

City of Auburn, Maine
"Maine's City of Opportunity"
City Manager Department

TO: Clint Deschene, City Manager
FROM: Howard Kroll, Assistant City Manager
DATE: 01/26/14
SUBJECT: Ethics Panel

The following memo is intended to outline The City of Auburn, Maine's Code of Ordinances Part II entitled **Chapter 2. Administration, Article 3. Officers and Employees, Division 2. Ethics and Conflict of Interest**. Further consideration for amending the ordinance should be considered to eliminate confusion and yearly appointment to an entity that meets infrequently.

Why do we need an Ethics Panel?

(a) It is the policy of the city that the proper operation of democratic government requires that public officials be independent, impartial and responsible to the citizens, that public office not be used for personal gain, and that the public have confidence in the integrity of its municipal government. The purpose and intent of this division is to promote the objective of protecting the integrity of the government of the city against actual or reasonably perceived conflicts of interest without creating unnecessary barriers to public service.

(b) This division shall not prevent the city council, the school committee, the city manager or the superintendent of schools from adopting additional procedures and employment standards intended to prevent the exercise or appearance of improper influence or bias in the conduct of government business.

Ethics Panel Established; Membership; Powers and Duties

- (1) **Established; membership. There shall be established an ethics panel consisting of three regular voting members and two alternate members. Two regular voting members and one alternate member of the ethics panel shall be appointed by the mayor with approval of a majority of the members of the city council, and one regular voting member and one alternate member of the ethics panel shall be appointed by the chair of the school committee with**

approval of a majority of the members of the school committee. A regular voting member or alternate member of the ethics panel **may not hold any other city or school department office or position or be a member of any board or commission to which the city council or school committee has appointing authority.**

(2) *Term of members; chair.* The regular voting members of the ethics panel shall be appointed to **staggered three-year terms.** When the first appointments are made, **one member shall be appointed by the mayor to a three-year term, one member shall be appointed by the chair of the school committee to a two-year term, and one member shall be appointed by the mayor to a one-year term.** **The mayor annually shall appoint one of the regular voting members to serve as chair of the ethics panel.**

Alternate members shall be appointed to three-year terms.

(3) *Role of alternate members.* Alternate members of the ethics panel may participate and vote in ethics panel proceedings if a regular voting member is incapable or unavailable to serve in regard to a particular referral or is disqualified from participation because of a conflict of interest. **The alternate member designated shall be selected by the chair of the ethics panel.**

(4) *Powers and duties.* The ethics panel shall have the authority to issue advisory opinions on questions relating to conflicts of interest and the incompatibility of employment positions.

Duties of the Board

- (a) The Ethics Panel is responsible to ensure that public officials refrain from participation in a matter when there exists an actual, potential or reasonably perceived conflict of interest arising from a personal relationship or a financial involvement that would cause a reasonable person to believe that the public official cannot act in his official capacity without self-interest or bias.
- (b) *Referral of matters to ethics panel.* When a public official does not voluntarily refrain from participation in a matter and there is a question as to the existence of a conflict of interest under the standard set forth in subsection (a) of this section, the matter may be referred to the ethics panel for its advisory opinion as follows:

- (1) **A public official may refer to the ethics panel the question of whether he has an actual, potential or reasonably perceived conflict of interest;**
- (2) **Two or more members of the city council, the school committee or other municipal board may refer to the ethics panel the question of**

whether another member of that body, or a public official who serves under the authority of that body, has an actual, potential or reasonably perceived conflict of interest; or

(3) A registered voter within the city may request an advisory opinion from the ethics panel regarding whether an elected or appointed public official who serves on a municipal board has an actual, potential or reasonably perceived conflict of interest. Such request shall be made on forms available from the city clerk and shall be endorsed by the signatures of 25 registered voters within the city.

(c) *Ethics panel determination.* The ethics panel shall determine whether the public official should refrain from participation in a matter because of the actual, potential or reasonably perceived existence of a conflict of interest arising from a personal relationship or a financial involvement that would cause a reasonable person to believe that the public official cannot act in his official capacity without self-interest or bias.

Conduct relative to municipal contracts.

No municipal officer, employee or agent shall solicit or accept any gratuity or favor or anything of monetary value from any contractor or potential contractor with the city relative to the procurement of any supplies, equipment, construction or other services with municipal, state or federal grant funds. In addition to any other penalties which may be provided by law, any municipal officer, employee or agent who violates this section shall be subject to appropriate disciplinary action, including, in the case of an officer, removal from office; in the case of an employee, suspension or discharge from employment; and in the case of an agent, termination of such agency.

Incompatible employment positions.

(a) *Standard of conduct.*

(1) *Generally.* A public official, other than the city manager or the superintendent of schools, who is a municipal or school department employee shall not hold a supervisory position, or be senior in the chain of command, to an individual with whom he has a personal relationship or a financial involvement (other than the municipal or school system employment relationship), unless:

- a. The relationship is disclosed by the public official to the city manager or superintendent of schools, whoever is the appropriate senior administrative officer;
- b. The city manager or superintendent of schools approves a management plan that is designed to prevent favoritism or any other improper influence in connection with the employment relationship and that provides ongoing oversight by a person not subordinate to either of the individuals who have the personal relationship or financial involvement; and
- c. The city manager or superintendent of schools reports to the city council or the school committee, whichever is the appropriate legislative body, the existence of the potential incompatibility of employment positions and the establishment of a management plan to address the potential incompatibility.

(2) *City manager and superintendent of schools.* Neither the city manager nor the superintendent of schools shall hold a supervisory position, or be senior in the chain of command, to an individual with whom he has a personal relationship or financial involvement (other than the municipal or school system employment relationship), unless:

- a. The relationship is disclosed to the city council or school committee, whichever is the appropriate legislative body, by the city manager or superintendent of schools; and
- b. The legislative body establishes a management plan that is designed to prevent favoritism or any other improper influence in connection with the employment relationship and that provides ongoing oversight by a person not subordinate to the city manager or superintendent of schools.

(b) *Referral of matters to ethics panel.* The city manager, the superintendent of schools, or a majority of the members of the city council or the school committee may request an advisory opinion from the ethics panel relating to the incompatibility of employment positions and the formulation of a management plan.

Procedure for determinations by ethics panel.

(a) *Referral of cases; notice of referral.*

(1) **A referral to the ethics panel shall be in writing and shall describe with particularity the factual basis of the referral.**

(2) The ethics panel promptly shall give notice of the referral to the chair of the municipal board concerned and the public official whose personal relationship or financial involvement is the subject of the referral.

(b) *Fact-finding.*

(1) Upon receipt of a referral, the ethics panel shall determine the facts necessary to render an advisory opinion. The facts may be agreed upon and set forth in the referral. If additional fact-gathering is necessary, the ethics panel, or a person designated by it, may conduct informal interviews and solicit additional information. The ethics panel shall determine the facts through a formal hearing process only if so requested either by the public official who is the subject of a referral or by the public officials who submitted a referral.

(2) In regard to its gathering of facts relating to the existence and nature of a personal relationship, the ethics panel shall be limited to the voluntary statements and other information provided by the public official whose relationship is at issue.

(c) *Deliberation.* Upon conclusion of its fact-finding, the ethics panel shall deliberate over the question referred to the panel. Any person may submit written comments to the ethics panel setting forth his position regarding the question under consideration.

(d) *Issuance of advisory opinion.* Upon conclusion of fact-finding and deliberation, the ethics panel shall issue a written advisory opinion that includes findings of fact, application of the standards set forth in this division, and recommendations. The ethics panel shall furnish a copy of its advisory opinion to the chair of the municipal board concerned and the public official whose personal relationship or financial involvement is the subject of the opinion.

(e) *Time limits.* **The ethics panel shall attempt to issue its advisory opinion within two weeks of its receipt of a referral.** The ethics panel may decline to consider referrals regarding conflict of interest questions relating to the final vote of a municipal board that occurred prior to the referral.

Effect of recommendations of ethics panel.

The opinion and recommendations of the ethics panel shall be advisory only. The members of a municipal board may vote to adopt the recommendation of the ethics panel as it relates to the participation in a matter by a public official.

City of Auburn Ethics Panel Overview

Position Title:	Ethics Panel
Membership:	3 Ethics Panel Members and 2 Alternates
Selection:	2 Panel Appointments and 1 Alternate made by Mayor subject to the approval of the Auburn City Council, 1 Panel Appointment and 1 Alternate made by the Chair of the Auburn School Committee subject to the approval of the Auburn School Committee
Term:	Staggered appointments. Mayor can appoint one member to a three year term and another to a one year term, School Board Chair can appoint one member to a two year term. Mayor shall, annually, appoint a Chair of the Ethics Panel.
Accountable to:	Auburn City Council, Auburn School Committee
Function:	To advise the City Council and School Committee on referrals of matters pertaining to public officials participation in a matter when there exists an actual, potential or reasonably perceived conflict of interest arising from a personal relationship or a financial involvement that would cause a reasonable person to believe that the public official cannot act in his official capacity without self-interest or bias. To make recommendations and or opinions to the City Council and or the School Committee on their findings of those referrals. Recommendations and or opinions are <u>advisory only</u>.
Responsibilities:	Accept any referral in writing and describe with particularity the factual basis of the referral. Promptly give notice of the referral to the chair of the municipal board concerned and the public official whose personal relationship or financial involvement is the subject of the referral. Upon receipt of a referral, the ethics panel shall determine the facts necessary to render an advisory opinion. (3 types of referrals- self, 2 City Councilors/School Board Member or

Citizen who has collected 25 signatures of Auburn Registered Voters for the referral to be considered by the Ethics Panel)

Be conscience of the gathering of facts relating to the existence and nature of a personal relationship. Limit to only voluntary statements and other information provided by the public official whose relationship is at issue.

Upon conclusion of its fact-finding, immediately deliberate over the question referred to the panel. Any person may submit written comments to the ethics panel setting forth his position regarding the question under consideration.

Upon conclusion of fact-finding and deliberation, issue a written advisory opinion that includes findings of fact, application of the standards set forth in this division, and recommendations. Furnish a copy of its advisory opinion to the chair of the municipal board concerned and the public official whose personal relationship or financial involvement is the subject of the opinion.

Issue an advisory opinion within two weeks of its receipt of a referral.

Time Commitment: As Needed

Qualifications: Potential Members of the Ethics Panel should have general interest in sound government practices that are transparent and free of conflict or unfair practices. Members should also have the ability to take a broad view of the needs of the community as a whole. Above all, potential members need to possess time, a flexible schedule and willingness to be an engaged and active member.

**Desired Skill Sets/
Backgrounds:**

**Engineers
Attorneys
Local Business Owners
Law Enforcement Officials
Judicial System Professionals
Human Resource Professionals
Senior Military Officials (retired, active or reserve)**