolution, motion, order, appointment, application or other matter pending or proposed in the City Council or any committee or subcommittee thereof.

(o) "Lobbyist" means any individual (i) who for compensation or on behalf of any person other than such individual undertakes to influence any legislative or administrative action; or (ii) any part of whose regular duties as an employee of another includes undertaking to influence any legislative or administrative action.

(p) "Official" means any person holding any elected office of the City or any appointed, non-employee member of any City agency.

(q) "Person" means a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons.

(r) "Professional services" means services in any occupation requiring advanced or specialized education and training, including without limitation law, accounting, insurance, real estate, engineering, medicine, architecture, dentistry, banking, finance, public relations, education or consulting.

(s) "Relative" means a person who is related to an official or employee as spouse, as a descendent of any grandparent of such official or employee whether by the whole- or half-blood or by adoption, or as spouse of any of the foregoing and any person who resides with an employee or an official.

(t) "Favor" means an act, omission, arrangement or other matter which would, in the opinion of a reasonable person, create a moral obligation on the part of the person benefited.

2.66.020 Fiduciary duty. Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

2.66.030 Improper influence. No official or employee shall make, participate in making or in any way attempt to use such official's or such employee's position, influence or power, to influence or effect any City governmental decision or action in which such official or employee knows

or has reason to know that such official or employee has any economic interest distinguishable from its effect on the public generally or, with respect to the City Council, any economic interest distinguishable from its effect on all councillors generally.

2.66.040 Offering, receiving and soliciting gifts, favors.

(a) No person shall give to any official or employee, or to the spouse or child of any of them, and none of them shall solicit or accept, any anonymous gift.

(b) No person shall give or offer to give to any official, employee, or City contractor, or to the spouse or child of any of them, and none of them shall accept, anything of value, including, but not limited to, a gift, a loan, a favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any official, employee or City contractor concerning the business of the City would be directly or indirectly influenced thereby. There shall be a rebuttable presumption that any such official who, having received such a gift, loan, favor or promise and who then acts or fails to act so as to benefit the donor, lender or promisor, has done so on the basis of such an understanding.

(c) No person who has an economic interest in a business entity or other enterprise conducting business in the City, a City service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect

such business, service or transaction, or to the sibling, spouse or child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service; provided however, nothing herein shall be construed to prohibit such person from accepting gifts from relatives.

(d) Nothing in this section shall prohibit any person from giving or receiving: (i) an award, with a monetary value of less than \$100, publicly presented in recognition of public service; (ii) commercially reasonable loans made in the ordinary course of the lender's business; (iii) political contributions, provided they are reported to the extent required by law; (iv) reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public event.

(e) Any gift given in violation of the provisions of this section shall be turned over to the Treasurer, who shall add the gift to the inventory of City property.

(f) Nothing in this section shall prohibit any official or employee, or any spouse or child of such official or employee, from accepting a gift on the City's behalf, provided, however, the person accepting the gift shall promptly report receipt of the gift and deliver it to the Treasurer, who shall add it to the inventory of City property.

2.66.050 Solicitation or receipt of money for advice or assistance. No official or employee, city contractor, or the spouse or minor child of any of them, shall solicit or accept any money or other thing of value including, but not limited to gifts, loans, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee or the spouse of an official or employee from accepting compensation for services wholly unrelated to the official's or employee's knowledge, discretion or authority concerning their City duties and responsibilities and rendered as part of the official's or employee's non-City employment, occupation or profession.

2.66.060 City-owned property. No official, employee or city contractor shall engage in or permit the unauthorized use of City-owned property by any person.

2.66.070 Use or disclosure of confidential information. No current or former official or employee shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that is not made available to the general public on request

or could not be obtained by obtaining documents available pursuant to the Massachusetts Public Records Act, as amended.

2.66.080 Conflicts of interest.

(a) No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which such official or employee has any financial interest distinguishable from that of the general public; provided however, that this section shall not prohibit the membership and participation on advisory boards and commissions by an official or employee having any such interest where persons with such interests are intended to be represented.

(b) Any member of the City Council who has any financial interest distinguishable from that of the general public or all councilors in any matter pending before the City Council or any Council Committee shall publicly disclose the nature and extent of such interest on the record of proceedings of the City Council. Such member shall abstain from voting on the matter, from discussion or debate on the matter or from any other participation in consideration of the matter and shall not be counted present for purposes of a quorum. Such member shall not be counted for the purpose of determining a majority. The obligation to report a potential conflict of interest under this subsection arises as soon as the member of the City Council knows or had reason to know of such potential conflict.

2.66.090 Representation of other persons.

(a) No employee or elected official may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of the employee's employment, or any elected official from appearing without compensation before any city agency on behalf of the constituents in the course of the elected official's duties as an elected official or any other person from representing such person.

(b) No employee or elected official may represent or have an economic interest in the representation of, any person, in any judicial or administrative proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

(c) No appointed official may represent or have any economic interest in the representation of any person in the circumstances described in subsection (a) or (b) unless the matter is wholly unrelated to the official's City duties and responsibilities. Nor shall any such official participate in any matter on behalf of the City, where there would be any appearance of a conflict of interest.

2.66.100 Post-employment restrictions.

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during the official's or employee's term of office or employment on behalf of the City; provided, however, that any person may represent himself, his spouse or his minor children.

(b) No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies; provided however, if the former official or employee participated personally and substantially in such matter during the term of office or employment of the official or employee; or exercised contract management authority with respect to such transaction this prohibition shall be permanent as to such transaction or matter.

2.66.110 Interest in City business. No elected official or his or her spouse shall have a financial interest, directly or indirectly, in the name of the official or employee or in the name of any other person in any contract, work or business of the City or in the sale to the City of any property or service whenever the expense, price or

consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance. Compensation for property taken pursuant to the City's eminent domain power shall not constitute a financial interest within the meaning of this section. Unless sold pursuant to a process of competitive bidding following public notice, no elected official or employee shall have a financial interest in the purchase of any property that (i) belongs to the City or a City Agency, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City. No employee or appointed official nor their spouse shall engage in a transaction described in this section unless the matter is wholly unrelated to the employee or official's City duties and responsibilities.

2.66.120 Contract inducements. No payment, favor, gift or offer of employment or future employment shall be made in connection with any City contract, by or on behalf of a City contractor to a City official or employee, a subcontractor to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. This prohibition shall be set forth in every City contract and solicitation therefor.

2.66.130 Employment of relatives.

(a) No official or employee shall employ or advocate for employment, in any City agency in which said official

or employee serves or over which he exercises authority, supervision, or control, any person (i) who is a relative of said official or employee, or (ii) in exchange for or in consideration of the employment of any of said official's or employee's relatives by any other official or employee.

(b) No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority with respect to any City contract with any person employing, or having contracts with any relative of such official or employee.

(c) No official or employee shall use or permit the use of his position to assist any relative in securing employment or contracts with persons over whom the employee or official exercises contract management authority. The employment of or contracting with a relative of such a City official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a City contract shall be evidence that said employment or contract was obtained in violation of this chapter.

#### 2.66.140 Favors By City Councillors

City Councillors shall not make loans, gifts, offers of employment or future employment or of business or investment opportunities to the city manager, to assistant city managers, to heads of city departments or agencies, to

the city solicitor and assistant solicitors or to members of boards or commissions involved in the granting of variances, permits, licenses or other such discretionary or adjudicatory functions.

2.66.150 Advisory Opinions. (a) Any city employee, official or board or commission member shall be entitled to the opinion of the city solicitor upon any question arising under this ordinance relating to the duties, responsibilities and interests of such person. All requests for such opinions by a subordinate municipal employee shall be made in confidence directly to the city manager who shall in turn request in confidence such opinion of the city solicitor on behalf of such person, and all constitutional officers, members of boards or commissions and chief officers or heads of municipal agencies may make direct confidential requests for such opinions on their own account. The city solicitor shall file such opinion in writing with the city clerk and such opinion shall be a matter of public record; however, no opinion will be rendered by the city solicitor except upon the submission of detailed existing facts which raise a question of actual or prospective violation of any provision of this ordinance.

(b) Any person who acts in reliance on an opinion of the city solicitor shall be exempt from the penalties provided herein if they have made a good faith disclosure of all material facts related to the opinion.

#### 2.66.160 Penalties

(a) Any employee or City official who violates this code shall be subject to appropriate discipline, including suspension, termination or censure, consistent with the rules and requirements of the state civil service law and state election laws, as well as civil or criminal prosecution under any other applicable state laws.

(b) A knowing violation of this code shall constitute a misdemeanor. Upon conviction, the Court shall impose a fine of not more than \$300 per offense.

(c) All City contracts shall include therein a clause for termination in the event of a violation of this Chapter in connection with the awarding, administration or performance of the contract.

(d) Any permit, license, ruling, determination or other official action taken in violation of this Code shall be void; provided however, that in the event that voiding would substantially damage the City or innocent third parties then the City Council, by vote of at least six of its members, may preserve the permit, license, ruling, determination or other action.

(e) Ten registered voters shall have standing to enforce the provisions of this ordinance by (i) seeking the issuance of a criminal complaint; and/or (ii) instituting a civil action on behalf of the City to recover damages on its behalf or to implement any other remedy provided for in this ordinance.

2.66.170 Other remedies. Nothing in this chapter shall preclude the City or any City Agency from maintaining an action for an accounting for any economic benefit received by any person in violation of this chapter or other law, or to recover damages for violation of this chapter.

2.66.180 Conflict with other laws. In the event of any conflict or inconsistency of this ordinance with any other state law, the provision of broadest or most strict coverage shall control.

FSBB126

July 11, 1990

Be It ordained by the City Council of the City of Cambridge, as follows:

The Code of the City of Cambridge is hereby amended by adding the new chapter:

CHAPTER 2.66  
CODE OF CONDUCT FOR CITY OFFICIALS

The Municipal Code of Cambridge is hereby amended by adding a new Chapter 2.66 entitled "Governmental Ethics" as follows:

2.66.010 Definitions. Whenever used in this chapter, the following terms shall have the following meanings:

(a) "Administrative action" means a decision on, or proposal, consideration, enactment or making of any rule, regulation, or other official non-ministerial action or non-action by any executive department, or by any official or employee of an executive department, on any matter.

(b) "Agency" means the City Council, any committee or other subdivision thereof, any City department or other administrative unit, commission, board, or other division of the government of the City.

(c) "City" means the City of Cambridge.

(d) "City contractor" means any person (including his agents or employees acting within the scope of their employment) who is paid from the City treasury or pursuant to City Ordinance, for goods or services provided to any City agency, regardless of the nature of the relationship of such individual to the City for purposes other than this chapter.

(e) "Compensation" means money, anything of value or other pecuniary benefit received or to be received in return for, or as reimbursement for, goods or services rendered or to be rendered.

(f) "Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

(g) "Doing business" means any one or any combination of sales, purchases, leases or contracts to, from, or with the City or any City agency in an amount in excess of \$5,000 in any twelve consecutive months.

(h) "Economic interest" means any interest valued or capable of valuation in monetary terms; provided, that "economic interest" is subject to the same exclusions as "financial interest."

(i) "Employee" means an individual (1) compensated by the City of Cambridge or any City agency, whether part-time or full-time, whether as common law employee or independent contractor and whether appointed or elected or (2) serving on any board or commission of the City, whether or not compensated.

(j) "Expenditure" means a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

(k) "Financial interest" means (i) any interest with a cost or present value (determined using a discount rate of 8% compounded annually) in excess of \$5,000; or (ii) any interest representing more than 1% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, business, trust, or any legal entity organized for profit; provided, however, financial interest shall not include (a) any ownership through purchase at fair market value, gift by a family member or purchased by the contribution of services, unrelated to duties with the City, which services have been fairly valued or inheritance of less than 1% (by value or voting power) of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if the corporation has more than 100 stock holders; (b) the authorized compensation paid to an official or employee for his office or employment; (c) any economic benefit provided equally to all residents of the City.

(l) "Gift" means a delivery of goods, payment, entertainment, subscription, advance services or anything of value, unless consideration of equal or greater value is received. If items are furnished or services are rendered for less than the fair market value, the difference between the fair market value and the price shall be treated as a gift. "Gift" shall not include a political contribution

reported as required by law, a commercially reasonable loan made in the ordinary course of business, anything of value received by inheritance or a gift received from a family member or from a relative within the third degree of consanguinity of the reporting person or of the reporting person's spouse or from the spouse of any such relative.

(m) "Legislation" means ordinances, resolutions, amendments, nominations, appointments, reports and any other matters pending or proposed in the City Council or a committee or other subdivision thereof, including any other matter which may be the subject of Council action.

(n) "Legislative action" means the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, disapproval or other official action or non-action on any ordinance, resolution, motion, order, appointment, application or other matter pending or proposed in the City Council or any committee or subcommittee thereof.

(o) "Lobbyist" means any individual (i) who for compensation or on behalf of any person other than such individual undertakes to influence any legislative or administrative action; or (ii) any part of whose regular duties as an employee of another includes undertaking to influence any legislative or administrative action.

(p) "Official" means any person holding any elected office of the City or any appointed, non-employee member of any City agency.

(q) "Person" means a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons.

(r) "Professional services" means services in any occupation requiring advanced or specialized education and training, including without limitation law, accounting, insurance, real estate, engineering, medicine, architecture, dentistry, banking, finance, public relations, education or consulting.

(s) "Relative" means a person who is related to an official or employee as spouse, as a descendent of any grandparent of such official or employee whether by the whole- or half-blood or by adoption, or as spouse of any of the foregoing and any person who resides with an employee or an official.

(t) "Favor" means an act, omission, arrangement or other matter which would, in the opinion of a reasonable person, create a moral obligation on the part of the person benefited.

2.66.020 Fiduciary duty. Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

2.66.030 Improper influence. No official or employee shall make, participate in making or in any way attempt to use such official's or such employee's position, influence or power, to influence or effect any City governmental decision or action in which such official or employee knows

or has reason to know that such official or employee has any economic interest distinguishable from its effect on the public generally or, with respect to the City Council, any economic interest distinguishable from its effect on all councillors generally.

2.66.040 Offering, receiving and soliciting gifts, favors.

(a) No person shall give to any official or employee, or to the spouse or child of any of them, and none of them shall solicit or accept, any anonymous gift.

(b) No person shall give or offer to give to any official, employee, or City contractor, or to the spouse or child of any of them, and none of them shall accept, anything of value, including, but not limited to, a gift, a loan, a favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any official, employee or City contractor concerning the business of the City would be directly or indirectly influenced thereby. There shall be a rebuttable presumption that any such official who, having received such a gift, loan, favor or promise and who then acts or fails to act so as to benefit the donor, lender or promisor, has done so on the basis of such an understanding.

(c) No person who has an economic interest in a business entity or other enterprise conducting business in the City, a City service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect

such business, service or transaction, or to the sibling, spouse or child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service; provided however, nothing herein shall be construed to prohibit such person from accepting gifts from relatives.

(d) Nothing in this section shall prohibit any person from giving or receiving: (i) an award, with a monetary value of less than \$100, publicly presented in recognition of public service; (ii) commercially reasonable loans made in the ordinary course of the lender's business; (iii) political contributions, provided they are reported to the extent required by law; (iv) reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public event.

(e) Any gift given in violation of the provisions of this section shall be turned over to the Treasurer, who shall add the gift to the inventory of City property.

(f) Nothing in this section shall prohibit any official or employee, or any spouse or child of such official or employee, from accepting a gift on the City's behalf, provided, however, the person accepting the gift shall promptly report receipt of the gift and deliver it to the Treasurer, who shall add it to the inventory of City property.

2.66.050 Solicitation or receipt of money for advice or assistance. No official or employee, city contractor, or the spouse or minor child of any of them, shall solicit or accept any money or other thing of value including, but not limited to gifts, loans, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee or the spouse of an official or employee from accepting compensation for services wholly unrelated to the official's or employee's knowledge, discretion or authority concerning their City duties and responsibilities and rendered as part of the official's or employee's non-City employment, occupation or profession.

2.66.060 City-owned property. No official, employee or city contractor shall engage in or permit the unauthorized use of City-owned property by any person.

2.66.070 Use or disclosure of confidential information. No current or former official or employee shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that is not made available to the general public on request

or could not be obtained by obtaining documents available pursuant to the Massachusetts Public Records Act, as amended.

2.66.080 Conflicts of interest.

(a) No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which such official or employee has any financial interest distinguishable from that of the general public; provided however, that this section shall not prohibit the membership and participation on advisory boards and commissions by an official or employee having any such interest where persons with such interests are intended to be represented.

(b) Any member of the City Council who has any financial interest distinguishable from that of the general public or all councilors in any matter pending before the City Council or any Council Committee shall publicly disclose the nature and extent of such interest on the record of proceedings of the City Council. Such member shall abstain from voting on the matter, from discussion or debate on the matter or from any other participation in consideration of the matter and shall not be counted present for purposes of a quorum. Such member shall not be counted for the purpose of determining a majority. The obligation to report a potential conflict of interest under this subsection arises as soon as the member of the City Council knows or had reason to know of such potential conflict.

2.66.090 Representation of other persons.

(a) No employee or elected official may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of the employee's employment, or any elected official from appearing without compensation before any city agency on behalf of the constituents in the course of the elected official's duties as an elected official or any other person from representing such person.

(b) No employee or elected official may represent or have an economic interest in the representation of, any person, in any judicial or administrative proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

(c) No appointed official may represent or have any economic interest in the representation of any person in the circumstances described in subsection (a) or (b) unless the matter is wholly unrelated to the official's City duties and responsibilities. Nor shall any such official participate in any matter on behalf of the City, where there would be any appearance of a conflict of interest.

2.66.100 Post-employment restrictions.

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during the official's or employee's term of office or employment on behalf of the City; provided, however, that any person may represent himself, his spouse or his minor children.

(b) No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies; provided however, if the former official or employee participated personally and substantially in such matter during the term of office or employment of the official or employee; or exercised contract management authority with respect to such transaction this prohibition shall be permanent as to such transaction or matter.

2.66.110 Interest in City business. No elected official or his or her spouse shall have a financial interest, directly or indirectly, in the name of the official or employee or in the name of any other person in any contract, work or business of the City or in the sale to the City of any property or service whenever the expense, price or

consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance. Compensation for property taken pursuant to the City's eminent domain power shall not constitute a financial interest within the meaning of this section. Unless sold pursuant to a process of competitive bidding following public notice, no elected official or employee shall have a financial interest in the purchase of any property that (i) belongs to the City or a City Agency, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City. No employee or appointed official nor their spouse shall engage in a transaction described in this section unless the matter is wholly unrelated to the employee or official's City duties and responsibilities.

2.66.120 Contract inducements. No payment, favor, gift or offer of employment or future employment shall be made in connection with any City contract, by or on behalf of a City contractor to a City official or employee, a subcontractor to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. This prohibition shall be set forth in every City contract and solicitation therefor.

2.66.130 Employment of relatives.

(a) No official or employee shall employ or advocate for employment, in any City agency in which said official

or employee serves or over which he exercises authority, supervision, or control, any person (i) who is a relative of said official or employee, or (ii) in exchange for or in consideration of the employment of any of said official's or employee's relatives by any other official or employee.

(b) No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority with respect to any City contract with any person employing, or having contracts with any relative of such official or employee.

(c) No official or employee shall use or permit the use of his position to assist any relative in securing employment or contracts with persons over whom the employee or official exercises contract management authority. The employment of or contracting with a relative of such a City official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a City contract shall be evidence that said employment or contract was obtained in violation of this chapter.

#### 2.66.140 Favors By City Councillors

City Councillors shall not make loans, gifts, offers of employment or future employment or of business or investment opportunities to the city manager, to assistant city managers, to heads of city departments or agencies, to

the city solicitor and assistant solicitors or to members of boards or commissions involved in the granting of variances, permits, licenses or other such discretionary or adjudicatory functions.

2.66.150 Advisory Opinions. (a) Any city employee, official or board or commission member shall be entitled to the opinion of the city solicitor upon any question arising under this ordinance relating to the duties, responsibilities and interests of such person. All requests for such opinions by a subordinate municipal employee shall be made in confidence directly to the city manager who shall in turn request in confidence such opinion of the city solicitor on behalf of such person, and all constitutional officers, members of boards or commissions and chief officers or heads of municipal agencies may make direct confidential requests for such opinions on their own account. The city solicitor shall file such opinion in writing with the city clerk and such opinion shall be a matter of public record; however, no opinion will be rendered by the city solicitor except upon the submission of detailed existing facts which raise a question of actual or prospective violation of any provision of this ordinance.

(b) Any person who acts in reliance on an opinion of the city solicitor shall be exempt from the penalties provided herein if they have made a good faith disclosure of all material facts related to the opinion.

2.66.160 Penalties

(a) Any employee or City official who violates this code shall be subject to appropriate discipline, including suspension, termination or censure, consistent with the rules and requirements of the state civil service law and state election laws, as well as civil or criminal prosecution under any other applicable state laws.

(b) A knowing violation of this code shall constitute a misdemeanor. Upon conviction, the Court shall impose a fine of not more than \$300 per offense.

(c) All City contracts shall include therein a clause for termination in the event of a violation of this Chapter in connection with the awarding, administration or performance of the contract.

(d) Any permit, license, ruling, determination or other official action taken in violation of this Code shall be void; provided however, that in the event that voiding would substantially damage the City or innocent third parties then the City Council, by vote of at least six of its members, may preserve the permit, license, ruling, determination or other action.

(e) Ten registered voters shall have standing to enforce the provisions of this ordinance by (i) seeking the issuance of a criminal complaint; and/or (ii) instituting a civil action on behalf of the City to recover damages on its behalf or to implement any other remedy provided for in this ordinance.

2.66.170 Other remedies. Nothing in this chapter shall preclude the City or any City Agency from maintaining an action for an accounting for any economic benefit received by any person in violation of this chapter or other law, or to recover damages for violation of this chapter.

2.66.180 Conflict with other laws. In the event of any conflict or inconsistency of this ordinance with any other state law, the provision of broadest or most strict coverage shall control.

FSBB126

# Los Angeles Council Grapples With an Ethics Bill

By ROBERT REINHOLD

Special to The New York Times

LOS ANGELES, Feb. 6 — Some called it farsighted and others called it naive when a special Los Angeles commission proposed the "toughest set of ethics laws in the country" two and a half months ago.

In either case, the City Council has, all but gutted the plan, setting the stage for a political battle that could reshape the government of the nation's second-largest city.

Unless the chairman of the Council's ethics committee, Councilman Michael Woo of Hollywood, brings off a compromise, citizens' groups say they will try to override the Council by taking the ethics proposals directly to the voters in November. The Council decided today to re-examine the proposal next Tuesday.

Last November, a commission appointed by Mayor Tom Bradley, who is under investigation for alleged conflict of interest over outside income and other ethical lapses, offered 30 recommendations to restore integrity to the city's government, including public financing of city elections, creating a special, independent commission on ethics, and an almost total ban on honorariums and other gifts to top officials.

Last month, in an atmosphere of re-

sentment and anger, the 15-member Council shot holes in a compromise between Mr. Woo and Geoffrey Cowan, a lawyer who headed the special commission.

The Council's president, John Ferraro, complained that "we are all tarred with being crooks" because of the Mayor's problems. Others insisted that government is cleaner in Los Angeles than in New York or Chicago, or, as Councilman Hal Bernson put it, "We are not criminals."

The Council passed four dozen amendments to the Ethics Act, rejecting public financing of city campaigns, watering down prohibitions on gifts and honorariums, deleting money for the new ethics watchdog commission and limiting the circumstances under which a special prosecutor for ethical lapses could be appointed. But members did vote to place on the June ballot an amendment to the City Charter to raise their salaries by 40 percent; it was tied to a prohibition on outside work and honorariums.

"This demonstrates how difficult it is for people who are to be governed by rules of ethics and campaign-finance reform to adopt tough rules for themselves," said Mr. Cowan, who is a

leader of Common Cause, the public affairs lobby. "The level of resentment about this process is unfortunate."

Mr. Cowan said a coalition of groups including Common Cause and the League of Women Voters had the money and organization for a campaign for a November referendum.

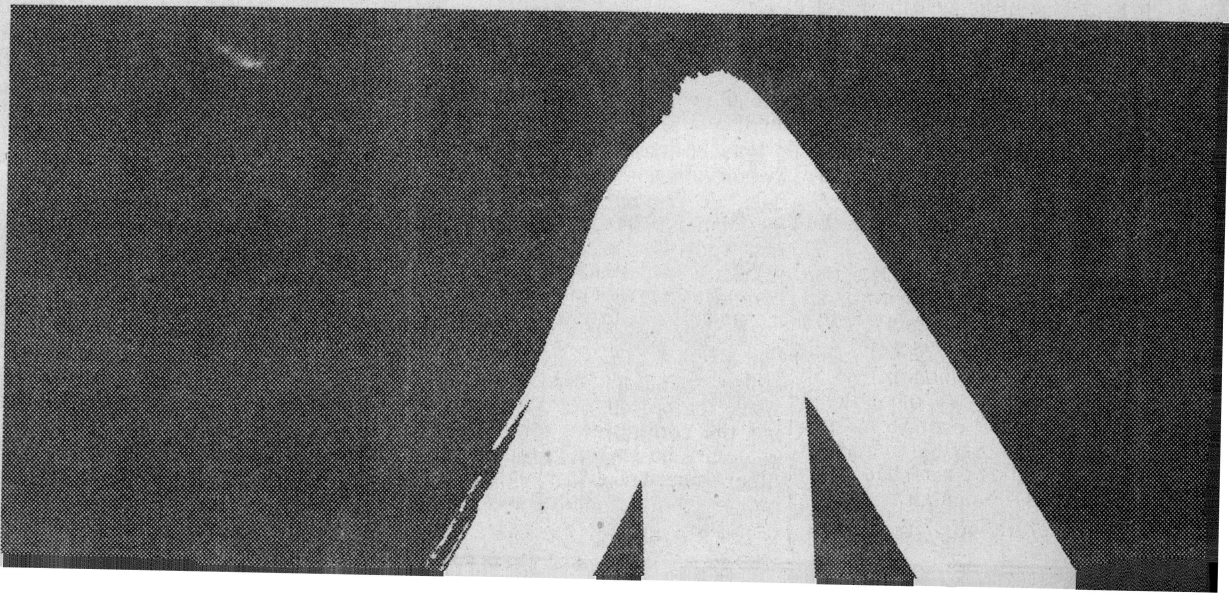
The main issue is public financing of election campaigns. Proponents say it could reduce politicians' dependence on developers and others who do business with the city. Seattle, in 1978, was the first big city to finance election campaigns, followed by Sacramento County, Calif.; Tucson, Ariz., and most recently New York City, where each candidate in the mayoral election is entitled to up to \$3.5 million in matching funds. Twenty-five states have adopted public financing of campaigns, mostly for gubernatorial races.

But the practice is not entirely welcome here. It is opposed by, among others, Joan Milke Flores, a Council member who says the taxpayers should not have to pay for candidates whose beliefs they reject. She also says a charter amendment passed in 1985, limiting any individual's campaign contributions to \$125 a year, should have a chance to work.

only go in one

TIMES

2/7/98



DRAFT 1/29/90

Be it ordained by the City Council of the City of Cambridge, as follows:

The Code of the City of Cambridge is hereby amended by adding the following chapter:

CHAPTER 26

STATEMENTS OF INTERESTS BY CERTAIN CITY OFFICIALS  
AND PERSONS CONDUCTING BUSINESS WITH THE CITY

Section 26-1. Definitions. As used in this chapter, unless the context requires otherwise.

(a) "amount" means a category value, rather than an exact dollar figure, as follows: greater than \$1000 but not more than \$2500; greater than \$2500 but not more than \$5000; greater than \$5000 but not more than \$10,000; greater than \$10,000 but not more than \$25,000; greater than \$25,000 but not more than \$50,000; greater than \$50,000 but not more than \$100,000; greater than \$100,000;

(b) "business" means any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, receivership, business or real estate trust, or any other legal entity organized for profit, non-profit or charitable purposes, including any federal, state, county, district or municipal agency, authority or other governmental entity;

(c) "business with which a person is associated" means any business in which the reporting person or a family member is an employee, an elected or appointed governmental official, a general partner, limited partner, proprietor, officer,

director, trustee or serves in any managerial capacity; and any business more than one per cent of any class of outstanding equity of which is beneficially owned in the aggregate by the reporting person and/or family members;

(d) "doing business" is the purchase, leasing or sale of goods or services in any transaction with the City or any department, agency, commission or other part thereof.

(e) "candidate" means any individual who seeks nomination or election to the office of city councillor or school committee member. For the purposes of this chapter, an individual shall be deemed to be seeking nomination or election to an office if such individual has (1) received a political contribution or made an expenditure, or has given such individual's consent for any person or committee to receive a political contribution or make an expenditure, for the purpose of influencing such individual's nomination or election to such office, whether or not the specific municipal office for which such individual will seek nomination or election is known at the time the political contribution is received or the expenditure is made, or (2) taken action necessary under the law to qualify such individual for nomination or election to such office;

(f) "commission" means the board of election commissioners of Cambridge, established by chapter 239 of the acts of 1921, as amended;

(g) "equity" means any stock, interests in capital or profits and losses or similar ownership interest in a business;

(h) "family member" means a spouse, any dependent children residing in the reporting person's household, or a sibling;

(i) "gift" means a delivery of goods, payment, entertainment, subscription, advance services or anything of value, unless consideration of equal or greater value is received. If items are furnished or services are rendered for less than the fair market value, the difference between the fair market value and the price shall be treated as a gift. "Gift" shall not include a political contribution reported as required by law, a commercially reasonable loan made in the ordinary course of business, anything of value received by inheritance or a gift received from a family member or from a relative within the third degree of consanguinity of the reporting person or of the reporting person's spouse or from the spouse of any such relative;

(j) "legislative agent" means any person who for compensation or reward does any act to promote, oppose or influence legislation or any other matter before the City Council or School Committee, or to influence the decision of any member of the city administration where such decision concerns legislation or the adoption, defeat or postponement of a standard rate, rule or regulation pursuant thereto. The term shall include persons who, as any part of their usual employment and not simply incidental thereto, attempt to promote, oppose or influence such matters, whether or not any compensation in addition to the salary for such employment is received for such services;

(k) "municipal body" means any agency, authority, board, bureau, commission, committee, council, department, division, school department, or other legal entity within the government of the City of Cambridge;

(l) "municipal official" means:

(i) any individual holding any one of the following positions in the government of the City of Cambridge, whether by election or appointment: mayor; councillor; city manager; deputy city manager; assistant city manager; city clerk; auditor; city solicitor; school committee member;

(ii) the executive or administrative head or heads, whether elected or appointed, compensated or uncompensated, of a municipal body or bodies with primary executive authority for any of the following: general purpose administration; planning; development and land use; zoning; public safety; education; inspection; licensing; public works; or assessment; or

(iii) the executive or administrative head or heads, whether elected or appointed, compensated or uncompensated, of a municipal body or bodies which the commission may designate; or

(iv) any employee of a municipal body whose salary exceeds that of any of the foregoing and reports directly to any of the foregoing, or who is head of a major administrative unit within a municipal body, as determined by the commission;

(m) "person" means a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons;

(n) "political contribution" means a contribution of money or anything of value to an individual, candidate, or political committee, or person acting on behalf of any individual, candidate, or political committee, for the purpose of influencing the nomination or election of said individual or candidate, or for the purpose of promoting or opposing a charter change, referendum question, or other question submitted to the voters, and shall include any: (1) gift, subscription, loan, advance, deposit of money, or thing of value, except a loan of money to a candidate by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business; (2) transfer of money or anything of value between political committees; (3) payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee; (4) purchase from an individual, candidate or political committee, whether through the device of tickets, advertisements, or otherwise, for fund-raising activities, including testimonials, held on behalf of said individual, candidate, or political committee, to the extent that the purchase price exceeds the actual cost of the goods sold or services rendered; (5) discount or rebate not available to other candidates for the same office and the general public; and (6) the forgiveness of indebtedness or payment of indebtedness by another person, but shall not include the rendering of services by speakers, editors, writers, poll

watchers, poll checkers or others, nor the payment by those rendering such services or such personal expenses as may be incidental thereto, nor the exercise of ordinary hospitality;

(o) "reporting person or reporting business" means any person required to file a statement of interests pursuant to section 3 of this chapter.

(p) "businesses conducting business within the City" shall mean all businesses which obtain payments or receive monies in any fiscal year from the City of Cambridge or any department, division or agency thereof in excess of \$5,000 per year, which monies are not received as a consequence of a contract awarded on the basis of competitive bidding.

Section 26-2. Administration.

The commission shall:

(a) on or before March first of each year request from the city manager a list of the names and positions of all municipal officials and businesses conducting business with the City, certified as to correctness and completeness, and the city manager shall furnish such a list within (60) days;

(b) on or before May first of each year make forms and instructions for statements of interests available to persons required to file the statements pursuant to the provisions of this chapter;

(c) upon receipt of a statement of interests filed pursuant to this chapter, issue to the person filing such statement a receipt verifying the fact that a statement of interests has been filed and a receipted copy of such statement;

(d) make the lists of municipal officials and statements of interests filed with the commission pursuant to this chapter available upon written request of any individual for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost; the commission shall forward a copy of said request to the individual whose statement has been examined; provided, however, that such requests from the attorney general of the Commonwealth of Massachusetts, the district attorney of Middlesex County, or the State Ethics Commission shall be confidential;

(e) compile and maintain an index of all filed statements of interests to facilitate public access to the statements;

(f) inspect all filed statements of interests in order to ascertain whether any reporting person has failed to file a statement as required by law or has filed a statement which is deficient on its face. After inspection, the commission shall list all reporting persons who have failed to file a statement of interests and all reporting persons who have filed a statement of interests on its face;

(g) notify each delinquent reporting person that a statement of interests has not been filed or that such a statement which has been filed is deficient. Such notice shall be in writing and shall state in detail each deficiency and the penalties for failure to file a correct statement of interests pursuant to this chapter;

(h) preserve all statements filed with it for six years from the date of receipt.

Section 26-3. Statements of Interests.

(a) Every candidate shall file a statement of interests for the preceding calendar year with the commission on or before the date on which nomination papers for such candidate must be submitted to the commission;

(b) Every municipal official shall file a statement of interests for the preceding year with the commission:

(1) on or before June first of each year that such person is a municipal official or within thirty days of becoming a municipal official, whichever is later, and (2) on or before June first of the year after such person ceases to be a municipal official; provided, however, that no former municipal official shall be required to file a statement of interests for any year in which such former municipal official was a municipal official for less than (30) days;

(c) the statements of interests shall be filed on a form prescribed by the commission and shall be signed under penalty of perjury by the reporting person;

(d) every reporting person (other than businesses conducting business with the City) shall disclose, to the best of such reporting person's knowledge, the following information for such reporting person and every family member for the preceding calendar year:

(i) the name and address of and the nature of association with any business from which income in excess of \$1,000 is received if that business is transacting business in

Massachusetts, provided, however, that no such disclosure must be made where dividends or other such profit distributions arise from the beneficial ownership of less than one percent of the business;

(ii) the name of all businesses transacting business in Massachusetts as to which more than one percent of the beneficial ownership of which is held directly or indirectly by a family member;

(iii) the name and address of each creditor, located within, or doing business with the City of Cambridge, to whom more than one thousand dollars was owed on December 31, and the original amount, the amount outstanding, the terms of repayment and the general nature of the security pledged for each obligation; provided, however, that mortgages on the person's primary residence the proceeds of which were substantially used to purchase or improve such residence or to refinance indebtedness incurred for such purposes, obligations arising out of retail installment transactions, educational loans, medical and dental expenses, debt incurred in the ordinary course of an active ongoing business, and any obligation to make alimony or support payments shall not be reported; provided, further, that such information need not be reported if the creditor is a relative within the third degree of consanguinity or affinity;

(iv) the name and address of the source, and the cash value of any reimbursement for expense aggregating more than one hundred dollars in the calendar year if the recipient is a

member of a municipal body and the source of such reimbursement is a person having a direct interest in legislation, legislative action, administrative action, or a matter before that municipal body;

(v) the name and address of the donor, and the fair market value, if determinable, of any gift(s) (other than campaign contributions which have been reported pursuant to Mass. Gen. L. Chapter \_\_\_, §\_\_\_) aggregating more than one hundred dollars in the calendar year, if the recipient is a member of a municipal body and the source of such gift(s) is a person having a direct interest in legislation, legislative action, or a matter before that municipal body;

(vi) the description, as appearing on the most recent tax bill of all real property located within the boundaries of the City of Cambridge, in which direct or indirect financial interest was held, which has an assessed value greater than one thousand dollars; and, if the property was transferred during the year, the name and address of the person furnishing consideration to the reporting person or receiving it from him in respect to such transfer;

(vii) the name and address of the source, and the fair market value, of any honoraria aggregating more than one hundred dollars if the source of such honoraria is a legislative agent; or if the recipient is a member of a municipal body and the source of such honoraria is a person having a direct interest in legislation, legislative action, or a matter before that municipal body;

(viii) the name and address of any creditor who has forgiven an indebtedness of over one thousand dollars, and the amount forgiven; provided, however, that no such information need be reported if the creditor is a relative within the third degree of consanguinity or affinity of the reporting person, or the spouse of such a relative;

(ix) the name and address of any business from which the reporting person is taking a leave of absence;

(x) the identity of any equity in a business from which the reporting person is associated which has been transferred to a member of the reporting person's family; provided, however, that a member of a reporting person's family need not report any such transfer to the reporting person;

(xi) the date, nature, amount or value of any commercial or business transaction with any city councilor and the name of the councilor.

(e) every business conducting business with the City shall file a statement of interests for the calendar year in which any city funds are owed or paid and for two years thereafter listing thereon any of the following:

(i) the date, amount, and basis for any loan payment, gift or honorarium paid to any municipal official, candidate or committee supporting a candidate, whether paid directly by the business or by its officers, employees, shareholders or agents.

(ii) the name and address of any municipal official, candidate or member of their family employed by the business or owning more than one percent of the business or of any class of outstanding equity.

(f) any reporting person or reporting person who fails to file a statement of interests within the time, in the manner and to the extent required by this section shall be punished by a fine of not more than \$300. Every day that any such statement is not so filed shall constitute a separate offense.

Section 26-4. Powers and Duties of the Commission.

The commission shall:

(a) prescribe and publish rules and regulations to carry out the purposes of this chapter, including rules governing the conduct of proceedings hereunder;

(b) determine whether any reporting person has failed to file a statement of interests or has filed a deficient statement. If a reporting person has failed to file a statement of interests, or if any such statement filed with the clerk fails to conform with the requirement of section 3 (d) of this chapter, then the commission shall notify the delinquent in writing. Such notice shall state in detail each deficiency and the penalties for failure to file a correct statement of interests pursuant to this chapter;

(c) initiate a hearing and require the attendance and testimony of the delinquent reporting person, if that person fails to file or correct the statement of interests within thirty (30) days. The delinquent person may forego a hearing before the commission at such delinquent person's discretion, but shall be subject to a civil penalty pursuant to subsection (d) of this section.

Any member of the commission may administer oaths and any member of the commission may hear testimony or receive other evidence in any proceeding before the commission.

All testimony in commission proceedings shall be under oath. All parties have the right to call and examine witnesses and to be represented by counsel. Before testifying, all witnesses shall be given a copy of the regulations governing commission proceedings.

All proceedings of the commission carried out pursuant to the provisions of this subsection shall be public, unless the members vote to go into executive session in accordance with section 23B of chapter 39 of the General Laws.

Within thirty days after the end of the proceeding pursuant to the provisions of this subsection, the commission shall meet for the purpose of reviewing the evidence before it. Within thirty days after the completion of deliberations, the commission shall publish its findings.

(d) issue an order requiring the delinquent reporting person to pay a civil forfeiture of not more than \$300 for each violation against such person, if the commission establishes in its findings that a violation of this chapter has been committed, or if the delinquent reporting person decides to forego a hearing before the commission.

The commission may commence a civil action in the Cambridge division of the district court department to enforce such an order, and for this purpose may retain independent legal counsel. Any such order shall also be subject to judicial

review in said court, upon complaint of the delinquent reporting person filed within thirty days after such order.

FSBB 124

DRAFT 1/29/90

Be It ordained by the City Council of the City of Cambridge, as follows:

The Code of the City of Cambridge is hereby amended by adding the new chapter:

CHAPTER \_\_\_\_\_  
CODE OF CONDUCT FOR CITY OFFICIALS

SECTION \_\_\_\_-1. The Municipal Code of Cambridge is hereby amended by adding a new Chapter \_\_\_\_ entitled "Governmental Ethics" as follows:

1. Definitions. Whenever used in this chapter, the following terms shall have the following meanings:

(a) "Administrative action" means a decision on, or proposal, consideration, enactment or making of any rule, regulation, or other official non-ministerial action or non-action by any executive department, or by any official or employee of an executive department, on any matter.

(b) "Agency" means the City Council, any committee or other subdivision thereof, any City department or other administrative unit, commission, board, or other division of the government of the City.

(c) "City" means the City of Cambridge.

(d) "City contractor" means any person (including his agents or employees acting within the scope of their employment) who is paid from the City treasury or pursuant to City Ordinance, for goods or services to any City agency, regardless of the nature of the relationship of such individual to the City for purposes other than this chapter.

(e) "Compensation" means money, anything of value or other pecuniary benefit received or to be received in return for, or as reimbursement for, goods or services rendered or to be rendered.

(f) "Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

(g) "Doing business" means any one or any combination of sales, purchases, leases or contracts to, from, or with the City or any City agency in an amount in excess of \$5,000 in any twelve consecutive months.

(h) "Economic interest" means any interest valued or capable of valuation in monetary terms; provided, that "economic interest" is subject to the same exclusions as "financial interest."

(i) "Employee" means an individual employed by the City of Cambridge or any City agency, whether part-time or full-time, paid or unpaid, whether as common law employee or independent contractor and whether appointed or elected.

(j) "Expenditure" means a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

(k) "Financial interest" means (i) any interest with a cost or present value (determined using a discount rate

of 8% compounded annually) in excess of \$5,000; or (ii) any interest representing more than 1% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, business, trust, or any legal entity organized for profit; provided, however, financial interest shall not include (a) any ownership through purchase at fair market value, gift by a family member or inheritance of less than 1% (by value or voting power) of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (b) the authorized compensation paid to an official or employee for his office or employment; (c) any economic benefit provided equally to all residents of the City.

(l) "Gift" means anything of value given without consideration, for nominal consideration or without expectation of fair value in return with less than equivalent consideration in money or monies worth given in return.

(m) "Legislation" means ordinances, resolutions, amendments, nominations, appointments, reports and any other matters pending or proposed in the City Council or a committee or other subdivision thereof, including any other matter which may be the subject of Council action.

(n) "Legislative action" means the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto or other official action or non-action on any ordinance, resolution, motion, order, appointment, application or other matter pending or proposed in the City Council or any committee or subcommittee thereof.

(o) "Lobbyist" means any individual (i) who for compensation or on behalf of any person other than such individual undertakes to influence any legislative or administrative action; or (ii) any part of whose regular duties as an employee of another includes undertaking to influence any legislative or administrative action.

(p) "Official" means any person holding any elected office of the City or any appointed, non-employee member of any City agency.

(q) "Person" means any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as any parent or subsidiary of any of the foregoing or other organization as a group of persons, and whether or not operated for profit.

(r) "Professional services" means services in any occupation requiring advanced or specialized education and training, including without limitation law, accounting, insurance, real estate, engineering, medicine, architecture, dentistry, banking, finance, public relations, education or consulting.

(s) "Relative" means a person who is related to an official or employee as spouse, as a descendent of any grandparent of such official or employee whether by the whole- or half-blood or by adoption, or as spouse of any of the foregoing.

2. Fiduciary duty. Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

3. Improper influence. No official or employee shall make, participate in making or in any way attempt to use such official's or such employee's position, influence or power, any City governmental decision or action in which such official or employee knows or has reason to know that such official or employee has any economic interest distinguishable from its effect on the public generally.

4. Offering, receiving and soliciting gifts, favors.

(a) No person shall give to any official or employee, or to the spouse or child of any of them, and none of them shall solicit or accept, any anonymous gift.

(b) No person shall give or offer to give to any official, employee, or City contractor, or to the spouse or child of any of them, and none of them shall accept, anything of value, including, but not limited to, a gift, a loan, a favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any

official, employee or City contractor concerning the business of the City would be directly or indirectly influenced thereby. There shall be a presumption that any such city official who, having received such a gift, loan, favor or promise and who then acts or fails to act so as to benefit the donor, lender or promisor, has done so on the basis of such an understanding.

(c) No person who has an economic interest in a business entity or other enterprise conducting business in the City, a City service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect such business, service or transaction, or to the sibling, spouse or child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service; provided however, nothing herein shall be construed to prohibit such person from accepting gifts from relatives.

(d) Nothing in this section shall prohibit any person from giving or receiving: (i) an award, with a monetary value of less than \$100, publicly presented in recognition of public service; (ii) commercially reasonable loans made in the ordinary course of the lender's business; (iii) political contributions, provided they are reported to the extent required by law; (iv) reasonable hosting, including travel and expenses, entertainment, meals or refreshments

furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public event.

(e) Any gift given in violation of the provisions of this section shall be turned over the Treasurer, who shall add the gift to the inventory of City property.

(f) Nothing in this section shall prohibit any official or employee, or any spouse or child of such official or employee, from accepting a gift on the City's behalf, provided, however, the person accepting the gift shall promptly report receipt of the gift and deliver it to the Treasurer, who shall add it to the inventory of City property.

5. Solicitation or receipt of money for advice or assistance. No official or employee, city contractor, or the spouse or minor child of any of them, shall solicit or accept any money or other thing of value including, but not limited to gifts, loans, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee or the spouse of an official or employee from accepting compensation for services wholly unrelated to the official's or employee's knowledge, discretion or authority concerning their City duties and responsibilities and rendered as part of the

official's or employee's non-City employment, occupation or profession.

6. City-owned property. No official, employee or city contractor shall engage in or permit the unauthorized use of City-owned property by any person.

7. Use or disclosure of confidential information. No current or former official or employee shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Massachusetts Public Records Act, as amended.

8. Conflicts of interest.

(a) No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which such official or employee has any material economic interest distinguishable from that of the general public; provided however, that this section shall not prohibit the membership and participation on advisory boards and commissions where persons with such interests are intended to be represented.

(b) Any member of the City Council who has any economic interest distinguishable from that of the general public or all councilors in any matter pending before the

City Council or any Council Committee shall publicly disclose the nature and extent of such interest on the record of proceedings of the City Council. Such member shall abstain from voting on the matter but shall be counted present for purposes of a quorum. The obligation to report a potential conflict of interest under this subsection arises as soon as the member of the City Council knows or had reason to know of such potential conflict.

9. Representation of other persons.

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of the employee's employment, or any elected official from appearing without compensation before any city agency on behalf of the constituents in the course of the elected official's duties as an elected official or any person from representing such person.

(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or administrative proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

(c) No appointed official may represent or have any economic interest in the representation of any person in the circumstances described in subsection (a) or (b) unless the matter is wholly unrelated to the official's City duties and responsibilities. Nor shall any such official participate in any matter on behalf of the City, where there would be any appearance of a conflict of interest.

10. Post-employment restrictions.

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during the official's or employee's term of office or employment; provided, however, that any person may represent himself, his spouse or his minor children.

(b) No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies; provided however, if the official or employee participated personally and substantially in the subject matter of the transaction or subject matter during the term of office or employment of the official or employee; or exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract transaction or matter.

11. Interest in City business. No elected official or employee or their spouses shall have a financial interest, directly or indirectly, in the name of the official or employee or in the name of any other person in any contract, work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance. Compensation for property taken pursuant to the City's eminent domain power shall not constitute a financial interest within the meaning of this section. Unless sold pursuant to a process of competitive bidding following public notice, no elected official or employee shall have a financial interest in the purchase of any property that (i) belongs to the City or a City Agency, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City. No appointed official shall engage in a transaction described in this section unless the matter is wholly unrelated to the official's City duties and responsibilities.

12. Contract inducements. No payment, gift or offer of employment or future employment shall be made in connection with any City contract, by or on behalf of a contractor to a City official or employee, a subcontractor to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a

subcontract or order. This prohibition shall be set forth in every City contract and solicitation therefor.

13. Employment of relatives.

(a) No official or employee shall employ or advocate for employment, in any City agency in which said official or employee serves or over which he exercises authority, supervision, or control, any person (i) who is a relative of said official or employee, or (ii) in exchange for or in consideration of the employment of any of said official's or employee's relatives by any other official or employee.

(b) No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority.

(c) No official or employee shall use or permit the use of his position to assist any relative in securing employment or contracts with persons over whom the employee or official exercises contract management authority. The employment of or contracting with a relative of such a City official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a City contract shall be evidence that said employment or contract was obtained in violation of this chapter.

14. Favors By City Councillors

City Councillors shall not make loans, gifts, offers

of employment or future employment or of business or investment opportunities to the city manager, to assistant city managers, to heads of city departments or agencies, to the city solicitor, and assistant ~~city~~ solicitors or to members of boards or commissions involved in the granting of variances, permits, licenses or other such discretionary or adjudicatory functions.

15. Penalties

(a) Any employee or City official who violates this code shall be subject to appropriate discipline, including suspension, termination or censure, consistent with the rules and requirements of the state civil service law, as well as civil or criminal prosecution under any other applicable state laws.

(b) A knowing violation of this code shall constitute a misdemeanor. Upon conviction, the Court shall impose a fine of not more than \$500 per offense.

(c) All City contracts shall include therein a clause for termination in the event of a violation of this Chapter in connection with the awarding, administration or performance of the contract.

(d) Any permit, license, ruling, determination or other official action taken in violation of this Code shall be void; provided however, that in the event that voiding would substantially damage the City or innocent third parties then the City Council, by vote of at least six of its members, may preserve the permit, license, ruling, determination or other action.

(e) Ten registered voters shall have standing to enforce the provisions of this ordinance by (i) seeking the issuance of a criminal complaint; and/or (ii) instituting a civil action on behalf of the City to recover damages on its behalf or to implement any other remedy provided for in this ordinance.

16. Other remedies. Nothing in this chapter shall preclude the City or any City Agency from maintaining an action for an accounting for any economic benefit received by any person in violation of this chapter or other law, or to recover damages for violation of this chapter.

17. Conflict with other laws. In the event of any conflict or inconsistency of this ordinance with any other state law, the provision of broadest or most strict coverage shall control.

DRAFT 1/29/90

Be It ordained by the City Council of the City of Cambridge, as follows:

The Code of the City of Cambridge is hereby amended by adding the new chapter:

CHAPTER \_\_\_\_  
CODE OF CONDUCT FOR CITY OFFICIALS

SECTION \_\_\_\_-1. The Municipal Code of Cambridge is hereby amended by adding a new Chapter \_\_\_\_ entitled "Governmental Ethics" as follows:

1. Definitions. Whenever used in this chapter, the following terms shall have the following meanings:

(a) "Administrative action" means a decision on, or proposal, consideration, enactment or making of any rule, regulation, or other official non-ministerial action or non-action by any executive department, or by any official or employee of an executive department, on any matter.

(b) "Agency" means the City Council, any committee or other subdivision thereof, any City department or other administrative unit, commission, board, or other division of the government of the City.

(c) "City" means the City of Cambridge.

(d) "City contractor" means any person (including his agents or employees acting within the scope of their employment) who is paid from the City treasury or pursuant to City Ordinance, for goods or services to any City agency, regardless of the nature of the relationship of such individual to the City for purposes other than this chapter.

(e) "Compensation" means money, anything of value or other pecuniary benefit received or to be received in return for, or as reimbursement for, goods or services rendered or to be rendered.

(f) "Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

(g) "Doing business" means any one or any combination of sales, purchases, leases or contracts to, from, or with the City or any City agency in an amount in excess of \$5,000 in any twelve consecutive months.

(h) "Economic interest" means any interest valued or capable of valuation in monetary terms; provided, that "economic interest" is subject to the same exclusions as "financial interest."

(i) "Employee" means an individual employed by the City of Cambridge or any City agency, whether part-time or full-time, paid or unpaid, whether as common law employee or independent contractor and whether appointed or elected.

(j) "Expenditure" means a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

(k) "Financial interest" means (i) any interest with a cost or present value (determined using a discount rate

of 8% compounded annually) in excess of \$5,000; or (ii) any interest representing more than 1% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, business, trust, or any legal entity organized for profit; provided, however, financial interest shall not include (a) any ownership through purchase at fair market value, gift by a family member or inheritance of less than 1% (by value or voting power) of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (b) the authorized compensation paid to an official or employee for his office or employment; (c) any economic benefit provided equally to all residents of the City.

(l) "Gift" means anything of value given without consideration, for nominal consideration or without expectation of fair value in return with less than equivalent consideration in money or monies worth given in return.

(m) "Legislation" means ordinances, resolutions, amendments, nominations, appointments, reports and any other matters pending or proposed in the City Council or a committee or other subdivision thereof, including any other matter which may be the subject of Council action.

(n) "Legislative action" means the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto or other official action or non-action on any ordinance, resolution, motion, order, appointment, application or other matter pending or proposed in the City Council or any committee or subcommittee thereof.

(o) "Lobbyist" means any individual (i) who for compensation or on behalf of any person other than such individual undertakes to influence any legislative or administrative action; or (ii) any part of whose regular duties as an employee of another includes undertaking to influence any legislative or administrative action.

(p) "Official" means any person holding any elected office of the City or any appointed, non-employee member of any City agency.

(q) "Person" means any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as any parent or subsidiary of any of the foregoing or other organization as a group of persons, and whether or not operated for profit.

(r) "Professional services" means services in any occupation requiring advanced or specialized education and training, including without limitation law, accounting, insurance, real estate, engineering, medicine, architecture, dentistry, banking, finance, public relations, education or consulting.

(s) "Relative" means a person who is related to an official or employee as spouse, as a descendent of any grandparent of such official or employee whether by the whole- or half-blood or by adoption, or as spouse of any of the foregoing.

2. Fiduciary duty. Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

3. Improper influence. No official or employee shall make, participate in making or in any way attempt to use such official's or such employee's position, influence or power, any City governmental decision or action in which such official or employee knows or has reason to know that such official or employee has any economic interest distinguishable from its effect on the public generally.

4. Offering, receiving and soliciting gifts, favors.

(a) No person shall give to any official or employee, or to the spouse or child of any of them, and none of them shall solicit or accept, any anonymous gift.

(b) No person shall give or offer to give to any official, employee, or City contractor, or to the spouse or child of any of them, and none of them shall accept, anything of value, including, but not limited to, a gift, a loan, a favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any

official, employee or City contractor concerning the business of the City would be directly or indirectly influenced thereby. There shall be a presumption that any such city official who, having received such a gift, loan, favor or promise and who then acts or fails to act so as to benefit the donor, lender or promisor, has done so on the basis of such an understanding.

(c) No person who has an economic interest in a business entity or other enterprise conducting business in the City, a City service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect such business, service or transaction, or to the sibling, spouse or child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service; provided however, nothing herein shall be construed to prohibit such person from accepting gifts from relatives.

(d) Nothing in this section shall prohibit any person from giving or receiving: (i) an award, with a monetary value of less than \$100, publicly presented in recognition of public service; (ii) commercially reasonable loans made in the ordinary course of the lender's business; (iii) political contributions, provided they are reported to the extent required by law; (iv) reasonable hosting, including travel and expenses, entertainment, meals or refreshments

furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public event.

(e) Any gift given in violation of the provisions of this section shall be turned over the Treasurer, who shall add the gift to the inventory of City property.

(f) Nothing in this section shall prohibit any official or employee, or any spouse or child of such official or employee, from accepting a gift on the City's behalf, provided, however, the person accepting the gift shall promptly report receipt of the gift and deliver it to the Treasurer, who shall add it to the inventory of City property.

5. Solicitation or receipt of money for advice or assistance. No official or employee, city contractor, or the spouse or minor child of any of them, shall solicit or accept any money or other thing of value including, but not limited to gifts, loans, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee or the spouse of an official or employee from accepting compensation for services wholly unrelated to the official's or employee's knowledge, discretion or authority concerning their City duties and responsibilities and rendered as part of the

official's or employee's non-City employment, occupation or profession.

6. City-owned property. No official, employee or city contractor shall engage in or permit the unauthorized use of City-owned property by any person.

7. Use or disclosure of confidential information. No current or former official or employee shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Massachusetts Public Records Act, as amended.

8. Conflicts of interest.

(a) No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which such official or employee has any material economic interest distinguishable from that of the general public; provided however, that this section shall not prohibit the membership and participation on advisory boards and commissions where persons with such interests are intended to be represented.

(b) Any member of the City Council who has any economic interest distinguishable from that of the general public or all councilors in any matter pending before the

City Council or any Council Committee shall publicly disclose the nature and extent of such interest on the record of proceedings of the City Council. Such member shall abstain from voting on the matter but shall be counted present for purposes of a quorum. The obligation to report a potential conflict of interest under this subsection arises as soon as the member of the City Council knows or had reason to know of such potential conflict.

9. Representation of other persons.

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of the employee's employment, or any elected official from appearing without compensation before any city agency on behalf of the constituents in the course of the elected official's duties as an elected official or any person from representing such person.

(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or administrative proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

(c) No appointed official may represent or have any economic interest in the representation of any person in the circumstances described in subsection (a) or (b) unless the matter is wholly unrelated to the official's City duties and responsibilities. Nor shall any such official participate in any matter on behalf of the City, where there would be any appearance of a conflict of interest.

10. Post-employment restrictions.

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during the official's or employee's term of office or employment; provided, however, that any person may represent himself, his spouse or his minor children.

(b) No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies; provided however, if the official or employee participated personally and substantially in the subject matter of the transaction or subject matter during the term of office or employment of the official or employee; or exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract transaction or matter.

11. Interest in City business. No elected official or employee or their spouses shall have a financial interest, directly or indirectly, in the name of the official or employee or in the name of any other person in any contract, work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance. Compensation for property taken pursuant to the City's eminent domain power shall not constitute a financial interest within the meaning of this section. Unless sold pursuant to a process of competitive bidding following public notice, no elected official or employee shall have a financial interest in the purchase of any property that (i) belongs to the City or a City Agency, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City. No appointed official shall engage in a transaction described in this section unless the matter is wholly unrelated to the official's City duties and responsibilities.

12. Contract inducements. No payment, gift or offer of employment or future employment shall be made in connection with any City contract, by or on behalf of a contractor to a City official or employee, a subcontractor to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a

subcontract or order. This prohibition shall be set forth in every City contract and solicitation therefor.

13. Employment of relatives.

(a) No official or employee shall employ or advocate for employment, in any City agency in which said official or employee serves or over which he exercises authority, supervision, or control, any person (i) who is a relative of said official or employee, or (ii) in exchange for or in consideration of the employment of any of said official's or employee's relatives by any other official or employee.

(b) No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority.

(c) No official or employee shall use or permit the use of his position to assist any relative in securing employment or contracts with persons over whom the employee or official exercises contract management authority. The employment of or contracting with a relative of such a City official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a City contract shall be evidence that said employment or contract was obtained in violation of this chapter.

14. Favors By City Councillors

City Councillors shall not make loans, gifts, offers

of employment or future employment or of business or investment opportunities to the city manager, to assistant city managers, to heads of city departments or agencies, to the city solicitor, and assistant ~~city~~ solicitors or to members of boards or commissions involved in the granting of variances, permits, licenses or other such discretionary or adjudicatory functions.

15. Penalties

(a) Any employee or City official who violates this code shall be subject to appropriate discipline, including suspension, termination or censure, consistent with the rules and requirements of the state civil service law, as well as civil or criminal prosecution under any other applicable state laws.

(b) A knowing violation of this code shall constitute a misdemeanor. Upon conviction, the Court shall impose a fine of not more than \$500 per offense.

(c) All City contracts shall include therein a clause for termination in the event of a violation of this Chapter in connection with the awarding, administration or performance of the contract.

(d) Any permit, license, ruling, determination or other official action taken in violation of this Code shall be void; provided however, that in the event that voiding would substantially damage the City or innocent third parties then the City Council, by vote of at least six of its members, may preserve the permit, license, ruling, determination or other action.

(e) Ten registered voters shall have standing to enforce the provisions of this ordinance by (i) seeking the issuance of a criminal complaint; and/or (ii) instituting a civil action on behalf of the City to recover damages on its behalf or to implement any other remedy provided for in this ordinance.

16. Other remedies. Nothing in this chapter shall preclude the City or any City Agency from maintaining an action for an accounting for any economic benefit received by any person in violation of this chapter or other law, or to recover damages for violation of this chapter.

17. Conflict with other laws. In the event of any conflict or inconsistency of this ordinance with any other state law, the provision of broadest or most strict coverage shall control.



# OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON  
CITY CLERK

JOHN E. FLYNN  
DEPUTY CITY CLERK

February 21, 1990

Mr. Russell B. Higley  
City Solicitor  
City Hall  
Cambridge, MA 02139

Dear Sir:

Please be advised that the Chairman of the Ordinance Committee has scheduled public hearings on the proposed amendments to the Municipal Code as follows:

- March 14, 1990 at 6:15 P. M. - AN ORDINANCE TO PROTECT THE STRATOSPHERIC OZONE LAYER BY RESTRICTING THE USE AND EMISSIONS OF OZONE DEPLETING CHEMICALS.
- March 21, 1990 at 5:30 P.M. - CODE OF CONDUCT OF CITY OFFICIALS
- 6:00 P. M. - STATEMENTS OF INTERESTS BY CERTAIN CITY OFFICIALS AND PERSONS CONDUCTING BUSINESS WITH THE CITY.
- March 28, 1990 at 5:30 P. M. - AN ORDINANCE TO PROMOTE THE RECYCLING OF USED MOTOR OIL IN THE CITY OF CAMBRIDGE.

Would you kindly incorporate these new proposals into the Municipal Code format prior to these hearings.

Your kind attention in this matter will be greatly appreciated.

Sincerely yours,

Joseph E. Connarton  
City Clerk

JEC/dl

Encs (4)



RECEIVED BY  
OFFICE OF CITY CLERK  
**CITY OF CAMBRIDGE**  
1990 MAR 21 PM 5:16  
362 GREEN STREET CAMBRIDGE MASSACHUSETTS 02139 • TEL. 498-9087  
CAMBRIDGE MA.

BOARD OF  
ELECTION COMMISSIONERS

EDWARD J. SAMP, JR.  
SONDRA SCHEIR  
ARTIS B. SPEARS  
DARLEEN GONDOLA BONISLAWSKI  
Commissioners

TERESA S. NEIGHBOR  
Executive Director

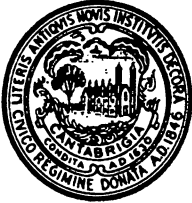
To: Ordinance Committee, Cambridge City Council  
From: Board of Election Commissioners  
Date: March 21, 1990  
Subject: Proposed Ethics Ordinance

The Board of Election Commissioners wishes to go on record as having no objection to the role described for the Commission in the proposed "Ethics Ordinance" being reviewed by the Ordinance Committee of the Cambridge City Council. Based on its review of the "Code of Conduct" and the amended "Chapter 26," the Commission understands its role to be administrative and clerical and to exclude judicial responsibilities, similar to the role it exercises in overseeing the municipal Campaign Political Finance Reports.

Should the City Council approve the Ordinance and confirm the Commission's role as administrator, it is assumed that adequate provisions will be made for the Commission's additional administrative and clerical duties.

As a final matter, the Commission would request the Ordinance Committee to submit a fully amended version of the Ordinance to the Board for review before submitting it to the City Council for final adoption.

*Edward J. Samp, Jr.*  
*Sondra Scheir*  
*Artis B. Spears*  
*Darleen Gondola Bonislowski*



RECEIVED BY  
CITY OF CAMBRIDGE  
1990 MAR 21 PM 5:16

# CITY OF CAMBRIDGE

362 GREEN STREET, CAMBRIDGE MASSACHUSETTS 02139 • TEL. 498-9087

CAMBRIDGE MA.

BOARD OF  
ELECTION COMMISSIONERS

EDWARD J. SAMP, JR.  
SONDRA SCHEIR  
ARTIS B. SPEARS  
DARLEEN GONDOLA BONISLAWSKI  
Commissioners

TERESA S. NEIGHBOR  
Executive Director

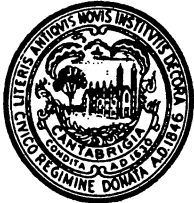
To: Ordinance Committee, Cambridge City Council  
From: Board of Election Commissioners  
Date: March 21, 1990  
Subject: Proposed Ethics Ordinance

The Board of Election Commissioners wishes to go on record as having no objection to the role described for the Commission in the proposed "Ethics Ordinance" being reviewed by the Ordinance Committee of the Cambridge City Council. Based on its review of the "Code of Conduct" and the amended "Chapter 26," the Commission understands its role to be administrative and clerical and to exclude judicial responsibilities, similar to the role it exercises in overseeing the municipal Campaign Political Finance Reports.

Should the City Council approve the Ordinance and confirm the Commission's role as administrator, it is assumed that adequate provisions will be made for the Commission's additional administrative and clerical duties.

As a final matter, the Commission would request the Ordinance Committee to submit a fully amended version of the Ordinance to the Board for review before submitting it to the City Council for final adoption.

*Edward J. Samp, Jr.*  
*Sondra Scheir*  
*Artis B. Spears*  
*Darleen Gondola Bonislowski*



RECEIVED BY  
CITY OF CAMBRIDGE  
1990 MAR 21 PM 5:16

362 GREEN STREET, CAMBRIDGE MASSACHUSETTS 02139 • TEL. 498-9087

CAMBRIDGE MA.

BOARD OF  
ELECTION COMMISSIONERS

EDWARD J. SAMP, JR.  
SONDRA SCHEIR  
ARTIS B. SPEARS  
DARLEEN GONDOLA BONISLAWSKI  
Commissioners

TERESA S. NEIGHBOR  
Executive Director

To: Ordinance Committee, Cambridge City Council  
From: Board of Election Commissioners  
Date: March 21, 1990  
Subject: Proposed Ethics Ordinance

The Board of Election Commissioners wishes to go on record as having no objection to the role described for the Commission in the proposed "Ethics Ordinance" being reviewed by the Ordinance Committee of the Cambridge City Council. Based on its review of the "Code of Conduct" and the amended "Chapter 26," the Commission understands its role to be administrative and clerical and to exclude judicial responsibilities, similar to the role it exercises in overseeing the municipal Campaign Political Finance Reports.

Should the City Council approve the Ordinance and confirm the Commission's role as administrator, it is assumed that adequate provisions will be made for the Commission's additional administrative and clerical duties.

As a final matter, the Commission would request the Ordinance Committee to submit a fully amended version of the Ordinance to the Board for review before submitting it to the City Council for final adoption.

*Edward J. Samp, Jr.*  
*Sondra Scheir*  
*Artis B. Spears*  
*Darleen Gondola Bonislowski*

# City of Cambridge

## CITY COUNCIL HEARING SCHEDULE

- Monday, March 19, 1990
- 5:30 P. M. Regular City Council Meeting.  
(Sullivan Chamber)
- 7:00 P. M. **MEETING HELD**  
The City Council will conduct a public hearing to discuss the findings of the Mayoral Blue Ribbon Committee on the Commonwealth Day School.
- Wednesday, March 21, 1990
- The Committee on Ordinances will conduct a public hearing in the Sullivan Chamber on the following:
- 5:30 P. M. Proposed amendment to the Municipal Code entitled "Code of Conduct of City Officials".
- 6:00 P. M. Proposed amendment to the Municipal Code entitled "Statements of Interests by Certain City Officials and Person Conducting Business with the City".
- 6:30 P. M. Proposed amendment to the Zoning Ordinances entitled "Disclosure of Beneficial Interests."
- Monday, March 26, 1990
- 5:30 P. M. Regular City Council Meeting.  
(Sullivan Chamber)
- 7:00 P. M. The City Council will conduct a public hearing relative to criminal complaints being served to property owners who applied for relief under Ordinance # 1093 with the Rent Control Executive Director and the Commissioner of Inspectional Services. (Sullivan Chamber).
- Tuesday, March 27, 1990
- 5:30 P. M. The Committee on Rent Control will meet to further discuss the resolution of conflict cases by category. (Ackermann Room)



RECEIVED BY  
OFFICE OF CITY CLERK

1990 JUL 17 AM 11:45  
CITY OF CAMBRIDGE  
MASSACHUSETTS 02139 • 617-498-9091  
CAMBRIDGE MA.

Councillor Francis H. Duehay  
26 LOWELL STREET  
CAMBRIDGE, MASSACHUSETTS 02138  
617-547-0271

July 17, 1990

TO: Ordinance Committee  
FROM: Francis H. Duehay F+D  
Chairman

Enclosed are changes and the revised texts for the two ethics ordinances which I will submit at next week's Committee Meeting on behalf of the proponents.



# OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON  
CITY CLERK

JOHN E. FLYNN  
DEPUTY CITY CLERK

JULY 11, 1990

TO: THE HONORABLE, THE CITY COUNCIL

FROM: JOHN E. FLYNN, DEPUTY CITY CLERK JEF

SUBJECT: ORDINANCE COMMITTEE

Please be advised that Councillor Francis H. Duehay, Chairman of the above referenced committee has scheduled the following public hearings:

**WEDNESDAY, JULY 25, 1990 - SULLIVAN CHAMBER, CITY HALL**

✓ 5:30 P. M. To consider and act on an amendment to Chapter 2.52, sections 2.52.010, 2.52.020 and 2.52.070 of the Municipal Code entitled "Police Department" as recommended by the City Manager.

6:00 P. M. To consider further and act on the following amendments to the Municipal Code:

Code of Conduct for City Officials

Statements of Interest by Certain City Officials and Persons Conducting Business with the City.

(Postponed until September, 1990)

**THURSDAY, JULY 26, 1990 - SULLIVAN CHAMBER, CITY HALL**

5:30 P. M. Petition of the Planning Board to amend the text of Section 3.14 - Cambridgeport Interim Planning Overlay District to remain in effect until November 30, 1990.

6:00 P. M. Petition of the Planning Board to amend the text of Section 3.15 - East Cambridge Interim Planning Overlay District to remain in effect until September 30, 1990.

You are requested to attend at this time.



# OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON  
CITY CLERK

JOHN E. FLYNN  
DEPUTY CITY CLERK

July 5, 1990

TO: COUNCILLOR FRANCIS H. DUEHAY  
CHAIRMAN, ORDINANCE COMMITTEE

FROM: JOSEPH E. CONNARTON *JEC*  
CITY CLERK

SUBJECT: ATTACHED COMMUNICATION FROM VERNE W. VANCE, JR.

Please be advised I am in receipt of the above referenced communication forwarded to me from the Law Department.

As you will note it addresses the questions which were raised at the Ordinance Committee meeting held on May 22, 1990.

I hope you will find the information beneficial.

c.c. The Honorable, the City Council.

100 JUL -2 PM 2: 53

VWV:dtc  
6/14/90

CAMBRIDGE MA.  
M E M O R A N D U M

TO: Donald Drisdell, Esq.

FROM: Verne W. Vance, Jr.

RE: Questions raised concerning the proposed new  
conflict of interest and financial disclosure  
ordinances

---

At the meeting of the City Council's Committee on Ordinances on May 22 I undertook to respond to the questions raised at that meeting concerning the proposed new conflict of interest and financial disclosure ordinances, as well as to any other questions concerning those ordinances which were submitted to me. I believe it was suggested that the time limit for submission of such questions be two weeks. I have received no additional questions beyond those raised at the May 22 meeting so I am responding only to the questions raised at the meeting.

1. A question was raised by Mayor Wolf and others as to what should be the threshold dollar or percentage value of a financial interest of an official or his/her spouse to fall within the restrictions applicable to such financial interest in the proposed Code of Conduct ordinance. The definition of "Financial interest" in section 1(i) encompasses only any such interest with a "cost or present value" in excess of \$5,000 or any such interest representing more than 1% ownership of a corporation or other business entity. However, as per the amended version of the proposed ordinance dated May 18, 1990, even interests with a present value in excess of \$5,000 are excluded if they represent less than 1% of a corporation's stock if the corporation has more than 100 stockholders and if such stock was acquired through purchase at fair market value, gift by a family member, inheritance, or purchased by the contribution of services, unrelated to duties with the City, which have been fairly valued. Thus if a councillor acquired 0.8% of the stock of IBM, which has more than 100 stockholders, by purchase at fair market value, gift by a family member, inheritance or rendering of services fairly valued, that financial interest would be excluded from the coverage of the ordinance. If one wished to include such an interest within the coverage of the statute, one could eliminate this exclusion entirely or modify it by lowering the 1% figure to a lower percentage or by providing that the value of such an excluded interest must be less than a specified dollar amount.

As for the specific situation described by Mayor Wolf, if the value of her husband's Polaroid stock exceeded \$5,000 and he acquired it for services fairly valued, that financial interest would be excluded from the coverage of the ordinance.

2. A question was raised as to what language could be employed if one wished to include with the coverage of the ordinances not only "spouses" of city officials or employees by also non-spouses with whom such officials or employees are living in the manner of a spousal relationship, i.e., a so-called "significant other." To achieve this result we recommend adding to the proposed ordinances or Code of Conduct and Statements of Interests the following definition of "Spouse":

"Spouse" means a reporting person's [or, in the Code of Conduct ordinance, an official's or employee's] legally-married husband or wife or a person cohabiting with such reporting person [or official or employee] in the manner of a spouse but without being legally married to such reporting person.

3. As to the question whether the proposed Code of Conduct would prohibit the councillors from voting on their own salaries as councillors, it is generally accepted that as a part of a legislative body's status as an independent branch of government, its members should have the power to set their own salaries. I believe this is reasonable (although I acknowledge possible bias as a member of the Board of Aldermen of the City of Newton), and it appears to me the Code of Conduct ordinance permits this by specifically excluding from the definition of "Financial interest" "the authorized compensation paid to an official or employee for his office or employment." By this specific exclusion of the councillors' salaries from the definition of "Financial interest," it would not appear to be a conflict of interest under section 8 for the councillors to vote on their salaries. If there is continuing concern over this as a possible question, the matter can be made quite clear by adding to section 8(a) the words "Nothing in this ordinance is intended to prohibit, or interfere with, the right and power of members of the Cambridge City Council to participate in determining and voting on the salary to be paid to such persons for service on the Council."

4. A question was raised as to whether the proposed ordinances would preclude city officials and employees from participating in efforts to raise funds for the City. Perhaps I missed the thrust of this question but I find nothing in the proposed ordinances that would seem to preclude this. The only possible question might relate to the definition of "gift," which does not specifically exclude voluntary delivery of anything of value which is specified by the donor, at the time of such delivery, to be intended for the benefit of the City rather than for that of the particular official or employee to whom such thing

of value is delivered. It would probably be helpful to add this specific exclusion to the definition of "gift" in section 1(1) of the Code of Conduct ordinance.

5. A question was raised as to whether the proposed ordinances would require any public officials to disclose publicly their state or federal income tax returns. As presently drafted, the ordinances would not require such disclosure. To my knowledge such disclosure is not required of any public officials in the Commonwealth, although on occasion candidates for public office voluntarily disclose such tax returns. Whether to require such disclosure in the proposed ordinance is purely a policy choice for the members of the Council, on which I express no opinion.

To my knowledge this responds to all questions that have been put to me concerning the proposed ordinances. Please let me know if there are other questions to which responses are desired.

# City of Cambridge

MASSACHUSETTS

In City Council MAY 22 1990

*C. WALSH TO ADD TO CODE OF CONDUCT THE FILING OF STATE AND FEDERAL INCOME TAX RETURNS*

	YEA	NAY	ABSENT	PRESENT
Mr. Ed Cyr		✓		
Mr. Francis H. Duehay		✓		
Mr. Jonathan S. Myers		✓		
Mr. Kenneth E. Reeves		✓		
Mrs. Sheila T. Russell	✓			
Mr. Walter J. Sullivan	✓			
Mr. Timothy J. Toomey, Jr.	✓			
Mr. William H. Walsh	✓			
Mayor Alice K. Wolf		✓		

4 5

FAILED IF ADOPTION

# City of Cambridge

MASSACHUSETTS

In City Council MAY 22 1990

*C. Toomey 1% BENEFICIAL INTEREST BE STRICKEN AND*

*\$1.00 BE INSERTED*

	YEA	NAY	ABSENT	PRESENT
Mr. Ed Cyr		✓		
Mr. Francis H. Duehay		✓		
Mr. Jonathan S. Myers		✓		
Mr. Kenneth E. Reeves		✓		
Mrs. Sheila T. Russell	✓			
Mr. Walter J. Sullivan	✓			
Mr. Timothy J. Toomey, Jr.	✓			
Mr. William H. Walsh	✓			
Mayor Alice K. Wolf		✓		

*4 5*

*FAILED BY ADOPTION*



# CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9094

COUNCILLOR FRANCIS H. DUEHAY  
26 LOWELL STREET  
CAMBRIDGE, MASSACHUSETTS 02138

May 18, 1990

Memo to: Ordinance Committee

From: Frank Duehay, Chair

*F.H.D.*

In preparation for the committee meeting on Tuesday evening, May 22 on ethics legislation, I have asked the city clerk (who in turn asked the city solicitor) to prepare a summary of the suggestions made by special counsel and by others who testified at the public hearing, so that you could be in a position to offer any of these suggestions as amendments. That memo is enclosed as are the revisions suggested by the proponents, ~~together with their new text containing their amendments.~~

*Submitted 5/22/90*

RECEIVED BY  
OFFICE OF CITY CLERK

May 17, 1990

1990 MAY 18 PM 1:55

CAMBRIDGE MA.

COMBINED AMENDMENTS TO PROPOSED ZONING  
ORDINANCE - DISCLOSURE OF BENEFICIAL  
INTERESTS

EXPLANATION

1. Add to the list of the city agencies contained in Sections 1, 2.6 and 3 the "License Commission". Omitted Agency
2. Section \_\_\_ - 2.1: delete and substitute the following definition: "Applicant" means the owner of property as to which zoning relief is sought. F H & E Suggestion
3. Section \_\_\_ - 3(b): Add "square feet" after "10,000 or more". F H & E Suggestion
4. Section \_\_\_ - 4.1: Change "shall" to "may" in line 3. F H & E Suggestion
5. In Section 4.1 and in paragraph 4 of Appendix A, change "employing" to "employed as" and add to the following list of professions "general contractors" Planning Board Suggestion
6. Section \_\_\_ - 4.1, 5th line on page 4: Change line to read: "of all individuals, firms, partnerships and personal corporations employed as" F H & E Suggestion
7. Section \_\_\_ - 4.1, last sentence: Change to read as follows: F H & E Suggestion  

"The provisions of this section shall not require disclosure of the name and address of any Person whose only Beneficial Interest consists of stock or any other form of ownership interest of a corporation, partnership or trust, of which is available for sale to the public on a listed securities exchange or on a regulated over the counter market, if such Person holds less than one percent of the total stock or other ownership interest of such corporation, partnership, or trust."

8. Section \_\_ - 6: Change to read as follows: F H & E  
Suggestion
- Annually for seven years from the date of Zoning Relief the Applicant shall file with the City Clerk updated Disclosure Statements containing all of the information required in Section \_\_ - 4 for each year in which there is a change; for any year in which there has been no material change in the identity of Persons have a Beneficial Interest, as disclosed in the last Disclosure Statement filed, the Applicant shall notify in writing the City Clerk to that effect annually. Updated Disclosure statements shall specifically identify changes or differences from the immediately preceding filed Disclosure Statement."
9. Section \_\_ - 7.1
- (a) page 6, line 1: change "zoning" to "this ordinance". F H & E  
Suggestion
- (b) page 6, line 2: delete "of such a violation". F H & E  
Suggestion
- (c) page 6, line 5: add ", as listed on the last Disclosure Statement," after "Interest". F H & E  
Suggestion
- (d) page 6, line 5: add "or obtains" before "a Beneficial Interest". F H & E  
Suggestion
10. In sections 7.1 and 7.2 delete "(including mortgagees)" and substitute "and mortgagees". Planning  
Board  
Suggestion
11. Section \_\_ - 7.2
- (a) lines 2 and 3 and 7 and 8: move "willfully" to immediately before "false" in both places. F H & E  
Suggestion
- (b) line 10: change "such a" to "any resulting violation". F H & E  
Suggestion
- (c) line 11: add "ordinance or other law regulating the alteration, construction or demolition of buildings" after "zoning". F H & E  
Suggestion

RECEIVED BY  
OFFICE OF CITY CLERK

May 1, 1990

1990 MAY 18 PM 1:55

Amendment to Proposed Ordinance:  
Code of Conduct for City Officials

Explanation

1. Section \_\_ - 1(d), line 4: Add "provided" after "services". FH&E  
Comment
2. Section \_\_ - 1(k), line 10: Add after "member", "or purchased by the contribution of services, unrelated to duties with the City, which services have been fairly valued" and line 14 delete from "such" to "amended" and substitute the following: "if the corporation has more than 100 stock holders" FH&E  
Comment
3. Section \_\_ - 1(l): delete and substitute the following: "Gift" means a delivery of goods, payment, entertainment, subscription, advance services or anything of value, unless consideration of equal or greater value is received. If items are furnished or services are rendered for less than the fair market value, the difference between the fair market value and the price shall be treated as a gift. "Gift" shall not include a political contribution reported as required by law, a commercially reasonable loan made in the ordinary course of business, anything of value received by inheritance or a gift received from a family member or from a relative within the third degree of consanguinity of the reporting person or of the reporting person's spouse or from the spouse of any such relative. FH&E  
Comment
4. Section \_\_ - 1(n), line 3: Change "veto" to "disapproval". FH&E  
Comment
5. Section \_\_ - 1(q): delete and substitute the following: "Person means a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons. FH&E  
Comment
6. Add Section \_\_ - 1(t): "Favor means an act, omission, arrangement or other matter which would, in the opinion of a reasonable person, create a moral obligation on the part of the person benefited." FH&E  
Comment

7. Section \_\_\_ - 1.3, line 4: Add "to influence or effect" before "any City ...". FH&E  
Comment
8. Section \_\_\_ - 1.4, page 6, line 3: Add "rebuttable" before "presumption" and line 4, delete "city". FH&E  
Comment
9. Section \_\_\_ - 1.7, lines 8 and 9: Replace with the following:  
  
"that is not made available to the general public on request or could not be obtained by obtaining documents available pursuant to the Massachusetts Public Records Act, as amended." FH&E  
Comment
10. Section \_\_\_ - 1.8(a), line 4: Change "material economic" to "financial" and line 7, add "by an official or employee having and(?) such interest" before "where". FH&E  
Comment
11. Section \_\_\_ - 1.8(b), line 2: Change "economic" to "financial". FH&E  
Comment
12. Section \_\_\_ - 1.10(a), line 3: Change "of" to "or", and line 7 add: "on behalf of the City" after "employment". FH&E  
Comment
13. Section \_\_\_ -1.9: Substitute "employee or elected official" for "elected official or employee" throughout; line 11 of (a): add "other" before "person"; line 1 of (b): add "represent or" before "have". FH&E  
Comment
14. Section \_\_\_ - 1.10(b), line 6: Add "former" before "official"; line 7 and 8: substitute "such" for "the subject matter ... subject."; line 10: substitute "such transaction" for "a contract"; line 11: substitute "such" for "that contract"; and line 16: Add "such member shall not be counted for the purpose of determining a majority" after "quorum." FH&E  
Comment
15. Section \_\_\_ - 1.11, line 1: Add "employee or" before "elected"; line 2: substitute "his or her spouse" for "their spouses"; line 6: substitute "to the City of any property or service" for "any article". FH&E  
Comment

16. Section \_\_\_ - 1.12, line 1: Add "favor" before "gift"; line 3: Add "City" before "contractor". FH&E  
Comment
17. Section \_\_\_ - 1.13(b), line 5: Add at the end: "with respect to any City contract with any person employing, or having contracts with any relative of such official or employee." FH&E  
Comment
18. Section \_\_\_ - 1.15, \_\_\_ - 1.16 and \_\_\_ - 1.17 renumber to \_\_\_ - 1.16 \_\_\_ - 1.17 and \_\_\_ 1.18 and add the following new section \_\_\_ - 1.15: (a) Any city employee, official or board or commission member shall be entitled to the opinion of the city solicitor upon any question arising under this ordinance relating to the duties, responsibilities and interests of such person. All requests for such opinions by a subordinate municipal employee shall be made in confidence directly to the city manager who shall in turn request in confidence such opinion of the city solicitor on behalf of such person, and all constitutional officers, members of boards or commissions and chief officers or heads of municipal agencies may make direct confidential requests for such opinions on their own account. The city solicitor shall file such opinion in writing with the city clerk and such opinion shall be a matter of public record; however, no opinion will be rendered by the city solicitor except upon the submission of detailed existing facts which raise a question of actual or prospective violation of any provision of this ordinance.
- (b) Any person who acts in reliance on an opinion of the city solicitor shall be exempt from the penalties provided herein if they have made a good faith disclosure of all material facts related to the opinion.
19. Section \_\_\_ - 1.16, in (a), line 4: Add "and state election laws" after "law; in (b): change "\$500" to "\$300". FH&E  
Comment

RECEIVED BY  
OFFICE OF CITY CLERK

May 17, 1990

1990 MAY 18 PM 1:55

CAMBRIDGE MA.  
COMBINED AMENDMENTS OF PROPOSED  
CHAPTER 26 STATEMENTS OF INTERESTS  
BY CERTAIN CITY OFFICIALS AND  
PERSONS CONDUCTING BUSINESS  
WITH THE CITY

---

EXPLANATION

1. Section 26-1(b): Delete the last phrase beginning "including any federal, state ...." FH&E Suggestion
2. Section 26-1(c), line 3: Delete "an elected or appointed government official". FH&E Suggestion
3. Section 26-1(d): Change "leasing" to "lease". FH&E Suggestion
4. Add to Section 26-1(1)(i) at the end thereof the following:  
  
"police commissioner; chief of police and all officers with the rank of captain; chief of fire department and all officers with the rank of captain." Omitted Positions
5. Add to section 26-1(1)(ii)  
  
(a) at the beginning thereof the following:  
  
"the members of boards and commissions"; and Omitted Positions  
  
(b) at the end thereof the following:  
  
"purchasing; personnel; retirement; water; electric; human services; historic commission." Omitted Departments
6. Delete from Section 26-1(1)(iii) the phrase "as determined by the commission." Election Comm. Reqst
7. Section 26-1(1)(iv), second line: Add "compensated officials" after "foregoing". FH&E Suggestion
8. Section 26-2(a): Add at the end "of receipt of such request." FH&E Suggestion

- |  |  |
|--|--|
| 9. Delete subsection (b) of Section 26-2 and reletter.   | Election<br>Comm. Rept.  |
| 10. Change the last line of Section 26-2(e) to read: "statement of interest which is deficient on its face."   | Technical<br>correction  |
| 11. Section 26-3(a): Add at the end "unless the candidate neither files nomination papers nor conducts a sticker or write in campaign."  | FH&E<br>Suggestion   |
| 12. Change subsection 26-3(c) to read:<br><br>"the statements of interest shall be filed on the form prescribed hereby and shall be signed under the penalty of perjury by the reporting person."  | Election<br>Commission<br>Request  |
| 13. Section 26-3(d)(i) delete from "in Massachusetts" to "the business." and substitute therefore the following: "is transacting business with or makes any application to for zoning relief (as defined in §___ of the Zoning Ordinance) or other discretionary action or is subject to licensing, regulation or investigation by the department, agency, board or commission of the City in which or by which the individual is employed or has a position or for which the reporting individual, employee or official has management or supervisory responsibility. | Response<br>to<br>Licensing<br>Comm.<br>Chair's<br>Comments  |
| 14. Section 26-3(d)(ii) change "in Massachusetts" to "in Cambridge".   | FH&E<br>Suggestion   |
| 15. Delete subsections (a), (c), and (d) of Section 26-4 and reletter.   | Election<br>Comm. Reqt   |
| 16. Add new subsection (c) to Section 26-4 as follows:   |  |
| (c) the Commission and the City Clerk shall post prominently for public inspection a list of all delinquent persons who have been reported pursuant to subsection (c), and the list of persons required to file.   | Changed in<br>response<br>to Elect.<br>Commission<br>Request   |
| 17. Add Section 26-5 "Enforcment" as follows:  |  |
| (a) A criminal complaint for a violation may be filed by the Attorney General, the District Attorney or the City. If a violation has been reported to the District Attorney or the City Manager and no complaint is filed within sixty days thereof, any ten citizens of Cambridge   | Enforcement<br>provisions<br>changed at<br>reque of<br>Elect. Comm<br>(includes<br>tech. sugg<br>of FH&E). |

may file a criminal complaint unless the District Attorney shall advise the court in writing that there is no reasonable basis to conclude that there has been a violation.

(b) Any City employee or official who violates this Chapter shall be subject to appropriate discipline, including suspension, termination or censure, consistent with the rules and requirements of the state civil service law and the state election laws.

(c) Any person who violates this Chapter shall be subject to a civil fine or criminal penalty to be imposed by the court, in the amount of \$300 for each violation. Each failure to file and each failure to disclose a gift, contribution, payment, purchase, forgiveness, favor, discount or other thing or transaction required to be disclosed by this Chapter shall constitute a separate violation.

(d) The rights and remedies provided herein are cumulative and not exclusive.

FSBB318



# City of Cambridge

Calendar Item # 14

-8-

IN CITY COUNCIL

~~February 5, 1990~~

February 12, 1990

MAYOR WOLF  
 VICE MAYOR REEVES  
 COUNCILLOR CYR  
 COUNCILLOR DUEHAY  
 COUNCILLOR MYERS

ORDERED: That the following three attached proposed ordinances be referred to the Committee on Ordinances and/or Planning Board for hearing and report:

1. By adding a new chapter to the General Ordinances of the City of Cambridge entitled "Code of Conduct for City Officials";
2. By adding a new Chapter Twenty-Six to the General Ordinances of the City of Cambridge entitled "Statements of Interests by Certain City Officials and Persons Conducting Business with the City"; and
3. By adding a new Article to the Zoning Ordinances of the City of Cambridge entitled "Disclosure of Beneficial Interests".

In City Council February 12, 1990.

Adopted by the affirmative vote of eight members.

Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

Joseph E. Connarton, City Clerk.

DRAFT 1/29/90

Be It ordained by the City Council of the City of Cambridge, as follows:

The Code of the City of Cambridge is hereby amended by adding the new chapter:

CHAPTER \_\_\_\_\_  
CODE OF CONDUCT FOR CITY OFFICIALS

SECTION \_\_\_\_-1. The Municipal Code of Cambridge is hereby amended by adding a new Chapter \_\_\_\_ entitled "Governmental Ethics" as follows:

1. Definitions. Whenever used in this chapter, the following terms shall have the following meanings:

(a) "Administrative action" means a decision on, or proposal, consideration, enactment or making of any rule, regulation, or other official non-ministerial action or non-action by any executive department, or by any official or employee of an executive department, on any matter.

(b) "Agency" means the City Council, any committee or other subdivision thereof, any City department or other administrative unit, commission, board, or other division of the government of the City.

(c) "City" means the City of Cambridge.

(d) "City contractor" means any person (including his agents or employees acting within the scope of their employment) who is paid from the City treasury or pursuant to City Ordinance, for goods or services to any City agency, regardless of the nature of the relationship of such individual to the City for purposes other than this chapter.

(e) "Compensation" means money, anything of value or other pecuniary benefit received or to be received in return for, or as reimbursement for, goods or services rendered or to be rendered.

(f) "Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

(g) "Doing business" means any one or any combination of sales, purchases, leases or contracts to, from, or with the City or any City agency in an amount in excess of \$5,000 in any twelve consecutive months.

(h) "Economic interest" means any interest valued or capable of valuation in monetary terms; provided, that "economic interest" is subject to the same exclusions as "financial interest."

(i) "Employee" means an individual employed by the City of Cambridge or any City agency, whether part-time or full-time, paid or unpaid, whether as common law employee or independent contractor and whether appointed or elected.

(j) "Expenditure" means a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

(k) "Financial interest" means (i) any interest with a cost or present value (determined using a discount rate

of 8% compounded annually) in excess of \$5,000; or (ii) any interest representing more than 1% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, business, trust, or any legal entity organized for profit; provided, however, financial interest shall not include (a) any ownership through purchase at fair market value, gift by a family member or inheritance of less than 1% (by value or voting power) of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (b) the authorized compensation paid to an official or employee for his office or employment; (c) any economic benefit provided equally to all residents of the City.

(l) "Gift" means anything of value given without consideration, for nominal consideration or without expectation of fair value in return with less than equivalent consideration in money or monies worth given in return.

(m) "Legislation" means ordinances, resolutions, amendments, nominations, appointments, reports and any other matters pending or proposed in the City Council or a committee or other subdivision thereof, including any other matter which may be the subject of Council action.

(n) "Legislative action" means the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto or other official action or non-action on any ordinance, resolution, motion, order, appointment, application or other matter pending or proposed in the City Council or any committee or subcommittee thereof.

(o) "Lobbyist" means any individual (i) who for compensation or on behalf of any person other than such individual undertakes to influence any legislative or administrative action; or (ii) any part of whose regular duties as an employee of another includes undertaking to influence any legislative or administrative action.

(p) "Official" means any person holding any elected office of the City or any appointed, non-employee member of any City agency.

(q) "Person" means any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as any parent or subsidiary of any of the foregoing or other organization as a group of persons, and whether or not operated for profit.

(r) "Professional services" means services in any occupation requiring advanced or specialized education and training, including without limitation law, accounting, insurance, real estate, engineering, medicine, architecture, dentistry, banking, finance, public relations, education or consulting.

(s) "Relative" means a person who is related to an official or employee as spouse, as a descendent of any grandparent of such official or employee whether by the whole- or half-blood or by adoption, or as spouse of any of the foregoing.

2. Fiduciary duty. Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

3. Improper influence. No official or employee shall make, participate in making or in any way attempt to use such official's or such employee's position, influence or power, any City governmental decision or action in which such official or employee knows or has reason to know that such official or employee has any economic interest distinguishable from its effect on the public generally.

4. Offering, receiving and soliciting gifts, favors.

(a) No person shall give to any official or employee, or to the spouse or child of any of them, and none of them shall solicit or accept, any anonymous gift.

(b) No person shall give or offer to give to any official, employee, or City contractor, or to the spouse or child of any of them, and none of them shall accept, anything of value, including, but not limited to, a gift, a loan, a favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any

official, employee or City contractor concerning the business of the City would be directly or indirectly influenced thereby. There shall be a presumption that any such city official who, having received such a gift, loan, favor or promise and who then acts or fails to act so as to benefit the donor, lender or promisor, has done so on the basis of such an understanding.

(c) No person who has an economic interest in a business entity or other enterprise conducting business in the City, a City service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect such business, service or transaction, or to the sibling, spouse or child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service; provided however, nothing herein shall be construed to prohibit such person from accepting gifts from relatives.

(d) Nothing in this section shall prohibit any person from giving or receiving: (i) an award, with a monetary value of less than \$100, publicly presented in recognition of public service; (ii) commercially reasonable loans made in the ordinary course of the lender's business; (iii) political contributions, provided they are reported to the extent required by law; (iv) reasonable hosting, including travel and expenses, entertainment, meals or refreshments

furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public event.

(e) Any gift given in violation of the provisions of this section shall be turned over the Treasurer, who shall add the gift to the inventory of City property.

(f) Nothing in this section shall prohibit any official or employee, or any spouse or child of such official or employee, from accepting a gift on the City's behalf, provided, however, the person accepting the gift shall promptly report receipt of the gift and deliver it to the Treasurer, who shall add it to the inventory of City property.

5. Solicitation or receipt of money for advice or assistance. No official or employee, city contractor, or the spouse or minor child of any of them, shall solicit or accept any money or other thing of value including, but not limited to gifts, loans, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee or the spouse of an official or employee from accepting compensation for services wholly unrelated to the official's or employee's knowledge, discretion or authority concerning their City duties and responsibilities and rendered as part of the

official's or employee's non-City employment, occupation or profession.

6. City-owned property. No official, employee or city contractor shall engage in or permit the unauthorized use of City-owned property by any person.

7. Use or disclosure of confidential information. No current or former official or employee shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Massachusetts Public Records Act, as amended.

8. Conflicts of interest.

(a) No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which such official or employee has any material economic interest distinguishable from that of the general public; provided however, that this section shall not prohibit the membership and participation on advisory boards and commissions where persons with such interests are intended to be represented.

(b) Any member of the City Council who has any economic interest distinguishable from that of the general public or all councilors in any matter pending before the

City Council or any Council Committee shall publicly disclose the nature and extent of such interest on the record of proceedings of the City Council. Such member shall abstain from voting on the matter but shall be counted present for purposes of a quorum. The obligation to report a potential conflict of interest under this subsection arises as soon as the member of the City Council knows or had reason to know of such potential conflict.

9. Representation of other persons.

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of the employee's employment, or any elected official from appearing without compensation before any city agency on behalf of the constituents in the course of the elected official's duties as an elected official or any person from representing such person.

(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or administrative proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

(c) No appointed official may represent or have any economic interest in the representation of any person in the circumstances described in subsection (a) or (b) unless the matter is wholly unrelated to the official's City duties and responsibilities. Nor shall any such official participate in any matter on behalf of the City, where there would be any appearance of a conflict of interest.

10. Post-employment restrictions.

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City of any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during the official's or employee's term of office or employment; provided, however, that any person may represent himself, his spouse or his minor children.

(b) No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies; provided however, if the official or employee participated personally and substantially in the subject matter of the transaction or subject matter during the term of office or employment of the official or employee; ~~or~~ exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract transaction or matter.

11. Interest in City business. No elected official or employee or their spouses shall have a financial interest, directly or indirectly, in the name of the official or employee or in the name of any other person in any contract, work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance. Compensation for property taken pursuant to the City's eminent domain power shall not constitute a financial interest within the meaning of this section. Unless sold pursuant to a process of competitive bidding following public notice, no elected official or employee shall have a financial interest in the purchase of any property that (i) belongs to the City or a City Agency, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City. No appointed official shall engage in a transaction described in this section unless the matter is wholly unrelated to the official's City duties and responsibilities.

12. Contract inducements. No payment, gift or offer of employment or future employment shall be made in connection with any City contract, by or on behalf of a contractor to a City official or employee, a subcontractor to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a

subcontract or order. This prohibition shall be set forth in every City contract and solicitation therefor.

13. Employment of relatives.

(a) No official or employee shall employ or advocate for employment, in any City agency in which said official or employee serves or over which he exercises authority, supervision, or control, any person (i) who is a relative of said official or employee, or (ii) in exchange for or in consideration of the employment of any of said official's or employee's relatives by any other official or employee.

(b) No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority.

(c) No official or employee shall use or permit the use of his position to assist any relative in securing employment or contracts with persons over whom the employee or official exercises contract management authority. The employment of or contracting with a relative of such a City official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a City contract shall be evidence that said employment or contract was obtained in violation of this chapter.

14. Favors By City Councillors

City Councillors shall not make loans, gifts, offers

of employment or future employment or of business or investment opportunities to the city manager, to assistant city managers, to heads of city departments or agencies, to the city solicitor, and assistant ~~city~~ solicitors or to members of boards or commissions involved in the granting of variances, permits, licenses or other such discretionary or adjudicatory functions.

15. Penalties

(a) Any employee or City official who violates this code shall be subject to appropriate discipline, including suspension, termination or censure, consistent with the rules and requirements of the state civil service law, as well as civil or criminal prosecution under any other applicable state laws.

(b) A knowing violation of this code shall constitute a misdemeanor. Upon conviction, the Court shall impose a fine of not more than \$500 per offense.

(c) All City contracts shall include therein a clause for termination in the event of a violation of this Chapter in connection with the awarding, administration or performance of the contract.

(d) Any permit, license, ruling, determination or other official action taken in violation of this Code shall be void; provided however, that in the event that voiding would substantially damage the City or innocent third parties then the City Council, by vote of at least six of its members, may preserve the permit, license, ruling, determination or other action.

(e) Ten registered voters shall have standing to enforce the provisions of this ordinance by (i) seeking the issuance of a criminal complaint; and/or (ii) instituting a civil action on behalf of the City to recover damages on its behalf or to implement any other remedy provided for in this ordinance.

16. Other remedies. Nothing in this chapter shall preclude the City or any City Agency from maintaining an action for an accounting for any economic benefit received by any person in violation of this chapter or other law, or to recover damages for violation of this chapter.

17. Conflict with other laws. In the event of any conflict or inconsistency of this ordinance with any other state law, the provision of broadest or most strict coverage shall control.

DRAFT 1/29/90

Be it ordained by the City Council of the City of Cambridge, as follows:

The Code of the City of Cambridge is hereby amended by adding the following chapter:

## CHAPTER 26

### STATEMENTS OF INTERESTS BY CERTAIN CITY OFFICIALS AND PERSONS CONDUCTING BUSINESS WITH THE CITY

Section 26-1. Definitions. As used in this chapter, unless the context requires otherwise.

(a) "amount" means a category value, rather than an exact dollar figure, as follows: greater than \$1000 but not more than \$2500; greater than \$2500 but not more than \$5000; greater than \$5000 but not more than \$10,000; greater than \$10,000 but not more than \$25,000; greater than \$25,000 but not more than \$50,000; greater than \$50,000 but not more than \$100,000; greater than \$100,000;

(b) "business" means any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, receivership, business or real estate trust, or any other legal entity organized for profit, non-profit or charitable purposes, including any federal, state, county, district or municipal agency, authority or other governmental entity;

(c) "business with which a person is associated" means any business in which the reporting person or a family member is an employee, an elected or appointed governmental official, a general partner, limited partner, proprietor, officer,

director, trustee or serves in any managerial capacity; and any business more than one per cent of any class of outstanding equity of which is beneficially owned in the aggregate by the reporting person and/or family members;

(d) "doing business" is the purchase, leasing or sale of goods or services in any transaction with the City or any department, agency, commission or other part thereof.

(e) "candidate" means any individual who seeks nomination or election to the office of city councillor or school committee member. For the purposes of this chapter, an individual shall be deemed to be seeking nomination or election to an office if such individual has (1) received a political contribution or made an expenditure, or has given such individual's consent for any person or committee to receive a political contribution or make an expenditure, for the purpose of influencing such individual's nomination or election to such office, whether or not the specific municipal office for which such individual will seek nomination or election is known at the time the political contribution is received or the expenditure is made, or (2) taken action necessary under the law to qualify such individual for nomination or election to such office;

(f) "commission" means the board of election commissioners of Cambridge, established by chapter 239 of the acts of 1921, as amended;

(g) "equity" means any stock, interests in capital or profits and losses or similar ownership interest in a business;

(h) "family member" means a spouse, any dependent children residing in the reporting person's household, or a sibling;

(i) "gift" means a delivery of goods, payment, entertainment, subscription, advance services or anything of value, unless consideration of equal or greater value is received. If items are furnished or services are rendered for less than the fair market value, the difference between the fair market value and the price shall be treated as a gift. "Gift" shall not include a political contribution reported as required by law, a commercially reasonable loan made in the ordinary course of business, anything of value received by inheritance or a gift received from a family member or from a relative within the third degree of consanguinity of the reporting person or of the reporting person's spouse or from the spouse of any such relative;

(j) "legislative agent" means any person who for compensation or reward does any act to promote, oppose or influence legislation or any other matter before the City Council or School Committee, or to influence the decision of any member of the city administration where such decision concerns legislation or the adoption, defeat or postponement of a standard rate, rule or regulation pursuant thereto. The term shall include persons who, as any part of their usual employment and not simply incidental thereto, attempt to promote, oppose or influence such matters, whether or not any compensation in addition to the salary for such employment is received for such services;

(k) "municipal body" means any agency, authority, board, bureau, commission, committee, council, department, division, school department, or other legal entity within the government of the City of Cambridge;

(l) "municipal official" means:

(i) any individual holding any one of the following positions in the government of the City of Cambridge, whether by election or appointment: mayor; councillor; city manager; deputy city manager; assistant city manager; city clerk; auditor; city solicitor; school committee member;

(ii) the executive or administrative head or heads, whether elected or appointed, compensated or uncompensated, of a municipal body or bodies with primary executive authority for any of the following: general purpose administration; planning; development and land use; zoning; public safety; education; inspection; licensing; public works; or assessment; or

(iii) the executive or administrative head or heads, whether elected or appointed, compensated or uncompensated, of a municipal body or bodies which the commission may designate; or

(iv) any employee of a municipal body whose salary exceeds that of any of the foregoing and reports directly to any of the foregoing, or who is head of a major administrative unit within a municipal body, as determined by the commission;

(m) "person" means a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons;

(n) "political contribution" means a contribution of money or anything of value to an individual, candidate, or political committee, or person acting on behalf of any individual, candidate, or political committee, for the purpose of influencing the nomination or election of said individual or candidate, or for the purpose of promoting or opposing a charter change, referendum question, or other question submitted to the voters, and shall include any: (1) gift, subscription, loan, advance, deposit of money, or thing of value, except a loan of money to a candidate by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business; (2) transfer of money or anything of value between political committees; (3) payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee; (4) purchase from an individual, candidate or political committee, whether through the device of tickets, advertisements, or otherwise, for fund-raising activities, including testimonials, held on behalf of said individual, candidate, or political committee, to the extent that the purchase price exceeds the actual cost of the goods sold or services rendered; (5) discount or rebate not available to other candidates for the same office and the general public; and (6) the forgiveness of indebtedness or payment of indebtedness by another person, but shall not include the rendering of services by speakers, editors, writers, poll

watchers, poll checkers or others, nor the payment by those rendering such services or such personal expenses as may be incidental thereto, nor the exercise of ordinary hospitality;

(o) "reporting person or reporting business" means any person required to file a statement of interests pursuant to section 3 of this chapter.

(p) "businesses conducting business within the City" shall mean all businesses which obtain payments or receive monies in any fiscal year from the City of Cambridge or any department, division or agency thereof in excess of \$5,000 per year, which monies are not received as a consequence of a contract awarded on the basis of competitive bidding.

Section 26-2. Administration.

The commission shall:

(a) on or before March first of each year request from the city manager a list of the names and positions of all municipal officials and businesses conducting business with the City, certified as to correctness and completeness, and the city manager shall furnish such a list within (60) days;

(b) on or before May first of each year make forms and instructions for statements of interests available to persons required to file the statements pursuant to the provisions of this chapter;

(c) upon receipt of a statement of interests filed pursuant to this chapter, issue to the person filing such statement a receipt verifying the fact that a statement of interests has been filed and a receipted copy of such statement;

(d) make the lists of municipal officials and statements of interests filed with the commission pursuant to this chapter available upon written request of any individual for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost; the commission shall forward a copy of said request to the individual whose statement has been examined; provided, however, that such requests from the attorney general of the Commonwealth of Massachusetts, the district attorney of Middlesex County, or the State Ethics Commission shall be confidential;

(e) compile and maintain an index of all filed statements of interests to facilitate public access to the statements;

(f) inspect all filed statements of interests in order to ascertain whether any reporting person has failed to file a statement as required by law or has filed a statement which is deficient on its face. After inspection, the commission shall list all reporting persons who have failed to file a statement of interests and all reporting persons who have filed a statement of interests on its face;

(g) notify each delinquent reporting person that a statement of interests has not been filed or that such a statement which has been filed is deficient. Such notice shall be in writing and shall state in detail each deficiency and the penalties for failure to file a correct statement of interests pursuant to this chapter;

(h) preserve all statements filed with it for six years from the date of receipt.

Section 26-3. Statements of Interests.

(a) Every candidate shall file a statement of interests for the preceding calendar year with the commission on or before the date on which nomination papers for such candidate must be submitted to the commission;

(b) Every municipal official shall file a statement of interests for the preceding year with the commission:

(1) on or before June first of each year that such person is a municipal official or within thirty days of becoming a municipal official, whichever is later, and (2) on or before June first of the year after such person ceases to be a municipal official; provided, however, that no former municipal official shall be required to file a statement of interests for any year in which such former municipal official was a municipal official for less than (30) days;

(c) the statements of interests shall be filed on a form prescribed by the commission and shall be signed under penalty of perjury by the reporting person;

(d) every reporting person (other than businesses conducting business with the City) shall disclose, to the best of such reporting person's knowledge, the following information for such reporting person and every family member for the preceding calendar year:

(i) the name and address of and the nature of association with any business from which income in excess of \$1,000 is received if that business is transacting business in

Massachusetts, provided, however, that no such disclosure must be made where dividends or other such profit distributions arise from the beneficial ownership of less than one percent of the business;

(ii) the name of all businesses transacting business in Massachusetts as to which more than one percent of the beneficial ownership of which is held directly or indirectly by a family member;

(iii) the name and address of each creditor, located within, or doing business with the City of Cambridge, to whom more than one thousand dollars was owed on December 31, and the original amount, the amount outstanding, the terms of repayment and the general nature of the security pledged for each obligation; provided, however, that mortgages on the person's primary residence the proceeds of which were substantially used to purchase or improve such residence or to refinance indebtedness incurred for such purposes, obligations arising out of retail installment transactions, educational loans, medical and dental expenses, debt incurred in the ordinary course of an active ongoing business, and any obligation to make alimony or support payments shall not be reported; provided, further, that such information need not be reported if the creditor is a relative within the third degree of consanguinity or affinity;

(iv) the name and address of the source, and the cash value of any reimbursement for expense aggregating more than one hundred dollars in the calendar year if the recipient is a

member of a municipal body and the source of such reimbursement is a person having a direct interest in legislation, legislative action, administrative action, or a matter before that municipal body;

(v) the name and address of the donor, and the fair market value, if determinable, of any gift(s) (other than campaign contributions which have been reported pursuant to Mass. Gen. L. Chapter \_\_\_, §\_\_\_) aggregating more than one hundred dollars in the calendar year, if the recipient is a member of a municipal body and the source of such gift(s) is a person having a direct interest in legislation, legislative action, or a matter before that municipal body;

(vi) the description, as appearing on the most recent tax bill of all real property located within the boundaries of the City of Cambridge, in which direct or indirect financial interest was held, which has an assessed value greater than one thousand dollars; and, if the property was transferred during the year, the name and address of the person furnishing consideration to the reporting person or receiving it from him in respect to such transfer;

(vii) the name and address of the source, and the fair market value, of any honoraria aggregating more than one hundred dollars if the source of such honoraria is a legislative agent; or if the recipient is a member of a municipal body and the source of such honoraria is a person having a direct interest in legislation, legislative action, or a matter before that municipal body;

(viii) the name and address of any creditor who has forgiven an indebtedness of over one thousand dollars, and the amount forgiven; provided, however, that no such information need be reported if the creditor is a relative within the third degree of consanguinity or affinity of the reporting person, or the spouse of such a relative;

(ix) the name and address of any business from which the reporting person is taking a leave of absence;

(x) the identity of any equity in a business from which the reporting person is associated which has been transferred to a member of the reporting person's family; provided, however, that a member of a reporting person's family need not report any such transfer to the reporting person;

(xi) the date, nature, amount or value of any commercial or business transaction with any city councilor and the name of the councilor.

(e) every business conducting business with the City shall file a statement of interests for the calendar year in which any city funds are owed or paid and for two years thereafter listing thereon any of the following:

(i) the date, amount, and basis for any loan payment, gift or honorarium paid to any municipal official, candidate or committee supporting a candidate, whether paid directly by the business or by its officers, employees, shareholders or agents.

(ii) the name and address of any municipal official, candidate or member of their family employed by the business or owning more than one percent of the business or of any class of outstanding equity.

(f) any reporting person or reporting person who fails to file a statement of interests within the time, in the manner and to the extent required by this section shall be punished by a fine of not more than \$300. Every day that any such statement is not so filed shall constitute a separate offense.

Section 26-4. Powers and Duties of the Commission.

The commission shall:

(a) prescribe and publish rules and regulations to carry out the purposes of this chapter, including rules governing the conduct of proceedings hereunder;

(b) determine whether any reporting person has failed to file a statement of interests or has filed a deficient statement. If a reporting person has failed to file a statement of interests, or if any such statement filed with the clerk fails to conform with the requirement of section 3 (d) of this chapter, then the commission shall notify the delinquent in writing. Such notice shall state in detail each deficiency and the penalties for failure to file a correct statement of interests pursuant to this chapter;

(c) initiate a hearing and require the attendance and testimony of the delinquent reporting person, if that person fails to file or correct the statement of interests within thirty (30) days. The delinquent person may forego a hearing before the commission at such delinquent person's discretion, but shall be subject to a civil penalty pursuant to subsection (d) of this section.

Any member of the commission may administer oaths and any member of the commission may hear testimony or receive other evidence in any proceeding before the commission.

All testimony in commission proceedings shall be under oath. All parties have the right to call and examine witnesses and to be represented by counsel. Before testifying, all witnesses shall be given a copy of the regulations governing commission proceedings.

All proceedings of the commission carried out pursuant to the provisions of this subsection shall be public, unless the members vote to go into executive session in accordance with section 23B of chapter 39 of the General Laws.

Within thirty days after the end of the proceeding pursuant to the provisions of this subsection, the commission shall meet for the purpose of reviewing the evidence before it. Within thirty days after the completion of deliberations, the commission shall publish its findings.

(d) issue an order requiring the delinquent reporting person to pay a civil forfeiture of not more than \$300 for each violation against such person, if the commission establishes in its findings that a violation of this chapter has been committed, or if the delinquent reporting person decides to forego a hearing before the commission.

The commission may commence a civil action in the Cambridge division of the district court department to enforce such an order, and for this purpose may retain independent legal counsel. Any such order shall also be subject to judicial

review in said court, upon complaint of the delinquent reporting person filed within thirty days after such order.

FSBB124



# City of Cambridge

Calendar Item # 14

-8-

IN CITY COUNCIL

~~February 5, 1990~~

February 12, 1990

MAYOR WOLF  
 VICE MAYOR REEVES  
 COUNCILLOR CYR  
 COUNCILLOR DUEHAY  
 COUNCILLOR MYERS

ORDERED: That the following three attached proposed ordinances be referred to the Committee on Ordinances and/or Planning Board for hearing and report:

1. By adding a new chapter to the General Ordinances of the City of Cambridge entitled "Code of Conduct for City Officials";
2. By adding a new Chapter Twenty-Six to the General Ordinances of the City of Cambridge entitled "Statements of Interests by Certain City Officials and Persons Conducting Business with the City"; and
3. By adding a new Article to the Zoning Ordinances of the City of Cambridge entitled "Disclosure of Beneficial Interests".

In City Council February 12, 1990.

Adopted by the affirmative vote of eight members.

Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

*Joseph E. Connarton*

Joseph E. Connarton, City Clerk.



# City of Cambridge

Calendar Item # 14

-8-

IN CITY COUNCIL

~~February 5, 1990~~  
February 12, 1990

MAYOR WOLF  
VICE MAYOR REEVES  
COUNCILLOR CYR  
COUNCILLOR DUEHAY  
COUNCILLOR MYERS

ORDERED: That the following three attached proposed ordinances be referred to the Committee on Ordinances and/or Planning Board for hearing and report:

1. By adding a new chapter to the General Ordinances of the City of Cambridge entitled "Code of Conduct for City Officials";
2. By adding a new Chapter Twenty-Six to the General Ordinances of the City of Cambridge entitled "Statements of Interests by Certain City Officials and Persons Conducting Business with the City"; and
3. By adding a new Article to the Zoning Ordinances of the City of Cambridge entitled "Disclosure of Beneficial Interests".

In City Council February 12, 1990.

Adopted by the affirmative vote of eight members.

Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

*Joseph E. Connarton*

Joseph E. Connarton, City Clerk.



# City of Cambridge

Calendar Item # 14

-8-

IN CITY COUNCIL

~~February 5, 1990~~

February 12, 1990

MAYOR WOLF  
 VICE MAYOR REEVES  
 COUNCILLOR CYR  
 COUNCILLOR DUEHAY  
 COUNCILLOR MYERS

ORDERED: That the following three attached proposed ordinances be referred to the Committee on Ordinances and/or Planning Board for hearing and report:

1. By adding a new chapter to the General Ordinances of the City of Cambridge entitled "Code of Conduct for City Officials";
2. By adding a new Chapter Twenty-Six to the General Ordinances of the City of Cambridge entitled "Statements of Interests by Certain City Officials and Persons Conducting Business with the City"; and
3. By adding a new Article to the Zoning Ordinances of the City of Cambridge entitled "Disclosure of Beneficial Interests".

In City Council February 12, 1990.

Adopted by the affirmative vote of eight members.

Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

*Joseph E. Connarton*

Joseph E. Connarton, City Clerk.



# City of Cambridge

Calendar Item # 14

-8-

IN CITY COUNCIL

~~February 5, 1990~~

February 12, 1990

MAYOR WOLF  
 VICE MAYOR REEVES  
 COUNCILLOR CYR  
 COUNCILLOR DUEHAY  
 COUNCILLOR MYERS

ORDERED: That the following three attached proposed ordinances be referred to the Committee on Ordinances and/or Planning Board for hearing and report:

1. By adding a new chapter to the General Ordinances of the City of Cambridge entitled "Code of Conduct for City Officials";
2. By adding a new Chapter Twenty-Six to the General Ordinances of the City of Cambridge entitled "Statements of Interests by Certain City Officials and Persons Conducting Business with the City"; and
3. By adding a new Article to the Zoning Ordinances of the City of Cambridge entitled "Disclosure of Beneficial Interests".

In City Council February 12, 1990.

Adopted by the affirmative vote of eight members.

Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

*Joseph E. Connarton*

Joseph E. Connarton, City Clerk.



# City of Cambridge

8.

IN CITY COUNCIL

February 5, 1990

MAYOR WOLF  
VICE MAYOR REEVES  
COUNCILLOR CYR  
COUNCILLOR DUEHAY  
COUNCILLOR MYERS

ORDERED: That the following three attached proposed ordinances be referred to the Committee on Ordinances and/or Planning Board for hearing and report:

1. By adding a new chapter to the General Ordinances of the City of Cambridge entitled "Code of Conduct for City Officials";
2. By adding a new Chapter Twenty-Six to the General Ordinances of the City of Cambridge entitled "Statements of Interests by Certain City Officials and Persons Conducting Business with the City"; and
3. By adding a new Article to the Zoning Ordinances of the City of Cambridge entitled "Disclosure of Beneficial Interests".

**CHARTER RIGHT EXERCISED BY COUNCILLOR WALSH.**



# City of Cambridge

8.

IN CITY COUNCIL

February 5, 1990

MAYOR WOLF  
VICE MAYOR REEVES  
COUNCILLOR CYR  
COUNCILLOR DUEHAY  
COUNCILLOR MYERS

ORDERED: That the following three attached proposed ordinances be referred to the Committee on Ordinances and/or Planning Board for hearing and report:

1. By adding a new chapter to the General Ordinances of the City of Cambridge entitled "Code of Conduct for City Officials";
2. By adding a new Chapter Twenty-Six to the General Ordinances of the City of Cambridge entitled "Statements of Interests by Certain City Officials and Persons Conducting Business with the City"; and
3. By adding a new Article to the Zoning Ordinances of the City of Cambridge entitled "Disclosure of Beneficial Interests".

Order # 8 *Cal #14*

Mayor Wolf, Vice-Mayor Reeves, Councillors  
Cyr, Duehay and Myers re: three ordinances be  
referred to the Ordinance Committee and/or  
Planning Board for hearing and report:

1. Code of Conduct for City Officials
2. Statements of interests by certain city  
Officials and persons conducting  
business with the city.
3. Disclosure of Beneficial Interests.

In City Council,

February 5, 1990

*Charter Right  
exercised by  
Councillor Walsh  
2/12/90 <sup>super adapted -</sup> Referred to.*

*Ordinance Committee  
& Planning Board for  
hearing & report.*

*Copies sent to Ord. Comm &  
Planning Board 2/13/90 *ae**

DRAFT 1/29/90

Be It ordained by the City Council of the City of Cambridge, as follows:

The Code of the City of Cambridge is hereby amended by adding the new chapter:

CHAPTER \_\_\_\_\_  
CODE OF CONDUCT FOR CITY OFFICIALS

SECTION \_\_\_\_-1. The Municipal Code of Cambridge is hereby amended by adding a new Chapter \_\_\_\_ entitled "Governmental Ethics" as follows:

1. Definitions. Whenever used in this chapter, the following terms shall have the following meanings:

(a) "Administrative action" means a decision on, or proposal, consideration, enactment or making of any rule, regulation, or other official non-ministerial action or non-action by any executive department, or by any official or employee of an executive department, on any matter.

(b) "Agency" means the City Council, any committee or other subdivision thereof, any City department or other administrative unit, commission, board, or other division of the government of the City.

(c) "City" means the City of Cambridge.

(d) "City contractor" means any person (including his agents or employees acting within the scope of their employment) who is paid from the City treasury or pursuant to City Ordinance, for goods or services to any City agency, regardless of the nature of the relationship of such individual to the City for purposes other than this chapter.

1.

(e) "Compensation" means money, anything of value or other pecuniary benefit received or to be received in return for, or as reimbursement for, goods or services rendered or to be rendered.

(f) "Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

(g) "Doing business" means any one or any combination of sales, purchases, leases or contracts to, from, or with the City or any City agency in an amount in excess of \$5,000 in any twelve consecutive months.

(h) "Economic interest" means any interest valued or capable of valuation in monetary terms; provided, that "economic interest" is subject to the same exclusions as "financial interest."

(i) "Employee" means an individual employed by the City of Cambridge or any City agency, whether part-time or full-time, paid or unpaid, whether as common law employee or independent contractor and whether appointed or elected.

(j) "Expenditure" means a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

(k) "Financial interest" means (i) any interest with a cost or present value (determined using a discount rate



of 8% compounded annually) in excess of \$5,000; or (ii) any interest representing more than 1% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, business, trust, or any legal entity organized for profit; provided, however, financial interest shall not include (a) any ownership through purchase at fair market value, gift by a family member or inheritance of less than 1% (by value or voting power) of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (b) the authorized compensation paid to an official or employee for his office or employment; (c) any economic benefit provided equally to all residents of the City.

(l) "Gift" means anything of value given without consideration, for nominal consideration or without expectation of fair value in return with less than equivalent consideration in money or monies worth given in return.

(m) "Legislation" means ordinances, resolutions, amendments, nominations, appointments, reports and any other matters pending or proposed in the City Council or a committee or other subdivision thereof, including any other matter which may be the subject of Council action.

...

(n) "Legislative action" means the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto or other official action or non-action on any ordinance, resolution, motion, order, appointment, application or other matter pending or proposed in the City Council or any committee or subcommittee thereof.

(o) "Lobbyist" means any individual (i) who for compensation or on behalf of any person other than such individual undertakes to influence any legislative or administrative action; or (ii) any part of whose regular duties as an employee of another includes undertaking to influence any legislative or administrative action.

(p) "Official" means any person holding any elected office of the City or any appointed, non-employee member of any City agency.

(q) "Person" means any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as any parent or subsidiary of any of the foregoing or other organization as a group of persons, and whether or not operated for profit.

(r) "Professional services" means services in any occupation requiring advanced or specialized education and training, including without limitation law, accounting, insurance, real estate, engineering, medicine, architecture, dentistry, banking, finance, public relations, education or consulting.



(s) "Relative" means a person who is related to an official or employee as spouse, as a descendent of any grandparent of such official or employee whether by the whole- or half-blood or by adoption, or as spouse of any of the foregoing.

2. Fiduciary duty. Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

3. Improper influence. No official or employee shall make, participate in making or in any way attempt to use such official's or such employee's position, influence or power, any City governmental decision or action in which such official or employee knows or has reason to know that such official or employee has any economic interest distinguishable from its effect on the public generally.

4. Offering, receiving and soliciting gifts, favors.

(a) No person shall give to any official or employee, or to the spouse or child of any of them, and none of them shall solicit or accept, any anonymous gift.

(b) No person shall give or offer to give to any official, employee, or City contractor, or to the spouse or child of any of them, and none of them shall accept, anything of value, including, but not limited to, a gift, a loan, a favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any



official, employee or City contractor concerning the business of the City would be directly or indirectly influenced thereby. There shall be a presumption that any such city official who, having received such a gift, loan, favor or promise and who then acts or fails to act so as to benefit the donor, lender or promisor, has done so on the basis of such an understanding.

(c) No person who has an economic interest in a business entity or other enterprise conducting business in the City, a City service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect such business, service or transaction, or to the sibling, spouse or child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service; provided however, nothing herein shall be construed to prohibit such person from accepting gifts from relatives.

(d) Nothing in this section shall prohibit any person from giving or receiving: (i) an award, with a monetary value of less than \$100, publicly presented in recognition of public service; (ii) commercially reasonable loans made in the ordinary course of the lender's business; (iii) political contributions, provided they are reported to the extent required by law; (iv) reasonable hosting, including travel and expenses, entertainment, meals or refreshments



furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public event.

(e) Any gift given in violation of the provisions of this section shall be turned over the Treasurer, who shall add the gift to the inventory of City property.

(f) Nothing in this section shall prohibit any official or employee, or any spouse or child of such official or employee, from accepting a gift on the City's behalf, provided, however, the person accepting the gift shall promptly report receipt of the gift and deliver it to the Treasurer, who shall add it to the inventory of City property.

5. Solicitation or receipt of money for advice or assistance. No official or employee, city contractor, or the spouse or minor child of any of them, shall solicit or accept any money or other thing of value including, but not limited to gifts, loans, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee or the spouse of an official or employee from accepting compensation for services wholly unrelated to the official's or employee's knowledge, discretion or authority concerning their City duties and responsibilities and rendered as part of the



official's or employee's non-City employment, occupation or profession.

6. City-owned property. No official, employee or city contractor shall engage in or permit the unauthorized use of City-owned property by any person.

7. Use or disclosure of confidential information. No current or former official or employee shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Massachusetts Public Records Act, as amended.

8. Conflicts of interest.

(a) No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which such official or employee has any material economic interest distinguishable from that of the general public; provided however, that this section shall not prohibit the membership and participation on advisory boards and commissions where persons with such interests are intended to be represented.

(b) Any member of the City Council who has any economic interest distinguishable from that of the general public or all councilors in any matter pending before the



City Council or any Council Committee shall publicly disclose the nature and extent of such interest on the record of proceedings of the City Council. Such member shall abstain from voting on the matter but shall be counted present for purposes of a quorum. The obligation to report a potential conflict of interest under this subsection arises as soon as the member of the City Council knows or had reason to know of such potential conflict.

9. Representation of other persons.

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of the employee's employment, or any elected official from appearing without compensation before any city agency on behalf of the constituents in the course of the elected official's duties as an elected official or any person from representing such person.

(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or administrative proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.



(c) No appointed official may represent or have any economic interest in the representation of any person in the circumstances described in subsection (a) or (b) unless the matter is wholly unrelated to the official's City duties and responsibilities. Nor shall any such official participate in any matter on behalf of the City, where there would be any appearance of a conflict of interest.

10. Post-employment restrictions.

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City of any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during the official's or employee's term of office or employment; provided, however, that any person may represent himself, his spouse or his minor children.

(b) No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies; provided however, if the official or employee participated personally and substantially in the subject matter of the transaction or subject matter during the term of office or employment of the official or employee; or exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract transaction or matter.



11. Interest in City business. No elected official or employee or their spouses shall have a financial interest, directly or indirectly, in the name of the official or employee or in the name of any other person in any contract, work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance. Compensation for property taken pursuant to the City's eminent domain power shall not constitute a financial interest within the meaning of this section. Unless sold pursuant to a process of competitive bidding following public notice, no elected official or employee shall have a financial interest in the purchase of any property that (i) belongs to the City or a City Agency, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City. No appointed official shall engage in a transaction described in this section unless the matter is wholly unrelated to the official's City duties and responsibilities.

12. Contract inducements. No payment, gift or offer of employment or future employment shall be made in connection with any City contract, by or on behalf of a contractor to a City official or employee, a subcontractor to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a

100

subcontract or order. This prohibition shall be set forth in every City contract and solicitation therefor.

13. Employment of relatives.

(a) No official or employee shall employ or advocate for employment, in any City agency in which said official or employee serves or over which he exercises authority, supervision, or control, any person (i) who is a relative of said official or employee, or (ii) in exchange for or in consideration of the employment of any of said official's or employee's relatives by any other official or employee.

(b) No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority.

(c) No official or employee shall use or permit the use of his position to assist any relative in securing employment or contracts with persons over whom the employee or official exercises contract management authority. The employment of or contracting with a relative of such a City official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a City contract shall be evidence that said employment or contract was obtained in violation of this chapter.

14. Favors By City Councillors

City Councillors shall not make loans, gifts, offers



of employment or future employment or of business or investment opportunities to the city manager, to assistant city managers, to heads of city departments or agencies, to the city solicitor, and assistant ~~city~~ solicitors or to members of boards or commissions involved in the granting of variances, permits, licenses or other such discretionary or adjudicatory functions.

15. Penalties

(a) Any employee or City official who violates this code shall be subject to appropriate discipline, including suspension, termination or censure, consistent with the rules and requirements of the state civil service law, as well as civil or criminal prosecution under any other applicable state laws.

(b) A knowing violation of this code shall constitute a misdemeanor. Upon conviction, the Court shall impose a fine of not more than \$500 per offense.

(c) All City contracts shall include therein a clause for termination in the event of a violation of this Chapter in connection with the awarding, administration or performance of the contract.

(d) Any permit, license, ruling, determination or other official action taken in violation of this Code shall be void; provided however, that in the event that voiding would substantially damage the City or innocent third parties then the City Council, by vote of at least six of its members, may preserve the permit, license, ruling, determination or other action.



(e) Ten registered voters shall have standing to enforce the provisions of this ordinance by (i) seeking the issuance of a criminal complaint; and/or (ii) instituting a civil action on behalf of the City to recover damages on its behalf or to implement any other remedy provided for in this ordinance.

16. Other remedies. Nothing in this chapter shall preclude the City or any City Agency from maintaining an action for an accounting for any economic benefit received by any person in violation of this chapter or other law, or to recover damages for violation of this chapter.

17. Conflict with other laws. In the event of any conflict or inconsistency of this ordinance with any other state law, the provision of broadest or most strict coverage shall control.

CODE OF CONDUCT FOR CITY OFFICIALS.

In City Council,  
February 5, 1990

DRAFT 1/29/90

Be it ordained by the City Council of the City of Cambridge, as follows:

The Code of the City of Cambridge is hereby amended by adding the following chapter:

CHAPTER 26

STATEMENTS OF INTERESTS BY CERTAIN CITY OFFICIALS  
AND PERSONS CONDUCTING BUSINESS WITH THE CITY

Section 26-1. Definitions. As used in this chapter, unless the context requires otherwise.

(a) "amount" means a category value, rather than an exact dollar figure, as follows: greater than \$1000 but not more than \$2500; greater than \$2500 but not more than \$5000; greater than \$5000 but not more than \$10,000; greater than \$10,000 but not more than \$25,000; greater than \$25,000 but not more than \$50,000; greater than \$50,000 but not more than \$100,000; greater than \$100,000;

(b) "business" means any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, receivership, business or real estate trust, or any other legal entity organized for profit, non-profit or charitable purposes, including any federal, state, county, district or municipal agency, authority or other governmental entity;

(c) "business with which a person is associated" means any business in which the reporting person or a family member is an employee, an elected or appointed governmental official, a general partner, limited partner, proprietor, officer,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

director, trustee or serves in any managerial capacity; and any business more than one per cent of any class of outstanding equity of which is beneficially owned in the aggregate by the reporting person and/or family members;

(d) "doing business" is the purchase, leasing or sale of goods or services in any transaction with the City or any department, agency, commission or other part thereof.

(e) "candidate" means any individual who seeks nomination or election to the office of city councillor or school committee member. For the purposes of this chapter, an individual shall be deemed to be seeking nomination or election to an office if such individual has (1) received a political contribution or made an expenditure, or has given such individual's consent for any person or committee to receive a political contribution or make an expenditure, for the purpose of influencing such individual's nomination or election to such office, whether or not the specific municipal office for which such individual will seek nomination or election is known at the time the political contribution is received or the expenditure is made, or (2) taken action necessary under the law to qualify such individual for nomination or election to such office;

(f) "commission" means the board of election commissioners of Cambridge, established by chapter 239 of the acts of 1921, as amended;

(g) "equity" means any stock, interests in capital or profits and losses or similar ownership interest in a business;



(h) "family member" means a spouse, any dependent children residing in the reporting person's household, or a sibling;

(i) "gift" means a delivery of goods, payment, entertainment, subscription, advance services or anything of value, unless consideration of equal or greater value is received. If items are furnished or services are rendered for less than the fair market value, the difference between the fair market value and the price shall be treated as a gift. "Gift" shall not include a political contribution reported as required by law, a commercially reasonable loan made in the ordinary course of business, anything of value received by inheritance or a gift received from a family member or from a relative within the third degree of consanguinity of the reporting person or of the reporting person's spouse or from the spouse of any such relative;

(j) "legislative agent" means any person who for compensation or reward does any act to promote, oppose or influence legislation or any other matter before the City Council or School Committee, or to influence the decision of any member of the city administration where such decision concerns legislation or the adoption, defeat or postponement of a standard rate, rule or regulation pursuant thereto. The term shall include persons who, as any part of their usual employment and not simply incidental thereto, attempt to promote, oppose or influence such matters, whether or not any compensation in addition to the salary for such employment is received for such services;



(k) "municipal body" means any agency, authority, board, bureau, commission, committee, council, department, division, school department, or other legal entity within the government of the City of Cambridge;

(l) "municipal official" means:

(i) any individual holding any one of the following positions in the government of the City of Cambridge, whether by election or appointment: mayor; councillor; city manager; deputy city manager; assistant city manager; city clerk; auditor; city solicitor; school committee member;

(ii) the executive or administrative head or heads, whether elected or appointed, compensated or uncompensated, of a municipal body or bodies with primary executive authority for any of the following: general purpose administration; planning; development and land use; zoning; public safety; education; inspection; licensing; public works; or assessment; or

(iii) the executive or administrative head or heads, whether elected or appointed, compensated or uncompensated, of a municipal body or bodies which the commission may designate; or

(iv) any employee of a municipal body whose salary exceeds that of any of the foregoing and reports directly to any of the foregoing, or who is head of a major administrative unit within a municipal body, as determined by the commission;

(m) "person" means a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons;

37 -----

(n) "political contribution" means a contribution of money or anything of value to an individual, candidate, or political committee, or person acting on behalf of any individual, candidate, or political committee, for the purpose of influencing the nomination or election of said individual or candidate, or for the purpose of promoting or opposing a charter change, referendum question, or other question submitted to the voters, and shall include any: (1) gift, subscription, loan, advance, deposit of money, or thing of value, except a loan of money to a candidate by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business; (2) transfer of money or anything of value between political committees; (3) payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee; (4) purchase from an individual, candidate or political committee, whether through the device of tickets, advertisements, or otherwise, for fund-raising activities, including testimonials, held on behalf of said individual, candidate, or political committee, to the extent that the purchase price exceeds the actual cost of the goods sold or services rendered; (5) discount or rebate not available to other candidates for the same office and the general public; and (6) the forgiveness of indebtedness or payment of indebtedness by another person, but shall not include the rendering of services by speakers, editors, writers, poll



watchers, poll checkers or others, nor the payment by those rendering such services or such personal expenses as may be incidental thereto, nor the exercise of ordinary hospitality;

(o) "reporting person or reporting business" means any person required to file a statement of interests pursuant to section 3 of this chapter.

(p) "businesses conducting business within the City" shall mean all businesses which obtain payments or receive monies in any fiscal year from the City of Cambridge or any department, division or agency thereof in excess of \$5,000 per year, which monies are not received as a consequence of a contract awarded on the basis of competitive bidding.

Section 26-2. Administration.

The commission shall:

(a) on or before March first of each year request from the city manager a list of the names and positions of all municipal officials and businesses conducting business with the City, certified as to correctness and completeness, and the city manager shall furnish such a list within (60) days;

(b) on or before May first of each year make forms and instructions for statements of interests available to persons required to file the statements pursuant to the provisions of this chapter;

(c) upon receipt of a statement of interests filed pursuant to this chapter, issue to the person filing such statement a receipt verifying the fact that a statement of interests has been filed and a receipted copy of such statement;



(d) make the lists of municipal officials and statements of interests filed with the commission pursuant to this chapter available upon written request of any individual for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost; the commission shall forward a copy of said request to the individual whose statement has been examined; provided, however, that such requests from the attorney general of the Commonwealth of Massachusetts, the district attorney of Middlesex County, or the State Ethics Commission shall be confidential;

(e) compile and maintain an index of all filed statements of interests to facilitate public access to the statements;

(f) inspect all filed statements of interests in order to ascertain whether any reporting person has failed to file a statement as required by law or has filed a statement which is deficient on its face. After inspection, the commission shall list all reporting persons who have failed to file a statement of interests and all reporting persons who have filed a statement of interests on its face;

(g) notify each delinquent reporting person that a statement of interests has not been filed or that such a statement which has been filed is deficient. Such notice shall be in writing and shall state in detail each deficiency and the penalties for failure to file a correct statement of interests pursuant to this chapter;

(h) preserve all statements filed with it for six years from the date of receipt.

40

Section 26-3. Statements of Interests.

(a) Every candidate shall file a statement of interests for the preceding calendar year with the commission on or before the date on which nomination papers for such candidate must be submitted to the commission;

(b) Every municipal official shall file a statement of interests for the preceding year with the commission:

(1) on or before June first of each year that such person is a municipal official or within thirty days of becoming a municipal official, whichever is later, and (2) on or before June first of the year after such person ceases to be a municipal official; provided, however, that no former municipal official shall be required to file a statement of interests for any year in which such former municipal official was a municipal official for less than (30) days;

(c) the statements of interests shall be filed on a form prescribed by the commission and shall be signed under penalty of perjury by the reporting person;

(d) every reporting person (other than businesses conducting business with the City) shall disclose, to the best of such reporting person's knowledge, the following information for such reporting person and every family member for the preceding calendar year:

(i) the name and address of and the nature of association with any business from which income in excess of \$1,000 is received if that business is transacting business in



Massachusetts, provided, however, that no such disclosure must be made where dividends or other such profit distributions arise from the beneficial ownership of less than one percent of the business;

(ii) the name of all businesses transacting business in Massachusetts as to which more than one percent of the beneficial ownership of which is held directly or indirectly by a family member;

(iii) the name and address of each creditor, located within, or doing business with the City of Cambridge, to whom more than one thousand dollars was owed on December 31, and the original amount, the amount outstanding, the terms of repayment and the general nature of the security pledged for each obligation; provided, however, that mortgages on the person's primary residence the proceeds of which were substantially used to purchase or improve such residence or to refinance indebtedness incurred for such purposes, obligations arising out of retail installment transactions, educational loans, medical and dental expenses, debt incurred in the ordinary course of an active ongoing business, and any obligation to make alimony or support payments shall not be reported; provided, further, that such information need not be reported if the creditor is a relative within the third degree of consanguinity or affinity;

(iv) the name and address of the source, and the cash value of any reimbursement for expense aggregating more than one hundred dollars in the calendar year if the recipient is a



member of a municipal body and the source of such reimbursement is a person having a direct interest in legislation, legislative action, administrative action, or a matter before that municipal body;

(v) the name and address of the donor, and the fair market value, if determinable, of any gift(s) (other than campaign contributions which have been reported pursuant to Mass. Gen. L. Chapter \_\_\_, §\_\_\_) aggregating more than one hundred dollars in the calendar year, if the recipient is a member of a municipal body and the source of such gift(s) is a person having a direct interest in legislation, legislative action, or a matter before that municipal body;

(vi) the description, as appearing on the most recent tax bill of all real property located within the boundaries of the City of Cambridge, in which direct or indirect financial interest was held, which has an assessed value greater than one thousand dollars; and, if the property was transferred during the year, the name and address of the person furnishing consideration to the reporting person or receiving it from him in respect to such transfer;

(vii) the name and address of the source, and the fair market value, of any honoraria aggregating more than one hundred dollars if the source of such honoraria is a legislative agent; or if the recipient is a member of a municipal body and the source of such honoraria is a person having a direct interest in legislation, legislative action, or a matter before that municipal body;



(viii) the name and address of any creditor who has forgiven an indebtedness of over one thousand dollars, and the amount forgiven; provided, however, that no such information need be reported if the creditor is a relative within the third degree of consanguinity or affinity of the reporting person, or the spouse of such a relative;

(ix) the name and address of any business from which the reporting person is taking a leave of absence;

(x) the identity of any equity in a business from which the reporting person is associated which has been transferred to a member of the reporting person's family; provided, however, that a member of a reporting person's family need not report any such transfer to the reporting person;

(xi) the date, nature, amount or value of any commercial or business transaction with any city councilor and the name of the councilor.

(e) every business conducting business with the City shall file a statement of interests for the calendar year in which any city funds are owed or paid and for two years thereafter listing thereon any of the following:

(i) the date, amount, and basis for any loan payment, gift or honorarium paid to any municipal official, candidate or committee supporting a candidate, whether paid directly by the business or by its officers, employees, shareholders or agents.

(ii) the name and address of any municipal official, candidate or member of their family employed by the business or owning more than one percent of the business or of any class of outstanding equity.



(f) any reporting person or reporting person who fails to file a statement of interests within the time, in the manner and to the extent required by this section shall be punished by a fine of not more than \$300. Every day that any such statement is not so filed shall constitute a separate offense.

Section 26-4. Powers and Duties of the Commission.

The commission shall:

(a) prescribe and publish rules and regulations to carry out the purposes of this chapter, including rules governing the conduct of proceedings hereunder;

(b) determine whether any reporting person has failed to file a statement of interests or has filed a deficient statement. If a reporting person has failed to file a statement of interests, or if any such statement filed with the clerk fails to conform with the requirement of section 3 (d) of this chapter, then the commission shall notify the delinquent in writing. Such notice shall state in detail each deficiency and the penalties for failure to file a correct statement of interests pursuant to this chapter;

(c) initiate a hearing and require the attendance and testimony of the delinquent reporting person, if that person fails to file or correct the statement of interests within thirty (30) days. The delinquent person may forego a hearing before the commission at such delinquent person's discretion, but shall be subject to a civil penalty pursuant to subsection (d) of this section.

45

Any member of the commission may administer oaths and any member of the commission may hear testimony or receive other evidence in any proceeding before the commission.

All testimony in commission proceedings shall be under oath. All parties have the right to call and examine witnesses and to be represented by counsel. Before testifying, all witnesses shall be given a copy of the regulations governing commission proceedings.

All proceedings of the commission carried out pursuant to the provisions of this subsection shall be public, unless the members vote to go into executive session in accordance with section 23B of chapter 39 of the General Laws.

Within thirty days after the end of the proceeding pursuant to the provisions of this subsection, the commission shall meet for the purpose of reviewing the evidence before it. Within thirty days after the completion of deliberations, the commission shall publish its findings.

(d) issue an order requiring the delinquent reporting person to pay a civil forfeiture of not more than \$300 for each violation against such person, if the commission establishes in its findings that a violation of this chapter has been committed, or if the delinquent reporting person decides to forego a hearing before the commission.

The commission may commence a civil action in the Cambridge division of the district court department to enforce such an order, and for this purpose may retain independent legal counsel. Any such order shall also be subject to judicial

410

review in said court, upon complaint of the delinquent reporting person filed within thirty days after such order.

FSBB124

Statements of interests by certain city  
officials and persons conducting business  
with the city.

In City Council,

Feb. 5, 1990

ESH

Be It ordained by the City Council of the City of Cambridge, as follows:

The Zoning Ordinance of the City of Cambridge is hereby amended by adding the following new section:

ARTICLE \_\_\_\_  
DISCLOSURE OF BENEFICIAL INTERESTS

SECTION \_\_-1. Statement of Purpose. This Article establishes a process for the full disclosure of beneficial interests in large-scale development projects which require zoning relief. The purposes of such disclosure include without limitation the following: to inform public decision-makers and the public-at-large of the identity and extent of the interest held by all persons having any beneficial interest in property which is subject to public review and approval by the Cambridge Historic Commission, Cambridge Redevelopment Authority, the City Council, the Planning Board or the Zoning Board of Appeal, and thereby improve municipal land use decisions and foster public understanding and trust in the process of such review and approval; and to provide a process under which officials making land use decisions can identify and avoid conflicts of interest.

SECTION \_\_-2. Definitions. For the purposes of this article only, the following words and phrases have the meanings indicated:

1. "Applicant" means any Person having a legal or equitable interest in a Proposed Project subject to the provisions of this article or the authorized agent of any such Person.

100

2. "Beneficial Interest" means any legal, equitable or discretionary, direct or indirect interest, whether as an individual or through a partnership, corporation, trust, or other legal entity, or otherwise, or any actual or potential profit, benefit, or advantage resulting from any such ownership interest, or a contractual right to any such ownership interest, whether or not contingent.
3. "Disclosure Statement" means the statement required by Section \_\_-4 of this article.
4. "Person" means an individual, partnership, corporation, trust, and other legal entity.
5. "Proposed Project" means the demolition, construction or extension of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a demolition, building or use permit.
6. "Zoning Relief" means any demolition permit, zoning variance, special permit, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the City Council, the Zoning Board of Appeal, the Cambridge Historic Commission or the Planning Board.

SECTION \_\_-3. Applicability. This article applies to any Proposed Project which requires Zoning Relief and which falls into any of the following categories:



(a) construction of a building or structure having a gross floor area of twenty-five thousand (25,000) or more square feet; (b) enlargement or construction of a building or structure so as to increase its gross floor area by 10,000 or more if after such increase computed with all others increases within a year will exceed twenty five thousand (25,000) or more square feet; (c) establishment or change of the uses of gross floor area of twenty five thousand (25,000) or more square feet; or (d) demolition of historic structures.

SECTION \_\_-4. Disclosure Statements of Persons Having Beneficial Interests in Proposed Projects.

Proposed Projects

1. Disclosure of Beneficial Interests in Proposed Projects. The City Council, Planning Board and Zoning Board of Appeal shall grant Zoning Relief for a Proposed Project only if the Applicant for such Proposed Project has filed a statement, signed under the penalties of perjury, with the City Clerk, the Cambridge Redevelopment Authority, with the City Council in instances in which the City Council shall act on the application for Zoning Relief, and with the Zoning Board of Appeal in instances in which the Board of Appeal shall act on the application for Zoning Relief, and with the Planning Board in instances in which the Planning Board shall act disclosing the true



names and addresses of all Persons who have a Beneficial Interest in such Proposed Project, the amount of their Beneficial Interest accurate to within one-tenth of one percent, and the names and addresses of all firms and personal corporations employing attorneys, real estate brokers, architects, engineers, planners, surveyors providing services on behalf of the proposed project, and all agents who have acted on behalf of any of the foregoing with respect to the application. The provisions of this section shall not apply to an owner of a corporation, partnership, or trust, the stock of which ownership interest is listed for sale to the public with the Securities and Exchange Commission, if such owner holds less than one percent of the corporation, partnership, or trust.

2. Form of Disclosure Statement. The statement required by this section shall be in the form shown in Appendix A to this article. If the Applicant filing the statement required by this section is a corporation, the statement shall be signed by a duly authorized officer thereof.
3. Circulation of Disclosure Statement. The Disclosure Statement shall be circulated to all members of the City Council, Zoning Board of Appeal, Cambridge Historic Commission, and Planning Board who are eligible to vote upon the application for Zoning Relief.



SECTION \_\_-5. Public Records. The City Clerk shall make the Disclosure Statements required by Section \_\_\_-4 available to the public upon request.

SECTION \_\_-6. Updating Disclosure Statements. The Applicant shall file with the City Clerk updated Disclosure Statements containing all the information required in Section \_\_\_-4 annually from the date of issuance of Zoning Relief to the year following completion. The updated Disclosure Statements shall specifically identify the differences in such information from that provided in the immediately preceding Disclosure Statement filed in connection with such Proposed Project. An updated Disclosure Statement shall be filed for a period of seven (7) years for each year in which there is a change; provided that for any year in which there has been no material change in the identity of Persons having a Beneficial Interest in the Proposed Project, as disclosed in the last Disclosure Statement filed, the Applicant shall notify in writing the City Clerk to that effect.

SECTION \_\_-7. Penalties.

1. Failure to File Updated Disclosure Statement; Security of Permits Issued. If an Applicant who receives Zoning Relief fails subsequently to file an updated Disclosure Statement required by Section \_\_-6, the Commissioner of Inspectional Services may take any action provided in law or equity to remedy such a



violation of zoning. However, prior to seeking any remedy of such a violation for failure to file an Updated Disclosure Statement, the Commissioner of Inspectional Services shall notify the Applicant, and any other Person who has a Beneficial Interest in the Proposed Project (including mortgagees) and who has previously notified the Commissioner of Inspectional Services to send notice to such Person, by certified mail of such failure, and advise said Applicant and Person that if the updated Disclosure Statement is not filed within forty-five (45) days of receipt of the notice, the Commissioner of Inspectional Services shall consider revoking the Proposed Project's building or occupancy permit as a result of such failure to file, or any other remedies available at law or in equity. If, within such forty-five (45) day period, any Person to whom the notice of failure to file was sent provides evidence to the Commissioner of Inspectional Services of due diligence in seeking the Applicant's filing of an updated Disclosure Statement, the Commissioner of Inspectional Services shall not revoke any building or occupancy permit for the Proposed Project, and no such revocation may take place so long as the due diligence to seek compliance is being undertaken. For the purposes of this regulation, "due diligence" shall conclusively mean, but not be limited to, the diligent prosecution of a



civil action to compel compliance with the requirement to file an updated Disclosure Statement.

2. Falsification of Disclosure Statement. Any Person who willfully files a Disclosure Statement required by this article which is false in a material matter shall be subject to the penalties of perjury pursuant to G.L. c. 268, Section 1A, and any other applicable criminal and civil penalties. If a court of competent jurisdiction determines that such a false statement in a material matter has been willfully filed, the Commissioner of Inspectional Services may take any action provided in law or equity to remedy such a violation of zoning. However, prior to seeking any remedy of such a violation for materially falsifying a Disclosure Statement, the Commissioner of Inspectional Services shall notify the Applicant, and any other Person who has a Beneficial Interest in the Proposed Project (including mortgagees) and who has previously notified the Commissioner of Inspectional Services to send notice to such Person, by certified mail of such falsification, and advise said Applicant and Person that if the true Disclosure Statement is not filed within forty-five (45) days of receipt of the notice, the Commissioner of Inspectional Services shall consider revoking the Proposed Project's Zoning Relief or building or occupancy permit as a result of such falsification, or any other remedies available at law



or in equity. If, within such forty-five (45) day period, any Person to whom the notice of falsification was sent provides evidence to the Commissioner of Inspectional Services of due diligence in seeking the Applicant's filing of a true Disclosure Statement, the Commissioner of Inspectional Services shall not revoke any Zoning Relief or building or occupancy permit for the Proposed Project, and no such revocation may take place so long as the due diligence to seek compliance is being undertaken. For the purpose of this regulation, "due diligence" shall conclusively mean, but not be limited to, the diligent prosecution of a civil action to compel compliance with the requirement to file a true Disclosure Statement.

SECTION \_\_-8. Severability. The provisions of this article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this article.



Appendix A

Disclosure Statement Concerning Beneficial Interest  
Required by Article      of the Cambridge Zoning Code

(1) Location: \_\_\_\_\_

(2) Applicant: \_\_\_\_\_

(3) I hereby state, under the penalties of perjury, that the true names and addresses of all persons who have or will have a direct or indirect beneficial interest (including the amount of their beneficial interest accurate to within one-tenth percent) in the above-listed property are listed below in compliance with the provisions of Article \_\_ of the Cambridge Zoning Ordinance:

NAME AND RESIDENCE OF ALL PERSONS WITH SAID BENEFICIAL INTEREST:

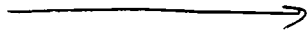
<u>NAME</u>	→ <u>ADDRESS</u>	→ <u>PERCENTAGE INTEREST</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(4) I hereby state, under the penalties of perjury, that the names and addresses of all firms and personal corporation employing attorneys, real estate brokers, architects, engineer, planners, and surveyors, and all other agents who have acted on behalf of any of the foregoing with respect to the application of the above-listed property are listed below in compliance with the provisions of Article \_\_ of the Cambridge Zoning Code.

1

NAME AND ADDRESS OF ALL FIRMS AND PERSONAL CORPORATIONS, AND AGENTS WHO HAVE ACTED ON SAID APPLICATION.

NAME



ADDRESS

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

SIGNED under the penalties of perjury.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

FSBB125

DISCLOSURE OF BENEFICIAL INTERESTS.

In City Council,  
February 5, 1990



# City of Cambridge

Calendar Item # 14

-8-

IN CITY COUNCIL

~~February 5, 1990~~

February 12, 1990

MAYOR WOLF  
 VICE MAYOR REEVES  
 COUNCILLOR CYR  
 COUNCILLOR DUEHAY  
 COUNCILLOR MYERS

ORDERED: That the following three attached proposed ordinances be referred to the Committee on Ordinances and/or Planning Board for hearing and report:

1. By adding a new chapter to the General Ordinances of the City of Cambridge entitled "Code of Conduct for City Officials";
2. By adding a new Chapter Twenty-Six to the General Ordinances of the City of Cambridge entitled "Statements of Interests by Certain City Officials and Persons Conducting Business with the City"; and
3. By adding a new Article to the Zoning Ordinances of the City of Cambridge entitled "Disclosure of Beneficial Interests".

In City Council February 12, 1990.

Adopted by the affirmative vote of eight members.

Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

*Joseph E. Connarton*

Joseph E. Connarton, City Clerk.



# City of Cambridge

8.

IN CITY COUNCIL

February 5, 1990

MAYOR WOLF  
VICE MAYOR REEVES  
COUNCILLOR CYR  
COUNCILLOR DUEHAY  
COUNCILLOR MYERS

ORDERED: That the following three attached proposed ordinances be referred to the Committee on Ordinances and/or Planning Board for hearing and report:

1. By adding a new chapter to the General Ordinances of the City of Cambridge entitled "Code of Conduct for City Officials";
2. By adding a new Chapter Twenty-Six to the General Ordinances of the City of Cambridge entitled "Statements of Interests by Certain City Officials and Persons Conducting Business with the City"; and
3. By adding a new Article to the Zoning Ordinances of the City of Cambridge entitled "Disclosure of Beneficial Interests".

DRAFT 1/29/90

Be It ordained by the City Council of the City of Cambridge, as follows:

The Code of the City of Cambridge is hereby amended by adding the new chapter:

CHAPTER \_\_\_\_\_  
CODE OF CONDUCT FOR CITY OFFICIALS

SECTION \_\_\_\_-1. The Municipal Code of Cambridge is hereby amended by adding a new Chapter \_\_\_\_ entitled "Governmental Ethics" as follows:

1. Definitions. Whenever used in this chapter, the following terms shall have the following meanings:

(a) "Administrative action" means a decision on, or proposal, consideration, enactment or making of any rule, regulation, or other official non-ministerial action or non-action by any executive department, or by any official or employee of an executive department, on any matter.

(b) "Agency" means the City Council, any committee or other subdivision thereof, any City department or other administrative unit, commission, board, or other division of the government of the City.

(c) "City" means the City of Cambridge.

(d) "City contractor" means any person (including his agents or employees acting within the scope of their employment) who is paid from the City treasury or pursuant to City Ordinance, for goods or services to any City agency, regardless of the nature of the relationship of such individual to the City for purposes other than this chapter.

(e) "Compensation" means money, anything of value or other pecuniary benefit received or to be received in return for, or as reimbursement for, goods or services rendered or to be rendered.

(f) "Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

(g) "Doing business" means any one or any combination of sales, purchases, leases or contracts to, from, or with the City or any City agency in an amount in excess of \$5,000 in any twelve consecutive months.

(h) "Economic interest" means any interest valued or capable of valuation in monetary terms; provided, that "economic interest" is subject to the same exclusions as "financial interest."

(i) "Employee" means an individual employed by the City of Cambridge or any City agency, whether part-time or full-time, paid or unpaid, whether as common law employee or independent contractor and whether appointed or elected.

(j) "Expenditure" means a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

(k) "Financial interest" means (i) any interest with a cost or present value (determined using a discount rate

of 8% compounded annually) in excess of \$5,000; or (ii) any interest representing more than 1% of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, business, trust, or any legal entity organized for profit; provided, however, financial interest shall not include (a) any ownership through purchase at fair market value, gift by a family member or inheritance of less than 1% (by value or voting power) of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (b) the authorized compensation paid to an official or employee for his office or employment; (c) any economic benefit provided equally to all residents of the City.

(l) "Gift" means anything of value given without consideration, for nominal consideration or without expectation of fair value in return with less than equivalent consideration in money or monies worth given in return.

(m) "Legislation" means ordinances, resolutions, amendments, nominations, appointments, reports and any other matters pending or proposed in the City Council or a committee or other subdivision thereof, including any other matter which may be the subject of Council action.

(n) "Legislative action" means the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto or other official action or non-action on any ordinance, resolution, motion, order, appointment, application or other matter pending or proposed in the City Council or any committee or subcommittee thereof.

(o) "Lobbyist" means any individual (i) who for compensation or on behalf of any person other than such individual undertakes to influence any legislative or administrative action; or (ii) any part of whose regular duties as an employee of another includes undertaking to influence any legislative or administrative action.

(p) "Official" means any person holding any elected office of the City or any appointed, non-employee member of any City agency.

(q) "Person" means any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as any parent or subsidiary of any of the foregoing or other organization as a group of persons, and whether or not operated for profit.

(r) "Professional services" means services in any occupation requiring advanced or specialized education and training, including without limitation law, accounting, insurance, real estate, engineering, medicine, architecture, dentistry, banking, finance, public relations, education or consulting.

(s) "Relative" means a person who is related to an official or employee as spouse, as a descendent of any grandparent of such official or employee whether by the whole- or half-blood or by adoption, or as spouse of any of the foregoing.

2. Fiduciary duty. Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

3. Improper influence. No official or employee shall make, participate in making or in any way attempt to use such official's or such employee's position, influence or power, any City governmental decision or action in which such official or employee knows or has reason to know that such official or employee has any economic interest distinguishable from its effect on the public generally.

4. Offering, receiving and soliciting gifts, favors.

(a) No person shall give to any official or employee, or to the spouse or child of any of them, and none of them shall solicit or accept, any anonymous gift.

(b) No person shall give or offer to give to any official, employee, or City contractor, or to the spouse or child of any of them, and none of them shall accept, anything of value, including, but not limited to, a gift, a loan, a favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any

official, employee or City contractor concerning the business of the City would be directly or indirectly influenced thereby. There shall be a presumption that any such city official who, having received such a gift, loan, favor or promise and who then acts or fails to act so as to benefit the donor, lender or promisor, has done so on the basis of such an understanding.

(c) No person who has an economic interest in a business entity or other enterprise conducting business in the City, a City service or regulatory transaction shall give, directly or indirectly, to any City official or employee whose decision or action may substantially affect such business, service or transaction, or to the sibling, spouse or child of such official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service; provided however, nothing herein shall be construed to prohibit such person from accepting gifts from relatives.

(d) Nothing in this section shall prohibit any person from giving or receiving: (i) an award, with a monetary value of less than \$100, publicly presented in recognition of public service; (ii) commercially reasonable loans made in the ordinary course of the lender's business; (iii) political contributions, provided they are reported to the extent required by law; (iv) reasonable hosting, including travel and expenses, entertainment, meals or refreshments

furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public event.

(e) Any gift given in violation of the provisions of this section shall be turned over the Treasurer, who shall add the gift to the inventory of City property.

(f) Nothing in this section shall prohibit any official or employee, or any spouse or child of such official or employee, from accepting a gift on the City's behalf, provided, however, the person accepting the gift shall promptly report receipt of the gift and deliver it to the Treasurer, who shall add it to the inventory of City property.

5. Solicitation or receipt of money for advice or assistance. No official or employee, city contractor, or the spouse or minor child of any of them, shall solicit or accept any money or other thing of value including, but not limited to gifts, loans, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the City; provided, however, that nothing in this section shall prevent an official or employee or the spouse of an official or employee from accepting compensation for services wholly unrelated to the official's or employee's knowledge, discretion or authority concerning their City duties and responsibilities and rendered as part of the

official's or employee's non-City employment, occupation or profession.

6. City-owned property. No official, employee or city contractor shall engage in or permit the unauthorized use of City-owned property by any person.

7. Use or disclosure of confidential information. No current or former official or employee shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Massachusetts Public Records Act, as amended.

8. Conflicts of interest.

(a) No official or employee shall make or participate in the making of any governmental decision with respect to any matter in which such official or employee has any material economic interest distinguishable from that of the general public; provided however, that this section shall not prohibit the membership and participation on advisory boards and commissions where persons with such interests are intended to be represented.

(b) Any member of the City Council who has any economic interest distinguishable from that of the general public or all councilors in any matter pending before the

City Council or any Council Committee shall publicly disclose the nature and extent of such interest on the record of proceedings of the City Council. Such member shall abstain from voting on the matter but shall be counted present for purposes of a quorum. The obligation to report a potential conflict of interest under this subsection arises as soon as the member of the City Council knows or had reason to know of such potential conflict.

9. Representation of other persons.

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of the employee's employment, or any elected official from appearing without compensation before any city agency on behalf of the constituents in the course of the elected official's duties as an elected official or any person from representing such person.

(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or administrative proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

(c) No appointed official may represent or have any economic interest in the representation of any person in the circumstances described in subsection (a) or (b) unless the matter is wholly unrelated to the official's City duties and responsibilities. Nor shall any such official participate in any matter on behalf of the City, where there would be any appearance of a conflict of interest.

10. Post-employment restrictions.

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City of any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during the official's or employee's term of office or employment; provided, however, that any person may represent himself, his spouse or his minor children.

(b) No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies; provided however, if the official or employee participated personally and substantially in the subject matter of the transaction or subject matter during the term of office or employment of the official or employee; or exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract transaction or matter.

11. Interest in City business. No elected official or employee or their spouses shall have a financial interest, directly or indirectly, in the name of the official or employee or in the name of any other person in any contract, work or business of the City or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance. Compensation for property taken pursuant to the City's eminent domain power shall not constitute a financial interest within the meaning of this section. Unless sold pursuant to a process of competitive bidding following public notice, no elected official or employee shall have a financial interest in the purchase of any property that (i) belongs to the City or a City Agency, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City. No appointed official shall engage in a transaction described in this section unless the matter is wholly unrelated to the official's City duties and responsibilities.

12. Contract inducements. No payment, gift or offer of employment or future employment shall be made in connection with any City contract, by or on behalf of a contractor to a City official or employee, a subcontractor to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a

subcontract or order. This prohibition shall be set forth in every City contract and solicitation therefor.

13. Employment of relatives.

(a) No official or employee shall employ or advocate for employment, in any City agency in which said official or employee serves or over which he exercises authority, supervision, or control, any person (i) who is a relative of said official or employee, or (ii) in exchange for or in consideration of the employment of any of said official's or employee's relatives by any other official or employee.

(b) No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority.

(c) No official or employee shall use or permit the use of his position to assist any relative in securing employment or contracts with persons over whom the employee or official exercises contract management authority. The employment of or contracting with a relative of such a City official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a City contract shall be evidence that said employment or contract was obtained in violation of this chapter.

14. Favors By City Councillors

City Councillors shall not make loans, gifts, offers

of employment or future employment or of business or investment opportunities to the city manager, to assistant city managers, to heads of city departments or agencies, to the city solicitor, and assistant ~~city~~ solicitors or to members of boards or commissions involved in the granting of variances, permits, licenses or other such discretionary or adjudicatory functions.

15. Penalties

(a) Any employee or City official who violates this code shall be subject to appropriate discipline, including suspension, termination or censure, consistent with the rules and requirements of the state civil service law, as well as civil or criminal prosecution under any other applicable state laws.

(b) A knowing violation of this code shall constitute a misdemeanor. Upon conviction, the Court shall impose a fine of not more than \$500 per offense.

(c) All City contracts shall include therein a clause for termination in the event of a violation of this Chapter in connection with the awarding, administration or performance of the contract.

(d) Any permit, license, ruling, determination or other official action taken in violation of this Code shall be void; provided however, that in the event that voiding would substantially damage the City or innocent third parties then the City Council, by vote of at least six of its members, may preserve the permit, license, ruling, determination or other action.

(e) Ten registered voters shall have standing to enforce the provisions of this ordinance by (i) seeking the issuance of a criminal complaint; and/or (ii) instituting a civil action on behalf of the City to recover damages on its behalf or to implement any other remedy provided for in this ordinance.

16. Other remedies. Nothing in this chapter shall preclude the City or any City Agency from maintaining an action for an accounting for any economic benefit received by any person in violation of this chapter or other law, or to recover damages for violation of this chapter.

17. Conflict with other laws. In the event of any conflict or inconsistency of this ordinance with any other state law, the provision of broadest or most strict coverage shall control.

Mayor Wolf, Vice-Mayor Reeves, Councillors  
Cyr, Duehay and Myers re: three ordinances be  
referred to the Ordinance Committee and/or  
Planning Board for hearing and report:

1. Code of Conduct for City Officials
2. Statements of interests by certain city  
Officials and persons conducting  
business with the city.
3. Disclosure of Beneficial Interests.

In City Council,

February 5, 1990

*Charter Right  
exercised by  
Councillor Walsh  
2/12/90 <sup>Super adopted</sup> Referred to  
Ordinance Committee  
& Planning Board for  
hearing & report.*

0-43A

1990 materials on the Ethics Legislation  
re: Code of conduct for city officials &  
statement of financial interests by certain  
city officials conducting business with  
the city.

