



**Request for City Council Committee Action  
From the City Attorney's Office**

**Date:** March 21, 2006

**To:** Ways & Means/Budget Committee

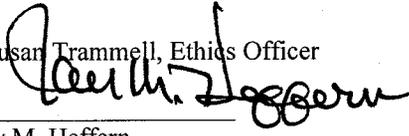
**Subject:** 2006 Ethical Practices Board Annual Report

**Recommendation:** That your Committee receive and file the 2006 Ethical Practices Board Annual Report.

**Previous Directives:** None

**Prepared by:** Susan Trammell, Ethics Officer Phone: 612-673-3230

**Approved by:**

  
Jay M. Heffern,  
City Attorney

**Presenter in Committee:** Mr. Bill Dooley, Chair  
Ethical Practices Board

**Financial Impact** (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the \_\_\_\_\_ Capital Budget or \_\_\_\_\_ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: \_\_\_\_\_ Action is within the plan. \_\_\_\_\_ Action requires a change to plan.
- Other financial impact (Explain):
- Budget request previously provided to the Budget Office and Mayor's Office pursuant to the 2007 budget cycle schedule.

**Community Impact**

Neighborhood Notification  
City Goal(s): (include the applicable goal)  
Comprehensive Plan  
Zoning Code  
Other

**Background/Supporting Information**

On its meeting of March 20, 2007, the Ethical Practices Board finalized the attached annual report on the 2006 Ethical Practices Board activities and directed the Ethics Officer to submit the report to the City Council.

# **CITY OF MINNEAPOLIS ETHICAL PRACTICES BOARD 2006 ANNUAL REPORT**

## **Introduction**

The Ethical Practices Board (“EPB”) was created in 2003 with the passage of the City’s Ethics in Government Ordinance (“Ordinance”), codified at M.C.O. Ch. 15. Section 15.210 of the Ordinance establishes the EPB and outlines the powers and the duties of the EPB, which include issuing advisory opinions and investigating complaints from City employees and members of the public that the Ordinance has been violated. The Ordinance sets forth some specific standards below which no City official or employee should violate and, as importantly, sets forth aspirations for ethical conduct that go above and beyond the minimum requirements of the Ordinance.

M.C.O. §15.210(f) states:

The ethical practices board shall prepare and submit an annual report to the mayor and the city council detailing the ethics activities of the board and the city during the prior year. The format of the report must be designed to maximize public and private understanding of the board and city ethics activities. The report may recommend changes to the text or administration of this Code. The city clerk shall take reasonable steps to ensure wide dissemination and availability of the annual report of the ethical practices board and other ethics information reported by the board.

This annual report is respectfully submitted to the Mayor and to the City Council in response to the requirements of the Ordinance in that regard.

## **Appointment and Membership.**

The current chair of the EPB is William Dooley, Jr. Mr. Dooley was appointed to the Board in September 2005. He is a lobbyist in Minnesota, Oregon, North Dakota, and South Dakota on various issues, and was a liaison between American Family and National Black Caucus of State Legislators and the Congressional Black Caucus. Mr. Dooley is currently a Case Placement Coordinator for Volunteer Lawyers Network. Mr. Dooley’s current term expires on January 2, 2008.

Mr. Schumacher is an original member of the EPB and was appointed in May of 2004. Mr. Schumacher is the Director of Institutional Compliance at the University of Minnesota. Mr. Schumacher’s current term expires on January 2, 2009.

Patricia Kovel-Jarboe was first appointed to the Board in appointed to the Board in September 2005 and has been reappointed to a term ending January 2, 2009. Ms. Kovel-Jarboe is a former professor at the University of Minnesota and was also an administrator. Ms. Kovel-Jarboe is currently a self-employed consultant on organizational effectiveness. .

## **Mission**

The Mission of the Ethical Practices Board is to provide interpretations of the ethics code, to respond to allegations of Ethics Code violations, and to provide policy advice to the Ethics Officer.

- *Ethics Complaints.* The Board received four formal complaints on city officials and five complaints regarding employees. As of the end of 2006, three of the city official complaints had been investigated and no probable cause findings issued and the fourth city official complaint was on hold pending action by the appointing authority.

The five complaints regarding employees were referred to either the Departments or other appropriate city officials for investigation pursuant to Code section 15.230(a)(1). Two of the five employee related complaints are still being investigated. Of the resolved employee related complaints, one complaint was dismissed, one was resolved with coaching and another resolved with a change in departmental policy.

- *Ethics Survey.* In collaboration with the City Coordinator and the Human Resources Department, the Ethical Practices Board sought to evaluate current workforce culture regarding ethics and workforce knowledge of Ethics Ordinance through an employee survey. Responses to four statements were sought in the 2006 Employee Survey:

<i>Statement</i>	<i>Overall City Favorable Response</i>
○ I would report suspected violations of the City's Ethics Code	67%
○ The People I work with practice high standard of ethical conduct	65%
○ Where I work, ethical issues can be discussed without negative consequences	48%
○ City Leadership practices high standards of ethical conduct <sup>1</sup>	39%

The Board has reviewed all departmental results and is working through the Ethics Officer to address concerns raised by the survey responses through departmental trainings.

- *Confidential Reporting Line.* At the direction of the Ethical Practices Board, the Ethics Officer pursued the creation of a committee to research the best mechanism for confidential employee reporting of ethics and fraud issues. The committee reported back to the Board that the City implement a confidential reporting line. The Board evaluated the findings of the committee and adopted the committee's recommendations. The board, on September 21, 2006, recommended to the City Council the establishment and implementation of a confidential reporting line. On January 12, 2007, the City Council adopted the recommendation for implementation of the confidential reporting line and directed the City Coordinator's Office to select a vendor for the confidential reporting line using a competitive procurement process, to make a recommendation about funding the confidential reporting line and to implement the confidential reporting line enterprise wide. The Ethics Officer will provide semi-annual reports on the utilization of the confidential reporting line once implemented.
- *Ethics Ordinance review.* The Ethical Practices Board reviewed both the Ethics Code and the Ethical Practices Board Bylaws and Rules of Procedure. Attached to this Annual Report are the proposed Ethics Code Amendments.

### 2006 Expenses

Parking	\$122.75
COGEL membership	\$445.00
Attorney II at 25% time (\$123,931.00 FTE per year)	\$30,982.75
Law Clerk	\$6,178.35

<sup>1</sup> The 2006 Survey defined City Leadership: "City Leadership refers to Department Heads, Division Directors, or Senior Public Safety Commanders."

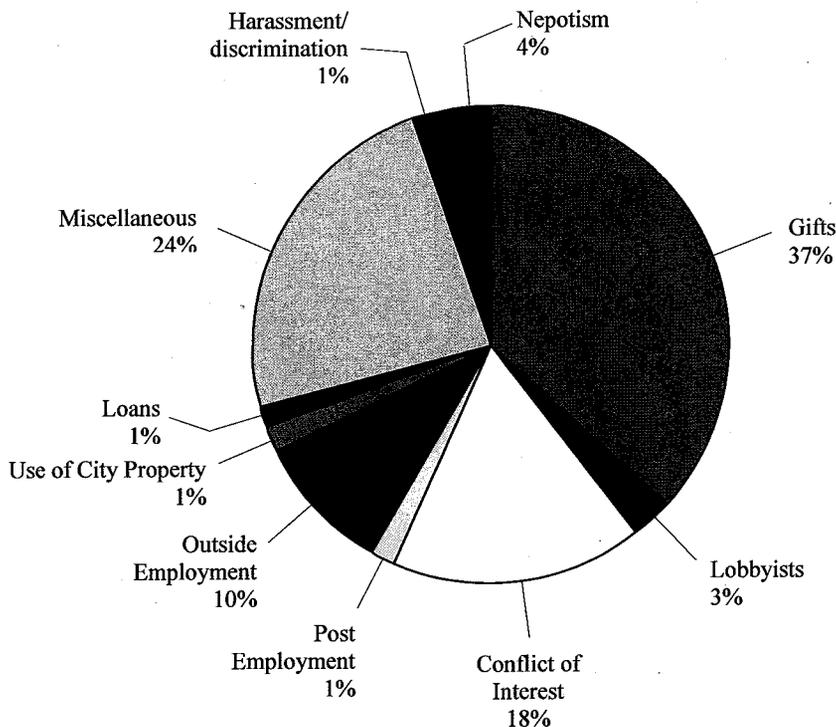
## 2006 Accomplishments

The primary activities and accomplishments achieved by the Ethical Practices Board and assigned staff in 2006 included:

- *Ethics Education to City employees.* Section 15.260 of the Ethics Code requires local officials and employees to attend an ethics education seminar within six months of becoming a local official or an employee and once every four years thereafter. All employees and local officials were to attend an ethics education seminar within twelve months of the effective date of the Ethics Code. In the early months of 2006, the Ethical Practices Board learned that nearly half of the City's employees had yet to complete the initial Ethics Education training. The Ethics Officer then collaborated with the Human Resources Department to ensure that all Departments arranged for the requisite training. The Board is pleased to report that all Departments arranged for their full-time permanent employees to obtain the required training.

In February 2006, the Ethics Officer provided training to the City council members and some of their staff. This training was particularly timely for the newly elected council members. The Ethics Officer provided five Ethics Education seminars to the Minneapolis City Attorney's Office in October 2006. The seminars were attended by 105 employees.

- *Ethics Inquiries.* From February 14, 2006 through December 31, 2006, the Ethics Officer answered 169 inquiries. The topics of inquiries were as follows:



The miscellaneous category includes inquiries ranging from requests for a copy of the Ethics Code or a complaint form to statement of economic interest and public purpose doctrine questions. Throughout 2006 the Ethical Practices Board and the Ethics Officer worked towards an ethics inquiry reporting system that would adequately track inquiries without consuming substantial staff time. With the implementation of the reporting system, the Board anticipates that the percentage of "miscellaneous" inquiries will substantially decrease next year.

## **2006 Revenue**

During 2006 the Ethical Practices Board did not receive any income from grants, awards or donations.

## **2006 Volunteer Hours**

The members of the Ethical Practices Board estimate that collectively they spent approximately 210 hours on work related to the Board during the 2006 calendar year.

## **2007 Ethical Practices Board Work Plan**

The 2007 work plan is predicated on the availability of city staff to complete the tasks requiring staff involvement.

- Conduct ethics education seminars for all MPD sworn officers.
- Prepare a ethics education seminar for Minneapolis supervisors.
- Conduct ethics education seminars for other departments based upon the results of the 2006 Employee survey.
- Develop a City-wide solicitation policy for City Council consideration.
- In collaboration with the City's Communication and City Coordinator's Departments, educate city employees of the confidential reporting line.
- Collaborate with the City's Communication Department to create a question and answer brochure for commonly asked questions
- Collaborate with the City's Human Resources Department to establish ethics as a topic of annual performance reviews.
- Collaborate with the City's Human Resources Department to establish protocol to include ethics questions in all employee exit interviews.

## **2008 Budget Request**

The Ethical Practices Board will submit a budget request for 2008 during the City's budget process when the Office of the City Attorney submits its 2008 Budget request.

## Proposed Ordinance Amendments

### Amending Title 2, Chapter 15 of the Minneapolis Code of Ordinances relating to Administrations: Ethics in Government.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 15.40 of the above-entitled ordinance be amended to read as follows:

#### **15.40 Conflicts of interest.**

(b)(4) Any lobbyist (other than an employee of the city) who is lobbying on behalf of the city must disclose a complete list of ~~his or her~~ the principals, the principal's clients represented by that lobbyist or other lobbyists in the same firm, along with ~~and the project or projects on which he or she is working~~ lobbying is expected to occur on a principal's behalf, to all elected officials of the city and the city clerk. The ethics officer will report to the intergovernmental relations committee on what projects, if any, create, or may create a professional conflict of interest for the lobbyist. A professional conflict of interest is a situation where the interests of a principal of the lobbyist are or may be adverse to the interests of the city. The lobbyist must update the list any time there is a change in his or her list.

(c) (3) A local official ~~or who is not an employee and who is not covered by paragraphs (1) and (2) above shall disclose a conflict of interest (i) orally to his or her supervisor; and (ii) in writing as described below.~~ to the other individuals on the agency, authority or instrumentality as soon as the local official becomes aware of the conflict. If a local official becomes aware of a conflict during a meeting, the local official shall immediately disclose the conflict of interest orally. If there is no supervisor, a local official or employee shall disclose a conflict of interest in writing as described below. A local official or employee who is required to disclose a conflict of interest in writing under this paragraph (3) shall also prepare a written statement, on a form prescribed by the city clerk, a written statement describing the matter requiring action or decision and the nature of his or her conflict of interest. The written statement shall be distributed to the employee's immediate supervisor and department head, or in the case of these local officials, to the mayor and city council, any department head whose jurisdiction or agency could be affected, and filed with the city clerk.

(c) (4) An employee who is not covered by paragraphs (1), (2) or (3) above shall disclose a conflict of interest (i) orally to his or her supervisor; and (ii) in writing as described below. If there is no supervisor, an employee shall disclose a conflict of interest in writing as described below. An employee who is required to disclose a conflict of interest in writing under this paragraph (3) shall prepare, on a form prescribed by the city clerk, a written statement describing the matter requiring action or decision and the nature of his or her conflict of interest. The written statement shall be distributed to the employee's immediate supervisor and

department head, and filed with the city clerk.

(4 5) All initial written statements required by this section shall be filed not later than June 1, 2003. Thereafter, they shall be filed and distributed within one (1) week after the local official or employee becomes aware of the conflict of interest.

(5 6) If the local official or employee has a supervisor, the supervisor shall assign the matter, if possible, to another person who does not have a conflict of interest. If they have no immediate supervisor, the local official or employee shall remove himself or herself from participating in the action or decision in question.

Rationale: As currently drafted, 15.40(b)(4) requires that lobbyists disclose all "clients" of the principals for whom they lobby. Literal application of this language would require Lobbyist A, who is a lobbyist for both the City and American Family Insurance, to disclose a list of all the insurance company's "clients". Information received from members of the original Ethics Task Force indicates that the intent was only to require a list of all principals that are clients of the lobbyist and the lobbyist's firm.

Section 2. That Section 15.50 of the above-entitled ordinance be amended to read as follows:

**15.50. Soliciting or accepting personal gifts.** (a) A local official or employee shall not solicit or accept any gift from an interested person, lobbyist, or principal who has a direct financial interest in a decision that the local official or employee is authorized to make.

(b) Exceptions. The prohibitions in this section do not apply if the gift is:

(8) Given because of the recipient's membership in a group, a majority of whose members are not local officials, and an equivalent gift is given to the other members of the group; or

(9) A solicitation for city purposes conducted pursuant to a city council approved solicitation policy.

Rationale: The inclusion of "personal" in the heading gives the impression that the scope of the ordinance is narrower than the plain reading supports. The heading is not part of the ordinance itself and should be corrected to reflect the language of the ordinance. The word "local" in subsection (b)(8) was added because the phrase "local official" is defined by section 15.280(m) but the word "official" is not defined in the Ethics Code.

Exception (b)(9) was added because the city council has requested that the Ethics Officer prepare recommendations for a city solicitation policy. This language would make it clear that solicitations conducted pursuant to that policy would be permissible.

Section 3. That Section 15.60(e) of the above-entitled ordinance be amended to read as follows:

15.60. Outside employment.

(e) An appointed local official, as defined in section 15.280(m)(2) of this ordinance, or an employee shall:

- (1) ~~Obtain written permission from~~ Notify his or her department head before accepting outside employment or entering into a contract for services. Notification shall be in writing on the form prescribed by the city clerk.
- (2) Not use city facilities or equipment to solicit or perform outside work. This provision shall not apply to sworn employees of the police or fire department who use city facilities or equipment for outside work in accordance with written ~~police~~ department policies.
- (3) Not solicit or perform outside work during the local official's or employee's hours of employment. The written permission must address the use of vacation or compensatory time, if applicable.

Rationale: "Obtain written permission from" was changed to "notify" because of the number of concerns raised by employees about the City's permission being required for activities outside of City employment. The resulting language would still permit a department head to inform the employee that the outside employment would either interfere with the proper discharge of the employee's public duty in violation of 15.60(a) (1) or would create a conflict of interest that would materially impair the employee's ability to serve the City in violation of 15.60(a)(2). In such situations, the notification would result in the employee not being able to accept the outside employment.

The inclusion of the sworn firefighters in subsection 15.60(e)(2) resulted from discussions with the Fire Department about outside employment. There are situations where firefighters might use their city-issued gear when responding to outside employment emergency calls.

Section 4. That Section 15.80(a)(1) of the above-entitled ordinance be amended to read as follows:

- (1) A candidate for the office of mayor, ~~or~~ city council member, or board of estimate and taxation member within fourteen (14) days after filing an affidavit of candidacy or petition to appear on the ballot for an elective city office; and

Rationale: Pursuant to the definition of "local official" in section 15.280(m)(1) of the Ethics Code, the elected officials subject to the Code are the mayor, city council members, and the board of estimate and taxation members. It is consistent, therefore, to include them in the section for the filing of SEI.

Section 5. That Section 15.140 of the above-entitled ordinance be amended to read as follows:

**15.140. Required reporting of fraud; unlawful use of public funds or property.**

Whenever a local official or employee discovers evidence of fraud, theft, embezzlement, forgery, or unlawful use of public funds or property, the local official or employee shall promptly report the discovery in writing to the city coordinator and the internal auditor or to the confidential reporting line. If necessary under state law, the city coordinator shall forward the report to the Minnesota State Auditor.

Rationale: This language anticipates the implementation of the confidential reporting line pursuant to the Council Action of January 12, 2007.

Section 6. That Section 15.210 of the above-entitled ordinance be amended to read as follows:

**15.210. Ethical practices board.** (a) The ethical practices board will be composed of three (3) members appointed by an appointing committee. The members of the appointing committee shall be the Chief Judge of Hennepin County District Court, the Dean of the University of Minnesota Law School, and the Dean of the University of St. Thomas School of Law. In making the appointments, the committee shall follow the city's open appointments process, supplemented by the following:

- (1) The city clerk shall notify non-partisan civic and community groups, colleges and universities of any openings on the board.
- (2) At least thirty (30) days prior to making an appointment, the committee shall submit the names of the finalists for the position to the mayor and the city council for comment.
- (3) Within five (5) days of receiving the names, the city council shall schedule a public hearing to solicit public input on the finalists. ~~The chair of the board shall be elected by the membership from among its members.~~

(b) One (1) member of the ethical practices board will be appointed for an initial term to expire on January 2, 2005; two (2) members will be appointed for an initial term to expire on January 2, 2006. All subsequent appointments will be made for three (3) year terms. All members shall serve until their successors have been appointed and qualified. The appointing committee may remove a board member for cause at any time during the board member's term of office. The chair of the board shall be elected by the membership from among its members.

(c) No member of the ethical practices board may be a local official or city employee; the related person of a local official or city employee; a candidate for elected public office; a person who, for compensation, represents the private interests of others before the city council or mayor; or a paid campaign worker or political consultant of a current local official.

Rationale: This is a housekeeping amendment.

Section 7. That Section 15.230 of the above-entitled ordinance be amended to read as follows:

**15.230. Code of ethics violations.** (a) A local official or employee must report any conduct by other local officials or employees that he or she believes violates this Code of ethics.

- (1) The ~~improper conduct~~ suspected misconduct of a non-appointed employee must be reported to either the alleged violator's supervisor or department head or to the ethics officer or to the confidential reporting line. Conduct reported ~~to the ethics officer~~ shall be referred to the appropriate official for investigation.
- (2) The ~~improper conduct~~ suspected misconduct of an appointed employee who is not a department head must be reported to the alleged violator's supervisor and department head or to either the ethics officer or to the confidential reporting line. Conduct reported ~~to the ethics officer~~ shall be referred to the appropriate official for investigation.
- (3) The ~~improper conduct~~ suspected misconduct of a department head, an elected official, or an appointed local official who is a member of an agency, authority, or instrumentality listed in section 15.280(m)(3) must be reported to either the ethical practices board or the confidential reporting line.

Rationale: The change from "improper conduct" to "suspected misconduct" was a change suggested by the EPB in response to concerns as to why employees may not report suspected ethical violations. The premise is that use of the phrase improper conduct signifies a level of certainty of misconduct that is not actually required. The changes also anticipate the implementation of the confidential reporting line pursuant to the Council Action of January 12, 2007.

Section 8. That Section 15.280 of the above-entitled ordinance be amended to read as follows:

**15.280 Definitions.**

- (b) Candidate means any individual who files an affidavit of candidacy or petition to appear on the ballot for ~~any elected office~~ the offices for mayor, city council member or board of estimate and taxation member.

Rationale: Pursuant to the definition of "local official" in section 15.280(m)(1) of the Ethics Code, the elected officials subject to the Code are the mayor, city council members, and the board of estimate and taxation members. It is consistent, therefore, to include them in the definition of candidate since they are elected.

- (e) *Department head* means:  
Assistant city coordinator, chief information officer

Assistant city coordinator, city finance officer

Assistant city coordinator, communications

Assistant city coordinator, director, intergovernmental relations

Assistant city coordinator, director of human resources

Assistant city coordinator, emergency communications director

Assistant city coordinator, Minneapolis Convention Center

Assistant city coordinator, regulatory services and emergency preparedness

City assessor

City attorney

City coordinator

Commissioner of health

Chief of fire

Chief of police

~~Director, civil rights~~

City engineer

City clerk

Director of the department of civil rights

Director of the department of community planning and economic development

~~Director, planning~~

~~Executive director, MCDA~~

~~Director, human resources~~

~~Director, communications~~

~~Assistant city coordinator, operations/regulatory services~~

~~Chief information officer~~

~~Finance officer~~

~~Director, government relations~~

Rationale: On March 31, 2006, the City Council approved a department of human resources request related to positions in the unclassified service. Titles were officially changed as a result of that action. The MCDA no longer has a director as that role has been assumed by the Director of the Department of Community Planning and Economic Development. The prior listing of department heads in this section omitted the convention center.

(m) *Local official* means a person holding the following elected or appointed positions:

(3) Individuals appointed or designated by the mayor or appointed by the city council to agencies, authorities, or instrumentalities including, but not limited to, the following:

Arts Commission, Minneapolis

Bassett Creek Watershed Management Commission

Central Avenue Special Service District Advisory Board

Citizen Environmental Advisory Committee (CEAC)

Civil Rights Commission, Minneapolis

Civil Service Commission, Minneapolis

Civilian Review Authority, Minneapolis

Community Development Agency, Minneapolis

Dinkytown Special Service District Advisory Board

Disabilities, Minneapolis Advisory Committee on People With

Downtown Skyway Advisory Committee

Family Housing Fund, Minneapolis/St. Paul

Forty Third Street West and Upton Avenue South Special Service District

Franklin Avenue East Special Service District Advisory Board

Hennepin Theatre District Special Services District

Heritage Preservation Commission, Minneapolis

~~Hiawatha Corridor Light Rail Transit Community Advisory Committee~~

Housing Board of Appeals

Latino Community Advisory Committee to the Mayor and City Council

Nicollet Avenue South Special Services District

Nicollet Mall Advisory Board

Planning Commission, Minneapolis

Public Health Advisory Committee

Public Housing Authority, Minneapolis

Real Estate Advisory Board

Rental Dwelling License Board of Appeals

Riverview Special Service District Advisory Board

Senior Citizen Advisory Committee to the Mayor and City Council  
Shingle Creek Watershed Management Commission  
South Hennepin Avenue Special Service District  
Sports Facilities Commission, Metropolitan  
Stadium Village Special Service District Advisory Board  
Telecommunications Network, Minneapolis, (MTN)  
Truth in Sale of Housing Board of Appeals  
Uptown Special Service District Advisory Committee  
Urban Environment, Committee on (CUE)  
Workforce Investment Board (formerly Private Industry Council)  
Zoning Board of Adjustment

The term local official shall not include individuals appointed to the following agencies, authorities, or instrumentalities:

Metropolitan Airports Commission  
Capital Long Range Improvements Committee  
Empowerment Zone Governance Board  
Homelessness, County Advisory Board  
Minneapolis Public Library Board of Trustees

Rationale: The Hiawatha Corridor Light Rail Transit Community Advisory Committee is no longer an active committee of the City according to the City Clerk's office.

The listing of the exclusions is to address the issue created at the time of the adoption of the original ethics ordinance. On the date of adoption, Council Member Goodman moved to amend the proposed Ordinance to delete reference to the above commissions/boards from §15.80, Statements of economic interest. The amendment was adopted. The effect of that amendment is clear: individuals appointed or designated by the Mayor or City Council to those four commissions are NOT required to file a statement of economic interest with the City pursuant to the City's Ethics Code. Note, however, that the statutory provision regarding filing of SEIs, Minn. Stat. §10A.09, may apply directly to the members of one or more of these commissions or boards.

Council Member Goodman made a related motion to amend that was also adopted. The definition of 'local official' in §15.280 (m) was amended prior to adoption to deleting the Metropolitan Airports Commission, Capital Long Range Improvements Committee, Empowerment Zone Governance Board, Homelessness, County Advisory Board, Minneapolis Public Library Board of Trustees.

Ethics Officer Lansing's notes from the Council meeting indicate that it was Council Member Goodman's intent to exempt members of these four commissions from the jurisdiction of the City's Ethics Code altogether. However, the actual effect of the amendment to 15.280(m)(3) is ambiguous because the preface to the list of affected agencies applies to the agencies "including, but not limited to, the following." 15.280(m)(3) defines as "local officials" those "individuals appointed or designated by the mayor or appointed by the city council to agencies, authorities, or instrumentalities . . . ." The list that follows is intended to be as comprehensive as possible, but ultimately, it is only illustrative. Section 15.280(m)(3) was drafted in this manner in order that City appointees to new (or overlooked) agencies would be subject to the Ethics Code without need for an amendment to the definition of "local official."

Thus, although the names of the four commissions identified in Council Member Goodman's motion were deleted from the list of agencies in 15.280(m)(3), it is fair to say that individuals appointed by the Mayor or Council to those four organizations remain subject to the Ethics Code as it is currently written. The proposed amendment would clarify that the individuals appointed to the list of excluded commissions would not be subject to the Ethics Code.