

County Council of Cuyahoga County, Ohio

Ordinance No. O2011-0023

Sponsored by: Greenspan, Schron and Rogers	An Ordinance amending Cuyahoga County's permanent Code of Ethics, and declaring the necessity that this Ordinance become immediately effective.
---	--

WHEREAS, the Cuyahoga County Council enacted a permanent Code of Ethics in Ordinance No. O2011-0008, which was signed by the Cuyahoga County Executive and went into effect on April 8, 2011;

WHEREAS, it is necessary to amend the Code of Ethics to clarify potentially ambiguous provisions therein and to ensure that the Code of Ethics accurately reflects Council's original intent in enacting the Ethics Code; and

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to continue the usual and daily operation of the County.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Sections 1, 15, 22, 26, 29, 32, 33, 34, and 35 of Article VII of the Cuyahoga County Code of Ethics, adopted as Ordinance No. O2011-0008, effective April 8, 2011, are hereby amended to read as follows (additions are bolded, deletions are stricken out):

Section 1. Definitions – As Used in this Ordinance

Administrative Fee	The civil penalty equivalent of a fine, levied by and payable to the Inspector General.
Advice	A written, expert judgment and recommendation by the Inspector General as to whether an issue raised poses ethical problems and how the issue may best be resolved. If the recipient acts in accordance with that advice, s/he is in compliance with the Code of Ethics.
“Anything of Value”	OHIO REVISED CODE (ORC) 1.03 As used in any section of the Ohio Revised Code for the

violation of which there is provided a penalty of forfeiture, unless the context otherwise requires, **As used in Article VII herein, "Anything of Value" means anything, other than a Campaign Contribution,** having a cumulative monetary value in excess of \$75.00 and includes: a. Money, bank bills or notes, United States treasury notes, and other bills, bonds, or notes issued by lawful authority and intended to pass and circulate as money; B. Goods and chattels; C. Promissory notes, bills of exchange, orders, drafts, warrants, checks, or bonds given for the payment of money; D. Receipts given for the payment of money or other property; E. Rights in action; F. Things which savor of the realty and are, at the time they are taken, a part of the freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the servicing and taking away; G. Any interest in realty, including fee simple and partial interests, present and future, contingent or vested interest, beneficial interests, leasehold interests, and any other interest in realty; H. Any promise or future employment; I. Every other thing of value.

Associated

Associated, when used with reference to a business or an organization, includes any business or organization in which a Public Servant Public Official or a Public Servant's Public Official's partner in interest is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least five percent of the outstanding equity, or any business or organization in which a Public Servant Public Official or a partner in interest has a personal interest.

Before

A matter is "before" a public agency when it is "being considered by, decided by, or in the presence of or under the official purview of" the agency. Adv. Op. No. 2007-03.

Benefit

1. "Anything of Value" having a cumulative monetary value in excess of \$75.00; 2. Anything, regardless of its monetary value, perceived or

intended by either the one who offers it or the one to whom it is offered to be sufficient in value to influence a Public Servant in the performance or nonperformance of an official action; or 3. Anything, regardless of its monetary value, which, under the circumstances, a reasonably prudent person in the position of the Public Servant to whom the thing is or may be offered, would recognize as being likely to be intended to influence the Public Servant in the performance or nonperformance of an official action.

The term "benefit" includes, but is not limited to, a valuable act, advance, award, contract, compensation, contribution, deposit, emolument, employment, favor, fee, forbearance, fringe benefit, gift, gratuity, honorarium, loan, offer, payment, perquisite, privilege, promise, reward, remuneration, service, subscription, or the promise that any of these things will be conferred in the future. The term "benefit" shall not include food and beverage.

Board	An abbreviation for any authority, board, commission or special district to which County officials appoint at least one member or to which County funds are appropriated.
Business	Business means an activity, association, commercial entity, corporation, enterprise, firm, franchise, holding company, joint stock company, organization, partnership, receivership, self-employed individual, sole proprietorship, trust or other legal entity established to earn or otherwise obtain money, whether for profit or nonprofit, excluding a municipal corporation or governmental entity.
Business Associate or Partner in Interest	A business associate includes any individuals, companies, or organizations with which the official is acting together to pursue a common business purpose. Examples of a Public Official's business associates include, but are not limited to, the official's: (1) partners in a partnership; (2) co-owners of a business; (3)

outside employer; and (4) co-members of an LLC. Adv. Op. No. 2009-06.

Business with which a Public Official or Employee is associated

Business with which a Public Official or Employee is associated or associated business means a business in which any of the following applies:

- (1) The Public Official or Employee is an owner, partner, director, officer, employee or independent contractor in relation to the business;
- (2) A Public Official, Employee's or partner in interest is an owner, partner, director or officer;
- (3) The Public Official, Employee or a partner in interest is a stockholder of close corporation stock which is worth at least \$1,000.00 at fair market value or which represents more than a five percent equity interest;
- (4) The Public Official, Employee or a partner in interest is a stockholder of publicly traded stock which is worth at least \$5,000.00 at fair market value or which represents more than five percent equity interest, other than publicly traded stock under a trading account if the Public Official or Employee reports the name and address of the stockholder/

Campaign Contribution

Any monetary or non monetary donation to any political campaign committee.

Candidate

Means an individual who is a candidate for an elective County office, as defined in the County Charter, or an applicant for County employment or for an appointive County position.

Compensation

Money, thing of value, or financial benefit. "Compensation" does not include reimbursement for actual and necessary expenses incurred in the performance of official duties. Ohio Revised Code (ORC)102.01

Compensation also means "Anything of Value" that is given for services can be "compensation," whether it is in the form of cash, tangible goods or chattels, or other financial gains or benefits that accrue to the Public Servant. The services

performed by the Public Servant may be provided for the specific benefit of the individual offering the compensation or for the general benefit of the public agency and the citizens served by the agency. Adv. Op. No. 2008-01.

Conflict of Interest	Means not only a personal interest, as defined in this Ordinance, but also a professional or non-pecuniary interest, such as arises when the County attorney is precluded from representing one Public Servant because of the County attorney's preexisting attorney-client relationship with another Public Servant.
Contractor	A person or an entity business, including, but not limited to, service providers, vendors, consultants and their subcontractors, that provides goods or services to the County under terms specified in a binding, officially approved agreement.
County Agency	Means the County Council, any department, division, institution, board, commission, or advisory council, or other instrumentality of the County or any board, commission, or advisory council for which the Cuyahoga County Executive and/or the Cuyahoga County Council appoints one or more of its members.
Day	A calendar day, unless otherwise noted
Decision Maker	Decision maker means any Public Official or Employee or Board, Commission or Advisory Agency of Cuyahoga County empowered to act in a discretionary manner on behalf of the County in any capacity whatsoever, including the making of recommendations. To the extent this Ordinance is applicable to them, any volunteer or independent contractor who is empowered to exercise any discretionary power which could influence a Public Official or Employee in the performance or nonperformance of an official action. In this Ordinance, the term "decision maker" is used to represent any and every Public Official or Employee who could take any discretionary action regarding a matter in which a Public

	Official or Employee or a partner in interest has or may have a conflict of interest, or as a result of which a Public Official or Employee might receive a personal benefit.
Disclosure	The reporting of financial information, personal or business connections, gifts, activities, campaign contributions or potential conflicts of interest.
Domestic Partner	Any person who shares the same residence with a Public Official or Employee.
Finding	The official decision reached by the Inspector General after thorough investigation or a formal hearing.
Full Family	<p>A Public Official or Employee 's spouse, domestic partner, child children, grandchildren, parents, parents-in-law, grandparents, grandparents-in-law, sisters, sisters-in-law, brothers, brothers-in-law, sons-in-law, daughters-in-law, nieces, nephews, aunts, uncles, or cousins (whether by marriage, lineal descent or adoption);</p> <p>A Public Official or Employee's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the Public Official or Employee or from whom the Public Official or Employee receives, directly or indirectly, more than one-half of his or her support; and</p> <p>An individual claimed by the Public Official or Employee or the Public Official or Employee's spouse as a dependent under the United States Internal Revenue Code.</p>
Immediate Family	A Public Official's spouse, domestic partner, child or children (whether by marriage, lineal descent or adoption).
Gift	Gift means any benefit or thing or act of monetary value of \$75.00 or more which is

conveyed to or performed for the benefit of a Public Servant or a partner in interest, including any advance, award, contract, contribution, deposit, employment, favor, forbearance, gift, gratuity, honorarium, loan, payment, service, subscription, or the promise that any of these things or acts of value will be conferred in the future, if such thing or act of value is conferred or performed without the lawful exchange of consideration which is commensurate in value at least equal in value to the thing or act conferred or performed.

Interest

A prohibited "interest" in a public contract is a definite and direct interest that can be of either a financial or fiduciary nature. Adv. Op. No. 2009-06.

Lobbyist

An individual wholly or partially compensated for direct, private communication with County policy-making officials or their staffs, with the purpose of influencing the expenditure of funds in the awarding of a contract or other financial arrangement; or for making direct, private contact with same to promote, advocate or oppose the passage, modification, defeat, approval or veto of any legislation or policy.

Organization

"Organization" means a church or a religious, benevolent, fraternal, or professional organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3), (4), (8), (10), or (19) of the "Internal Revenue Code of 1986."

Of such a character as to manifest a substantial and improper influence

A thing of value is "of such a character as to manifest a substantial and improper influence" on a Public Official or Employee if it is "of such a quality, nature or kind that it could have a substantial and improper influence on the Public Official or Employee." Adv. Op. No. 2009-01. The Commission has explained that it is unnecessary that the thing of value actually has a substantial and improper influence on the official or employee provided that it is of such a character that it could have such influences.

Person	Includes “an individual, corporation, business trust, estate, trust, partnership, and association.” R.C. 1.59. Also includes governmental agencies. Adv. Op. No. 2009-01.
Personally rendering services	Includes, but is not limited to, representing, advising, preparing non-ministerial documents for, or consulting with, any person. Adv. Op. No. 2007-03. Examples are: (1) negotiating or discussing matters with agency personnel or contractors; (2) appearing at an agency meeting or hearing; and (3) preparing pleadings or documents to be filed with or submitted to an agency. A person would be personally rendering services if he or she prepared and submitted, to a state agency, any grant or investment proposals, contract bid packages, responses to requests for proposals, or any other submission for financial support for a client or customer.
Position of Profit	A Public Official occupies a “position of profit” in the prosecution of a public contract when he or she receives some financial gain or benefit that is definitely and directly related to the carrying out and completion of a contract that he or she authorized or that was authorized by a board of which he or she is a member. Adv. Op. No. 2009-05
Prohibited Source	A party that gives or promises an unlawful gift to any Public Official, specifically a party doing or seeking to do business with, regulated by, or interested in matters before the County, its departments, agencies, boards or commissions, including any lobbyist or contractor.
Public Officials and Employees	Any elected or appointed officer, or employee, or volunteer, or agent of the County or board, commission or agency member, whether in a temporary or permanent capacity.” The definition applies regardless of whether the person is: (1) compensated or uncompensated; (2) serving full time or part time; or (3) serving in a temporary or permanent position.

Relatives	The definition for Full Family and Relatives shall be interchangeable.
Use Of or Authorization of the Use Of	The authority or influence of one's office or employment: Voting on, recommending, deliberating about, discussing, lobbying, or taking any other formal or informal action within the scope of a Public Official's or employee's public authority is "use of," or "authorization of the use of" the authority or influence of a Public Official's or employee's office or employment. Adv. Op. No. 2010-03.
Whistleblower	A person who reports possible crimes or violations of this Code of Ethics.

Section 15. Employee Contributions to an Elected Employer.

No Public Official or Employee shall make political contributions to or raise funds for their own elected County employer. Exempted from this total prohibition are voluntary employee contributions to candidates for any other Public office.

Section 22. Disclosure of conflict of interest or potential conflict of interest.

(A) **Unless the Public Official or Employee recuses themselves,** a Public Official or Employee who has or may have a conflict of interest in a matter which requires an official action by any decision maker shall, before the matter is decided, disclose the conflict of interest or the potential or alleged conflict of interest to the Inspector General. If the Inspector General believes that no conflict of interest exists, or that despite any alleged or potential special interest, such Public Official or Employee is nevertheless able to vote and otherwise participate fairly, objectively and in a manner consistent with the Public interest, then the member shall so state in the written disclosure.

(B) If the Public Official or Employee has or may have a conflict of interest in any matter before the County, such Public Official or Employee shall not discuss, debate, deliberate about, act upon, vote upon or otherwise participate in or influence the decision-making process pertaining to the matter in which the member has a conflict of interest.

(C) ~~Any Public Official or Employee who has or may have a conflict of interest shall disclose it to the Inspector General.~~ After receiving a **conflict of interest** disclosure, the Inspector General shall:

- (1) Maintain a record of such disclosure; and
- (2) Promptly forward copies of the disclosure to any person named in the disclosure.

(D) Any Public Official or Employee who believes that any other Public Official or Employee has a conflict of interest in any agenda item before a governmental body shall disclose such interest to the Inspector General.

(E) A Public Official or Employee, in addition to disqualifying her/himself from participation in any decision regarding the pecuniary or employment interest of a partner in interest, shall make known the existence of the relationship and the interest by filing with the Inspector General a written disclosure of the relationship and the nature and extent of the conflict of interest involved.

Section 26. Boards, Commissions and Advisory Board Appointments

Unless such appointment is provided for by statute, the County Charter, County ordinance or otherwise by operation of law, no County appointing authority shall appoint any person ~~No appointee to a Board, Commission or Advisory Board shall have one or more who has~~ **any of the following conflicts of interest with the intended Board's objective and impartial operations:**

(A) **An elected or appointed employee of employment with the County during the 12 months immediately preceding the Board appointment may not be appointed to any Board, Commission or Advisory Board if the Ohio Attorney General's *Index of Compatibility of Public Offices and Positions* provides that such appointment is incompatible with the elected or appointed employee's position with the County. If the Index does not address the appointment, the County appointing authority shall request the opinion of the Inspector General on whether the appointment is incompatible, and the Inspector General or his or her designee in the Inspector General's office shall provide said opinion within five (5) business days of the request;**

(B) One or more full family members or business associates serving on the same Board, Commission or Advisory Board; or

(C) An interest in one or more public contracts of the County or contracts in effect with or under consideration by that Board, Commission or Advisory Board.

Section 29: Additional Financial Disclosure Requirements

Pursuant to and in addition to the Financial Disclosure Filing procedures in OHIO REVISED CODE (ORC): Section 102.02, all department heads and senior management level staff, including deputy directors shall file with the Ohio Ethics Commission and the Inspector General the disclosure statements described in OHIO REVISED CODE (ORC) Section 102.02 on a form prescribed by the Ohio Ethics Commission **no later than June 30th of each year.**

Section 32. Lobbyist Registration and Reporting

(A) Registry. All lobbyists shall register with **the** Inspector General. The Registry **application** form shall include the entity for which the person is lobbying, the employer's name, type of business and current contact information, **a current list of the contracts or policies they are trying to influence, and a list of campaign contributions to County elected officials.** Registrations shall be valid for twelve months. As necessary, the Inspector General may choose to require additional information.

(B) Signed Ethics Statement and Training. Lobbyists shall also sign an ethics statement indicating they have read, understood and agreed to follow the pertinent sections of this Ordinance and attend Ethics Training within 15 days of approval from the Inspector General.

(C) Applications. ~~----- All lobbyists shall file an application to the Inspector General every April 15 and October 15 containing the following:~~

~~1.----- A current list of the contracts or policies they are trying to influence;~~

~~2.----- Campaign contributions to County elected officials.~~

(D)(C) Penalties. A lobbyist who fails to comply with provisions a, b, or c, shall be prohibited from entering into any contracts with the County

until they are in compliance. A lobbyist who is found to be in violation of this Ordinance shall be removed from the registry and be prohibited from entering into contracts with the County for a period determined by the Inspector General, along with such other penalty(ies) as the Inspector General may deem appropriate.

(E)(D) Authorization. No lobbyist shall engage in any lobbying activity until the registration process has been completed and approved by the Inspector General.

(F)(E) Registration Date. All lobbyists must register with the Inspector General ~~for~~ annually on or before December 31 for the subsequent year to which they wish to engage in lobbying activities. First time registration may take place at anytime during the calendar year for the year in which lobbying activity is to take place.

(G)(F) Term. All Lobbyist **registrations term** shall expire on December 31 **of the respective registration year.**

(H)(G) Transparency. The Inspector General shall make all registrations available for public inspection and shall publish an active Lobbyist Registration List on the County website.

(I)(H) Registry Application Fee: \$100.00

(I) Implementation Date. Persons engaging in lobbying activities on or after the effective date of this Ordinance must comply with the requirements of this Section beginning July 31, 2011.

Section 33. Prohibited Activities by Lobbyists

Lobbyists are prohibited from:

(A) ~~P~~paying for any food, or beverages, or "Anything of Value" for any Public Officials or Employees; **and,**

(B) ~~M~~making campaign contributions for or **otherwise** on behalf of any elected officials or candidates for public office **for the purpose of influencing the elected official(s) or candidate(s) on any matter of county business.**

(C) **Nothing in this Ordinance shall prohibit lobbyists from making voluntary political contributions to any elected official, candidate, political action committee, political party, or any other political**

committee so long as such contributions are properly reported in accordance with applicable laws and regulations, including this Ordinance.

Section 34. Contractors Registration and Reporting

(A) Registry. All contractors doing or seeking to do business with the County must register with the Inspector General. The registration form shall include, but not be limited to: **the contractor's** corporate name, Federal Tax Identification Number, address, type of business, and names of **the contractor's** principals and contracts with the County during the past four years. Registrations shall be valid for twelve months. As necessary, the Inspector General may choose to require additional information.

(B) Signed Ethics Statement and Training. Contractors shall also sign an ethics statement indicating they have read, understood and agreed to follow the pertinent sections of this Ordinance and attend Ethics Training within 15 days of approval from the Inspector General.

(C) First-time Awards. Registration and the signed ethics statement shall be pre-conditions for the signing of any first-time contract with the County. Contractors must register with the Inspector General before they submit competitive bids.

(D) Penalties. Contractors who fail to comply with provisions a, b, or c, shall be prohibited from entering into any contracts with the County until they are in compliance. Contractors who are found to be in violation of this Ordinance shall be removed from the registry and be prohibited from entering into contracts with the County for a period determined by the Inspector General, along with such other penalty(ies) as the Inspector General may deem appropriate.

(E) Authorization: No Contractor shall engage in any contracting activity until the registration process has been completed and approved by the Inspector General.

(F) Registration Date: All Contractors must register with the Inspector General for annually on or before December 31 for the subsequent year to which they wish to engage in contracting~~lobbying~~ activities. First time registration may take place at anytime during the calendar year for the year in which contracting activity is to take place.

(G) Term: ~~All Contractor term~~ registrations shall expire on December 31 **for the respective registration year.**

(H) Transparency. The Inspector General shall make all registrations available for public inspection and shall publish an active Contractor Registration List on the County website.

(I) **Registry Application Fee:** \$100.00

(J) **Implementation Date.** Contractors entering into contracts with the County on or after the effective date of this Ordinance must comply with the requirements of this Section beginning July 31, 2011.

Section 35. Prohibited Activities by Contractors

Contractors are prohibited from:

- (A) ~~P~~paying for any food, or beverages, or “Anything of Value” for any Public Officials or Employees; **and**
- (B) ~~M~~making campaign contributions for or **otherwise** on behalf of any elected officials or candidates for public office **for the purpose of influencing the elected official(s) or candidate(s) on any matter of county business.**
- (C) **Nothing in this Ordinance shall prohibit contractors from making voluntary political contributions to any elected official, candidate, political action committee, political party, or any other political committee so long as such contributions are properly reported in accordance with applicable laws and regulations, including this Ordinance.**

SECTION 2. The Cuyahoga County Code of Ethics, adopted as Ordinance No. O2011-0008, effective April 8, 2011, is hereby further amended to add Article X to read as follows:

ARTICLE X. CORRECTION OF TYPOGRAPHICAL ERRORS

The Clerk of Council may at any time, with the approval of the Director of Law or his/her designee within the Department of Law, correct typographical errors appearing in this Ordinance, but no such change shall in any way affect the substance or meaning of this Ordinance or any part thereof.


SECTION 3. Necessity. It is necessary that this Ordinance become immediately effective in order that critical services being provided by Cuyahoga County can continue without interruption, and to continue the usual daily operation of the County. Provided that this Ordinance receives the affirmative vote of eight members of Council, this Ordinance shall become immediately effective upon the signature of the County Executive.

SECTION 4. Open Meetings. It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Ms. Conwell, seconded by Mr. Greenspan, the foregoing Ordinance was duly enacted.

Yeas: Simon, Greenspan, Miller, Brady, Germana, Gallagher, Schron, Conwell, Jones, Connally and Rogers

Nays: None


County Council President 4/26/11
Date


County Executive 4/26/11
Date


Clerk of Council 4/26/2011
Date