

Summary of Ethics Code Update

1. General Structural Changes

- a. The updated code no longer incorporates provisions of the ORC verbatim, but rather states the county's code of ethics "shall supplement and be consistent with" the applicable sections of ORC 102, 124, 2921, and 3517. (Chapter 303 of the county code also explicitly incorporates ORC 124, the Ohio civil service code, as amended). § 401.01. State ethics laws have been amended on numerous occasions since the County's original ethics ordinance was adopted. The updated code the county code remains up-to-date if major changes are adopted at the state level.
- b. The chapters of Title IV are now organized by the particular individuals or entities being regulated, rather than by subject matter. This allows anyone seeking to learn their own ethical obligations to easily find the rules applicable to them.
- c. While the updated code does not touch upon all ethical matters governed in the Ohio Revised Code, every subject matter that *is* addressed in the county code is intended to either meet or exceed the ethical requirements mandated by the Ohio Revised Code.

2. Definitions

- a. Narrows the definitions section to those essential terms requiring clarification.
- b. The existing code defines "public officials" and "employees." The updated code separately defines "elected officials," "employees," and "board members," clarifying which individuals are covered by certain provisions within the County's ethics policy, and establishing separate standards for each. § 402.01 (B, E, & F).
- c. Provides a more refined definition of "lobbyist" depending on how much time an individual spends undertaking lobbying activities.

3. Training

- a. The updated code explicitly permits the electronic acknowledgement upon completing ethics training.
- b. The updated code clarifies which agencies are responsible for conducting the training:
 - i. Lobbyists and contractors are to be trained by the Inspector General. § 407.01(H).
 - ii. Elected officials, employees, and board members are to be trained by the ~~Department of Human Resources~~ the appropriate county agency. § 407.03 (A).

4. Use and Misuse of County Resources

- a. The use/misuse of the county's procurement card rules will be primarily governed by the County's procurement policies rather than the code of ethics. Ethical violations

involving procurement cards will still be subject to the general prohibition on misuse of County resources. This change is intended to avoid any conflict of law in the event there is a change in procurement policies in the county's contracting code or the county's administrative rules. § 403.02(A)

- b. While use of county resources for "political materials" or "conducting non-county business" remains a violation in the updated code, the de minimis use of county resources for "personal or private" purposes no longer rises to the level of an ethical violation. However, personal use of county resources will still be governed by the County's IT and HR policies, and will be enforced at a managerial level.

5. Use and Misuse of Official Position

- a. A general provision has been added prohibiting the use of one's official position to secure certain material or financial benefits, which mirrors the ethical standards of the Ohio Revised Code. § 403.03(A).
- b. A new provision prohibits county officials and employees from selling goods or services to the County except through the competitive bidding process. § 403.03(D).
- c. The ORC prohibition on awarding of public contracts is restated in the county code, and declares contracts awarded in violation of R.C. §2921.42 et seq. to be void and unenforceable.
- d. The ordering of goods/services for county use without prior official authorization is no longer *per se* ethical violation, but remains an internal control matter enforced at a managerial level. Unauthorized ordering of goods or services for personal or non-county purposes continues to be an ethical violation.

6. Conflicts of Interest

- a. The requirements for disclosure and recusal are significantly reworded, but apply substantially the same standard: i.e., matters ~~involving the exercise of discretion authorizing the approval of any public contract or the investment of public funds~~ coming before an elected official, employee, or board member that could result in a financial or material benefit require recusal. § 403.04(A).
- b. The updated code prohibits individuals from obtaining a financial interest in exchange for services rendered by the County, similar to ORC 102.04, which prohibits the receipt of outside compensation for doing County work. § 403.04(D). The requirements operate somewhat differently from those in ORC, but compliance with the County Code will ensure compliance with ORC.
- c. Elected officials or employees who are uncertain as to whether a particular conflict of interest exists may request an advisory opinion from either the Department of Law or the Inspector General, depending on the circumstances. § 403.04(F)
- d. Explicit exceptions to recusal requirements are established with respect to particular matters of general applicability. § 403.04(G)

7. Nepotism

- a. The term “relative” has been defined more broadly (applies to any relative, not just full family members), but the scope of the prohibition has been narrowed (does not prohibit family members from working in the same department if there is no direct supervision of a family member). The updated code applies standards similar to those governing conflict of interest; barring the direct supervision of relatives and requiring recusal from employment decisions impacting relatives. § 403.05
- b. The updated code explicitly incorporates the prohibition in ORC 2921.42 on using one’s influence to secure a public contract for a family member.

8. Gifts

- a. Current State policy prohibits gifts “of value” that have an actual “substantial or improper influence” on an individual. The updated County code explicitly incorporates the state prohibition and establishes additional limitations on the acceptance of gifts. § 403.06 (A)
- b. The County’s existing \$75 “hard cap” on gifts from contractors and lobbyists has been amended to establish a “presumption of influence” standard. Certain gifts will be presumed to be improper based on their value (i.e. those valued over \$75 annually) and source. A presumption of influence can be overcome, but only if the giftor or giftee provides sufficient evidence to demonstrate there has been no improper influence. § 403.06(C)
- c. The updated code establishes specific exceptions where a presumption of influence will not exist for the purpose of county enforcement. § 403.06 (D). All of these exceptions should fall within the category of gifts that are either not substantial or not-improper under state ethics law.

9. Financial Disclosure

- a. The updated code applies the same standard for elected officials, but more narrowly defines the list of employees who must file financial disclosure statements with the IG. The IG is required to collect financial disclosure statements of elected officials from the BoE and OEC. §§ 403.07 & 407.01(I)

10. Secondary Employment

- a. Employees and elected officials are required to report secondary employment or private business activity to the Inspector General, however this requirement is limited to income reportable to the IRS, and excludes various types of unrelated gross income. § 403.08 (A) (1).
- b. The current code requires employees to resign whenever the Inspector General determines a conflict of interest exists. The updated code follows the established recusal procedures, and would only prohibit secondary employment where the

conflict would preclude an employee from performing a substantial portion of his or her job duties. § 403.08 (C).

- c. The updated code requires employees to request approval from the Inspector General within 30 days of accepting secondary employment (rather than prior to acceptance). The Inspector General is required to render an opinion within 14 days of the request. §403.08 (D).

11. Future Employment

- a. The updated code mirrors the 1 year prohibition in ORC § 102.03 on any outside representation on a matter involving the exercise of discretion in which an individual personally participated. § 403.09.
- a.b. Clarifies that the restrictions on representation before the county do not apply to those representing a person or organization on an uncompensated basis. This change is to address constitutional concerns.

12. Discrimination

- a. The existing ethics code applies to “public official[s], operations or entities of Cuyahoga County Government.” The updated standard would apply across the board, including to county contractors and lobbyists. §§ 403.10, 404.03, & 405.03.
- b. The updated code intentionally omits reference of the additional sexual harassment policy that exists in the current code of ethics, as it is already encompassed by the prohibition of discrimination on the basis of sex, and the county has other explicit prohibitions against sexual harassment in the County’s HR Policies and Procedures Manual.

13. Political contributions

- a. The updated code’s prohibition applies only to campaign contributions between elected officials and employees (but excludes the prohibition on board members due to constitutional concerns). § 403.11.
- b. The political contribution prohibition has been expanded to include employees whose confirmation before council is pending (encompassing “nominations” of county officers and directors).
- c. The updated code explicitly incorporates the ORC’s prohibition of classified civil service employees from engaging in partisan political activity. § 403.13.

14. Whistleblower Policies

- a. The updated code clarifies the Personnel Review Commission’s appellate authority to hear claims of retaliation against whistleblowers alleging violations of county ethics code. § 406.01(D).

15. Contractor & Lobbyist registration

- a. The contractor registration/training requirements have been relocated to Chapter 501, which governs the county's procurement process. § 501.19.
- b. The updated prohibition on gifts noted above applies equally to contractors and lobbyists.
- c. The updated code adds registration threshold for contractors of \$10,000 annually. Contractors falling below this threshold need not register with the county or complete ethics training. The \$10,000 threshold is intended to alleviate the burden on county agencies and contractors seeking to expedite the procurement process. Contractors are responsible for keeping track of their annual aggregate amount of contracting with the County. § 501.19(A).
- d. Public utilities have been added to the list of entities explicitly exempted from training requirements and registration fees. § 501.19(D)(1). Not for profit corporations solely seeking to provide a free service or financial or in-kind support for a county program or initiative are also exempt from lobbying requirements.
- e. The registration and training requirements for lobbyists no longer apply to bona fide members of the media, governmental entities, and their agents on matters of governmental interests, and attorneys or other representatives whose contact with the county is made solely as part of resolving a dispute.

16. Enforcement Authorities

- a. In the event the Inspector General is conflicted from performing his or her powers or duties on a particular matter, the Law Director shall appoint an independent person or entity to perform the powers or duties of the IG until the matter is closed or the conflict is resolved. § 407.01(A)
- b. The updated code explicitly grants the Inspector General investigative responsibilities and requires the IG take reasonable measures to protect the anonymity of complainants and witnesses. § 407.01(B)
- c. The updated code includes an update to the Inspector General's enforcement authority to include debarment, which was established after the most recent update to the county's ethics code, but was never separately added to the IG's enforcement authority. § 407.01(D)(3).
- ~~e.d.~~ The updated code explicitly requires the Inspector General to provide individuals under investigation an opportunity to rebut a presumption of influence prior to taking final action.
- ~~e.e.~~ The updated code retains the same duties and responsibilities for the Personnel Review Commission as the current code, many of which remain concurrent with either the duties of the Inspector General or the Human Resources Department. § 407.02. This section has been updated to include a clearer standard for what constitutes a whistleblower complaint, and clarifies which whistleblower appeals are to be heard by the PRC and which whistleblower appeals are to be heard by the State Personnel Board of Review (per ORC 124.341)

f. The updated code tasks the ~~Law Department~~ Inspector General with creating and updating a comprehensive ethics manual for ethics trainings. § 407.04.

e.g. A number of duties previously assigned to the Personnel Review Commission, such as posting of whistleblower policies and providing copies of ethics policies to employees, are reassigned to the Department of Human Resources.

~~h.~~ The updated code tasks the Human Resources Department with training employees and investigating claims of discrimination and other violations that can more appropriately be considered HR matters. § 403.03.

17. Notice of Debarment

- a. When debarring a contractor, the Inspector General must provide notice. The updated code provides a specific definition of “notice,” mirroring the notice requirements established for federal debarment. § 505.06(A)(1).