

"A Historic Past"



"A Bright Future"

CITY OF DELAWARE CITY
407 Clinton Street - P.O. Box 4159
Delaware City, Delaware 19706
302-834-4573

Ordinance No. 12-0716-04

SUBSTITUTE ORDINANCE NO. 1

**FIRST AMENDED ORDINANCE TO ESTABLISH A CODE OF CONDUCT FOR
CITY OF DELAWARE CITY EMPLOYEES, OFFICERS, ELECTED AND
APPOINTED OFFICIALS, AND MEMBERS OF BOARDS AND COMMISSIONS**

Chapter 1 – Administration and General

The City of Delaware City

WHEREAS, pursuant to Article V, Section 5-02(A) of The City of Delaware City Charter ("Charter"), and pursuant to the "Powers of the City," outlined in Article II, § 2-1 of the Charter, the Mayor and the Council of The City of Delaware City ("City Council") possess the authority to adopt, amend, modify, or repeal The City of Delaware City Code; and

WHEREAS, the Mayor and City Council believe establishing a code of conduct for City employees, officers, elected and appointed officials, and members of boards and commissions is in the best interest of the City of Delaware City; and

WHEREAS, to establish a code of conduct, the Mayor and City Council desire to amend Chapter 1, Article IV §§ 1-27 through 1-28, and adopt Chapter 1, Article IV §§ 1-29 through 1-29(E) as part of the City of Delaware City Code as set forth below ("Proposed Code Sections"); and

WHEREAS, pursuant to Article V, Section 5-02(B) of the Charter, the Proposed Code Sections were introduced by a member of Council at a regular meeting, duly read in full or in abstract, and prominently posted for seven (7) days in The City of Delaware City.

NOW, THEREFORE, the Mayor and the City Council of The City of Delaware City hereby ordain:

Section 1. Chapter 1, Article IV, Section 1-27 of the Delaware City Code, upon an affirmative vote of the City Council, is hereby amended to include the underlined language and shall read as follows:

c.) Use of Public Time. No Official or Employee shall request, use or permit the use of, governmental time for personal, private, or political gain or benefit. All governmental time shall be used to conduct the official business of the City. All non-official City business shall be performed on personal time.

Section 2. Chapter 1, Article IV, Section 1-28(c) of the Delaware City Code, upon an affirmative vote of the City Council, is hereby amended to include the underlined language and shall read as follows:

c.) Incompatible Employment. No Official or Employee shall engage in private employment with, ~~or~~ render services for, or represent or assist any private person who has business transactions with any public body or the municipality unless he shall first make full public disclosure of the nature and extent of such employment or services.

The forgoing notwithstanding, this subsection shall not preclude an Official or Employee from appearing before the City assisting a private entity with respect to any matter in the exercise of such person's official duties.

Section 3. Chapter 1, Article IV, Section 1-28(e) of the Delaware City Code, upon an affirmative vote of the City Council, is hereby amended to include the underlined language, modified to delete the strike through language, and shall read as follows:

e.) Confidential Information

~~1.) No official or employee shall, without prior formal authorization of the public body having jurisdiction, disclose any information involving matters discussed in an Executive Session or give or release to anyone documents or reports concerning matters discussed in Executive Session.~~

~~2.) Whether or not it shall involve disclosure, no official or employee shall use or permit the use of any such confidential information to advance the financial or personal interest of himself or any other person.~~

1.) No Official or Employee shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such Official or Employee to disclose confidential information acquired by reason of such public position, including, but not limited to, matters discussed in Executive Session.

2.) No Official or Employee shall, beyond the scope of such public position, disclose confidential information gained by reason of such public position, nor shall such Official or Employee use such information for personal gain or benefit.

Section 4. Chapter 1, Article IV, Section 1-28(f) of the Delaware City Code, upon an affirmative vote of the City Council, is hereby amended to include the underlined language, and shall read as follows:

f.) Contracts Voidable by City. In addition to any other penalty provided by law, any contract entered into by a City agency in violation of this subchapter shall be voidable by the City; provided, that in determining whether any court action should be taken to void such a contract pursuant to this subsection, the City shall consider the interests of innocent 3rd parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the City has, or should have, knowledge of such violation.

Section 5. Chapter 1, Article IV, Section 1-29 of the Delaware City Code, upon an affirmative vote of the City Council, is hereby adopted and shall read as follows:

Section 1-29 The City of Delaware City Ethics Policy

It is the policy of The City of Delaware City to uphold, promote, and demand the highest standards of ethics from all of its employees and officials, whether elected to Mayor, City Council, or appointed to positions, boards and/or commissions. Accordingly, all Officials and Employees shall maintain the utmost standards of personal integrity, truthfulness, honesty and fairness in carrying out their public duties, avoid improprieties in their roles as public servants, comply with all applicable laws, and shall not use their City position or authority improperly or for personal gain.

The City of Delaware City and all Officials and Employees share a commitment to ethical conduct and service to The City of Delaware City. This Article IV has been created to ensure that all Officials and Employees have clear guidelines for carrying out their responsibilities in their relationships with each other, the citizens of Delaware City, and all other private and governmental entities.

Section 6. Chapter 1, Article IV, Section 1-29(A) of the Delaware City Code, upon an affirmative vote of the City Council, is hereby adopted and shall read as follows:

Section 1-29(A) City Council Relationships

1. Intra-Council Relationships

The Mayor and City Council (hereinafter referred to as “the Council”) act as the legislative branch of the City and make laws that impact all residents. In doing so, certain types of conduct are beneficial and certain types are destructive. The Council is responsible to take the high road on Intra-Council conduct and treat other elected members as they would like to be treated.

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions and goals. Despite this diversity, all have chosen to serve in public office and have the obligation to preserve and protect the well being of the community and its citizens. In all cases, this common goal should be acknowledged, and the Council must recognize that certain behavior is counterproductive, while other behavior will lead to success. The following are examples of how the Council should relate to one another:

- a) Practice civility and decorum in discussion and debates.
- b) Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of an effective Council. However, Council members who are belligerent, impertinent, slanderous, threatening, abusive, or who engage in personal or disparaging attacks on other Council members denigrate the process and preclude effective discussions and the successful resolution of issues.
- c) Every Council member has the right to an individual opinion, which should be respected by the other Council members. Council members should presume the other members of the Council have the appropriate motives and interest of the public in mind and not criticize differing opinions because they believe them to be lacking in judgment.
- d) An issue may be contentious without being hostile, degrading or defamatory.
- e) The Council should act as cooperatively as possible.

2. Council Action in the Public

The Council members are expected to demonstrate, not only publicly but privately, their honesty and integrity and be an example of appropriate and ethical conduct. A Council member should not impugn the integrity of other Council members.

Council members should treat each other with respect when discussing issues at Council meetings.

A Council member has the right to state a personal opinion, and has the right to indicate that he/she is stating such as a member of the Council, but must always clarify that he/she is not speaking on behalf of the City or the Council unless authorized by the Council to do so.

3. Council Conduct with City Staff

Governance of the City relies on the cooperative efforts of elected officials who set policy and the City staff who implements and administers the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each other for the good of the community. The following are examples of how the Council should relate to the staff:

- a) The Council should treat all staff as professionals. Clear, honest communication that respects the abilities, experience and dignity of each staff member is expected.
- b) Staff works within a chain of command under the ultimate direction of the City Manager. Because the City Manager is the principle administrator in the City, the Council should direct questions and suggestions to the City Manager and allow the City Manager to assign out those tasks or responsibilities, as required by the Charter.
- c) If a Council member has a question regarding a matter that is on a Council agenda, the Council member should contact the City Manager prior to the meeting and indicate the concern or question so the City Manager can either research the question and be prepared to provide an answer, or have a staff member or the Solicitor research the question and be prepared to provide an answer.
- d) The Council should not attempt to influence the decisions or opinions of City staff members on issues that may come before the Council.
- e) The Council should avoid asking for information which will unduly burden the staff and, all requests for information shall go through the City Manager.
- f) Nothing herein shall be interpreted in conflict with the provisions of Article III, Section 3-08 of the Charter.

4. Council Conduct in City Council Meetings

Making the public feel welcome is an important part of the democratic process. No prejudice or disrespect should be evident on the part of individual Council members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public comments. The Council should listen to comments from the public and concerns raised by the public or disagreements voiced by the public. Council members should also ask for clarification if they do not understand the comment.

The Mayor shall maintain order in all Council meetings and shall take reasonable steps to ensure compliance by the public, staff, and Council members. This may include an indication that a comment is out of order. The Mayor may rule that continued inappropriate comments require interrupting the party and ordering removal from the premises.

5. Sanctions

Council member behavior in Council meetings and outside Council meetings is subject to sanctions as set forth in this Code of Conduct.

Council member conduct in and out of Council meetings must be in compliance with the open meeting laws of the Delaware Code, or any other applicable law.

Section 7. Chapter 1, Article IV, Section 1-29(B) of the Delaware City Code, upon an affirmative vote of the City Council, is hereby adopted and shall read as follows:

Section 1-29(B) Ethics Policy

It is the policy of The City of Delaware City to uphold, promote, and demand the highest standard of ethical behavior from all Officials and Employees, including its Mayor, members of its City Council, officials, individuals appointed to serve on City boards and commissions, and staff. Honesty, integrity and fairness are hallmarks of public service. Use of one's office or position for personal gain or inappropriate influence will not be tolerated and is prohibited.

All Officials and Employees shall obey and observe the letter and spirit of the Constitution of the United States, the Constitution of the State of Delaware, and all federal, state and local laws, codes, ordinances and regulations.

Section 8. Chapter 1, Article IV, Section 1-29(C) of the Delaware City Code, upon an affirmative vote of the City Council, is hereby adopted and shall read as follows:

Section 1-29(C) Conflicts of Interest

The Mayor and City Council, and any elected or appointed official or employee of the City, shall adhere to all standards set forth in Sections 1-27 and 1-28 of this Code and conflict of interest standards established by State law.

When a conflict of interest arises, the Officials and Employees involved must immediately refrain from participating in any manner in the City's decision-making processes relating to that issue. The Officials and Employee should not participate in any discussions of the matter, nor vote on the matter. Likewise, the Officials and Employees should not provide any opinion or suggest any conduct to be taken by any member of the City Council or any Employee, contractor or agent, officer, staff member, commission member, or any other advisory group to the City when such a conflict involves an Official or Employee.

No Official or Employee shall acquire a financial or personal interest in any private entity which such Official or Employee has reason to believe may be directly involved in decisions to be made on behalf of the City.

No person who has served as an Official or Employee shall represent or otherwise assist any private enterprise on any matter involving the City, for a period of two (2) years after termination of his employment or appointed status with the City, if that person gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of that person's official duties as an official or Employee. Nor shall any former official or Employee disclose confidential information gained by reason of public position nor shall the person otherwise use such information for personal gain or benefit.

In situations where Officials and Employees have questions about the applicability of the ethical standards of Delaware City or the provisions in other Delaware conflicts of interest laws or any other questions regarding a possible conflict, that person may seek the advice of the City Solicitor on whether a conflict of interest exists and/or may seek an advisory opinion of the Board of Ethics. Officials and Employees are also strongly encouraged to avoid involvement in situations where conduct is not a technical conflict of interest, but where active participation might raise the perception of undue influence or impropriety.

Section 9. Chapter 1, Article IV, Section 1-29(D) of the Delaware City Code, upon an affirmative vote of the City Council, is hereby adopted and shall read as follows:

Section 1-29(D) Acceptance of Gifts or Other Consideration for Public Action

All Officials and Employees are prohibited from soliciting, receiving, or accepting personal gifts of any kind from anyone who is engaged in a general practice or specific situation that involves the City's decision-making or permitting processes. The term "gifts of any kind" includes money, services, loans, travel, entertainment, hospitality

including meals, promises of any future gifts, or anything of value that might be construed as an attempt to create a more favorable relationship than that enjoyed by any other citizen, including the purchase, sale or lease of any real or personal property by the Official or Employee, by the Official or Employee's relative, or by any entity in which that person has a financial interest at a value below or above that available to the general public.

No Official or Employee shall have any interest in any private enterprise nor shall Officials or Employees incur any obligation of any nature which is in substantial conflict with the proper performance of such duties in the public interest. No Official or Employee shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in the following:

- 1) Impairment of independence of judgment in the exercise of official duties;
- 2) An undertaking to give preferential treatment to any person or entity;
- 3) The making of a governmental decision outside official channels; or
- 4) Any adverse effect on the confidence of the public in the integrity of the government of the State.

No Official or Employee, in the course of public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by an Official, an Employee or a City agency.

Officials and Employees shall endeavor to pursue a course of conduct which will not raise suspicion among the public that they are engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the City.

These provisions are intended to supplement, and should be read in conjunction with, the provisions of Article I, Section 1-28(d) of this Code.

Section 10. Chapter 1, Article IV, Section 1-29(E) of the Delaware City Code, upon an affirmative vote of the City Council, is hereby adopted and shall read as follows:

Section 1-29(E) Enforcement of this Code of Conduct

1. Delaware City Board of Ethics

There shall be a Delaware City Board of Ethics which shall consist of five members appointed by the Mayor with the consent of a majority of City Council from among the residents of the City (the "Board"). No more than four members of the Board shall be registered with the same political party. No member of the Board shall hold any

political office or seek an office in any political campaign. The term of each member of the Board shall be three years. Each member shall serve until his successor is appointed. Vacancies shall be filled by the Council for the unexpired term.

2. Selection of Chairman and Secretary of the Board of Ethics

The Board shall select a chairperson and secretary annually from among its members.

3. Meetings of the Board of Ethics—Frequency; quorum; minutes

The Board shall meet when a complaint is filed, when an advisory opinion or waiver is sought, at its own call, at the request of the Council, the Solicitor, or the City Manager. Three members shall constitute a quorum. Complete minutes shall be kept of the proceedings.

It shall be the function of the Board to administer the ethical standards adopted by the Council for public officers and employees. The duties of the Board shall be:

- a) To receive and initiate complaints of violations of the ethical standards;
- b) To hear and investigate complaints of these violations and transmit the findings to the Council or the City Manager; and
- c) To render advisory opinions, waivers, or interpretations with respect to the application of the ethical standards of Delaware City, either on request or on its own initiative.

5. Rules of Procedure

Complaint proceedings relating to the ethical standards of The City of Delaware City shall be governed by the following rules of procedure:

- a) Complaints as to violations of the ethical standards shall be filed in the office of the City Secretary. After receipt of a complaint, the City Secretary, or the designee of the City Secretary, shall, within seven days of receipt thereof, send copies of the complaint to each member of the Board and to the official or officials against whom such complaint has been filed and the City Solicitor. Hereinafter, the complaining party shall be referred to as the "complainant" and the official against whom a complaint has been lodged shall be referred to as the "respondent."
- b) The City Secretary shall also promptly contact the Board, the Solicitor, as well as the complainant and respondent, in order to

ascertain a date and time when a hearing can be convened on such complaint. As soon as a date and time have been agreed upon for a hearing before the Board, the City Secretary shall send written notice of such scheduling to the complainant and to the respondent.

- c) The City Secretary shall also send a copy of applicable rules of procedure to the complainant and the respondent. If either the complainant or the respondent advises the City Secretary that he or she is represented by legal counsel or other representative, a copy of applicable rules of procedure shall be provided to that attorney or representative.
- d) Any party to a hearing before the Board has the right to be represented by a licensed Delaware attorney.
- e) The record of hearings before the Board shall be preserved on audio recording equipment. Any party to a hearing shall have the right to arrange for the services of a certified court reporter to transcribe all or any portion of the proceedings. Such court reporter services shall be paid for by the party requesting such services, or by both parties if mutually agreed upon prior to the hearing.
- f) Prior to the commencement of the evidentiary portion of a hearing before the Board, any party may challenge the jurisdiction of the Board over the matters complained of. The Board may raise jurisdictional questions *sua sponte*. The Board shall satisfy itself that it has jurisdiction over the respondent and the subject matter of the complaint before proceeding with the remainder of the hearing.
- g) The Board shall have the authority to dismiss any complaint which it deems to be frivolous or fails to state a claim. For purposes of this section, a "frivolous" complaint is a complaint which alleges a substantially insignificant or trivial violation of Delaware City's ethical standards or a minor violation which occurred as the result of inadvertence or innocent error.
- h) The Board shall be provided legal assistance during the course of the hearing by the Solicitor or other appointed legal counsel. The Board may elect to designate its legal counsel to serve in the capacity as law officer during the conduct of the hearing.
- i) At the outset of a hearing, a party, or his or her representative, shall be offered the opportunity to make an opening statement summarizing the position of that party as well as what that party

believes the evidence will show. The complainant shall make an opening statement first, followed by that of the respondent.

- j) Complainant shall present his or her case first. Evidence shall be presented in the form of testimony, documents, or other demonstrative evidence. All witnesses shall testify under oath. In order to testify at a hearing, a witness shall be called by one of the parties or by the Board. Members of the public not called to testify by a party or by the Board shall not be permitted to testify. Any witness called by any party or the Board shall be subject to cross-examination by any other party. Members of the Board may question any witness.
- k) The Board shall have the power to compel the attendance of witnesses and/or the production of documentary evidence by the issuance of a subpoena. Such subpoenas may be issued by the Board *sua sponte*. A party seeking to compel the attendance of a witness or the production of documents shall request the issuance of an appropriate subpoena not less than seven days prior to the date of the relevant hearing. Such subpoenas shall be issued by the chairman of the Board on behalf of the Board.
- l) In order to be admissible, all evidence shall be relevant and material to the issues before the Board. Evidence will be excluded which is unduly cumulative, repetitive, or scandalous.
- m) After the evidentiary portion of the hearing has been concluded, each party shall have an opportunity to make a closing statement to the Board. The complainant shall give a closing first, followed by the respondent. The complainant may then make a brief rebuttal closing.
- n) As promptly as possible after the close of the hearing, the Board shall deliberate and come to a decision on the complaint. In arriving at its decision in a particular case, a majority of the Board shall be satisfied that the complainant has proved, by a preponderance of the evidence, that Delaware City's ethical standards have been violated by respondent.
- o) As soon after a vote as may be practicable, the Board shall issue a written decision which sets forth its findings of fact, conclusions of law, and decision on the complaint. Said written decision shall be forwarded to the parties or their representatives. The written decision on a particular complaint shall constitute the minutes of the Board with respect to the matter.

- p) All decisions of the Board shall be lodged with the City Secretary. The City Secretary shall provide copies of such decisions to the Council.
- q) The parties to a hearing may, with the consent of the Board, agree to waive or dispense with any of the aforementioned rules of procedure. If the complainant and the respondent agree to any such change, a request to proceed in another fashion shall be submitted to the Board not less than seven (7) days prior to the date of the relevant hearing.

No member shall sit on the Board concerning any matter which directly or indirectly affects his own interests.

6. Advisory Opinions

When an Official or Employee (past or present) has doubts as to the applicability of any provision of the ethical standards of Delaware City to a particular situation, that person should apply to the Board for an advisory opinion and be guided by the opinion given. The Official or Employee shall have the opportunity to present their interpretation of the facts at issue and of the applicable provisions of the Delaware City ethical standards before such advisory decision is made.

The ethical standards established by the Mayor and Council shall be operative in all instances covered by its provisions, except when superseded by an applicable State statute or Charter provision and said statute or Charter provision is mandatory, or when said State statute or Charter provision is discretionary but is determined to be more appropriate or desirable.

7. Effect of Violations of Code of Ethics

Violation of any provision of Delaware City's ethical standards should raise questions of conscience for the Official or Employee as to whether voluntary resignation or other action is indicated to promote the best interest of the City. In enforcing the ethical standards of Delaware City, the Board may reprimand or censure the elected or appointed Employee/Official. For rank and file employees, notwithstanding other laws, the Board can recommend removal, suspension, or demotion. For appointees to boards or commissions, the Board can recommend to the appointing authority that such person be removed. The Board shall refer any conduct rising to the level of criminal accountability to the appropriate authorities.

8. Waiver

- a) In a case where an Official or Employee has a statutory responsibility with respect to a matter where the person has a disqualifying interest under the Delaware City Code of Ethics, and there is no provision for

the delegation of such responsibility to another Official or Employee, the person may exercise responsibility with respect to such matter, provided that after becoming aware of such conflict of interest, the person files a written statement with the Board fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

- b) Upon written request of any person, by Employee or the City itself, the Board may grant a waiver of any specific prohibition contained in the Delaware City Code of Ethics if the Board determines that literal application of such prohibition in a particular case would not achieve the public purpose of the Delaware City Code of Ethics or would result in an undue hardship on the person, Official, Employee, or the City itself. A waiver under this section may be granted only by written decision of the Board. Any person who acts in good faith reliance on a waiver decision of the Board shall not be subject to discipline or other sanction outlined in Delaware City's Code of Ethics provided there was a full disclosure to the Board of all material facts necessary for the waiver decision.

9. Initial Board of Ethics Creation

The Mayor shall appoint and the City Council shall consider the appointments to the Board of Ethics within thirty (30) days of the adoption of this Ordinance. No complaints shall be accepted by the City Secretary in relation to any violation of this ordinance until the Board of Ethics is appointed with the advice and consent of a majority of Council.

Section 11. Inconsistent Ordinances and Resolutions Repealed. All Ordinances or parts of Ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed.

Section 12. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that City Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with City Council's intent.

Section 13. Effective Date. This Ordinance shall become effective immediately upon its adoption by a majority vote of the City Council.

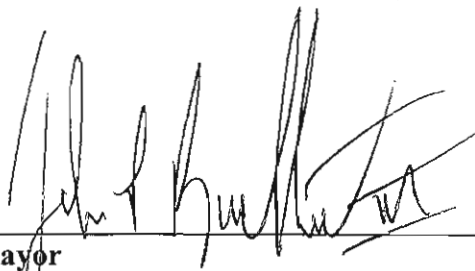
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ADOPTED BY THE MAYOR AND COUNCIL, this 19th day of November


2012.

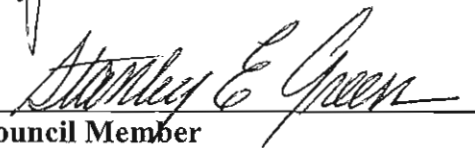
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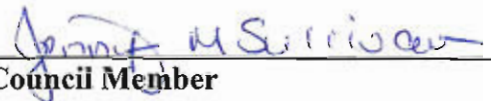

City Secretary



Mayor

APPROVED AS TO FORM:


City Solicitor


Council Member


Council Member


Council Member


Council Member

Council Member

First Reading on 7/16/12

Second Reading and Final Passage on 11/19/12