

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



Office of Government Ethics

MEMORANDUM

TO: Hon. Kenyan McDuffie
Chairman, Committee on the Judiciary
Council of the District of Columbia

Hon. Phil Mendelson
Chairman
Council of the District of Columbia

FROM: Robert J. Spagnoletti
Chairman, Board of Ethics and Government Accountability (Ethics Board)

Deborah Lathen
Ethics Board Member

Darrin P. Sobin
Director of Government Ethics

DATE: April 30, 2015

RE: Comprehensive Code of Conduct of the District of Columbia

Last year, the Council directed the Ethics Board to submit proposed legislation “to consolidate the Code of Conduct.”¹ The attached draft, entitled the Comprehensive Code of Conduct of the District of Columbia, is the result. The Comprehensive Code is comprised of nineteen Articles and will apply across the government to all employees, elected officials, lobbyists and, in some cases, to those who provide goods or services to the government. It includes a section-by-section analysis which accompanies the draft Comprehensive Code and which together represent the Board’s first step in responding to the Council’s call.

¹ See Report of the Committee on Government Operations on Bill 20-412, the Comprehensive Code of Conduct and BEGA Amendment Act of 2014, at 5 (Council of the District of Columbia, March 25, 2014).

In developing the draft, the Ethics Board drew from a number of sources, including the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*), the Council's Code of Official Conduct, and Chapter 18 of Title 6B of the District of Columbia Municipal Regulations. The Board also looked to relevant federal laws and regulations. However, for reasons explained in each instance, the Board looked beyond these familiar sources to support several provisions.

The draft Comprehensive Code is, in short, a true consolidation. More importantly, whatever the basis for any one of its provisions may be, the best practices of government ethics law are reflected in the sum of all the parts.

Next steps will be a 30-day public comment period, followed by submission of a legislative package for formal adoption as law by the Council.

Attachments

cc: Mayor Muriel Bowser
Councilmember Vincent Orange
Councilmember Anita Bonds
Councilmember David Grosso
Councilmember Elissa Silverman
Councilmember Brianne Nadeau
Councilmember Jack Evans
Councilmember Mary M. Cheh
Councilmember Charles Allen
Councilmember Yvette Alexander

PREAMBLE

[To be drafted.]

ARTICLE I. DEFINITIONS

For the purposes of this Title, the term:

(1) “Administrative decision” means any activity directly related to action by an official in the executive branch, but does not include proceedings related to a contested case conducted under the Administrative Procedure Act (Chapter 5 of Title 2 of the D.C. Official Code).

(2) “Advocate” means recommending, commending, endorsing, or taking similar action intended to influence positively a hiring decision.

(3) “Affiliated organization” means:

(A) An organization or entity:

(1) In which the covered individual serves as officer, director, trustee, general partner, or employee;

(2) In which the covered individual or member of his or her household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value; or

(3) That is a client of the covered individual or member of his or her household; or

(B) A person with whom the covered individual is negotiating for or has an arrangement concerning prospective employment.

(4) “Agency” means any unit of the District government, including the Council, required by law, by the Mayor, or by the Council to administer any law, rule, or any regulation adopted under authority of law, including a board or commission. Agency also includes an Advisory Neighborhood Commission and any unit of the District government created or organized by the Council as an agency, including an independent agency.

(5) “Authorized purposes” means those purposes for which government resources are made available to members of the public or those purposes authorized by an agency head in accordance with law or regulation.

(6) “Boards and commissions” means bodies established by law or by order of the Mayor consisting of appointed members to perform a trust or execute official functions on behalf of the District government.

(7) “Bundled” means to forward or arrange to forward two or more contributions from one or more persons by a person who is not acting with actual authority as an agent or principal of a committee. Hosting a fundraiser, by itself, shall not constitute bundling.

(8) “Business or business entity” means any corporation, partnership, sole proprietorship, firm, nonprofit corporation, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted, whether for profit or not.

(9) “Business relationship” means a relationship established to provide for business services.

(10) “Candidate” means, for purposes other than Article XIV, an individual who seeks nomination for election, or election, to office, whether or not the individual is nominated or elected. An individual deemed to be a candidate for the purposes of the Comprehensive Code of Conduct shall not be deemed, solely by reason of that status, to be a candidate for the purposes of any other law. For the purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if the individual:

(A) Received contributions or made expenditures, or has given consent to any other person to receive contributions or make expenditures, with a view to bringing about the individual’s nomination for election, or election, to office;

(B) Knows, or has reason to know, that any other person has received contributions or made expenditures for that purpose, and has not notified that person in writing to cease receiving contributions or making expenditures for that purpose; provided, that an individual shall not be deemed a candidate if the individual notifies each person who has received contributions or made expenditures that the individual is only testing the waters, has not yet made any decision whether to seek nomination or election to public office, and is not a candidate; or

(C) Filed a nominating petition.

(11) “Comprehensive Code of Conduct” means the Comprehensive Code of Conduct of the District of Columbia.

(12) “Connected to the attendee’s official duties” includes participation in the event as a speaker or a panel participant, presenting information related to the District government or matters before the District government, performing a ceremonial function appropriate to the official position of such individual, or attendance is otherwise in the interests of the District government.

(13) “Contractor” means a person that enters into a contract with the District, including a vendor of supplies.

(14)(A) “Contribution” means, for purposes other than Article XIV:

(i) A gift, subscription (including any assessment, fee, or membership dues), loan (except a loan made in the regular course of business by a business engaged in the business of making loans), advance, or deposit of money or anything of value (including contributions in cash or in kind), made for the purpose of financing, directly or indirectly:

(I) The nomination or election of a candidate;

(II) Any operations of a political committee or political action committee; or

(III) The campaign to obtain signatures on any initiative, referendum, or recall measure, or to bring about the ratification or defeat of any initiative, referendum, or recall measure;

(ii) A transfer of funds between:

(I) Political committees;

(II) Political action committees;

(III) A political committee and a political action committee;

or

(IV) Candidates.

(iii) The payment, by any person other than a candidate, a political committee, political action committee, or independent expenditure committee of compensation for the personal services of another person that are rendered to such

candidate or committee without charge or for less than reasonable value, or the furnishing of goods, advertising, or services to a candidate's campaign without charge or at a rate which is less than the rate normally charged for such services.

(iv) Professional services provided without compensation, or at a rate which is less than the rate normally charged for such services.

(B) Notwithstanding subparagraph (A) of this paragraph, the term "contribution" does not include:

(i) Personal or other services provided without compensation by a person (including an accountant, attorney, and other professional service where an expertise is required) volunteering a portion or all of the person's time to or on behalf of a candidate, political committee, political action committee, or independent expenditure committee;

(ii) Communications by an organization other than a political party solely to its members and their families on any subject;

(iii) Communications (including advertisements) to any person on any subject by any organization that is organized solely as an issue-oriented organization, which communications neither endorse nor oppose any candidate for office;

(iv) Normal billing credit for a period not exceeding 30 days;

(v) Services of an informational or polling nature, designed to seek the opinion of voters concerning the possible candidacy of a qualified elector for public office, before such qualified elector becomes a candidate;

(vi) The use of real or personal property, and the costs of invitations, food, and beverages voluntarily provided by a person to a candidate in rendering voluntary personal services on the person's residential premises for related activities; provided, that expenses do not exceed \$500 with respect to the candidate's election; and

(vii) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor; provided, that expenses do not exceed \$500 with respect to the candidate's election.

(15) “Council” means the Council of the District of Columbia.

(16) “Covered individual” shall have the same meaning as provided in subsection (a) of Article II.

(17) “Days” means calendar days, unless otherwise specified.

(18) “Direct and predictable effect” means:

(A) A close causal link between any decision or action to be taken in the particular matter and any expected effect of the matter on a financial or personal interest;

(B) A real, as opposed to a speculative possibility, that the matter will affect the financial or personal interest; and

(C) The effect is more than *de minimis*.

(19) “Director of Government Ethics” means the Director of Government Ethics appointed by the Ethics Board.

(20) “Domestic partner” shall have the same meaning as provided in the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(3)).

(21) “Elected official” means an individual holding office as a result of any election that is regulated by the District of Columbia Board of Elections. The term includes, but is not limited to the following:

(A) The Mayor, Chairman, and each member of the Council;

(B) The Attorney General;

(C) A Representative or Senator elected pursuant to section 4 of the District of Columbia Statehood Constitutional Convention Initiative of 1979, effective March 10, 1981 (D.C. Law 3-171; D.C. Official Code § 1-123);

(D) An Advisory Neighborhood Commissioner; and

(E) A member of the State Board of Education.

(22) “Election” means, except for subsection (d) of Article XIV, a primary, general, or special election held in the District of Columbia for the purpose of nominating an individual to be a candidate for election to office, or for the purpose of electing a candidate to office, or for the purpose of deciding an initiative, referendum, or recall measure, and includes a convention or caucus of a political party held for the purpose of nominating such a candidate.

(23) “Employee” means, except as specified in Article XIV, a person who performs a function of the District government, whether or not for compensation, including a member of a board or commission, an Advisory Neighborhood Commissioner, a special government employee, and a volunteer. The term does not include the District of Columbia Court of Appeals and the District of Columbia Superior Court, or an individual performing services for the District government as a vendor or contractor; however, for the purposes of Article IV (Contingent Fees), individuals performing services for the District government as a vendor or contractor shall be considered employees.

(24) “Entity” shall have the same meaning as provided in D.C. Official Code § 29-101.02.

(25) “Ethics Board” means the Board of Ethics and Government Accountability, established by section 202 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.02).

(26) “Executive agency” means a department, agency, or office in the executive branch of the District government.

(27)(A) “Expenditure” means:

(i) A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made for the purpose of financing, directly or indirectly:

(I) The nomination or election of a candidate;

(II) Any operations of a political committee, political action committee, or independent expenditure committee; or

(III) The campaign to obtain signatures on any initiative, referendum, or recall petition, or to bring about the ratification or defeat of any initiative, referendum, or recall measure;

(ii) A transfer of funds between:

(I) Political committees;

(II) Political action committees;

(III) A political committee and a political action committee;

or

(IV) Candidates.

(B) Notwithstanding subparagraph (A) of this paragraph, the term “expenditure” does not include incidental expenses (as defined by the Board of Elections or the Ethics Board) made by or on behalf of a person in the course of volunteering that person’s time on behalf of a candidate, political committee, or political action committee or the use of real or personal property and the cost of invitations, food, or beverages voluntarily provided by a person to a candidate in rendering voluntary personal services on the person’s residential premises for candidate-related activity; provided, that the aggregate value of such activities by such person on behalf of any candidate does not exceed \$500 with respect to any election.

(28) “Formal background investigation” means the process of authenticating the information supplied by a job applicant in his or her resume, application, and interviews.

(29) “Former employer” is any person or organization:

A) For whom or for which the covered individual has served as an owner, officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; or

(B) From whom or from which the covered individual receives an ongoing economic benefit.

(30) “Free attendance” may include waiver of all or part of a widely attended gathering or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. Free attendance does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees.

(31) “Gift” means any gratuity, favor, discount, entertainment, hospitality, payment, subscription, advance, loan, forbearance, rendering, or deposit of money, services, or other item having monetary value, unless consideration of equal or greater value is given. Gifts may also consist of the giving of time and services as well as training, transportation, local travel, lodgings and meals, whether provided in-kind, by

purchase of a ticket, payment in advance, or reimbursement after the expense has incurred. It does not include:

(A) Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;

(B) Food and beverages, of nominal value, consumed at hosted receptions where attendance is related to the covered individual's official duties;

(C) For elected officials, admission to and the cost of food and beverages consumed at events sponsored by a trade association or a civic, charitable, or community organization; provided, that the invitation to the event is extended directly by the event sponsor;

(D) Greeting cards and items with little intrinsic value, such as plaques, certificates, trophies, and other items that are intended solely for display or presentation;

(E) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(F) Unsolicited items received by covered individuals for the purposes of evaluation or review, provided the individual has no beneficial personal interest in the eventual use or acquisition of the item by the individual's agency;

(G) Unsolicited gifts from dignitaries or from the federal government, a state or territory, or a foreign country that are of a nominal value and intended to be personal in nature and, in the case of a foreign country, are permitted under 5 U.S.C. § 7342;

(H) Loans from banks and other financial institutions made in the ordinary course of business on terms generally available to the public;

(I) Opportunities and benefits, including favorable rates and commercial discounts

(i) Available to the public or to a class consisting of all District employees;

(ii) Offered to members of a group or class in which membership is unrelated to District employment; or

(iii) Offered to members of an organization, such as a covered individuals' association or agency credit union, in which membership is related to

District employment if the same offer is broadly available to large segments of the public through organizations of similar size;

(J) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the covered individual's entry into the contest or event is required as part of his or her official duties;

(K) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;

(L) Anything that is paid for by the District or secured by the District under a District contract;

(M) A political contribution, as defined by subsection (a)(8) of Article XIV, otherwise reported as required by law;

(N) The market value paid by a covered individual for any benefit received as a result of his or her participation in any carpool or other such mutual arrangement involving another covered individual or other individuals, if he or she bears a fair proportion of the expense or effort involved.

(32) "Government resources" includes any form of real or personal property in which a federal, District, state, or local government agency or entity has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with government funds, including personal services of a covered individual or contractor during his or her hours of work. The term includes equipment, or material of any kind, including office supplies, telephone and other telecommunications equipment and services, the government mails and email system, automated data processing capabilities, printing and reproduction facilities, government records, and government vehicles.

(33) "Hiring decision" means selecting, appointing, employing, promoting, reassigning, advancing, or advocating a personnel action.

(34) "Hiring official" means a covered individual or any other individual in whom authority by law, rule, or regulation is vested, or to whom the authority has been delegated to select, appoint, employ, promote, reassign, demote, separate, or recommend individuals for any of these actions.

(35) “Household” means a public official or covered individual and any member of his or her immediate family with whom the public official or covered individual resides.

(36) “Immediate family” means the spouse or domestic partner of a public official or covered individual and any parent, grandparent, brother, sister, or child of the public official or covered individual, and the spouse or domestic partner of any such parent, grandparent, brother, sister, or child.

(37) “Income” means gross income as defined in section 61 of the Internal Revenue Code (26 U.S.C. § 61), including gross income obtained from honoraria.

(38) “Independent expenditure” means an expenditure that is:

(A) Made for the principal purpose of promoting or opposing:

- (i) The nomination or election of a candidate;
- (ii) A political party; or
- (iii) Any initiative, referendum, or recall; and

(B) Not controlled by or coordinated with:

- (i) Any public official or candidate; or
- (ii) Any person acting on behalf of a public official or candidate.

(39) “Independent expenditure committee” means any committee, club, association, organization, or other group of individuals that:

(A) Is organized for the principal purpose of making independent expenditures;

(B) Is not controlled by or coordinated with:

- (i) Any public official or candidate; or
- (ii) Any person acting on behalf of a public official or candidate;

and

(C) Makes no transfer or contributions of funds to:

- (i) Political committees;
- (ii) Political action committees; or
- (iii) Candidates.

(40) “Internal Revenue Code” means the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 3; 26 U.S.C. § 1 *et seq.*), and the Internal Revenue

Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 *et seq.*), as amended from time to time.

(41) “Legislative action” includes any activity conducted by an official in the legislative branch in the course of carrying out his or her duties and relating to the introduction, passage, or defeat of any legislation in the Council.

(42)(A) “Lobby” or “lobbying” means communicating directly with any official in the legislative or executive branch of the District government with the purpose of influencing any legislative action or an administrative decision.

(B) The term “lobbying” shall not include:

(i) The appearance or presentation of written testimony by a person on his or her own behalf, or representation by an attorney on behalf of any such person in a rulemaking (which includes a formal public hearing), rate-making, or adjudicatory hearing before an executive agency or the Tax Assessor;

(ii) Information supplied in response to written inquiries by an executive agency, the Council, or any public official;

(iii) Inquiries concerning only the status of specific actions by an executive agency or the Council;

(iv) Testimony given before the Council or a committee of the Council, during which a public record is made of such proceedings or testimony submitted for inclusion in such a public record;

(v) A communication made through the instrumentality of a newspaper, television, or radio of general circulation, or a publication whose primary audience is the organization’s membership; and

(vi) Communications by a bona fide political party.

(43)(A) “Lobbyist” means any person who engages in lobbying.

(B) Public officials communicating directly or soliciting others to communicate with other public officials shall not be deemed lobbyists for the purposes of Article XVIII; provided, that a public official does not receive compensation in addition to his or her salary for such communication or solicitation and makes such communication and solicitation in his or her official capacity.

(44) “Merit Personnel Act” means the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*).

(45) “Nominal” means an individual cash donation of no more than twenty dollars (\$20) or an individual voluntary gift of no more than twenty dollars (\$20) in market value.

(46) “Official in the executive branch” means:

(A) The Mayor;

(B) Any officer or employee in the Executive Service;

(C) Persons employed under the authority of sections 901 through 903 (except 903(a)(3)) of the Merit Personnel Act paid at a rate of DS-13 or above in the General Schedule or equivalent compensation under the provisions of Title XI of the Merit Personnel Act or designated in section 908 of the Merit Personnel Act (except paragraphs (9) and (10) of that section); or

(D) Members of boards and commissions designated in section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)).

(47) “Official in the legislative branch” means any candidate for Chairman or member of the Council in a primary, special, or general election, the Chairman or Chairman-elect or any member or member-elect of the Council, officers, and employees of the Council appointed under the authority of sections 901 through 903 or designated in section 908 of the Merit Personnel Act.

(48) “Official responsibility” means the administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, personally or through subordinates, to approve, disapprove, or otherwise direct governmental action.

(49) “Official superior” means any other employee, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee’s official duties or those of any other official superior of the employee. An employee shall be considered to be the subordinate of any of his or her official superiors. For purposes of Article III, Article V, and Article VII(c), the term

“official superior” is deemed to be the Ethics Board for elected officials and, for members of boards and commissions, the Mayor.

(50) “Ongoing economic benefit from a former employer” shall include any pension, annuity, stock option, bonus, cash or in-kind distribution in satisfaction of equitable interest, payment of all or a portion of the premiums on a life or health insurance policy, or any other comparable benefit.

(51) “Particular matter” is limited to deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.

(52) “Participated personally and substantially” means as follows:

(A) To “participate” means to take an action as a covered individual through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action, or to purposefully forbear in order to affect the outcome of a matter. A covered individual can participate in particular matters that are pending in other than in his or her own agency. A covered individual does not participate in a matter merely because he or she had knowledge of its existence or because it was pending under his or her official responsibility. A covered individual does not participate in a matter unless he or she does so in his or her official capacity.

(B) To participate “personally” means to participate:

(i) Directly, either individually or in combination with other persons; or

(ii) Through direct and active supervision of the participation of any person supervised, including a subordinate.

(C) To participate “substantially” means that the covered individual’s involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory or peripheral involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Provided that a covered

individual participates in the substantive merits of a matter, his or her participation may be substantial even though his role in the matter, or the aspect of the matter in which he or she is participating, may be minor in relation to the matter as a whole.

(53) “Person” means an individual, partnership, committee, corporation, labor organization, and any other organization.

(54) “Personal interest” means an interest that, while not directly financially advantageous, would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the covered individual in a particular matter. Personal interests include, without limitation, benefits to the covered individual, benefits to immediate family members and affiliated organizations, including reputation or business good will, job or career advancement, close personal friendships, and memberships in groups and organizations.

(55) “Political action committee” means any committee, club, association, organization, or other group of individuals that is:

- (A) Organized for the principal purpose of promoting or opposing:
 - (i) The nomination or election of a person to public office;
 - (ii) A political party; or
 - (iii) Any initiative, referendum, or recall; and
- (B) Not controlled by or coordinated with:
 - (i) Any public official or candidate; or
 - (ii) Any person acting on behalf of a public official or candidate.

(56) “Political committee” means any committee (including any principal campaign, inaugural, exploratory, transition, or legal defense committee), club, association, organization, or other group of individuals that is:

- (A) Organized for the principal purpose of promoting or opposing:
 - (i) The nomination or election of a person to public office;
 - (ii) A political party;
 - (iii) Any initiative, referendum, or recall; or
- (B) An inaugural, transition, or legal defense committee; and

(C) Controlled by or coordinated with any candidate or public official, or controlled by or coordinated with anyone acting on behalf of a candidate or public official.

(57) “Professional services relationship” means a relationship where the functions are infrequent, technical or unique and, primarily performed by independent contractors or by consultants whose occupation is the rendering of such services.

(58) “Prohibited source” means any person that:

(A) Is seeking official action by the District government;

(B) Has or is seeking to obtain contractual or other business or financial relations with the District government;

(C) Conducts operations or activities that are subject to regulation by the District government;

(D) Has an interest that may be favorably affected by the performance or non-performance of the covered individual’s official responsibilities; or

(E) Is an organization in which the majority of its members are described in subparagraphs (A) through (D) of this paragraph.

(59) “Public official” means:

(A) A candidate for nomination for election, or election, to public office;

(B) The Mayor, Chairman, and each member of the Council of the District of Columbia holding office under the Home Rule Act;

(C) The Attorney General;

(D) A Representative or Senator elected pursuant to section 4 of the District of Columbia Statehood Constitutional Convention Initiative of 1979, effective March 10, 1981 (D.C. Law 3-171; D.C. Official Code § 1-123);

(E) An Advisory Neighborhood Commissioner;

(F) A member of the State Board of Education;

(G) A person serving as a subordinate agency head in a position designated as within the Executive Service;

(H) Members of the Children and Youth Investment Trust Corporation Board of Directors appointed pursuant to section 2403 of the Service Improvement and Fiscal Year 2000 Budget Support Act of 1999, effective October 20, 1999 (D.C. Law 13-

38; D.C. Official Code § 2-1553); members of the Health Benefit Exchange Authority Executive Board appointed pursuant to section 6 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.05); members of the Not-for-Profit Hospital Corporation Board of Directors appointed pursuant to section 5115 of the Not-for-Profit Hospital Corporation Establishment Amendment Act of 2011, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 44-951.04); members of the Police and Firemen's Retirement and Relief Board appointed pursuant to section 122 of An Act To increase compensation for District of Columbia policemen, firemen, and teachers; to increase annuities payable to retired teachers in the District of Columbia; to establish an equitable tax on real property in the District of Columbia; to provide for additional revenue for the District of Columbia; and for other purposes, approved September 3, 1974 (88 Stat. 1041; D.C. Official Code § 5-722); members of the Real Property Tax Appeals Commission appointed pursuant to section 2 of the Real Property Tax Appeals Commission Establishment Act of 2010, effective April 8, 2011 (D.C. Law 18-363; D.C. Official Code § 47-825.01a); members of the Retirement Board appointed pursuant to section 121 of the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; D.C. Official Code § 1-711); and members of the Washington Metropolitan Area Transit Authority Board of Directors appointed pursuant to section 1 of the Washington Metropolitan Area Transit Regulation Compact, approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01);

(I) A member of a board or commission listed in section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e));

(J) A District of Columbia employee paid, regardless of pay schedule, at a rate equivalent to a Career Service employee paid at a rate of Excepted Service 9 or above, who makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest.

(60) “Relative” means, with respect to a public official, an individual who is related to the public official as a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, domestic partner, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, foster child, stepbrother, stepsister, half-brother, or half-sister.

(61) “Registrant” means a person who is required to register as a lobbyist under the provisions of Article XVIII.

(62) “Senior employee” means an individual required to file a public financial disclosure statement pursuant to Article XV.

(63) “Special government employee” means any employee of an agency who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for not to exceed one hundred and thirty (130) days during any period of three hundred and sixty five (365) consecutive days.

(64) “Tax” means the taxes imposed under Chapter 1 of the Internal Revenue Code, under Chapter 18 of Title 47 of the District of Columbia Official Code, and under the District of Columbia Public Works Act of 1954, approved May 18, 1954 (68 Stat. 101; D.C. Official Codes § 34-2101 *passim*); and any other provision of law relating to the taxation of property within the District.

(65) “Training” means the process of providing for and making available to an employee, and placing or enrolling the employee in, a planned, prepared, and coordinated program or course of instruction in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the agency’s mission and performance goals.

(66) “Usual and customary constituent services” includes a covered individual’s representational activities, such as advocacy, communications, inquiry, oversight, and other actions, made on another person’s behalf; provided, that the individual does not, directly or indirectly:

(A) Threaten reprisal or promise favoritism for the performance or nonperformance of another person’s duties; or

(B) Request that another person abuse or exceed the discretion available to that person under law.

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ARTICLE II. APPLICABILITY AND STANDARDS OF CONDUCT

(a) The Comprehensive Code of Conduct shall apply to the ethical responsibilities of all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council of the District of Columbia, boards and commissions, and Advisory Neighborhood Commissions, pursuant to section 201a of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective July 15, 2014 (D.C. Law 20-122; D.C. Official Code § 1-1162.01a). Unless expressly designated otherwise, these individuals shall hereinafter be referred to as “covered individuals.”

(b) The Comprehensive Code of Conduct shall not apply to the following:

- (1) The District of Columbia Court of Appeals;
- (2) The District of Columbia Superior Court;
- (3) Individuals performing services for the District government as vendors or contractors, except as to Article IV; and

(4) Lobbyists, except as to Article VIII and Article XVIII.

(c) The following principles shall apply to all covered individuals and form the basis for the standards contained in the Comprehensive Code of Conduct. Where a situation is not specifically covered by another provision of law or policy, covered individuals shall apply the following principles in determining whether their conduct is proper:

- (1) Covered individuals shall at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government. Covered individuals shall strive to act solely in the public interest and not for any personal gain or take an official action on a matter as to which they have a conflict of interest created by a personal interest of their own or of an immediate family member or an affiliated organization, avoiding both actual and perceived conflicts of interest and preferential treatment.

(2) Covered individuals shall take full responsibility for understanding and complying with the letter and spirit of all laws and regulations governing standards of conduct for District employees, including those relating to conduct, conflicts of interest, gifts, financial disclosures, campaign finance, and political activity.

(3) Covered individuals shall strive to perform their duties in a proper and efficient manner.

(4) Covered individuals shall protect and conserve government resources and shall not use them for other than authorized activities.

(5) Covered individuals shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the District government.

(6) Covered individuals shall act impartially and not give preferential treatment to any private organization or individual.

(7) Covered individuals shall not take actions creating the appearance that they are violating the law or the ethical standards set forth in the Comprehensive Code of Conduct. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

(8) Covered individuals shall satisfy in good faith their lawful obligations, including all just financial obligations to federal, state, District and local governments.

(9) Covered individuals shall not hold personal interests or financial interests that conflict with the conscientious performance of their duties.

(10) Covered individuals shall not engage in financial or other transactions using nonpublic government information or allow the improper use of such information to further any private interest.

(11) Covered individuals shall not, except as permitted by Articles VIII and IX, solicit or accept any gift or other item of monetary value from a prohibited source.

(12) Covered individuals shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with their official government duties and responsibilities.

(13) Covered individuals shall immediately and directly report credible violations of the Comprehensive Code of Conduct to the Ethics Board, the District of Columbia Office of the Inspector General, or both.

(14) Covered individuals shall not interfere with or obstruct any investigation conducted by a District or federal agency.

(15) Covered individuals shall fully cooperate with any investigation, enforcement action, or other official function of the Ethics Board.

(16) Coercive, harassing, or retaliatory action shall not be taken against any covered individual acting in good faith under the Comprehensive Code of Conduct.

(17) Covered individuals shall not do indirectly what they may not do directly under the Comprehensive Code of Conduct.

(18) Covered individuals shall not aid, abet, counsel, command, induce, or procure a violation of the Comprehensive Code of Conduct, any additional agency standards of ethical conduct authorized by Article XIX, or any federal ethics law or regulation that is applicable to the District government.

(d) A violation of the Comprehensive Code of Conduct or additional agency standards of ethical conduct authorized by Article XIX shall be cause for appropriate corrective or adverse action to be taken under the procedures applicable to the covered individual involved.

(e) It is the responsibility of the employing agency to initiate appropriate corrective or adverse action in individual cases. Such action may be in addition to any other action or penalty prescribed by law.

(f) A covered individual who violates the Comprehensive Code of Conduct shall be subject to the penalties provided in section 221 of the Ethics Act (D.C. Official Code § 1-1162.21). Penalties imposed by the Ethics Board shall be separate and apart from any corrective or adverse action taken by the covered individual's agency.

ARTICLE III. CONFLICTS OF INTEREST

(a) No covered individual shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, including participating in preliminary discussions, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular matter, in a manner that the covered individual knows is likely to have a direct and predictable effect on a personal interest or financial interest of his or her own or of an immediate family member or an affiliated organization.

(b) A covered individual other than an elected official may seek a waiver, and the prohibition in subsection (a) of this Article shall not apply, if the covered individual:

(1) Advises his or her official superior and the Ethics Board of the nature and circumstances of the particular matter;

(2) Makes full disclosure of the personal interest or financial interest; and

(3) Receives in advance a written determination made by both the official superior and the Ethics Board that:

(A) The interest is not so substantial as to be deemed likely to affect the integrity of the services that the government may expect from the covered individual; or

(B) Another legally cognizable basis for waiver exists.

(c) Recusal statements shall be required as follows:

(1) Any elected official who, in the discharge of his or her official duties, would be required to act in any matter prohibited under subsection (a) of this Article shall make full disclosure of the personal interest or financial interest, prepare a written statement describing the matter and the nature of the potential conflict of interest, and deliver the statement to:

(A) In the case of a member of the Council, the Council Chairman;

or

(B) In the case of an elected official other than members of the Council, the Ethics Board; or

(2) Any covered individual other than an elected official who, in the discharge of his or her official duties, would be required to act in any matter prohibited under subsection (a) of this Article shall:

(A) Make full disclosure of the personal interest or financial interest;

(B) Prepare a written statement describing the matter and the nature of the potential conflict of interest; and

(C) Deliver the statement to his or her official superior and to the Ethics Board.

(d) During a proceeding in which an elected official would be required to take action in any matter that is prohibited under subsection (a) of this Article, he or she shall:

(1) Read the statement provided in paragraph (1) of this subsection into the record of proceedings; and

(2) Excuse the elected official from votes, deliberations, and other actions on the matter.

(e) No elected official excused from votes, deliberations, or other actions on a matter shall in any way participate in or attempt to influence the outcome of the particular matter in a manner that is likely to have a direct and predictable effect on a personal interest or financial interest of his or her own or of an immediate family member or an affiliated organization.

(f) Upon receipt of the statement provided in subsection (c)(2) of this Article, the covered individual's official superior shall assign the matter to another covered individual who does not have a potential conflict of interest.

(g)(1) A covered individual shall not receive any compensation, salary, or contribution to salary, gratuity, or any other thing of value from any source other than the District government for his or her performance of official duties.

(2) No covered individual, member of his or her immediate family, or affiliated organization may knowingly acquire:

(A) Stocks, bonds, commodities, real estate, or other property, whether held individually or jointly, the acquisition of which could unduly influence or give the appearance of unduly influencing the covered individual in the conduct of his or her official duties and responsibilities; or

(B) An outside interest, personal or financial, that is related directly to the covered individual's official duties, or which might otherwise be involved in an official action taken or recommended by him or her, or which is in any way related to matters over which the individual could wield any influence, official or otherwise.

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ARTICLE IV. CONTINGENT FEES

(a) A contractor shall not offer to pay any fee or other consideration that is contingent on the making of a contract.

(b) Every District government contract shall contain the following prohibition against contingent fees: “The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage fee, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For a breach or violation of this warranty, the District shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.”

(c) A covered individual shall not solicit or secure, or offer to solicit or secure, a contract for which the individual is paid or is to be paid any fee or other consideration contingent on the making of the contract between the individual and any other person.

ARTICLE V. PERSONAL AND FINANCIAL INTERESTS AND DISCLOSURES

(a) It is the policy of the District government to avoid conflicts of interest concerning the award, implementation, monitoring, and performance of contracts for services. Accordingly, as a means of assisting District government agencies to evaluate real or potential conflicts of interest in this area, each covered individual shall be required to disclose to his or her employing agency upon appointment, such previous employment relationships (whether in the private or public sectors) as the employing agency may direct, including full disclosure of any ongoing economic benefit to the covered individual from a former employer.

(b) The employing agency shall inform each new hire of the requirement to disclose employment relationships as described in subsection (a) of this Article. A new hire with employment relationships to disclose shall so inform his or her official superior and a person designated by the agency head, and complete D.C. Standard Form 36, Previous Employment Relationships, within thirty (30) days of the effective date of his or her appointment.

(c) The employing agency also shall communicate the following information to each new hire in writing:

(1) That for one (1) year after the date of initial employment with the District government, a covered individual required to make a disclosure under this Article shall be screened from, and shall not participate in any manner, in the District government's decision to enter into, extend, modify, or renew a contract or consultancy engagement with the individual's former employer (hereafter, "procurement action");

(2) That the one-year (1-year) restriction from participation in any procurement action prescribed in paragraph (1) of this subsection shall be extended for as long as the covered individual receives an ongoing economic benefit from a former employer; and

(3) That the covered individual shall have the continuing responsibility to advise his or her official superior and a person designated by the agency head of the receipt of an ongoing economic benefit from a former employer.

(d) Notwithstanding the provisions set forth in subsection (c) of this Article, except in the case of elected officials, the head of the employing agency may authorize a covered individual required to make a disclosure under this Article to do any of the following as part of the individual's official duties:

(1) Participate in the oversight or review of the work-product or performance of a former employer that is currently a contractor or consultant with the District government;

(2) Serve as the District government's liaison with the former employer;

or

(3) Otherwise communicate with the former employer on matters pending before the covered individual's employing agency.

(e) The determination to require a covered individual to perform any of the duties listed in subsection (d) of this Article shall be based upon a written determination of the agency head, made in light of all relevant circumstances, that the interest of the District government in the covered individual's participation outweighs the concern that a reasonable person might question the integrity of the District government's programs or operations. Applying this standard, the agency head may determine that the covered individual's participation reasonably may be permitted in certain activities involving his or former employer, but not in others. In all instances under this subsection in which the covered individual is prohibited from participation, he or she shall be screened from the receipt of any information regarding the former employer's matter that is pending before the District government.

(f) An agency head may delegate the responsibility for making any of the determinations prescribed in this Article to other personnel in the agency. The person in the agency making any such determinations may consult with the Director of Government Ethics.

(g) A covered individual who is called upon to act for or on behalf of the District government in a matter relating to or involving a non-governmental entity in which he or she, a member of his or her immediate family, or an affiliated organization has a personal interest or financial interest, shall make this fact known to his or her official superior and a person designated by the agency head, in writing, at the earliest possible moment.

Unless a waiver of the conflict of interest is granted pursuant to subsection (b) of Article III, the head of the employing agency shall determine whether or not the covered individual must take remedial action, including, if appropriate, the divestment of financial interests, or merely disqualify himself or herself from taking part in any official decision or action involving the matter.

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**ARTICLE VI. RESTRICTIONS ON HIRING AND EMPLOYMENT
(NEPOTISM)**

(a) A hiring official may not directly or indirectly make a hiring decision regarding a paid or unpaid position within his or her own agency with respect to a relative. Specifically, except as provided in subsection (b) of this Article, a hiring official may not appoint, employ, promote, evaluate, interview, or advance (or advocate for such actions) any individual who is a relative in an agency in which the hiring official serves or exercises jurisdiction or control.

(b) A hiring official may not advocate for any individual who is a relative in an agency in which the hiring official serves or exercises jurisdiction or control, except in the context of answering questions in a formal background investigation.

(c) Any hiring decision secured or effectuated in violation of this article shall be rescinded immediately.

(d) When the agency contemplates making a hiring decision concerning a relative of a hiring official within the same agency, the hiring official must file a written recusal, which shall be included in the relative's official personnel file along with the subject personnel action.

(e) In the event of emergencies resulting from natural or manmade disasters, the Mayor may, by rulemaking, temporarily suspend the prohibitions of this Article, as permitted by section 1804(c) the District of Columbia Government Comprehensive Merit Personnel Act of 1978 ("Merit Personnel Act"), effective March 14, 2012 (D.C. Law 19-115; D.C. Official Code § 1-618.04(c)); and the Civil Service Act of 1967, effective October 13, 1978, as amended (Pub. L. 90-206; 5 U.S.C. § 3110(d)).

(f) Except as otherwise provided in subsection (e) of this Article, there shall be no suspensions or waivers of any provision of this Article.

ARTICLE VII. OUTSIDE ACTIVITIES

(a) No covered individual shall engage in outside employment, private business activity, or other outside activity that is incompatible with government service, including, but not limited to, the following:

(1) Engaging in any activity that conflicts or would appear to conflict with the fair, impartial, and objective performance of the covered individual's official duties and responsibilities or with the efficient operation of the District government;

(2) Using government time or resources for other than official business or government approved or sponsored activities;

(3) Ordering, directing, or requesting subordinates to perform any personal services not related to official District government functions and activities;

(4) Maintaining personal or financial interests in, or serving (with or without compensation) as an officer or director of an outside entity, if there is any likelihood that such entity might be involved in an official government action or decision taken or recommended by the covered individual or his or her agency;

(5) Engaging in any outside activity that permits the covered individual, or an affiliated organization, to capitalize on his or her official title or position;

(6) Divulging any official government information to any unauthorized person or in advance of the time prescribed for its authorized issuance, or otherwise making use of or permitting others to make use of information not available to the general public;

(7) Engaging in any outside activity that might impair the covered individual's mental or physical capacity to such an extent that he or she can no longer carry out his or her duties and responsibilities as a government employee in a proper and efficient manner; and

(8) Engaging in any outside activity that is in violation of federal or District law, rule, or regulation.

(b) A covered individual may engage in outside employment or activities such as teaching, writing for publication, consultative activities, and speaking engagements if the activities are:

- (1) Consistent with subsection (a) of this Article;
- (2) Not otherwise prohibited by law, regulation, or agency standards; and
- (3) Conducted outside of regular working hours, or while the covered

individual is on annual leave, compensatory leave, exempt time off, or leave without pay.

(c) If the covered individual receives compensation or anything of monetary value for engaging in an activity permitted by subsection (b) of this Article, the subject matter shall not be devoted substantially to the responsibilities, programs, or operations of his or her agency, to his or her official duties or responsibilities, or to information obtained from his or her government employment, unless the covered individual has written authorization from the employee's supervisor to do so.

(d) The information used by a covered individual engaging in outside employment or activities shall not draw on official data or ideas that are not public information, unless the individual has written authorization from his or her supervisor to use such information.

(e)(1) Except as provided in paragraph (2) of this subsection, a covered individual shall not:

(A) Represent another person, as agent or attorney or otherwise, have a personal interest or financial interest in, or provide assistance in prosecuting a claim against the District of Columbia before any agency, instrumentality, or court of the District of Columbia; or

(B) Represent another person, as agent or attorney or otherwise, before any agency, instrumentality, or court of the District of Columbia, in a matter in which the District of Columbia is a party or has a direct and substantial interest.

(2) The prohibitions in paragraph (1) of this subsection shall not apply to a covered individual, who, if not inconsistent with the faithful performance of his or her duties, and acting without compensation represents:

(A) A person who is the subject of disciplinary or other personnel administration proceedings in connection with those proceedings; or

(B) A nonprofit cooperative, voluntary, professional, recreational, or similar organization, group, or union, if a majority of the organization's or group's members are current officers or employees of the United States government or of the

District of Columbia government, or their spouses or dependent children; provided, that this exception shall not apply to any matter that:

(i) Is a claim under paragraph (1)(A) of this subsection;

(ii) Is a judicial or administrative proceeding where the organization or group is a party; or

(iii) Involves a grant, contract, or other agreement (including a request for any such grant, contract, or agreement) providing for the disbursement of federal funds to the organization or group.

(f) The prohibitions in this Article shall not apply to a covered individual, who, if not inconsistent with the faithful performance of his or her duties, and acting with or without compensation, represents his or her parent(s), spouse, domestic partner, child, or any person for whom, or for any estate for which, he or she is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he or she has participated personally and substantially as a government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of the covered individual's official responsibility; provided that, the covered individual's supervisor approves the representation. This provision shall not abridge a government attorney's responsibilities under the District of Columbia Rules of Professional Conduct.

(g) A special government employee shall be subject to subsection (e)(1) of this Article only in relation to a particular matter involving specific parties in which he or she has at any time participated personally and substantially as a District government employee, or which is pending before his or her employing agency.

(h) Nothing in this Article shall prohibit the following:

(1) A covered individual from giving testimony under oath or from making statements required to be made under penalty of perjury; or

(2) A member of the faculty of the University of the District of Columbia David A. Clark School of Law from taking all actions necessary to teaching or supervising students in the school's law clinics and clinical programs; provided, that taking any such actions shall not abridge a faculty member's responsibilities under the

District of Columbia Rules of Professional Conduct or as codified in applicable regulations.

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ARTICLE VIII. GIFTS FROM OUTSIDE SOURCES

(a) Except as provided in Article IX, a covered individual shall not solicit, accept, or agree to solicit or accept, either directly or indirectly, any gift:

- (1) From a prohibited source; or
- (2) Given because of the individual's official position or duties.

(b) A gift is solicited or accepted because of the covered individual's position or duties if it is from a person other than a covered individual and would not have been solicited, offered, given, or accepted had the covered individual not held the status, authority, or duties associated with his or her District government position.

(c) A gift prohibited under subsection (b) of this Article that is solicited or accepted indirectly includes a gift given:

- (1) With the covered individual's knowledge and acquiescence to a member of his or her immediate family or to an affiliated organization because of the family member's or organization's relationship to the covered individual; or
- (2) To any other person or organization, including any charitable organization, on the basis of designation, recommendation, or other specification by the covered individual.

(d) The prohibitions set forth in this Article do not apply to gifts accepted under the circumstances described in the following paragraphs of this subsection, and a covered individual's acceptance of a gift in accordance with one of those paragraphs will not be deemed to violate the principles set forth in Article II:

(1) A covered individual may accept unsolicited gifts having a market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year, except when the offer of the gift would appear to a reasonable person to be intended to influence the covered individual in his or her official duties;

(2) A covered individual may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or a pre-existing bona fide personal friendship rather than the position of the covered individual. Relevant

factors in making such a determination include the history of the relationship, the nature and frequency of past gifting within the relationship, and whether the family member or friend personally pays for the gift;

(3) A covered individual may accept meals, lodgings, transportation and other benefits:

(A) Resulting from the business or employment activities of his or her spouse or domestic partner when it is clear that such benefits have not been offered or enhanced because of the individual's official position; or

(B) Resulting from the covered individual's authorized outside activities when it is clear that such benefits have not been offered or enhanced because of the individual's official status; and

(4) A covered individual may, on behalf of an agency of the District government, have his or her agency accept and use a gift, if done in accordance with the Acceptance and use of gifts by District Entities Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 1-329.01).

(e) Notwithstanding any exception provided in this Article, no covered individual shall:

(1) Directly or indirectly demand, solicit, accept, or agree to demand, solicit, or accept, any gift personally or for any other person, in return for:

(A) Any official act performed or to be performed by the individual;

(B) Being influenced in the performance or nonperformance of any official act;

(C) Being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the District of Columbia; or

(D) Being induced to do or omit to do any act in violation of the covered individual's official duty;

(2) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his or her public office for private gain; or

(3) Accept any gifts in violation of 5 U.S.C. § 7342.

(f) A covered individual who receives a gift that cannot be accepted under the provisions of this Article shall inform the person offering the gift that District government ethics rules do not permit acceptance of the gift, and:

(1) Return the gift to the donor;

(2) Donate the gift to an organization that is tax exempt pursuant to 26 U.S.C. § 501(c)(3);

(3) Reimburse the donor the market value of the gift;

(4) If the gift is perishable and it would not be practical to return it to the donor, donate the gift to charity, share it with the office staff, or destroy it.

(5) The actions set forth in paragraphs (1) through (4) of this subsection may be taken one time only with respect to any donor.

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**ARTICLE IX. CONFERENCES, WIDELY ATTENDED GATHERINGS, AND
TRAINING**

(a) When a covered individual is assigned to participate as a speaker or panel participant or otherwise to present information on behalf of his or her agency at a conference, forum, symposium, or other similar event, the individual may accept an offer of free attendance at the event on the day of his or her participation when provided by the sponsor of the event; provided, that the covered individual's assignment shall be made in advance of the event and in writing.

(b) When a covered individual's attendance is in the interest of his or her agency, the individual may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering from either of the following:

(1) The sponsor of the event; or

(2) A person other than the sponsor of the event, if more than fifty (50) people are expected to attend the event and the gift of free attendance has a market value of \$350 or less.

(c) A covered individual may accept a gift of free attendance for an event pursuant to subsection (b) of this Article only if the following conditions are met:

(1) That a large number of people is expected to attend the event;

(2) That the people attending the event represent a diversity of views or interests within a given industry, profession, or subject matter; and

(3) That the covered individual's attendance shall be determined by the agency head or designee, in advance of the event and in writing, to be in furtherance of agency programs and operations and to be connected to the attendee's official duties.

(d) When others in attendance will generally be accompanied by a guest, and where the invitation is from the same person who invited the covered individual, the agency may authorize a covered individual to accept an unsolicited invitation of free attendance to an accompanying guest to participate in all or a portion of the event at which the individual's free attendance is permitted under subsections (a) or (b) of this Article; provided, that the market value of the gift of free attendance includes the market

value of free attendance by the accompanying guest as well as the market value of the covered individual's own attendance.

(e) A covered individual may not accept a gift bag for an event under subsections (a) or (b) of this Article if the event sponsor is a prohibited source, unless the contents of the bag are materials integral to the event or otherwise meet the requirements of Article VIII.

(f)(1) A covered individual may, on behalf of an agency of the District government, have his or her agency accept from an organization that is tax exempt pursuant to 26 U.S.C. § 501(c)(3) a contribution or award incident to training, or accept payment of travel, food, lodging, and other expenses incident to attending training; provided, that such acceptance is done in accordance with the Acceptance and use of gifts by District Entities Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 1-329.01), and with 5 U.S.C. § 4111.

(2) A spouse or domestic partner may share lodging with the covered individual who is attending training under this subsection; provided, that the spouse or domestic partner may not accept travel, food, or other expenses incidental to the training unless he or she pays market value for the same.

(g)(1) A covered individual who accepts free attendance for an event under subsections (a) or (b) of this Article, or accepts a contribution, award, or expenses incident to training under subsection (d) of this Article, shall, by the last business day of each month, disclose to the Mayor or to the Secretary to the Council, as appropriate, the following information for each such acceptance:

- (A) The name and address of the event sponsor or training provider;
- (B) The purpose of attending the event or training;
- (C) The nature and value what was accepted; and
- (D) A copy of the individual's assignment or agency authorization.

(2) The Mayor and Secretary of the Council shall publish on their respective websites a list of each free attendance, contribution, award, or expense accepted under this Article on the first Friday in the first full week of each month or, if the Friday is a holiday, the next business day.

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ARTICLE X. GIFTS BETWEEN COVERED INDIVIDUALS

(a) Except as provided in subsections (d) and (e) of this Article, a covered individual shall not:

(1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or

(2) Solicit a contribution from another covered individual for a gift to either the covered individual's official superior or the other individual's official superior.

(b) Notwithstanding a subordinate-official superior relationship, a covered individual may accept a gift, directly or indirectly, from a covered individual if:

(1) There is a pre-existing bona fide personal relationship between the two individuals that would justify the gift; and

(2) The gift is not given or solicited to gain or induce any professional advantage.

(c) Notwithstanding any exception provided in this Article, an official superior shall not coerce a subordinate to make or contribute to a gift.

(d) On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other covered individual:

(1) Items, other than cash, with an aggregate market value of \$20 or less per occasion;

(2) Items such as food and refreshments to be shared in the office among several employees;

(3) Personal hospitality provided at a residence that is of a type and value customarily provided by the covered individual to personal friends; or

(4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions.

(e) A gift appropriate to the following occasions may be given to an official superior or accepted from a subordinate or other covered individual receiving less pay:

(1) In recognition of special occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or

(2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

(f) Regardless of the number of covered individuals contributing to gifts permitted under subsection (e) of this Article, a covered individual shall not accept such gift or gifts from a donating group if the market value exceeds an aggregate of \$300.

(g) Notwithstanding any other provision in this Article, the Director of Government Ethics may, upon written request, authorize covered individuals to solicit voluntary support for victims, including other covered individuals, in cases of emergencies and disasters. As used in this subsection, the term “support” includes both monetary donations and donations of in-kind gift items such as food, clothing, toys, and household items; the phrase “emergencies and disasters” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the world.

**ARTICLE XI. USE OF GOVERNMENT RESOURCES, PRESTIGE OF OFFICE,
AND LETTERS OF RECOMMENDATION**

(a) A covered individual has a duty to protect and conserve government resources and shall not use such resources, or allow their use, for other than authorized purposes.

(b) A covered individual shall not:

(1) Use or allow the use of government resources to influence in any manner a member of the Council or other public official in violation of 18 U.S.C. § 1913; or

(2) Use or allow the use of government resources, including the expenditure of funds, the personal services of employees during their hours of work, and nonpersonal services, including supplies, materials, equipment, office space, facilities, and telephones and other utilities, to support or oppose any candidate for elected office, whether partisan or nonpartisan, or to support or oppose any initiative, referendum, or recall measure, including a charter amendment referendum conducted in accordance with section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-203.03).

(c) A covered individual may accept any material, article, or service that is available as part of any District government program or provided free to District residents or visitors.

(d)(1) A covered individual may not knowingly use the prestige of office or public position for that covered individual's private gain or that of another.

(2) The performance of usual and customary constituent services, without additional compensation, is not prohibited under paragraph (1) of this subsection.

(3) Covered individuals shall not use or permit the use of their position or title or any authority associated with their public office in a manner that could reasonably be construed to imply that the District sanctions or endorses the personal or business activities of another, unless the District has officially sanctioned or endorsed the activities.

(e) The Mayor, Councilmembers, and the Attorney General may serve as an honorary chair or honorary member of a nonprofit entity's fundraising event, so long as

the entity for which funds are raised supports a nongovernmental bona fide charitable activity. Use of the Mayor's, Councilmember's, or Attorney General's name or title in fundraising solicitations or announcements of general circulation shall be in accordance with such terms and limitations as each person may prescribe; provided, that the authority granted by this subsection shall not extend to the use of the public official's name or title in solicitations made by him or her, or made on his or her behalf, directly to individual contributors.

(f) An agency, through its agency head, may do the following:

(1) Promote, endorse, co-sponsor, and collaborate with charitable organizations whose sole mission is to support the agency; or

(2) Where the charitable organization's mission is not solely to support the agency, the agency may nonetheless participate in events and other activities designed to raise funds for programs that assist the agency's constituents and that are consistent with the agency's mission; provided, that the agency shall not, except where otherwise authorized by law:

(A) Endorse, co-sponsor, or directly solicit funds for such events or activities; and

(B) Be listed or identified as a sponsor or co-sponsor in any promotional materials for the event. The agency may be listed only as a participant in such promotional materials.

(g)(1) A covered individual may sign a letter of recommendation using his or her official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual or entity with whom he or she has dealt in the course of their government employment.

(2) Letters of recommendation may be written on District government letterhead if the applicant is a current or former employee or has worked with the District government in an official capacity and the letter relates to the duties performed by the applicant.

(3) If a covered individual does not have personal knowledge of an individual or entity's work ability or performance, the covered individual may sign a

letter of recommendation on District government letterhead addressing only the character or residence of the individual or entity requesting the letter.

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**ARTICLE XII. USE OF PRIVILEGED, CONFIDENTIAL, PROTECTED, AND
NON-PUBLIC INFORMATION**

(a) Covered individuals and former covered individuals shall not:

(1) Willfully or knowingly disclose or use privileged or confidential information, information protected from disclosure by section 204(a)(6) the Freedom of Information Act of 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-534(a)(6)), or information that is otherwise non-public, without authorization or unless required by law to do so; or

(2) Divulge information in advance of the time prescribed for its authorized issuance or otherwise make use of or permit others to make use of information not available to the general public.

(b) When disclosure of privileged, confidential, or otherwise protected information is in the interest of the District government, as determined by the Mayor or Chairman of the Council, or their respective designee, in writing, because it will further government programs and operations, a covered individual may disclosure such information if not otherwise prohibited by law.

ARTICLE XIII. POST-GOVERNMENTAL EMPLOYMENT
CONFLICTS OF INTEREST

(a) Covered individuals shall comply with the provisions of 18 U.S.C. § 207(a)(1) and (2).

(b) No covered individual shall, after the termination of his or her service or employment with the District government, knowingly make, with the intent to influence, any communication to or appearance before any employee of any agency or court of the District of Columbia government, on behalf of any other person (except the District of Columbia) in connection with a particular matter:

(1) In which the District of Columbia is a party or has a direct and substantial interest;

(2) In which the covered individual participated personally and substantially as an employee; and

(3) Which involved a specific party or specific parties at the time of such participation.

(c) No covered individual shall, within two (2) years after the termination of his or her service or employment with the District government, knowingly make, with the intent to influence, any communication to or appearance before any employee of any agency or court of the District government, on behalf of any other person (except the District of Columbia), in connection with a particular matter:

(1) In which the District of Columbia is a party or has a direct and substantial interest;

(2) Which the covered individual knows or reasonably should know was actually pending under his or her official responsibility as an employee within a period of one (1) year before the termination of his or her service or employment with the District government; and

(3) Which involved a specific party or specific parties at the time it was pending.

(d) The two-year (2-year) restriction period in subsection (c) of this Article shall be measured from the date when the former covered individual's responsibility for a

particular matter ends, not from the termination of government service, unless the two occur simultaneously.

(e) A former covered individual shall be prohibited for two (2) years from knowingly aiding, counseling, advising, consulting, or assisting in representing any other person (except the District of Columbia) as to a particular government matter involving a specific party if the covered individual participated personally and substantially in that matter as a government employee.

(f) The two-year (2-year) period in subsection (e) of this Article shall be measured from the date of termination of employment in the position held by the former covered individual when he or she participated personally and substantially in the matter involved.

(g) A former senior employee (other than a special government employee who serves for fewer than one-hundred and thirty (130) days in a calendar year) shall be prohibited for one (1) year from having any transactions with his or her former agency intended to influence the agency in connection with any particular government matter pending before the agency or in which it has a direct and substantial interest, whether or not such matter involves a specific party.

(h) The restriction in subsection (g) of this Article is intended to prohibit the possible use of personal influence based on past governmental affiliations to facilitate the transaction of business. Therefore, the restriction shall apply without regard to whether the former senior employee had participated in, or had responsibility for, the particular matter, and shall include matters that first arise after the employee leaves government service.

(i) The restriction in subsection (g) of this Article shall apply whether the former senior employee is representing another or representing him or herself, either by appearance before an agency or through communications with that agency.

(j) A former senior employee, who was employed by the Council, a Councilmember, or a Council Committee, shall be prohibited for one (1) year from having any transactions with either the Council, Councilmember, members of the committee, or an employee of the Councilmember or committee for whom the employee worked (“Councilmember or committee”), intended to influence the Councilmember or

committee, in connection with any matter on which the former employee seeks action by a Councilmember or Council employee in his or her official capacity.

(k) The prohibitions contained in this Article shall not apply to acts done in carrying out official duties on behalf of:

(1) The United States or the District of Columbia, or as an elected official of a state or local government;

(2) An agency or instrumentality of a state or local government, if the appearance, communication, or representation is on behalf of such government; or

(3) An accredited, degree-granting institution of higher education, as defined in the Higher Education Act of 1965, approved November 8, 1965 (79 Stat. 1219; 20 U.S.C. § 1001), or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

(l) The restriction in subsection (g) of this Article shall not apply to appearances, communications, or representations by a former senior employee concerning:

(1) New matters, if the former senior employee is an elected official of a state or local government and is acting on behalf of that government, or is regularly employed by and acting on behalf of an agency or instrumentality of federal, state, or local government; an accredited, degree-granting institution of higher education; or a non-profit hospital or medical research organization; or

(2) Matters of a personal and individual nature, such as personal income taxes, pension benefits, or professional licensure or certification of the former senior employee. A former senior employee also may appear on his or her own behalf in any litigation or administrative proceeding involving the employee's former agency.

(m) The restriction in subsection (g) of this Article shall not prevent a former senior employee from making or providing a statement, which is based on the employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

(n) The restrictions in this Article shall not prevent a covered individual from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence, a former employee of the Council who is subject to the restrictions in subsection (b) of this Article with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person, other than the District of Columbia, in that matter.

(o) A former covered individual may be exempted from the restrictions in this Article if the Mayor or the Chairman of the Council (or their respective designee), in consultation with the Director of the Office of Government Ethics, executes a determination. The determination shall be in writing and shall state that the covered individual has outstanding qualifications in a scientific, technological, or other technical discipline; is acting with respect to a particular matter which requires such qualifications; and the interest of the District of Columbia would be served by such individual's participation.

ARTICLE XIV. POLITICAL ACTIVITIES

(a) For the purposes of this Article, the following terms shall have the meanings ascribed:

(1) “Candidate” means an individual who seeks nomination or election to any elective office in the District whether or not the person is elected. An individual is deemed to be a candidate if the individual has received political contributions or made expenditures or has consented to another person receiving contributions or making expenditures with a view to bringing about the individual’s nomination or election.

(2) “Employee” means:

(A) Any individual paid by the District government from grant or appropriated funds for his or her services, or holding office in the District of Columbia, other than the following (if not otherwise employed by the District):

- (i) Employees of the courts of the District of Columbia;
- (ii) The Mayor;
- (iii) The Attorney General;
- (iv) The members of the Council;
- (v) Advisory Neighborhood Commissioners;
- (vi) Members of the State Board of Education; or
- (vii) Members of the District of Columbia Statehood

Delegation;

(B) A member of a board or commission who is nominated for a position pursuant to section 2(e) of the Confirmation Act of 1978, approved March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)); and

(C) A member of a board or commission who is nominated for a position pursuant to section 2(f) of the Confirmation Act of 1978, approved March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(f)), when the member is engaged in political activity that relates to the subject matter that the member’s board or commission regulates.

(3) “On duty” means the time period when an employee is:

(A) In a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or

(B) Representing any agency or instrumentality of the District government in an official capacity.

(4) “Partisan” when used as an adjective means related to a political party.

(5) “Partisan political group” means any committee, club, or other organization that is regulated by the District government and that is affiliated with a political party or candidate for public office in a partisan election, or organized for a partisan purpose, or which engages in partisan political activity.

(6) “Partisan political office” means any office in the District government for which any candidate is nominated or elected as representing a party, any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization.

(7) “Political activity” means any activity that is regulated by the District directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum; provided, that for the purposes of subsection (d) of this Article, political activity is not limited to activities regulated by the District.

(8)(A) “Political contribution” means:

(i) A gift, subscription, loan, advance, or deposit of money, or anything of value, made for any political purpose;

(ii) A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(iii) A payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(iv) The provision of personal services, paid or unpaid, for any political purpose.

(B) The term “political contribution” shall not include the value of services provided without compensation by any individual on behalf of any candidate, campaign, political party, or partisan political group.

(9) “Political party” means a national political party, a State political party, or an affiliated organization that is regulated by the District.

(10) “Political purpose” means an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group that is regulated by the District.

(b) Nothing in this Article shall be construed as prohibiting an employee from taking an active part in political management or in political campaigns, unless the employee’s activity violates subsection (c) or (d) of this Article.

(c) For purposes of District-regulated elections, an employee shall not:

(1) Directly or indirectly solicit, accept, or receive a political contribution from any person, except if the employee has filed as a candidate for political office; he or she may fundraise for himself or herself only;

(2) Be a candidate for election to a partisan political office; except that an employee may run for nomination or as a candidate for election to office within a partisan political party;

(3) Knowingly direct, or authorize anyone else to direct, that any subordinate employee participate in an election campaign or request a subordinate to make a political contribution; or

(4) Knowingly solicit or discourage the participation in any political activity of any person who:

(A) Has a measure pending before the Council; or

(B) Is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the Council.

(d) For purposes of all elections, whether or not held in the District of Columbia, the following activities are prohibited:

(1) An employee shall not engage in political activity:

(A) While the he or she is on duty;

(B) In any facility of the District government, including any agency or instrumentality thereof;

(C) While wearing a uniform or official insignia identifying the office or position of the employee;

(D) Using any vehicle owned or leased by the District of Columbia, including any agency or instrumentality thereof; or

(E) Using his or her official authority or influence for the purpose of interfering with, or affecting the result of, an election or a nomination for office; and

(2) An employee may not coerce, explicitly or implicitly, any subordinate employee to engage in political activity.

(e) The Mayor and each member of the Council may designate one employee while on leave to solicit, accept, or receive a political contribution from any person; provided, that:

(1) The employee shall not perform those activities while the employee is on duty or in any facility of the District government, including any agency or instrumentality thereof;

(2) Any designation pursuant to this subsection shall be made in writing to the Secretary of the District of Columbia or the Secretary to the Council; and

(3) Any designated employee shall file a report within fifteen (15) days of being designated and as otherwise required pursuant to section 224 of the Ethics Act (D.C. Official Code § 1-1162.24).

ARTICLE XV. FINANCIAL DISCLOSURES

(a) Public disclosure of financial interests shall be accomplished as follows:

(1) Public officials, except Advisory Neighborhood Commissioners, members of the Washington Metropolitan Area Transit Authority Board of Directors appointed pursuant to title III of the Washington Metropolitan Area Transit Regulation Compact, approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01), and candidates, who are not otherwise required to file pursuant to this paragraph, shall file with the Ethics Board on or before May 15th of each year, a public financial disclosure statement containing a full and complete statement of the information required by subsection (c) of this Article.

(2) The disclosure statement required to be filed by paragraph (1) of this subsection shall be filed online via the Ethics Board's website; provided, that a public official may seek a waiver of the online filing requirement upon a written showing of good cause to the Director of Government Ethics.

(3) Each agency head shall provide to the Ethics Board, no later than the first Monday of March of each year, a list of all public officials within the agency. The list shall include the name, title, position, salary, home address, work email address (or personal email address, if available, where the official no longer works for the agency), and work telephone number (or personal telephone number, if available, where the official no longer works for the agency or does not have a District government telephone number).

(4) The Ethics Board may, on a case-by-case basis, exempt a public official from the financial disclosure filing requirement, or some portion thereof, for good cause shown in writing.

(5) A public official may, in writing and for good cause shown, request the Director of Government Ethics to extend for up to ninety (90) days the time in which to file the public financial disclosure statement.

(6) For the purposes of the financial disclosure statement required by this subsection, a person shall be considered to have been a public official if he or she has

served as a public official for more than thirty (30) days during any calendar year in a position for which financial disclosure statements are required under this subsection.

(7) If a public official ceases to hold the office or position, the occupancy of which imposes upon him or her the reporting requirements set forth in this subsection, the public official shall file the financial disclosure statement within three (3) months after leaving the office or position.

(8) Financial disclosure statements required by this subsection shall be in a form prescribed by the Ethics Board, which may provide for the grouping of items of income, sources of income, assets, liabilities, dealings in securities or commodities, and purchases and sales of real property, when separate itemization is not feasible or is not necessary for an accurate disclosure of the income, net worth, dealing in securities and commodities, or purchases and sales of rental property of any individual.

(9) The Ethics Board shall provide for the annual auditing of all financial disclosure statements filed pursuant to this subsection.

(10) Except as otherwise provided by this subsection, all papers filed under this subsection shall be kept by the Ethics Board in the custody of the Director of Government Ethics for no less than six (6) years. The Director of Government Ethics shall dispose of papers filed pursuant to this section in accordance with the District of Columbia Public Records Management Act of 1985, effective September 5, 1985 (D.C. Law 6-19; D.C. Official Code § 2-1701 *et seq.*).

(11) The Board shall publish in the District of Columbia Register, before June 15th each year, the name of each public official who has:

- (A) Filed a financial disclosure statement under this subsection;
- (B) Sought and received an extension of the deadline filing requirement and the reason for the extension; or
- (C) Not filed a financial disclosure statement and the reason for not filing, if known.

(12) The Mayor shall develop a list of each business entity transacting any business with the District government, or providing a service to the District for consideration, to include the business name, address, principals, and brief summary of the

business transacted within the immediately preceding six (6) months. The list shall be available online and published semiannually on January 1st and July 1st.

(b) Confidential disclosure of financial interests shall be accomplished as follows:

(1) Any covered individual, other than a public official, who advises, makes decisions, or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, policy-making, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest, as determined by the appropriate agency head, shall file, on or before May 15th of each year, with the agency head a confidential financial disclosure statement containing a full and complete statement of the information required by subsection (c) of this Article. Members of the Washington Metropolitan Area Transit Authority Board of Directors appointed pursuant to Washington Metropolitan Area Transit Regulation Compact, approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01) shall file with the Ethics Board the confidential financial disclosure statement required by this subsection.

(2) For the purposes of the financial disclosure statement required by this subsection, a person shall be considered to have been an employee if he or she has served as an employee for more than thirty (30) days during any calendar year in a position for which financial disclosure statements are required under this subsection.

(3) Each agency head shall, on or before April 15th of each year, do the following:

(A) Designate the persons (“designated filers”) in the agency required to file a confidential financial disclosure statement by name, title, position, and salary;

(B) Notify each designated filer in the agency, in writing, of the following:

(i) That he or she has been designated;

(ii) That he or she is required to file a confidential financial disclosure statement on or before May 15th of each year pursuant to paragraph (1) of this subsection; and

(iii) That he or she may request a review of the designation by the agency head within five (5) days, pursuant to paragraph (6) of this subsection; and

(C) Provide each designated filer with instructions on how to complete the confidential financial disclosure statement he or she is required to file; and

(4) Each agency head shall, on or before May 1st of each year, supply the list of designated filers identified by name, title, position, and salary to the Director of Government Ethics.

(5)(A) Each agency head shall review each designated filer's confidential financial disclosure statement and each supplementary statement, if any, and, on or before June 1st of each year, certify or otherwise report to the Director of Government Ethics, indicating whether or not designated filers have filed the required financial disclosure statement, and if not, shall provide a list of those designated filers who have failed to file the required financial disclosure statement. This report shall include information about successful and pending designation appeals.

(B) Upon review of the confidential financial disclosure statement, any violation of the Code of Conduct found by the agency head or his or her designee shall be forwarded immediately to the Director of Government Ethics for review.

(6) When an agency head questions whether a specific individual should be designated pursuant to paragraph (1) of this subsection, the matter shall be referred to the Director of Government Ethics for final resolution.

(7) Designated filers may request a review of their designation as follows:

(A) A designated filer may file a written request for review to the agency head within five (5) days of written notification of the designation;

(B) The agency head shall make a redetermination, in writing, within five (5) days of receipt of the request; and

(C) The agency head's redetermination denying requested relief shall be appealable, in writing, within five (5) days of receipt of the notice of denial to the Director of Government Ethics.

(8) The decision of the Director of Government Ethics respecting the designation shall be in writing and shall be issued within five (5) days of receipt and shall be final.

(9) The Ethics Board shall publish in the District of Columbia Register, before June 15th of each year, the name of each agency whose head failed to comply with paragraph (4) of this subsection.

(10) Confidential financial disclosure statements constitute a record and shall be maintained by the agency head for no less than six (6) years.

(c)(1) Each public official required to file a public financial disclosure statement pursuant to subsection (a) of this Article, and each designated filer required to file a confidential financial disclosure statement pursuant to subsection (b) of this Article, shall provide a full and complete statement of:

(A) The name of each business entity, including sole proprietorships, partnerships, trusts, nonprofit organizations, and corporations, whether or not transacting any business with the District of Columbia government, in or from which the public official or designated filer or his or her spouse, domestic partner, or dependent children:

(i) Has a beneficial interest, including, whether held in such person's own name, in trust, or in the name of a nominee, securities, stocks, stock options, bonds, or trusts, exceeding in the aggregate \$1,000, or that produced income of \$200;

(ii) Receives honoraria and income earned for services rendered in excess of \$200 during a calendar year, as well as the identity of any client for whom the public official or designated filer performed a service in connection with his or her outside income if the client has a contract with the government of the District of Columbia or the client stands to gain a direct financial benefit from legislation that was pending before the Council during the calendar year. The financial disclosure statement required by this sub-subparagraph shall include a narrative description of the nature of the service performed for the client in connection with the public official's or designated filer's outside income;

(iii) Serves as an officer, director, partner, employee, consultant, contractor, volunteer, or in any other formal capacity or affiliation; or

(iv) Has an agreement or arrangement for a leave of absence, future employment, or continuation of payment by a former employer, including the date of the agreement or arrangement;

(B) Any outstanding individual liability in excess of \$1,000 for borrowing by the public official or designated filer or his or her spouse, domestic partner, or dependent children from anyone other than a federal or state insured or regulated financial institution, including any revolving credit and installment accounts from any business enterprise regularly engaged in the business of providing revolving credit or installment accounts, or a member of the person's immediate family;

(C) All real property located in the District (and its actual location) in which the public official or designated filer or his or her spouse, domestic partner, or dependent children, has an interest with a fair market value in excess of \$1,000, or that produced income of \$200; provided, that this provision shall not apply to personal residences occupied by the public official or designated filer, his or her spouse, or domestic partner;

(D) All professional or occupational licenses issued by the District of Columbia government held by the public official or designated filer or his or her spouse, domestic partner, or dependent children;

(E) All gifts received in a calendar year by the public official or designated filer from a prohibited source in an aggregate value of \$100;

(F) A certification that the public official or designated filer has:

(i) Not caused title to, interest in, or ownership of property to be placed in another person or entity's name for the purposes of avoiding the disclosure requirements of this subsection;

(ii) Filed and paid his or her income and property taxes;

(iii) Diligently safeguarded the assets of the taxpayers and the District;

(iv) Reported known illegal activity, including attempted bribes, to the appropriate authorities;

(v) Not accepted any bribes;

(vi) Not directly or indirectly received government funds through illegal or improper means;

(vii) Not raised or received funds in violation of federal or District law; and

(viii) Not received or been given anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, contribution, or promise of future employment, based on any understanding that the public official's or designated filer's official actions or judgment or vote would be influenced.

(2)(A) In addition to the financial disclosure statements that must be filed, respectively, pursuant to subsections (a) and (b) of this Article, each public official or designated filer shall file a supplementary statement, in writing and to the same extent as specified for the filing of annual financial disclosure statements, within twenty-one (21) days of the following:

(i) Learning that any person or entity listed in his or her financial disclosure statement commences or ceases to do a business activity with the District government or commences or ceases any activity regulated by an agency of the District government, except as to any licensing requirement under applicable law;

(ii) Learning that any person or entity with whom the public official or designated filer holds outside employment, has a financial or real property interest, or has an agreement of indebtedness, which person or entity had not previously engaged in doing business with the District government or had not been regulated by any agency of the District, commences either to do business with or becomes subject to regulation by the District; and

(iii) Commencing any previously unreported outside employment, acquisition of financial or real property interests, or agreement of indebtedness.

(B) For purposes this subsection, a person or entity shall be deemed to be doing business with the District government if a contract or agreement has been formally entered into for supplying goods or services, including contracts for construction, to the District, or for extending a leasehold interest to the benefit of the District.

(d)(1) An Advisory Neighborhood Commissioner or a candidate who is not otherwise required to file an annual financial disclosure statement pursuant to subsection (a) of this Article shall file the certification required by subsection (c)(1)(F) of this Article for the preceding year.

(2) The certification required to be filed by paragraph (1) of this subsection shall be filed online via the Ethics Board's website; provided, that an Advisory Neighborhood Commissioner or a candidate may seek a waiver of the online filing requirement upon a written showing of good cause to the Director of Government Ethics.

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ARTICLE XVI. LIMITATIONS ON HONORARIA AND ROYALTIES

(a) Except as provided in subsections (b) and (c) of this Article, neither the Mayor, the Attorney General, the Chairman of the Council, nor any member of the Council or of the State Board of Education, nor any member of his or her immediate family, shall receive honoraria exceeding \$10,000 in the aggregate during any calendar year. For the purposes of this subsection, the term “honorarium” means payment of money or anything of value for an appearance, speech, or article; provided, that a reimbursement for or payment of actual and necessary travel expenses incurred shall not be considered honoraria. For the purposes of computing the \$10,000 limit on honoraria established under this subsection, an honorarium shall be considered received in the year in which the right to receive the honorarium accrues.

(b) Except as provided in subsection (c) of this Article, neither the Chairman of the Council, the Mayor, the Attorney General, nor any member of the Chairman of the Council’s, the Mayor’s, or the Attorney General’s immediate family shall accept royalties for works of the Chairman of the Council, the Mayor, or the Attorney General that exceed \$10,000 in the aggregate during any calendar year. For the purposes of computing the limit on royalties established under this subsection, a royalty shall be considered received during the calendar year in which the right to receive the royalty accrues.

(c) For the purposes of this section, any royalty or part of a royalty, or any honorarium or part of an honorarium, paid to a charitable organization by or on behalf of a public official shall not be calculated as part of an aggregate total; provided, that the public official shall not be an officer or board member of, or otherwise exercise any control over, the organization.

ARTICLE XVII. ETHICS TRAINING AND ETHICS COUNSELING.

(a)(1) All covered individuals shall complete a mandatory government ethics training course developed by the Ethics Board within three (3) months of beginning service with the District government. The mandatory training may be provided electronically, in person, or both, as considered appropriate by the Ethics Board.

(2) All employees shall certify on a biannual basis that they have completed at least four (4) hours of government ethics training courses, either developed by the Ethics Board or approved by the Director of Government Ethics, within the previous two (2) years.

(b) The Ethics Board shall ensure that ethics training materials, including summary guidelines to all applicable laws and regulations, shall be made readily available online on its website and in print.

(c) Notwithstanding the penalty provisions of the Merit Personnel Act, any public official who knowingly violates any provision of subsection (a) of this Article may be subject to an adverse performance action, but not termination.

(d) There shall be no enforcement of a violation of the Comprehensive Code of Conduct taken against a covered individual who relied in good faith upon an advisory opinion of the Director of Government Ethics opinion requested by that individual; provided, that the individual, in seeking the advisory opinion, made full and accurate disclosure of all relevant circumstances and information.

ARTICLE XVIII. LOBBYISTS

(a)(1) Except as provided in subsection (b) of this Article, the following persons shall register with the Director of Government Ethics pursuant to subsection (c) of this Article and pay the required registration fee:

(A) A person receiving any money or an exchange of value received, regardless of its form, or expends funds in an amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying; and

(B) A person receiving any money or an exchange of value received, regardless of its form, from more than one source shall register under this section if the person receives an aggregate amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying.

(2)(A) Except as provided in subparagraph (B) of this paragraph, the registration fee for lobbyists shall be \$250.

(B) The registration fee shall be \$50 for:

(i) Lobbyists who lobby solely for nonprofit organizations;

and

(ii) Nonprofit organizations.

(3)(A) There is established as a nonlapsing fund the Lobbyist Administration and Enforcement Fund (“Lobbyist Fund”), which shall be administered by the Ethics Board. The funds in the Lobbyist Fund shall be used by the Ethics Board solely for the purpose of administering and enforcing this Article.

(B) All fees collected under paragraph (2) of this subsection shall be deposited into the Lobbyist Fund. All funds deposited into the Lobbyist Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subparagraph (A) of this paragraph without regard to fiscal year limitation, subject to authorization by Congress.

(4) No person shall be permitted to register until any unpaid fine, penalty, or fee owed to the Ethics Board is paid and any past due report required by subsection (d) of this Article is filed.

(b)(1) A person need not register pursuant to section (c) of this Article if the person is:

(A) A public official or an employee of the United States acting in his or her official capacity;

(B) A publisher or working member of the press, radio, or television who, in the ordinary course of business, disseminates news or editorial comment to the general public;

(C) A member or member-elect of an Advisory Neighborhood Commission, or a candidate for election to an Advisory Neighborhood Commission; or

(D) An entity specified in D.C. Official Code § 47-1802.01(a)(4), whose activities do not consist of lobbying, the result of which shall inure to the financial gain or benefit of the entity.

(2) Any person who is exempt from registration under any provision of this subsection, except a person exempt from registration under the provisions of paragraph (1)(A) of this subsection, may be a registrant for other purposes under this Article; provided, that no activity engaged in by the person shall constitute a conflict of interest under Article III. Registrants have no obligation to report activities in furtherance of exempt activities under this section in activity reports required under subsection (d) of this Article.

(c)(1) Each registrant shall file a registration form with the Director of Government Ethics, signed under oath, on or before January 15th of each year, or no later than 15 days after becoming a lobbyist (and on or before January 15th of each year thereafter) online via the Ethics Board's website. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant shall file a separate registration form for each person from whom he or she receives any money or an exchange of value received, regardless of its form.

(2)(A) The registration shall be on a form prescribed by the Director of Government Ethics and shall include:

- (i) The registrant's name, permanent address, and, if applicable, temporary address while lobbying;
- (ii) The name and address of each person who will lobby on the registrant's behalf;
- (iii) The name, address, and nature of the business of any person who gives the registrant any money or exchanges anything of value, regardless of its form, and the terms thereof; and
- (iv) The identification, by formal designation, if known, of matters on which the registrant expects to lobby.

(B) The Director of Government Ethics shall publish in the District of Columbia Register on or before February 15th and on or before August 15th of each year a summary of all information required to be submitted under this subsection.

(3) No later than thirty (30) days after a registrant files a registration form with the Director of Government Ethics, the Director shall publish on the Ethics Board's website a summary of all information required to be submitted under this subsection.

(4) A registrant may seek a waiver of the online filing requirement of this subsection upon a written showing of good cause to the Director of Government Ethics.

(5) Failure to register as required by this subsection shall result in a civil penalty.

(d)(1) Each registrant shall file with the Director of Government Ethics between the 1st and 15th day of July and January of each year a report signed under oath concerning the registrant's lobbying activities during the previous 6-month period online via the Ethics Board's website. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant shall file a separate activity report for each person from whom he or she receives any money or an exchange of value received, regardless of its form. The reports shall be public documents and shall be on a form prescribed by the Director of Government Ethics and shall include the following:

(A) A complete and current statement of the information required to be supplied pursuant to subsection (c) of this Article;

(B)(i) Total expenditures on lobbying broken down into the following categories:

- (I) Office expenses;
- (II) Advertising and publications;
- (III) Compensation to others;
- (IV) Personal sustenance, lodging, and travel, if

compensated;

- (V) Other expenses;

(ii) Each expenditure of \$50 or more shall also be itemized by the date, name, and address of the recipient, and the amount and purpose of the expenditure;

(C) Each political expenditure, loan, gift, honorarium, or contribution of \$50 or more made by the registrant or anyone acting on behalf of the registrant to benefit an official in the legislative or executive branch, a member of his or her staff or household, or a political committee or political action committee established for the benefit of the official, be itemized by date, beneficiary, amount, and circumstances of the transaction; including the aggregate of all expenditures that are less than \$50;

(D) Each official in the executive or legislative branch and any member of the official's staff, including personal and committee staff, who has a business relationship or a professional services relationship with the registrant shall be identified by name and the nature of the relationship with the registrant;

(E) Each official in the executive or legislative branch with whom the registrant has had written or oral communications during the reporting periods related to lobbying activities conducted by the registrant shall also be included in the report, identifying the official with whom the communication was made;

(F) Each person whom the registrant has given any money or an exchange of value received, regardless of its form, to lobby on his or her behalf; and

(G) All bundled contributions in accordance with rules promulgated by the Ethics Board.

(2) A registrant shall file the report required by paragraph (1) of this subsection even if the registrant engaged in no lobbying activities during the reporting period. In such case, the report shall state that no lobbying activities were conducted.

(3) Each registrant shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the activity reports required to be made pursuant to this subsection for five (5) years from the date of filing of the report containing these items. These materials shall be made available for inspection upon requests by the Director of Government Ethics after reasonable notice.

(4) A registrant may seek a waiver of the online filing requirement of this subsection upon a written showing of good cause to the Director of Government Ethics.

(5) A registrant may, in writing and for good cause shown, request the Director of Government Ethics to extend for up to thirty (30) days the time in which to file the report required by paragraph (1) of this subsection.

(e)(1) No registrant or anyone acting on behalf of a registrant shall offer, give, or cause to be given a gift to an official in the legislative or executive branch or a member of his or her staff. This subsection shall not be construed to restrict in any manner contributions authorized in sections 333, 334, and 338 of the Ethics Act (D.C. Official Code §§ 1-1163.33, 1-1163.34, and 1-1163.38).

(2) No official in the legislative or executive branch or a member of his or her staff shall solicit or accept anything of value in violation of paragraph (1) of this subsection.

(3) No person shall knowingly or willfully make or cause to be made any false or misleading statement or misrepresentation of the facts relating to pending administrative decisions or legislative actions to any official in the legislative or executive branch.

(4) No person shall, knowing a document to contain a false statement relating to pending administrative decisions or legislative actions, cause a copy of the document to be transmitted to an official in the legislative or executive branch without notifying the official in writing of the truth.

(5) No information copied from registration forms and activity reports required by this part or from lists compiled from such forms and reports shall be sold or utilized by any person for the purpose of soliciting campaign contributions or selling tickets to a testimonial or similar fundraising affair or for any commercial purpose.

(6)(A) No public official shall lobby while acting as a public official, except as provided in subsection (b)(1)(A) of this Article.

(B) Notwithstanding subparagraph (A) of this paragraph, a public official may lobby in his or her personal capacity while serving on a board or commission that does not regulate or license the activities of any person who employs the official to lobby.

(7)(A) No lobbyist or registrant or person acting on behalf of the lobbyist or registrant, shall provide legal representation, or other professional services, to an official in the legislative or executive branch, or to a member of his or her staff, at no cost or at a rate that is less than the lobbyist or registrant would routinely bill for the representation or service in the marketplace.

(B) Notwithstanding subparagraph (A) of this paragraph, a nonprofit organization that routinely provides legal representation or other services to clients at no cost may provide such representation or services to such client when doing so serves the purposes for which such services are routinely provided.

ARTICLE XIX. ADDITIONAL STANDARDS

(a) The Council and each subordinate and independent agency of the District government may adopt additional standards of ethical conduct and reporting requirements that are appropriate to the particular functions and activities of each respective entity and that are not inconsistent with law or the Comprehensive Code of Conduct.

(b) Additional standards of ethical conduct must be approved prior to implementation as follows:

(1) Proposed standards shall be submitted to the Director of Government Ethics in writing for comment, if any;

(2) Following receipt of any comments from the Director of Government Ethics, or the expiration of no fewer than fifteen (15) business days, the proposed standards shall be submitted electronically for approval, respectively, to:

(A) The Council; or

(B) The Department of Human Resources;

(3) Once approved, the proposed standards shall be transmitted to any implicated labor organization for review; and

(4) Following approval by the Council or the Department of Human Resources, respectively, and any appropriate review by a labor organization, the standards shall be published to the impacted employees.

COMPREHENSIVE CODE OF CONDUCT

SECTION-BY-SECTION ANALYSIS

April 30, 2015

Introduction

Last year, the Council directed the Ethics Board to submit proposed legislation “to consolidate the Code of Conduct.”¹ The following section-by-section analysis accompanies the draft Comprehensive Code of Conduct of the District of Columbia, which represents the Board’s first step in responding to the Council’s call.

In developing the draft, the Ethics Board drew from a number of sources, including the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*), the Council’s Code of Official Conduct (“Council Code”), and Chapter 18 of Title 6B of the District of Columbia Municipal Regulations (“DPM”). The Board also looked to the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (“MPA”), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-606.01 *et seq.*), as well as relevant federal laws and regulations. However, for reasons explained in each instance, the Board looked beyond these familiar sources to support several provisions.

The draft Comprehensive Code is, in short, a true consolidation. More importantly, whatever the basis for any one of its provisions may be, the best practices of government ethics law are reflected in the sum of all the parts.

Article I. Definitions

Article I contains the definitions of key terms used throughout the Comprehensive Code. For purposes of discussion, the definitions are divided into five groups. Representative examples are noted for each group, and terms that the Ethics Board considers to be particularly significant are discussed in some detail.²

The first and largest group is comprised of terms that come directly from section 101 of the Ethics Act (D.C. Official Code § 1-1161.01), either as they are currently defined, as added or amended by the Campaign Finance Reform and Transparency Amendment Act of 2013 (“Campaign Finance Reform Act”), effective February 22, 2014 (D.C. Law 20-79; 61 DCR 153),

¹ See Report of the Committee on Government Operations on Bill 20-412, the Comprehensive Code of Conduct and BEGA Amendment Act of 2014, at 5 (Council of the District of Columbia, March 25, 2014).

² Many of the terms, with their definitions, figure into the analyses of the other Articles in the text below.

or as revised by the Ethics Board. Examples of currently defined terms include “affiliated organization,” “direct and predictable effect,” and “lobbyist.” “Bundled” and “independent expenditure” are among the terms added by the Campaign Finance Reform Act. Several terms were revised by the Ethics Board. One of those terms is “administrative decision,” whose definition was revised to read more consistently with the definition of “lobbying.” Another definition revised by the Board is that of “gift,” a term that appears in seven Articles of the Comprehensive Code. As revised, the general meaning of “[anything] having monetary value” is retained, but the definition draws on several sources, including DPM § 1803.4(a) and Rule III(c) of the Council Code, to expand the list of those items, benefits, and services to be excluded.³ One such exclusion for elected officials, added by the Board, is for admission to and the cost of food and beverages consumed at events sponsored by a trade association or a civic, charitable, or community organization, provided that the invitation to the event is extended directly by the event sponsor. The Board recognizes that elected officials are invited often to such events and that the costs of admission and refreshments are generally modest.

The second group is made up of terms related to the anti-nepotism prohibitions in Article VI. Some of these terms come from DPM §§ 1806.2 and 1899.1, either directly (“hiring decision”) or as revised by the Ethics Board (“relative”). The others were added by the Board. For example, the term “advocate” was added because it has been the subject of instructive discussion in relevant federal employment decisions.⁴ Another example is “formal background investigation,” which is discussed in the analysis of Article VI.

While not defined in Article I, the third group of terms contains those related to the restrictions on political activities in Article XIV. These terms are defined in subsection (a) of Article XIV because of their application to that Article only.⁵ Examples include “on duty,” “partisan,” and “political activity.” However, three of the terms – “candidate,” “employee,” and “political contribution” – are the same as, or similar to, terms defined in Article I.⁶ The Ethics Board notes this overlap here, so as to alert the reader to the fact that the three terms have different meanings for purposes of Articles other than Article XIV.

The fourth group includes terms added by the Ethics Board. Some of these terms reflect the Board’s operational experience. For example, “business relationship” and “professional services

³ See also subsection (d)(2) of Article VIII (authorizing acceptance of gift “given under circumstances which make it clear that the gift is motivated by a family relationship or a pre-existing *bona fide* personal friendship rather than the position of the covered individual”).

⁴ See, e.g., *Alexander v. Department of the Navy*, 24 M.S.P.R. 621 (1984).

⁵ The definitions in subsection (a) of Article XIV were taken directly from section 2 of the Prohibition on Government Employee Engagement in Political Activity Act of 2010 (“Local Hatch Act”), effective March 31, 2011 (D.C. Law 18-355; D.C. Official Code § 1-1171.01).

⁶ Article I(14)(A) defines the term “contribution.”

relationship” were taken from the training materials on the Board’s website to assist lobbyists with their required filings. Others were added for purposes related to specific Articles. For example, “contractor” was taken directly from section 104(17) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.04(17)) to lend meaning to the prohibitions on contingent fees set out in Article IV. Another example is “senior employee,” which was added because it is central to the provisions related to the post-employment “cooling-off” period in Article XIII. The Board intends the definition of the term – “an individual required to file a public financial disclosure statement pursuant to Article XV” – to capture the group (generally comprised of elected officials and higher ranking employees) that should be most readily restricted from using personal influence to facilitate transacting business with former colleagues,⁷ yet not be so broad as to discourage qualified people from applying to work for the District government.

Another term added by the Ethics Board is “personal interest.” The term is used in four Articles and, as noted in the discussion of Article III below, reflects the Board’s opinion that the concept of conflict of interest should include non-financial considerations. That view is not new to the District. When the Ethics Act repealed the District of Columbia Campaign Finance Reform and Conflict of Interest Act,⁸ section 601(g) of the former law (codified at D.C. Official Code § 1-1106.01(g)) required recusal by a public official when faced with “a matter as to which he or she [had] a conflict situation created by a personal, family, or client interest.” The rules implementing the law provided that a conflict of interest occurred “when a public official exert[ed] any ‘effort to realize personal gain’, as defined in [3 DCMR] § 9900.1, through official conduct.”⁹ The view also obtains in the federal government,¹⁰ as well as in other jurisdictions,¹¹ and the Board believes that it should find expression again in the District.

The fifth group of terms draws on various District and federal sources. For example, the terms “connected to the attendee’s duties” and “usual and customary constituent services” are based on

⁷ See subsection (h) of Article XIII and the related discussion in the text below.

⁸ See section 501(d) of the Ethics Act (uncodified).

⁹ 3 DCMR § 3300.1. In turn, 3 DCMR § 9900.1 defined “effort to realize personal gain” as meaning “any attempt by a public official to profit or obtain an advantage or an addition to that which official lawfully receives in his or her official capacity. No actual gain is necessary.”

¹⁰ See U.S. Department of Justice *Ethics Handbook* at 2 (January 2014) (available on-line at http://www.justice.gov/jmd/ethics/ethics_handbook.pdf) (stating general rule that employees should avoid situations where “official actions affect or appear to affect [their] private interests, financial or non-financial”).

¹¹ See, e.g., section 3.214 of San Francisco’s conflict of interest law (providing that “[a] City officer or employee shall disclose on the public record any personal, professional or business relationship with any individual who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by the officer or employee where as a result of the relationship, the ability of the officer or employee to act for the benefit of the public could reasonably be questioned”).

definitions in the Council Code.¹² “Agency” is based on the definition of the term in section 301(1) of the MPA (D.C. Official Code § 1-603.01(1)). “Training” is based on the definition of the term in 5 U.S.C. § 4101(4). “Participated personally and substantially” is based on 5 C.F.R. § 2641.201(i).

Article II. Applicability and Standards of Conduct

Subsection (a) of Article II is based on section 201a of the Ethics Act (D.C. Official Code § 1-1162.01a) and declares that the Comprehensive Code is applicable generally to all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council, boards and commissions, and Advisory Neighborhood Commissions (“ANCs”).¹³ While the defined terms “employee” and “public official”¹⁴ are used where necessary in specific contexts, these individuals are referred to as “covered individuals” throughout the Comprehensive Code. The more inclusive term “covered individual” is adopted to reflect the Council’s concern, in passing the Ethics Act, that “[t]he District lacks a uniform, comprehensive, code of conduct for all employee, including public officials.”¹⁵

Subsection (c) of Article II sets out the general principles of ethical conduct that form the basis for the standards contained in the Comprehensive Code and are to be applied in those situations that are not specifically covered by other provisions of law or policy. The principles are drawn directly from Rule 202(a) and (b) of the Council’s Rules of Organization and Procedure for Council Period 21 and from DPM §§ 1800 and 1801.

Subsection (d) of Article II provides that a violation of the Comprehensive Code, or of any additional agency standards of ethical conduct authorized by Article XIX, is cause for

¹² Respectively, *see* Rule IV(b)(2) and Rule VI(e)(2).

¹³ Subsection (b) of the Article excludes from coverage of the Comprehensive Code individuals employed by the District of Columbia Court of Appeals and the District of Columbia Superior Court, reflecting the same exclusion in section 201a of the Ethics Act. The subsection also excludes two other groups. The first is individuals performing services for the District government as vendors or contractors, except as to Article IV, which prohibits contingent fees in government contracting. The second group is lobbyists, except as to Article VIII, with its restrictions on gifts from prohibited sources, and Article XVIII, which tracks Part E (Lobbyists) of the Ethics Act (D.C. Official Code § 1-1162.27 *et seq.*), a constituent element of the current Code of Conduct. *See* section 101(7)(F) of the Ethics Act (D.C. Official Code § 1-1161.01(7)(F)).

¹⁴ Respectively, *see* Article I(23) and I(59).

¹⁵ *See* Report of the Committee on Government Operations on Bill 19-511, the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act Committee Report”), at 12 (Council of the District of Columbia, December 5, 2011); *see also id.* (“Although subject to two overarching policies – to always maintain a high level of ethical conduct and refrain from adversely affecting the public trust; and that any effort to realize a personal gain is a violation of the public trust - public officials, [sic] are not subject to any specific code of conduct.”).

appropriate corrective or adverse action to be taken under the procedures applicable to the covered individual. Subsection (f) draws on section 221(a)(4)(A)(i) of the Ethics Act (D.C. Official Code § 1-1162.21(a)(4)(A)(i)) in providing that penalties imposed by the Ethics Board are separate and apart from any personnel action taken by the covered individual's agency.¹⁶

Article III. Conflicts of Interest

With several exceptions, Article III tracks the conflicts of interest provisions of section 223 of the Ethics Act (D.C. Official Code § 1-1162.23) and Rule I of the Council Code, which are, as between them, substantively identical.

Subsection (a) of the Article states the general rule that no covered individual can use his or her official position or title, or personally and substantially participate,¹⁷ in a particular matter,¹⁸ or attempt to influence the outcome of a particular matter, in a manner that he or she knows is likely to have a direct and predictable effect¹⁹ on a personal interest or financial interest of his or her own or of an immediate family member or an affiliated organization.

The federal counterpart to this provision is 18 U.S.C. § 208(a). With very similar language, the statute prohibits an individual from “participat[ing] personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.”

¹⁶ Section 221(a)(4)(A)(i) of the Ethics Act provides that “[i]n addition to any civil penalty imposed under [the Ethics Act], a violation of the Code of Conduct may result in ... [r]emedial action in accordance with the Merit Personnel Act.”

¹⁷ The term “participated personally and substantially” is defined in Article I(52) by its constituent elements. Of note, for purposes of Article III, participation includes “participating in preliminary discussions.” That express provision does not appear in either section 223 of the Ethics Act or Council Rule I. However, recusal obligations pursuant to the federal analogue of section 223 – 18 U.S.C. § 208, which applies to District government employees – include participation in preliminary discussions. *See, e.g.*, federal Office of Government Ethics Memorandum 04 x 5, at 2 (June 1, 2004).

¹⁸ The term “particular matter” is defined in Article I(51) as being “limited to deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.”

¹⁹ The term “direct and predictable effect” is defined by Article I(18) as meaning “(A) A close causal link between any decision or action to be taken in a particular matter and any expected effect of the matter on a financial or personal interest; (B) A real, as opposed to a speculative possibility, that the matter will affect the financial or personal interest; and (C) The effect is more than *de minimis*.”

The federal statute “has long been interpreted as applying where the matter will have a ‘direct and predictable effect’ on the employee’s financial interest or on the financial interests of other persons or entities specified in the statute.”²⁰ To that extent, the text of subsection (a) of Article III reflects the standards of 18 U.S.C. § 208(a), thereby promoting consistent interpretation and enforcement of the local provision.²¹ That said, subsection (a) of the Article does depart from the provisions on which it is based in two respects. First, the subsection reaches not only financial interests as being the source of conflicts of interest, but personal interests²² as well. The inclusion of personal interests reflects a twice-repeated recommendation by the Ethics Board in its Best Practices Reports that the concept of conflict of interest should include non-financial considerations, so as to reflect the fact that there are, as one government ethics commentator has observed, “many personal interests that create a conflict, even though no money is involved.”²³

Subsection (a) of the Article also differs in that it eliminates the term “person closely affiliated with the employee,” which appears in both section 223(a) of the Ethics Act and Rule I(a) of the Council Code. As defined, for purposes of those provisions, the term means “a spouse, dependent child, general partner, a member of the employee’s household, or an affiliated organization.”²⁴ Aside from the fact that there is the potential for overlap in applying the term – a spouse and dependent child are very often members of someone’s household,²⁵ for example, and general partners are commonly associated with each other as members of an affiliated

²⁰ Notice of proposed rules, *Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)*, 60 Fed. Reg. 47208, 47209 (September 11, 1995) (citing 2 Op. Off. Legal Counsel 151, 155 (June 29, 1978)). See also David R. Flickinger, *Attracting the Best and the Brightest to Government Service: Requiring Scintier for Criminal Conflicts of Interest*, 25 Geo. J. Legal Ethics 519, 525-530 (2012) (discussing history, statutory framework, and judicial interpretation of section 208).

²¹ On the same note, see the discussion of 18 U.S.C. § 207 in the analysis of Article XIII below. See also Advisory Opinion by Director of Government Ethics to Phil Mendelson, Council Chairman, at 3 (Sept. 23, 2013) (available at <http://www.bega-dc.gov/sites/default/files/documents/MendelsonAO.pdf>) (finding 18 U.S.C. § 208 “instructive in interpreting how section 223 [of the Ethics Act] should be applied” in a matter involving legislative recusal).

²² The term “personal interest” is defined by Article I(54) and is discussed in the section of this analysis summarizing the definitions contained in Article I.

²³ Robert Wechsler, *Personal, Non-Financial Interests* (Feb. 7, 2009, 3:56 PM) <http://www.cityethics.org/node/635> (last visited April 29, 2015).

²⁴ Respectively, see section 101(43) of the Ethics Act (D.C. Official Code § 1-1161.01(43)); Rule I(e)(5) of the Council Code. Cf. 18 U.S.C. § 208(a) (“spouse, minor child, general partner, organization in which [officer or employee] is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment”).

²⁵ See section 101(25) of the Ethics Act (D.C. Official Code § 1-1161.01(25)) (defining “household” as meaning “a public official or employee and any member of his or her immediate family with whom the public official or employee resides”).

organization²⁶ – the language of subsection (a) is intended to be more expansive. Borrowing from the definition of “immediate family” in section 101(26) of the Ethics Act (D.C. Official Code § 1-1161.01(26)),²⁷ subsection (a) extends its prohibition beyond the interests of covered individuals to reach those of their immediate family members and affiliated organizations as well. One simple scenario will serve to illustrate the Ethics Board’s purpose: an elected official is faced with a potential conflict of interest when called upon to participate in a matter that would affect rental properties owned by her father and brother, neither of whom live under her roof.²⁸

Despite these differences in subsection (a) of the Article, subsections (b) through (e) make no significant changes in existing practices regarding waivers, recusal statements, or the obligations of elected officials in matters calling for their recusal. However, it should be noted that, for purposes of Article III (as well as for other Articles), the terms “supervisor” and “immediate supervisor” no longer appear. The term “official superior” is used instead. As defined by Article I(49), “official superior” is broad enough to encompass immediate supervisors for most covered individuals, but, in potential conflicts of interest situations, is tailored to mean the Ethics Board for elected officials and, for members of boards and commissions, the Mayor.²⁹

Article IV. Contingent Fees

Article IV prohibits the use of contingent fees in District government contracting. The Article is based, in substance, on section 416 of the Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-354.16), which itself is an element of the current Code of Conduct.³⁰

²⁶ The term “affiliated organization” is defined by Article I(3) as an organization or entity in which, generally, a covered individual or a member of his or her household serves in some business capacity or holds more than \$1,000 in stock. An affiliated organization is also defined as a person with whom, or a business entity with which, a covered individual is negotiating for or has an arrangement concerning prospective employment. Section 101(3) of the Ethics Act (D.C. Official Code § 1-1161.01(3)) and Rule I(e)(1) of the Council Code define the term in the same way.

²⁷ The Ethics Act definition of the term is “the spouse or domestic partner of a public official or employee and any parent, grandparent, brother, sister, or child of the public official or employee, and the spouse or domestic partner of any such parent, grandparent, brother, sister, or child.” This definition is adapted by Article I(36).

²⁸ The same considerations apply to the recusal obligations of elected officials set out in subsection (e) of the Article and to those specific conflict situations contemplated by subsection (g)(2).

²⁹ The term “official superior” is defined by Article I(49) as meaning “any other employee, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee’s official duties or those of any other official superior of the employee. An employee shall be considered to be the subordinate of any of his or her official superiors. For purposes of Article III, Article V, and Article VII(c), the term ‘official superior’ is deemed to be the Ethics Board for elected officials and, for members of boards and commissions, the Mayor.”

³⁰ See section 101(7)(D) of the Ethics Act (D.C. Official Code § 1-1161.01(7)(D)). See also *CapitalKeys, LLC v. Cyber, Inc.*, 875 F. Supp. 2d 59, 63 (D.D.C. 2012) (“Since 1864, the Supreme Court has held that the payment of contingent fees to third parties for the purpose of securing government contracts or sales violates public policy. See

Article V. Personal and Financial Interests and Disclosures

Article V tracks DPM § 1805. Subsection (a) of the Article states the policy of the District government of avoiding conflicts of interest concerning the award, implementation, monitoring, and performance of contracts for services and provides that, as a means of assisting District government agencies to evaluate real or potential conflicts of interest in the contracting area, each newly hired covered individual is required to disclose to his or her employing agency such previous employment relationships (whether in the private or public sectors) as the employing agency may direct, including full disclosure of any ongoing economic benefit from a former employer.³¹

Subsection (c) of the Article requires the employing agency to notify each new covered individual that, for one year from the date of hire, he or she will be for screened from, and not permitted to participate in any manner in, decisions related to procurement actions with the individual's former employer and that the one-year restriction will be extended for as long as the individual receives an ongoing economic benefit from the former employer.³²

Except in the case of elected officials, subsections (d) and (e) of the Article combine to permit the head of an employing agency to authorize a covered individual to take certain actions involving his or her former employer despite the one-year restriction. Those actions include participating in the oversight of the former employer's performance, if the employer is a current contractor or consultant with the District government, and communicating with the former employer on matters pending before the agency. The decision to authorize a covered individual to take any such actions must be based on a written determination, made in light of all relevant circumstances, that the interest of the District government in the covered individual's participation outweighs the concern that a reasonable person might question the integrity of the District government's programs or operations.

Tool Co. v. Norris, 69 U.S. (2 Wall.) 45, 55, 17 L. Ed. 868 (1864). In doing so, the Court reasoned that contingent payments 'suggest the use of sinister and corrupt means for the accomplishment of the end desired. The law meets the suggestion of evil, and strikes down the contract from its inception.' *Id.* This prohibition against contingent fees has been codified into a required warranty against contingent fees on all contracts with both the D.C. and federal governments.").

³¹ The term "former employer" is defined in Article I(29) as meaning, in pertinent part, any person or organization "[f]or whom or for which the employee has served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee." The term "ongoing economic benefit from a former employer" is defined in Article I(50) as including "any pension, annuity, stock option, bonus, cash or in-kind distribution in satisfaction of equitable interest, payment of all or a portion of the premiums on a life or health insurance policy, or any other comparable benefit."

³² Subsection (c)(3) of the Article provides that a covered individual's duty to disclose the receipt of ongoing economic benefits from a former employer is a continuing responsibility.

Subsection (g) of the Article requires a covered individual who is called upon to act for or on behalf of the District government in a matter relating to or involving a non-governmental entity in which he or she, a member of his or her immediate family, or an affiliated organization has a personal interest or financial interest, to disclose this fact in writing at the earliest possible time. A waiver of the conflict of interest may be granted pursuant to subsection (b) of Article III.

Article VI. Restrictions on Hiring and Employment (Nepotism)

Article VI is based on DPM § 1806, which implements the prohibitions on nepotism set out in section 1804(a) of the MPA (D.C. Official Code § 1-618.04(a)).³³ Specifically, the Article prohibits a hiring official³⁴ from directly or indirectly appointing, employing, promoting, evaluating, interviewing, or advancing (or advocating for such actions) any individual who is a relative³⁵ in an agency in which the official serves or exercises jurisdiction or control. The only exception to this general prohibition is to permit advocating for a relative when answering questions as part of a formal background investigation. The exception was added by the Ethics Board because such an investigation, as defined in Article I(28), is limited to verifying the information supplied in a resume, application, and interviews and because a hiring official, as the applicant's relative, is often in the best position to verify relevant information. Otherwise, the Article allows for no other exceptions or waivers of its provisions,³⁶ reflecting the position taken by the Board in its Best Practices Reports.

The Article reflects another position taken by the Ethics Board – this one in the latest Best Practice Report – by extending the nepotism prohibitions to both paid and unpaid positions. The Board's position is informed by the decisions of courts in other jurisdictions, notably Florida,

³³ The nepotism prohibitions in federal law also apply to District government employees. *See* 5 U.S.C. § 3110(a)(1)(D). In prohibiting nepotism in the District government, the Council intended to “mirror” federal law. *See* Report of the Committee on Government Operations on Bill 19-476, the Government of the District of Columbia Comprehensive Merit Personnel Amendment Act of 2011, at 3 (Council of the District of Columbia, December 5, 2011); *id.* at 5 (“Clarifying restrictions on nepotism and unifying federal and local law reestablish the public trust and allows for autonomy.”).

³⁴ “Hiring official” is defined in Article I(34) as meaning “an employee or any other individual in whom authority by law, rule, or regulation is vested, or to whom the authority has been delegated to select, appoint, employ, promote, reassign, demote, separate, or recommend individuals for any of these actions.” The definition is substantively the same as that of “public official,” as defined in the nepotism provisions of the MPA and DPM, but the term “hiring official” is adopted in Article VI so as to avoid any confusion with the broader term “public official,” which is used in other contexts in the Comprehensive Code.

³⁵ “Relative” is defined in Article I(60) and, as recommended in the Ethics Board's Best Practices Reports, expands on the MPA definition of the term by including domestic partners and foster children.

³⁶ However, the Article does maintain the provision in section 1804(c) of the MPA (D.C. Official Code § 1-618.04(c)) that authorizes the Mayor, by rulemaking, to suspend temporarily the nepotism prohibitions in the event of emergencies resulting from natural or manmade disasters.

which has an anti-nepotism statute substantively identical to section 1804(a) of the MPA. In *Galbut v. City of Miami Beach*, 605 So.2d 466, 467 (Fla. Dist. Ct. App. 1992), the court rejected the contention that the Florida statute applies only to paid positions of employment, declaring that “[t]he use of the words ‘appoint’ and ‘employ’ in the same sentence indicate that the statute was intended to encompass not only paid employment, but also appointment to other positions.” *Id.* Continuing, the court said that “[t]here is no indication in the text of the law that there was an intention to exempt service on unpaid boards from the coverage of the statute.” *Id.*³⁷

The same can be said about MPA section 1804(a). There is no basis in the text of the provision on which to conclude that the Council intended to limit its reach to paid positions, nor is there any such intent expressed in the committee report that accompanied Bill 19-476. In short, the Board believes that, by expressly extending the nepotism prohibitions to both paid and unpaid positions, Article VI furthers the Council’s purpose of clarifying the law and increasing the public’s trust in the District government’s hiring practices.

Article VII. Outside Activities

Based almost entirely on DPM § 1807 and Rule II of the Council Code, Article VII contains provisions relating to outside employment, private business activity, and other outside activities of covered individuals.³⁸ The lead in language of subsection (a) of the Article states the general rule that covered individuals are prohibited from engaging in outside activities that are incompatible with government service. The balance of the subsection contains a non-exhaustive list of examples of such outside activities, including engaging in any activity that conflicts or would appear to conflict with the fair, impartial, and objective performance of the covered individual’s official duties or with the efficient operation of the District government, engaging in any activity that permits the covered individual, or an affiliated organization, to capitalize on his or her official title or position,³⁹ and engaging in any activity that is in violation of federal or District law, rule, or regulation.⁴⁰

³⁷ *Cf. State ex inf. Atty. Gen. v. Shull*, 887 S.W.2d 397, 400 (Mo. 1994), abrogated on other grounds by *State v. Olvera*, 969 S.W.2d 715 (Mo. 1998) (rejecting contention that policy behind anti-nepotism provision in state constitution did not support public official’s ouster, where official participated in vote to appoint relative to unpaid position).

³⁸ The Article also reflects the standards of 18 U.S.C. § 203, one of the federal ethics laws that applies to District government employees. The statute generally prohibits receiving compensation for representing others on claims against the government.

³⁹ The prohibition in subsection (a)(5) on capitalizing on one’s official title or position is not intended to affirmatively require a covered individual to censure or remove biographical information from his or her resume or *curriculum vitae*. Rather, the prohibition will be enforce when there is a perceived or intended connection between the individual’s outside activity and his or her official title or position.

⁴⁰ While the Ethics Board has sought to reflect in the Comprehensive Code the standards of those federal ethics laws that apply to District government employees, it has not done so with respect to the few that, in the Board’s view,

Subsection (b) of the Article authorizes covered individuals to engage in outside activities such as teaching, writing for publication, consultative activities, and speaking engagements, generally as long as doing so is consistent with the restrictions in subsection (a) and the activities are conducted outside of regular working hours or during some type of approved leave. Subsection (c) imposes yet other conditions on those authorized outside activities for which covered individuals receive compensation or anything of monetary value. In those cases, covered individuals must get written supervisory clearance before undertaking any activity, the subject matter of which is devoted substantially to their official duties or to information obtained from their government employment.⁴¹

Subsection (e) of the Article contains two specific restrictions on outside representational activities. The first prohibits covered individuals from representing others, having a personal interest or financial interest in, or providing assistance in prosecuting a claim against the District in any regulatory, adjudicatory, or quasi-judicial agency, or court of the District. The second prohibits representing others in matters in which the District is a party or has a direct and substantial interest. However, the subsection does provide exceptions to these prohibitions. If not inconsistent with the performance of their duties, covered individuals are able to engage without compensation in representational activities in connection with disciplinary proceedings and with certain nonprofit groups.⁴²

would infrequently come into play, if at all. For example, one of those laws is 18 U.S.C. § 219(a), which prohibits “act[ing] as an agent of a foreign principal required to register under the [federal] Foreign Agents Registration Act of 1938 or a lobbyist required to register under the [federal] Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity.” Similarly, with respect to District law, the Comprehensive Code does not contain express provisions reflecting the Official Correspondence Regulations, effective April 7, 1977 (D.C. Law 1-118; D.C. Official Code § 2-701 *et seq.*), or section 338 of the Campaign Finance Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1163.38) (constituent service programs). Both those laws are elements of the current Code of Conduct, *see* section 101(7)(C) and (F) of the Ethics Act (D.C. Official Code § 1-1161.01(7)(C) and (F)), but seldom figure into enforcement efforts. Nevertheless, subsection (a)(8) of Article VII is intended to reach outside activities that violate all applicable federal and District laws, rules, and regulations.

⁴¹ The Ethics Board notes that, for enforcement purposes, the Director of Government Ethics has interpreted DPM § 1807.4, the basis for subsection (c) of the Article, as not precluding the receipt of compensation for teaching, speaking, or writing on a subject within a covered individual’s discipline or inherent area of expertise based on his or her educational background or experience, as long as the outside activity has touched *generally* on a subject within the employing agency’s areas of responsibility. In other words, the phrase “devoted substantially” in the subsection has been viewed as proscribing the use of “inside information” in paid outside activities. *Cf.* Rule II(b)(2) of the Council Code (“The information used by an employee engaging in outside employment or activities shall not draw on official data or ideas that are not public information, unless the employee has written authorization from the employee’s supervisor to use such information.”).

⁴² In addition, subsection (f) of the Article allows covered individuals to act, even with compensation, in a personal fiduciary capacity for family members, others, and estates, except in those matters in which they have participated personally and substantially as District government employees. Such representation can only be undertaken with supervisory approval and otherwise not be inconsistent with the performance of official duties.

Subsection (h) of the Article adds to existing practice by providing a specific exclusion for faculty members of the University of the District of Columbia David A. Clark School of Law who teach or supervise students in the school's law clinics and clinical programs.⁴³ Several considerations prompted the Board to add the provision.

First, teaching or supervising law students in the school's clinical programs is not an *outside* activity for faculty members. The programs are part of the school's core curriculum. *See* section 501(2) of the Authorization for the Establishment of a Public School of Law for the District of Columbia Amendment Act of 1986, effective February 24, 1987 (D.C. Law 6-177; D.C. Official Code § 38-1205.01(2)) (providing that one purpose in establishing public law school was “[t]o ensure that the programs and clinical operations of the School of Law of Antioch University, in operation as of February 24, 1987, are adopted initially as the programs and clinical operations of the public School of Law for the District of Columbia”); *see also* 8-A DCMR §1400.2 (“Faculty employees shall be responsible for teaching, law clinics and clinical programs, research, and public service activities essential to the mission of the School of Law.”).

Second, the exclusion is not unconditional. Faculty members teaching or supervising students in the clinical programs must, in doing so, abide by the District of Columbia Rules of Professional Conduct and applicable regulations. Significantly, the regulations recognize that, “[a]s an agency of the District of Columbia, the School of Law must be aware of the potential for inherent conflicts between the mission and operation of the School of Law and the operation of the government of the District of Columbia,” 8-A DCMR § 208.1, and, accordingly, provide that “prior to undertaking significant claims or actions against the District of Columbia which could lead to substantial expenditures of funds from the District budget, or which could lead to substantial involvement by the court in the management, policies, or financial decisions and priorities of another District agency,” potential cases undergo review by the Director of Clinical Programs and the Dean to determine whether representation should be undertaken. *Id.* at § 208.1(a) – (c).⁴⁴

Article VIII. Gifts from Outside Sources

Article VIII contains standards that prohibit a covered individual from soliciting or accepting a

⁴³ Subsection (h) also excludes covered individuals from giving testimony under oath or making statements required to be made under penalty of perjury. *Cf.* 18 U.S.C. § 203(f) (providing similar exclusion).

⁴⁴ *Cf. In re Determination of Executive Commission on Ethical Standards*, 116 N.J. 216, 229, 561 A.2d 542, 549 (N.J. 1989) (“Given the educational purposes of the [clinical legal program], and that the State University would be academically and educationally disadvantaged by the contrary interpretation, we hold that a Rutgers University professor in a teaching clinic of this type is not to be regarded as a State employee for purposes of the conflicts-of-interest law.”).

gift from a prohibited source⁴⁵ or a gift given because of the individual's official position unless the item or benefit is excluded from the definition of "gift"⁴⁶ or falls within one of the exceptions in the Article.

Subsection (a) of the Article is based on DPM § 1803.2 and sets out the general rule that a covered individual cannot, except as provided in Article IX, solicit, accept, or agree to solicit or accept, either directly or indirectly, a gift from a prohibited source⁴⁷ or one given because of the individual's official position or duties. The Ethics Board will apply this general rule strictly, together with subsection (e)(1) of Article XVIII, which prohibits a lobbyist, or anyone acting on behalf of a lobbyist, from offering or giving a gift to an official in the legislative or executive branch or to a member of the official's staff.

Subsections (b) and (c) of the Article provide, respectively,⁴⁸ the standards for determining when a gift is solicited or accepted because of a covered individual's official position or duties and when a gift is solicited or accepted indirectly.

Subsection (d) of the Article is based principally on DPM § 1803.5 and contains the exceptions to accepting gifts from outside sources. One exception allows a covered individual to accept unsolicited gifts having a market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person cannot exceed \$50 in a calendar year and, provided further, that the offer of the gift cannot appear to a reasonable person to be intended to influence the covered individual in his or her official duties. This exception raises two considerations worth noting.

First, the market value of \$20 or less per source per occasion requirement is consistent with the definition of "nominal" in Article I(45).⁴⁹

⁴⁵ The term "prohibited source" is defined by Article I(58) and means, generally, a person or organization that has or is seeking business with the District government or that conducts operations or activities subject to regulation by the District government.

⁴⁶ The term "gift" is defined by Article I(31) as meaning, generally, anything "having monetary value, unless consideration of equal or greater value is given." The term is discussed in the section of this analysis summarizing the definitions contained in Article I.

⁴⁷ *Cf.* Rule III(a) of the Council Code (providing that, with certain exceptions, "employees shall not solicit or accept, either directly or indirectly, any gift from a prohibited source").

⁴⁸ The subsections are, respectively, based on DPM § 1803.4(c) and (d).

⁴⁹ The term is defined as meaning "an individual cash donation of no more than twenty dollars (\$20) or an individual voluntary gift of no more than twenty dollars (\$20) in market value."

Second, the \$20 per source per occasion and \$50 aggregate calendar year market value limits represent what the Ethics Board considers to be a reasonable compromise between the respective \$10 and \$20 limits in DPM § 1803.5(a) and the \$50 and \$100 limits in Rule III(c)(8)(A) in the Council Code.

The other exceptions in subsection (d) of the Article include accepting gifts that are clearly motivated by family relationships or pre-existing *bona fide* personal friendships, as well as gifts accepted pursuant to the Acceptance and use of gifts by District Entities Act of 2000 (“Donations Approval Act”), effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 1-329.01).⁵⁰

Closely tracking Rule III(e) of the Council Code, subsection (e) of the Article contains specific restrictions on accepting gifts from outside sources.⁵¹ The restrictions prohibit soliciting or accepting gifts directly or indirectly in return for, among other things, the performance of any official act, being influenced to commit or aid in committing any fraud on the District government, and being induced to omit doing any act in violation of official duty. The subsection also prohibits a covered individual from accepting gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the individual is using his or her public office for private gain.

Subsection (f) of the Article is based on DPM § 1803.7 and provides that a covered individual who receives a gift that cannot be accepted under the provisions of the Article must inform the donor that District government ethics rules do not permit its acceptance. The individual must also take one of several forms of action, including, for example, returning the gift to the donor, donating it to a tax exempt organization, or, if the gift is perishable and would not be practical to return, sharing it with the office staff. However, subsection (f)(5) makes it clear that a covered individual may take any of these actions one time only with respect to any donor.⁵²

Article IX. Conferences, Widely Attended Gatherings, and Training

The prohibitions against accepting gifts from outside sources do not apply to gifts accepted by covered individuals when attending or participating in conferences, widely attended gatherings, and training in accordance with the provisions of Article IX.

⁵⁰ The Donations Approval Act is a constituent part of the current Code of Conduct. See section 101(7)(G) of the Ethics Act (D.C. Official Code § 1-1161.01(7)(G)).

⁵¹ The restrictions also reflect the criminal bribery-related provisions of 18 U.S.C. § 201(b)(2), which apply to District government employees.

⁵² In contrast, Rule III(b) of the Council Code does not contain a “one bite” provision, nor does it require a covered individual to explain why he or she cannot accept the gift.

Subsection (a) of the Article, which is based on DPM § 1803.5(d), authorizes a covered individual to accept an offer of free attendance⁵³ at a conference or similar event when he or she is assigned to participate as a speaker or otherwise to present information on behalf of his or her agency. The offer of free attendance must come from the event sponsor, and its acceptance is limited to the day of the covered individual's participation.⁵⁴

Subsections (b) and (c) of the Article combine to authorize a covered individual to accept an unsolicited gift of free attendance at a widely attended gathering from either the event sponsor or, if more than fifty people are expected to attend and the gift of free attendance has a market value of \$350 or less,⁵⁵ from a person other than the sponsor.⁵⁶ Other conditions for accepting the gift apply as well. For example, the covered individual's attendance at the event must be in the interest of his or her agency, a large number of people must be expected to attend the event, and those attending must represent a diversity of views or interests within a given industry, profession, or subject matter.⁵⁷

Under subsection (d) of the Article, an agency may authorize a covered individual to accept an unsolicited invitation of free attendance to an accompanying guest to participate in all or part of a conference or widely attended gathering. Such authorization may be granted when others in

⁵³ The term "free attendance" is not defined in either the DPM or the Council Code. Therefore, the Ethics Board looked for guidance in similar federal regulations and found, in 5 C.F.R. § 2635.204(g)(4), the basis for the definition in Article I(30), which provides that the term "[may] include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. Free attendance does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees.").

⁵⁴ Technically, accepting the offer of free attendance at a conference or similar event is not a gift at all. *See* DPM § 1803.5(d) ("The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.").

⁵⁵ The minimum of fifty expected attendees and the \$350 market value limit on an unsolicited gift from a non-sponsor are based on the provisions of DPM § 1803.5(e). The Ethics Board finds those provisions to be reasonable, especially given that Rule IV(b)(1)(A) of the Council Code contains no market value limit and permits attendance at gatherings of as few as twenty-five people. *Cf.* 5 C.F.R. § 2635.204(g)(2) (providing for acceptance of unsolicited gift from non-sponsor "if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of \$375 or less").

⁵⁶ Subsection (e) of the Article does prohibit a covered individual from accepting a gift bag at a conference or widely attended gathering, if the event sponsor is a prohibited source, unless the contents of the bag are materials integral to the event or otherwise meet the requirements of Article VIII.

⁵⁷ *See* federal Office of Government Ethics Memorandum 07 x 14, at 3-4 (Dec. 5, 2007) (explaining basic purposes of widely attended gatherings provisions) ("We believe that there are certain instances where an agency may have a legitimate interest in permitting attendance at certain group events where food is served so that employees may be able to meet on a less formal basis and have an interchange of ideas with a variety of individuals, including members of nongovernmental groups, legislators and other Government agency personnel, who are interested in but may have divergent positions on the same issues.") (citation omitted)).

attendance will generally be accompanied by a guest, and the invitation must be extended by the same person who invited the covered individual.⁵⁸ To that extent, the subsection seeks to standardize the practice across the government. Currently, while Rule IV(b)(1)(B) of the Council Code permits free attendance for an accompanying guest, the DPM does not for those in the executive branch.

Subsection (f) of the Article authorizes a covered individual to accept gifts of contributions and awards incident to training,⁵⁹ as well as payment of travel, food, and other expenses incident to training. Acceptance must be in accordance with the Donations Approval Act and with 5 U.S.C. § 4111. The federal statute, which applies to District government employees, requires that the donor of a training-related gift be a non-profit, tax-exempt organization. The subsection also allows a spouse or domestic partner to share lodging with the covered individual who is attending a training program, but requires the spouse or domestic partner to pay market value for any accepted travel, food, or other expenses incidental to the training.

Subsection (g) of the Article sets out the reporting and publication requirements related to accepting gifts under the Article. The subsection is based on DPM § 1803.6, Rule IV(e)(1) and (2) of the Council Code, and 5 C.F.R. § 410.503, one of the regulations implementing 5 U.S.C. § 4111.

Article X. Gifts Between Covered Individuals

Article X pertains to gifts between covered individuals, including those in subordinate-official superior relationships. Subsections (a) through (e) of the Article are based on DPM § 1804 and Rule V of the Council Code. There are only two noteworthy differences between those provisions and the Article. The first is subsection (a)(2), which adds a proviso to the general prohibition on soliciting for gifts for official superiors. Under the proviso, a covered individual may, on an occasional basis, solicit contributions for items such as food and refreshments (for example, a birthday cake) to be shared in the office among co-workers. The Ethics Board believes that the proviso, based on DPM § 1804.6(c)(2), represents a better practice than that under Council Rule V(a), which operates to permit soliciting for gifts for superiors on an occasional basis, as well as on special occasions. Aside from being intended to standardize practices across the government, the Board's view is informed by the fact that, under subsection

⁵⁸ However, the market value of the gift of free attendance, as between the covered individual and the accompanying guest, must be aggregated. In other words, the limit on the market value of the gift for both of them is \$350.

⁵⁹ The term "training" is defined by Article I(65) as meaning "the process of providing for and making available to a covered individual, and placing or enrolling the individual in, a planned, prepared, and coordinated program or course of instruction or education in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals." The definition is based on 5 U.S.C. § 4101(4).

(d) of the Article, covered individuals are free, on their own, to give occasional gifts to their official superiors.

The second difference is subsection (d)(1), which limits the aggregate market value of gifts (other than cash) that a subordinate can occasionally give to an official superior.⁶⁰ The subsection caps the value at \$20. The Ethics Board considers that amount to be a reasonable compromise between the \$10 limit in DPM § 1804.6(a)(1) and the \$50 limit in Council Rule V(c)(1), especially because the Article does not expressly define “occasional basis.”⁶¹

The Article does contain two new provisions. The first, subsection (f), caps at \$300 the aggregate market value of gifts that official superiors may receive from a group of subordinates, regardless of the number of contributing individuals. The \$300 limit is based on Department of Defense (DoD) Joint Ethics Regulation 2-203(a) (November 17, 2011) and applies to gifts appropriate to certain occasions, such as marriages and retirements, permitted under subsection (e). The Ethics Board looked to the DoD regulation as reflecting a best practice in establishing a reasonable monetary limit on the group expression of good wishes for official superiors even on special occasions.

The second new provision is subsection (g), which allows the Director of Government Ethics, upon written request, to authorize covered individuals to solicit voluntary support for victims, including other covered individuals, in cases of emergencies and disasters. For purposes of the provision, the phrase “emergencies and disasters” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the world.”

Subsection (g) is based on a similar provision in the regulations related to the Combined Federal Campaign that will go into effect on January 1, 2016.⁶² To the extent that the subsection permits monetary donations as a form of support, the Ethics Board respectfully suggests that the Mayor rescind Mayor’s Order 88-194, dated August 23, 1988,⁶³ and issue a new One Fund-related Mayor’s Order, in which there is express recognition of the authority of the Director of Government Ethics to permit solicitations of executive branch employees, outside the One Fund, in support of victims of emergencies and disasters.

⁶⁰ The lead in language of subsection (d) states that certain gifts may be given by a subordinate to an official superior “[o]n an occasional basis, including any occasion on which gifts are traditionally given or exchanged,” such as birthdays and holidays.

⁶¹ *Cf.* 5 C.F.R. § 2635.304(a)(1) (providing cap of aggregate market value of \$10 or less per occasion).

⁶² *See* Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations, 79 Fed. Reg. 21,581 (April 17, 2014) (to be codified at 5 C.F.R. § 950.102(a)(2)).

⁶³ Mayor’s Order 88-194 established the Office of the District of Columbia One Fund.

Article XI. Use of Government Resources, Prestige of Office, and Letters of Recommendation

Subsection (a) of the Article is based on DPM § 1808.1 and sets out the general rule that covered individuals have the duty to protect and conserve government resources and must not use such resources, or allow their use, for other than authorized purposes.⁶⁴ “Government resources” is a defined term⁶⁵ and includes any form of real or personal property in which a government agency has an ownership, leasehold, or other property interest, as well as any right or other intangible interest that is purchased with government funds, including personal services of an employee or contractor during his or her hours of work. The term includes equipment and material of any kind, including office supplies, telephone and other telecommunications equipment and services, and the government mails and email system. The Ethics Board purposefully includes the definition, which is adapted from that in DPM § 1808.2(a), to highlight the fact that a covered individual’s work email address is a form of government property and, as such, must be used only for authorized purposes.⁶⁶

Subsection (b) of the Article sets out two specific government resources-related prohibitions. The first reflects 18 U.S.C. § 1913, which applies to District government employees, and proscribes using government resources to influence in any manner a member of the Council or other public official. The second is based directly on section 336(a) of the Campaign Finance Act of 2011 (D.C. Official Code § 1-1163.36(a)) and prohibits using government resources to support or oppose any candidate for elected office, whether partisan or nonpartisan, or to support or oppose any initiative, referendum, or recall measure, including a charter amendment referendum.⁶⁷

⁶⁴ The term “authorized purposes” is defined by Article I(5) as meaning “those purposes for which government resources are made available to members of the public or those purposes authorized by an agency head in accordance with law or regulation.” In a similar vein, subsection (c) of Article XI is based on Rule VI(b) of the Council Code and authorizes covered individuals to accept any material, article, or service that is available as part of any District government program or provided free to District residents or visitors.

⁶⁵ See Article I(32).

⁶⁶ See 2014 Best Practices Report at 25 (December 31, 2014) (available at <http://www.bega-dc.gov/reports/bega-best-practices-report-december-2014>) (“Employees in all District government agencies entities should have dc.gov email addresses and be required to use them – and only them – to conduct official business.”); see also Mayor’s Order 2012-102, dated July 10, 2012, at 2 (“It is the policy of the District of Columbia that District employees are strongly discouraged from using private email accounts to transact public business and should do so only in rare instances where access to their District provided email account is, for practical reasons, not available.”).

⁶⁷ Cf. subsection (d)(1) of Article XIV (prohibiting certain political activities for purpose of all elections).

Based on Rule VI(c)(1) of the Council Code, subsection (d)(1) of the Article prohibits covered individuals from knowingly using the prestige of office for their own private gain or that of another. However, subsection (d)(2) makes clear that the performance of usual and customary constituent services,⁶⁸ without additional compensation, is not prohibited under subsection (d)(1).⁶⁹

Subsection (e) of the Article authorizes the Mayor, Councilmembers, and the Attorney General to serve as the honorary chair or as an honorary member of a nonprofit entity's fundraising event, provided that the entity for which funds are raised supports a nongovernmental bona fide charitable activity and that the public official's name or title is not used in solicitations directly to individual contributors. With the exception of its extension of authority to the now elected Attorney General, the provision operates to continue the practice allowed for the Mayor and Councilmembers, respectively, under DPM § 1805.10 and Rule VI(c)(4) of the Council Code.

Subsection (f) is new and was suggested after numerous queries from District agencies wishing to engage in public/private partnerships for various purposes. These partnerships may include such endeavors as fundraising for the needy, events that raise public awareness of important societal issues, or initiatives that advance an agency's overall mission, such as providing services to the elderly or homeless.

The longstanding interpretation of whether public/private partnerships are permissible is that, absent implied or express statutory authorization to do so, agencies may not engage in such activities in such a way that lends the prestige of the government to private causes. There are currently only two agencies that have express authority to do so – the Department of Parks and Recreation⁷⁰ and the Office of the State Superintendent of Education.⁷¹ The concern with lending the government's prestige to private entities is the risk that such entities will profit privately at the government's expense. There is also a risk that governmental agencies, through their employees, may be in a position to show favoritism to one charitable organization over another without any formalized selection process, creating the appearance of preferential treatment. On the other hand, it is certainly in the District's interest to engage in these arrangements when doing so benefits and assists the District in providing expanded services to its constituent residents and service recipients.

⁶⁸ The term "usual and customary constituent services" is defined by Article I(66). The definition is based directly on that in Rule VI(e)(2) of the Council Code.

⁶⁹ See also Advisory Opinion issued *sua sponte* by Director of Government (Aug. 29, 2013) (available at <http://www.bega-dc.gov/advisory-opinions/constituent-services>).

⁷⁰ See section 5(a) of the Recreation Act of 1995, effective March 23, 1995 (D.C. Law 10-246; D.C. Official Code § 10-304(a)).

⁷¹ See sections 4032 - 4033 of the State Athletic Activities, Programs, and Office Fund Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code §§ 38-2671 and -2672).

There are generally two types of charitable organizations that are at issue. The first are organizations that function solely to provide support to a particular government agency. Examples include the Police Foundation, the Library Association, and the David A. Clark School of Law Alumni Association. Each of these entities exists for one reason only – to raise funds and support the interested agency. These entities are also often times comprised of current or former District employees. The new provision in subsection (f)(1) expressly recognizes these entities as those that are already so closely aligned with the corresponding agencies that the risks discussed above are minimal or non-existent. For these select few entities, then, the provision allows the agency wide latitude to promote, endorse, co-sponsor, and collaborate with them.

The other types of charitable entities are those that are engaged in activities where, from time to time, there may be an alignment of goals or interests with a particular District agency, and it makes sense that the District and the entity join efforts to work toward a common goal. An example might be the American Association of Retired Persons, which may wish to partner with the D.C. Office of Aging to co-sponsor an event for the elderly. In those instances, there really should be separate legislation authorizing the agency to engage in the type of activities set aside for those closely aligned entities discussed above. However, this is not to say that some joint efforts would not be permitted. Subsection (f)(2) allows such arrangements, but only when the District serves as a “participant,” rather than as a co-sponsor or promoter of the event. The Ethics Board believes that this approach strikes the necessary balance between lending the prestige of government to private activities and the need for flexibility when attempting to address the needs of the public.

Subsection (g) of the Article contains provisions regarding letters of recommendation and is based on Rule VI(d) of the Council Code.⁷²

Article XII. Use of Privileged, Confidential, Protected, and Non-Public Information

Subsection (a) of Article XII is based on Rule VII of the Council Code and prohibits covered individuals from willfully or knowingly disclosing or using privileged or confidential information, information protected from disclosure by the Freedom of Information Act of 1976, or information that is otherwise non-public, without authorization or unless required by law to do so.

⁷² See also Advisory Opinion issued *sua sponte* by Director of Government at 5 (Nov. 19, 2014) (available at <http://www.bega-dc.gov/advisory-opinions/1040-001-advisory-opinion-letters-recommendation>) (“Regardless of whether the writer is employed by the Legislative or the Executive Branch, the standards [regarding letters of recommendation] essentially are the same.”).

Subsection (b) of the Article authorizes the Mayor and the Council Chairman to grant a waiver of the prohibition when disclosure would be in the interest of the District government and not otherwise prohibited by law.

Article XIII. Post-Governmental Employment Conflicts of Interest

Subsections (b) and (c) of Article XIII parallel the provisions in subsections (a) and (b) of Rule VIII of the Council Code and, respectively, set out certain permanent and two-year post-employment prohibitions for former covered individuals with respect to particular matters in which the District is either a party or has a substantial interest. Former covered individuals who personally and substantially participated in such particular matters are prohibited permanently from knowingly making, with the intent to influence, any communication to, or appearance before, any officer or employee of any component of the District government on behalf of any other person (except the District) in connection with those matters. Former covered individuals also are prohibited, for two years, from knowingly making, with the intent to influence, any communication to, or appearance before, any officer or employee of any component of the District government on behalf of any other person (except the District) in connection with any such particular matters which they know, or reasonably should know, were actually pending under their official responsibility⁷³ within a period of one year before their termination of employment.⁷⁴

These permanent and two-year prohibitions mirror 18 U.S.C. § 207(a)(1) and (2), federal criminal post-employment provisions that are among those ethics laws that apply to District government employees.⁷⁵ The substantive parallel is drawn purposefully, so as to eliminate the “disconnect” between the federal statute and its implementing regulations. While 18 U.S.C. § 207 applies to District government employees, its implementing regulations do not. *See* 5 C.F.R. § 2641.104, which defines “employee” to mean, “for purposes of determining the individuals subject to 18 U.S.C. 207, any officer or employee of the executive branch or any independent agency that is not a part of the legislative or judicial branches. *The term does not include* the President or the Vice President, an enlisted member of the Armed Forces, or *an*

⁷³ The term “official responsibility” is defined in Article I(48) as meaning “the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, personally or through subordinates, to approve, disapprove, or otherwise direct governmental action.”

⁷⁴ Based on DPM § 1811.8, subsection (d) of Article XIII contains another two-year restriction on former covered individuals, prohibiting them from knowingly aiding, counseling, advising, consulting, or assisting in representing any other person (except the District) as to particular matters in which they participated personally and substantially before terminating employment.

⁷⁵ Subsection (a) of Article XIII, accordingly, mandates that covered individuals are to comply with the federal provisions.

officer or employee of the District of Columbia.” (Emphasis added.)⁷⁶ Therefore, incorporating the standards of 18 U.S.C. § 207(a)(1) and (2) into Article XIII advances the goal of subjecting District government employees to one set of ethics standards rather than multiple and, sometimes, conflicting standards.

Very similar considerations underlie the one-year “cooling-off” period for senior employees,⁷⁷ as provided in subsection (g) of the Article. The subsection prohibits former executive branch senior employees (other than special government employees who serve for fewer than 130 days in a calendar year) for one year from having any transactions with their former agency that are intended to influence the agency in connection with any particular government matter pending before the agency or in which it has a direct and substantial interest, whether or not such matter involves a specific party. Inasmuch as this provision represents a departure from the current one-year “cooling-off” period applicable to all former District government employees, some discussion is required.

Effective April 11, 2014, the Department of Human Resources (DCHR) amended the DPM in its entirety. *See* 61 DCR 3799. The Notice of Final Rulemaking stated that “[t]he main purpose of amending the rules [was] to ensure the [DPM] provisions reflect changes resulting from” the enactment of the Ethics Act and certain amendments to the MPA.⁷⁸ *Id.* The Notice also stated that “[a]dditional changes were made throughout the [DPM].” *Id.*

In extending the one-year “cooling-off” prohibition to all former District government employees, DPM § 1811.10 clearly represents one of the “additional changes.” The prohibition had, for almost thirty years prior to the DCHR rulemaking, applied only to senior employees. *See* DPM § 1814.12 (33 DCR 6794 (October 31, 1986)). Significantly, the prior rule also tracked a similar provision applicable to former senior federal employees. *See* 18 U.S.C. § 207(c).⁷⁹

⁷⁶ *See also* Part 2635, 5 C.F.R. (setting out regulations applicable to standards of ethical conduct for federal executive branch employees). However, section 2635.102(a) defines “agency” to exclude “the Government of the District of Columbia.”

⁷⁷ The term “senior employee” is defined in Article I(62) as meaning “an individual required to file a public financial disclosure statement pursuant to Article XV.” The term is discussed in the text below as it relates to Article XIII. The significance of the definition itself – which is different from the definition for the same term used in prior post-employment “cooling-off” period regulations – is discussed in the section of this analysis summarizing the definitions contained in Article I.

⁷⁸ *See* District of Columbia Government Comprehensive Merit Personnel Amendment Act of 2012 (“MPA Amendment Act”), effective March 14, 2012 (D.C. Law 19-115; 59 DCR 461).

⁷⁹ Section 207(c) prohibits a former federal senior employee from “knowingly mak[ing], with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency[.]”

DCHR gave no explanation for the change, and none can otherwise be found in the legislative histories of the Ethics Act or the MPA Amendment Act, neither of which amended the DPM. Furthermore, while the Ethics Board, through the Director of Government Ethics, provided comments in response to the Notice of Proposed Rulemaking, only “non-substantive changes” came as a result. *See* Notice of Final Rulemaking at 61 DCR 3799. In short, DCHR’s overhauling of the DPM, a constituent part of the Code of Conduct,⁸⁰ occurred outside of the Ethics Board’s authority, serving to highlight a concern expressed by the Council as recently as last year. *See* Report of the Committee on Government Operations on Bill 20-412, *supra*, at 5 (“Because the District Department of Human Resources could amend [the DPM] at any point, such a significant change could take place without the Council’s or [the Ethics Board’s] involvement. Some District employees could then be governed by a different and conflicting set of ethics rules than others.”).

The DCHR rulemaking experience combined with other considerations to lead the Ethics Board to decide, with subsection (g) of Article XIII, to make the one-year “cooling-off” prohibition apply to former senior employees only.⁸¹

First, the rationale for the “cooling-off” period – to prohibit the possible use of personal influence based on past governmental affiliations to facilitate the transaction of business – more readily applies to former senior employees than to all employees generally. Notably, this view has long been recognized by the federal Office of Government Ethics in enforcing 18 U.S.C. § 207(c). *See, e.g.*, federal Office of Government Ethics Informal Advisory Letter 96 x 8 (April 4, 1996) (“Congress imposed a ‘cooling off’ period in section 207(c) to provide former senior employees and their agencies a period of time to adjust to new roles and to help diminish the appearance that Government decisions may be affected by the improper use of the senior employee’s former position.”).

Second, adapting the provisions of 18 U.S.C. § 207(c) furthers the Board’s general goal of achieving “clearer precedent and more consistent and predictable enforcement” by incorporating into the Comprehensive Code the standards of relevant federal ethics laws.⁸² To that end, Article XIII(g) represents one significant counter to what the Council has observed on a more general

⁸⁰ *See* section 101(7)(E) of the Ethics Act (D.C. Official Code § 1-1161.01(7)(E)).

⁸¹ Article XIII allows for exceptions to the one-year “cooling-off” prohibition, as well as to the permanent and two-year post-employment prohibitions. *See* subsections (k) through (o).

⁸² *See* 2014 Best Practices Report at 6; *see also* Ethics Act Committee Report at 5 (“As a federal enclave, the District has, and continues to be, subject to a host of federal ethics laws ... To a large degree these laws substantially mirror local ethics laws and criminal laws. Where they are not echoed, federal law controls and sets a base standard on which District law builds.”).

scale as a “continued lack of uniformity and cohesion in the District’s ethics laws.” Report of the Committee on Government Operations on Bill 20-412, *supra*, at 4.

Subsection (j) of the Article covers former senior Council employees. Rule VIII(c) of the Council Code contains specific language that imposes a one-year cooling off period for employees who were employed by an individual Councilmember. However, the Rule does not address central staff of the Council, as that term is defined in the MPA (codified at D.C. Official Code § 1-604.6(b)(3)(A)(i)), or officers or Legal Service employees, for whom the personnel authority is the Council Chairman. Further, both the federal Office of Government Ethics and the D.C. Office of Campaign Finance (“OCF”) have previously determined that 18 U.S.C. § 207 (a)(1) and (2) apply to Council employees. OCF specifically applied the District’s post-employment rules to a former Councilmember.⁸³ As a practical matter, it is unlikely that the permanent or two-year ban on transactions with former colleagues would apply to former Council employees, because legislative measures do not typically constitute particular matters involving specific parties. One example of when those bans might apply would be with tax relief measures that affected specific parties and parcels of land, or contract approvals. The more specific language in subsection (j) prohibiting a former employee from seeking action by a Councilmember or Council employee in their official capacity is necessary, therefore, to reach a wider range of former Council employees. The language is similar to that used in the Senate Ethics Rules that impose a one-year cooling off period on senior employees.⁸⁴

Article XIV. Political Activities

Article XIV is based on sections 2, 3, and 4 of the Local Hatch Act (D.C. Official Code §§ 1-1171.01, - 1171.02, and - 1171.03).⁸⁵ Subsection (b) of the Article states that, generally, an

⁸³ See federal Office of Government Ethics Advisory Opinions 86 x 18 (The Council of the District of Columbia and 18 U.S.C. § 207; December 8, 1997) and 97 x 9 (Letter to a Former City Council Member; May 21, 1997); see also OCF Interpretive Opinions 97-5 and 97-9 at, respectively, <http://ocf.dc.gov/node/1004862> and <http://ocf.dc.gov/node/1004832> (last visited April 24, 2015).

⁸⁴ See http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=1aec2c45-aadf-46e3-bb36-c472bcbcd20f (last visited April 24, 2015).

⁸⁵ The purpose of the Local Hatch Act was “to advance Home Rule by establishing local restrictions on the political activities of District government employees.” Report of the Committee on Government Operations and the Environment on Bill 18-460, the Prohibition on Government Employee Engagement in Political Activity Act of 2010, at 2 (Council of the District of Columbia, November 16, 2010). Violations of the Local Hatch Act constitute violations of the current Code of Conduct as defined in section 101(7)(E-i) of the Ethics Act (D.C. Official Code § 1-1161.01(7)(E-i)) and are enforceable by the Ethics Board. See section 5 of the Local Hatch Act (D.C. Official Code § 1-1171.04).

employee⁸⁶ may take an active part in political management or in political campaigns unless his or her activity violates the restrictions in subsection (c) or (d) of the Article.

The restrictions in subsection (c) of the Article apply to District-regulated elections. The restrictions include prohibitions on soliciting or receiving political contributions, except if the employee has filed as a candidate for political office,⁸⁷ being a candidate for election to a partisan political office, and soliciting or discouraging participation in any political activity.⁸⁸

Subsection (d) contains restrictions that apply to all elections, whether or not they are held in the District. The restrictions include prohibitions on engaging in political activity while on duty or in any facility of the District government, using official authority to interfere with, or affect the result of, an election or a nomination for office, and coercing any subordinate employee to engage in political activity.

Article XV. Financial Disclosures

Article XV, based on sections 224 and 225 of the Ethics Act (D.C. Official Code §§ 1-1162.24 and -1162.25),⁸⁹ covers public and confidential financial disclosures. Subsection (a) of the Article sets out provisions related to the requirement for public officials – other than ANCs, members of the Washington Metropolitan Area Transit Authority (“WMATA”) Board of Directors, and candidates – to file annual public financial disclosure statements. Subsection (b) contains provisions related to the requirement of certain covered individuals,⁹⁰ other than public officials, and WMATA Board members to file annual confidential financial disclosure statements. Subsection (c) sets out the requirements of what information must be supplied in the disclosure statements themselves. Subsection (d) requires ANCs and candidates who do not

⁸⁶ The definition of “employee” set out in Article XIV(a)(2) is to be distinguished from the definition of the same term in Article I(23). Inasmuch as the Local Hatch Act does not apply to court employees, elected officials, or members of certain boards and commissions – some number of whom, collectively, are otherwise District government employees – the two definitions are necessary.

⁸⁷ Subsection (e) of the Article authorizes the Mayor and members of the Council to designate, under certain conditions, one employee while on leave to solicit or accept political contributions on their behalf.

⁸⁸ Subsection (a)(7) of the Article defines “political activity” as meaning, in pertinent part, “any activity that is regulated by the District directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum.”

⁸⁹ See also DPM § 1810 (“implement[ing] the financial interest disclosure requirements” in Ethics Act).

⁹⁰ These covered individuals are referred to as “designated filers” in the Article. A designated filer is a covered individual “who advises, makes decisions, or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, policy-making, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest, as determined by [his or her] agency head.”

otherwise have to file a public financial disclosure statement to file, instead, the annual financial certification required by subsection (c)(1)(F) of the Article. The certification, which tracks section 224(a)(1)(G) of the Ethics Act, calls for the filer to certify, for example, that he or she has filed and paid income and property taxes and has reported known illegal activity to the appropriate authorities, and that he or she not accepted any bribes or placed title to property in another's name to avoid having to make disclosure.

The Article draws on almost three years of the Ethics Board's operational experience by reflecting several recommendations made in the 2014 Best Practices Report. First, subsections (a)(2) and (d)(2) require the filers of annual public financial disclosure statements and annual financial certifications to make their respective filings online via the Ethics Board's website.⁹¹ The intent of the electronic filing requirement is to make information more readily available to the public as a result of a more efficient and error-free filing process, although both subsections do allow for waivers in those cases where good cause can be shown to the Director of Government Ethics.

Second, subsection (a)(4) provides that a public official may, in writing and for good cause shown, request the Director of Government Ethics to extend for up to thirty days the time in which to submit his or her annual public financial disclosure statement. Granting the Director express authority in the Comprehensive Code to approve extension requests is preferable to the practice up to now, which has been based on two regulatory provisions.⁹²

Third, subsection (b)(2) establishes a 30-day service requirement for filers of confidential financial disclosure statements. The provision parallels the same requirement for public filers that is contained in subsection (a)(6) of the Article. To date, the Ethics Board has interpreted the 30-day service requirement to extend to all filers except candidates, but including an express requirement in the Comprehensive Code for confidential filers would allow the Board's staff to refer to a specific provision when explaining the requirement,⁹³ especially to those agency personnel who assist in designating confidential filers.

Fourth, subsection (b)(5) requires agency heads, by June 1st of each year, to report to the Director of Government Ethics the names of those covered individuals who did not file a confidential

⁹¹ The electronic filing requirement is authorized by section 211(8) of the Ethics Act (D.C. Official Code § 1-1162.11(8) ("The Director of Government Ethics, approved by the Ethics Board, shall have the power to ... "[r]equire any person to submit through an electronic format or medium a report required pursuant to [the Ethics Act].").

⁹² See 3 DCMR § 5702.4 ("A public official may request the Director, in writing, for an extension of up to thirty (30) days in which to submit the FDS."); 3 DCMR § 5702.5 ("The Director may extend the period of time for submission of the FDS by a public official, for good cause shown.").

⁹³ Section 225 of the Ethics Act (D.C. Official Code § 1-1162.25) lacks such a requirement.

financial disclosure statement. Currently, the Ethics Act requires agency heads to provide only a list of confidential filers by May 1st of each year. The new deadline to require reporting non-filers is intended to assist the Board's staff in its enforcement efforts.

Last, and also for enforcement-related reasons, subsection (b)(9) authorizes the Board, before June 15th of each year, to publish in the *D.C. Register* the name of each agency whose head failed to report the names of confidential non-filers, along with the list of those public officials who failed to file public financial disclosure statements.

Article XVI. Limitations on Honoraria and Royalties

Article XVI is based on section 226 of the Ethics Act (D.C. Official Code § 1-1162.26) and prohibits the Mayor, the Attorney General, the Chairman of the Council, members of the Council, members of the State Board of Education, as well as members of their immediate families, from receiving honoraria exceeding \$10,000 in the aggregate during any calendar year. The term "honorarium" is defined to mean "payment of money or anything of value for an appearance, speech, or article."

The Article also prohibits the Chairman of the Council, the Mayor, the Attorney General, as well as members of their immediate families, from accepting royalties for works of the Chairman, the Mayor, or the Attorney General that exceed \$10,000 in the aggregate during any calendar year.⁹⁴

Article XVII. Ethics Training and Ethics Counseling

Article XVII requires all covered individuals to complete a government ethics training course developed by the Ethics Board within three months of beginning their District service. Reflecting best practices, the training requirement draws on Rule XI(b)(1) of the Council Code, which requires all new Council staff and Councilmembers to complete "a mandatory ethics-training course within 2 months of beginning employment with the Council," rather than section 1801(a-2)(2) of the MPA (D.C. Official Code § 1-618.01(a-2)(2)), which requires only those new employees who are required to file public or confidential financial disclosure statements⁹⁵ to certify that they have undergone ethics training. However, the Article does expand a parallel MPA provision to the extent that it requires all covered individuals to certify on a biannual basis that they have completed at least four hours of government ethics training courses, either

⁹⁴ Subsection (c) of the Article provides an exception to the \$10,000 aggregate limits on honoraria and royalties to the extent that "any royalty or part of a royalty, or any honorarium or part of an honorarium, paid to a charitable organization by or on behalf of a public official [is not to] be calculated as part of an aggregate total; provided, that the public official shall not be an officer or board member of, or otherwise exercise any control over, the organization."

⁹⁵ See sections 224 and 225 of the Ethics Act (D.C. Official Code §§ 1-1162.24 and -1162.25).

developed by the Ethics Board or approved by the Director of Government Ethics, within the previous two years.⁹⁶

The Article borrows directly from the MPA and the Ethics Act for two of its other substantive provisions. First, the Article provides that, notwithstanding the penalty provisions of the MPA, any public official who knowingly violates the training or certification requirements may be subject to an adverse performance action, but not termination.⁹⁷ Second, the Article provides safe harbor to any covered individual who relies in good faith upon an advisory opinion of the Director of Government Ethics requested by the individual, provided that he or she, in seeking the advisory opinion, makes full and accurate disclosure of all relevant circumstances and information.⁹⁸

Article XVIII. Lobbyists

Except for reflecting several of the Ethics Board's recommendations in the 2014 Best Practices Report, Article XVIII tracks the provisions of Part E (Lobbyists) of the Ethics Act (D.C. Official Code §§ 1-1162.27 through 1-1162.32).⁹⁹

Subsection (a) of the Article contains the requirements of those who must register to lobby.¹⁰⁰ The subsection generally follows section 227 of the Ethics Act (D.C. Official Code § 1-1162.27), but paragraph (4) is new, prohibiting a person from filing an annual lobbyist registration form, if he or she owes the Ethics Board unpaid fines, penalties, or fees, or any past due activity reports. The provision, reflecting the Board's view that registrants should have clean hands, would operate in similar fashion to D.C. Official Code § 47-2862, which prohibits the District from

⁹⁶ Section 1801(a-2)(3) of the MPA (D.C. Official Code § 1-618.01(a-2)(3)) requires financial disclosure statement filers to "certify on an annual basis that they have completed at least one ethics training program within the previous year."

⁹⁷ See section 1801(a-3) of the MPA (D.C. Official Code § 1-618.01(a-3)).

⁹⁸ See section 219(d) of the Ethics Act (D.C. Official Code § 1-1162.19(d)).

⁹⁹ There are no provisions in the Article based on section 232 of the Ethics Act (D.C. Official Code § 1-1162.32), which covers penalties, prohibition from serving as a lobbyist, and citizen suits. The Ethics Board believes that those subjects are better addressed outside the Comprehensive Code itself, which seeks to reflect the standards of government ethics, rather than to provide specific sanctions for violations.

¹⁰⁰ Article I(42)(A) defines the term "lobby" or "lobbying" as meaning "communicating directly with any official in the legislative or executive branch of the District government with the purpose of influencing any legislative action or an administrative decision." "Legislative action" is defined by Article (41) as including "any activity conducted by an official in the legislative branch in the course of carrying out his or her duties as such an official, and relating to the introduction, passage, or defeat of any legislation in the Council." The term "administrative decision" is defined by Article I(1) as meaning "any activity directly related to action by an official in the executive branch, but does not include proceedings related to a contested case conducted under the Administrative Procedure Act."

issuing licenses or permits to any applicant who owes more than \$100 to the District for certain fines, penalties, assessed interest, past due taxes, or service fees.

Subsection (b) of the Article sets out those persons who are excepted from the registration requirement.¹⁰¹

Subsection (c) of the Article contains the requirements regarding the lobbyist registration form itself. The one departure from section 229 of the Ethics Act (D.C. Official Code § 1-1162.29) is the provision in paragraph (1) of the subsection requiring that the registration form be filed online via the Ethics Board's website. The intent of the electronic filing requirement is the same as that in Article XV for public financial disclosure statements – making information more readily to the public as the result of a more efficient and error-free filing process¹⁰² – but, in similar fashion, the subsection makes allowance for waivers of the requirement where good cause can be shown to the Director of Government Ethics.¹⁰³

Subsection (d) of the Article generally parallels section 230 of the Ethics Act (D.C. Official Code § 1-1162.30), covering the requirements related to filing lobbyist activity reports. However, several provisions are new, incorporating Ethics Board recommendations or coming as a result of recent Council action.

First, paragraph (1) requires that lobbyist activity reports have to be filed between the 1st and 15th day of July and January of each year, reflecting the Board's recommendation that the time for filing the reports be extended from the 10th day of each of those months.¹⁰⁴ The recommendation is based on the Board's experience with enforcing the filing requirement, including its having to respond to requests for waivers of the penalties imposed on late filers. Both filing periods are

¹⁰¹ See also Article I(42)(B) (excluding certain activities from the definition of “lobbying” or “lobbying”); Article I(43)(B) (“Public officials communicating directly or soliciting others to communicate with other public officials shall not be deemed lobbyists for the purposes of Article XVIII; provided, that a public official does not receive compensation in addition to his or her salary for such communication or solicitation and makes such communication and solicitation in his or her official capacity.”).

¹⁰² See Report of the Committee on Government Operations on Bill 20-76, the Campaign Finance Reform and Transparency Amendment Act of 2013, at 15 (Council of the District of Columbia, October 22, 2013) (“There is a definite need to enhance the accessibility of all information provided on both [lobbyist] Activity Report Forms and Registration Forms.”).

¹⁰³ The same electronic filing and waiver provisions apply in subsection (d) of the Article for lobbyist activity reports.

¹⁰⁴ This recommendation is also reflected in legislation pending before the Council. See section 2(g) of the Ethics Reform Amendment Act of 2015, as introduced on March 3, 2015 (D.C. Bill 21-124).

shortened by federal holidays, even with the extended deadline, and section 230 of the Ethics Act currently makes no provision for granting extensions.¹⁰⁵

Second, paragraph (1)(G) requires that the activity reports include all bundled¹⁰⁶ contributions in accordance with rules promulgated by the Ethics Board. The Campaign Finance Reform Act is the source of this reporting requirement, which is intended to address what the Council saw as a major flaw in the District's campaign finance laws.¹⁰⁷ For its part, the Board will undertake the rulemaking necessary to implement the requirement.¹⁰⁸

Third, paragraph (2) is based on the Ethics Board's recommendation that section 230(c) of the Ethics Act be amended to clarify that a registrant is required to file an activity report, even if he or she engaged in no lobbying activity during the reporting period.¹⁰⁹ Clarifying the filing requirement is intended to obviate the argument, raised by several late filers, that section 230(c) only requires activity reports to be filed if activity during the reporting period has occurred. Accepting that argument would make it impossible for the Board's auditors to distinguish between non-compliant lobbyists and those who did no lobbying for a given reporting period without contacting each person for confirmation.

Subsection (e) of the Article covers lobbying-related prohibited activities. The subsection is based principally on section 231 of the Ethics Act (D.C. Official Code § 1-1162.31), but two of its provisions warrant some discussion.

First, paragraph (1) prohibits a registrant, or anyone acting on his or her behalf, to offer or give a gift to an official in the legislative or executive branch or to a member of his or her staff. The

¹⁰⁵ To round out the recommendation, paragraph (5) of the subsection authorizes the Director of Government Ethics, upon a written showing of good cause, to grant a registrant an extension of up to 30 days to file his or her activity report.

¹⁰⁶ The term "bundled" is defined by Article I(7) as meaning, in pertinent part, "to forward or arrange to forward two or more contributions from one or more persons by a person who is not acting with actual authority as an agent or principal of a committee."

¹⁰⁷ See Report of the Committee on Government Operations on Bill 20-76, at 12-13 ("Most lacking in the District's campaign finance laws is sufficient transparency related to the campaign contributions of registered lobbyists and their employers. This bill provides that those lobbyists – along with their employers – required to register with [the Ethics Board] must disclose any bundling of campaign contributions. ").

¹⁰⁸ The Council saw the disclosure requirement going into effect fairly immediately. See *id.* at 15 ("[The requirement to disclose bundled contributions] will go into effect immediately and will practically be applied as of the first activity reporting period following the effective date of [D.C. Law 20-79] (likely July 2014.>"). However, while the law became effective on February 22, 2014, it did not become applicable until March 13, 2015, when the Chief Financial Officer's certification of the inclusion of its fiscal effect in an approved budget and financial plan was published at 62 DCR 2988. See section 3 (applicability) of D.C. Law 20-79.

¹⁰⁹ Section 230(c) currently provides that "[e]ach registrant who does not file a report required by [section 230] for a given period is presumed not to be receiving or expending funds that are required to be reported under this part."

ban on gifts¹¹⁰ is a change from section 231(a) of the Ethics Act, which currently permits such gifting up to an aggregate of \$100 in any calendar year. However, the ban stems from the Ethics Board’s view that lobbyists are in the very business of attempting to influence legislative or executive action. Accordingly, paragraph (1) reflects best practices in prohibiting gifts from lobbyists and their employers, no matter the value. Other jurisdictions take this approach.¹¹¹

Second, paragraph (6)(B) authorizes a public official to lobby in his or her personal capacity while serving on a board or commission that does not regulate or license the activities of any person who employs the official to lobby.¹¹² The provision represents something of a change in the Ethics Board’s position, taken in its 2013 Best Practices Report, that lobbyists should be prohibited from serving on any boards and commissions that perform quasi-judicial or rulemaking functions or exercise certain other types of authority, such as licensing, contracting, or grant-making. Behind the change is the D.C. Circuit’s decision in *Autor v. Pritzker*, 740 F.3d 176 (D.C. Cir. 2014), in which the court held, among other things, that federally registered lobbyists pled a viable First Amendment claim regarding the President’s ban on lobbyists serving on advisory committees.¹¹³ Therefore, informed by the court’s decision, the Council’s viewpoint,¹¹⁴ public comment,¹¹⁵ and similar practices in other jurisdictions,¹¹⁶ the Board now

¹¹⁰ Paragraph (1) does track section 231(a) of the Ethics Act in providing that the gift ban will not be construed to restrict in any manner contributions authorized in sections 333, 334, and 338 of the Campaign Finance Act (D.C. Official Code §§ 1-1163.33, 1-1163.34, and 1-1163.38). See also subparagraphs (A) through (N) of Article I(31) (exclusions to definition of “gift”).

¹¹¹ See, e.g., Ark. Const. art.19, § 30; Colo. Const. art. XXIX, § 3(4); Minn. Stat. § 10A.071, subdiv. 2.

¹¹² Section 231(f) of the Ethics Act currently provides that “[n]o public official shall be employed as a lobbyist while acting as a public official, except as provided in [section 228 (D.C. Official Code) § 1-1162.28.]” In turn, section 228(a)(1) of the Ethics Act provides that a public official “need not register” to lobby if acting within his or her official capacity. Paragraph 6(A) of subsection (e) of the Article is based on section 228(a)(1).

¹¹³ See 740 F.3d at 182 (“[R]egistered lobbyists are protected by the First Amendment right to petition. See *Liberty Lobby, Inc. v. Pearson*, 390 F.2d 489, 491 (D.C. Cir.1968) (holding lobbying is protected by the right to petition government).”).

¹¹⁴ See Report of the Committee on Government Operations on Bill 20-76, at 12 (“The act of lobbying, whether by a registered lobbyist or an advocate, is an exercise of the constitutional right to petition the government and can have the effect of magnifying underrepresented voices.”).

¹¹⁵ On October 13, 2013, the Board held a symposium on government ethics and transparency best practices. Members of the public were invited to participate, either in person or by submitting written comments. Of those individuals who expressed an opinion on whether lobbyists should be barred from serving on boards and commissions, most were opposed. As one person said, “Categorical restrictions or an outright ban on allowing lobbyists (or even former lobbyists) to serve – even in instances when no conceivable conflict of interest can be shown – only serves to limit getting the best people on those boards.” Visit <http://www.bega-dc.gov/meeting-minutes/public-symposium-government-ethics-and-transparency-best-practices> for minutes of the symposium and copies of all the written comments that were submitted.

¹¹⁶ See, e.g., N.C. Gen. Stat. § 120C-304(e) (“A lobbyist shall not be eligible for appointment by a State official to, or service on, any body created under the laws of this State that has regulatory authority over the activities of a

sees the way clear for a lobbyist to serve in his or her personal capacity on a board or commission, as long as the particular body does not regulate or license the lobbyist's employer. As a member of such a board or commission, the lobbyist would be subject to the Comprehensive Code, generally,¹¹⁷ and the conflicts of interest provisions of Article III, in particular.¹¹⁸

Article XIX. Additional Standards

Article XIX is based on DPM § 1809 and authorizes the Council and each subordinate and independent agency to adopt additional standards of ethical conduct and reporting requirements that are appropriate to their respective functions. The Article also prescribes the procedures to be followed in seeking approval of and publishing any additional standards.

person or governmental unit that the lobbyist currently represents or has represented within 120 days after the expiration of the lobbyist's registration representing that person or governmental unit."); Tenn. Code Ann. § 3-6-304(m) ("No lobbyist shall serve as a member of any board, commission or governmental entity of state government having jurisdiction to regulate the business endeavors or professional activities of any employer of the lobbyist[.]").

¹¹⁷ See subsection (a) of Article II.

¹¹⁸ This approach is consistent with subsection (b)(2) of the Article, which provides that a person who is exempt from lobbyist registration, other than a public official acting in his or her official capacity, may be a registrant for other purposes, provided that "no activity engaged in by the person shall constitute a conflict of interest under Article III." Subsection (b)(2) of subsection (e) of the Article is based directly on section 228(b) of the Ethics Act (D.C. Official Code § 1-1162.28(b)).