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Memorandum

DATE: August 12, 2004

TO: Mayor Satterthwaite and the Urbana City Council

FROM: Steve Holz

RE: City Officials Ethics, Political Activity, and Conflicts
of Interest Ordinance

I attach the City Officials Ethics, Political Activity, and Conflicts of Interest Ordinance as sent to Council with amendments made at the Committee of the Whole meeting of August 9, 2004.

There was discussion by members of the Committee that it could be advisable to have a definition of the term "Domestic Partner." I agree, and suggest the following definition to be added to Section 2-201:

"Domestic Partner" means any person as to whom a person has made a declaration of mutual partnership, obligation, or responsibility, in order to claim benefits akin to those traditionally conferred upon married couples.

Following the Committee meeting, Alderperson Wyman suggested to me that it could be useful to add a "Severability" provision to the ordinance. I agree, and suggest the following language to be added at a new Section 2-220:

Sec. 2-210 through 2-219. [Reserved]

Sec. 2-220. Severability.

Should any section, paragraph, sentence, clause, phrase or word of this Article be declared invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs or sections of this Code.

Per the request made to me at that Committee meeting, I attach also the language of the state laws that are referenced by the ordinance. Those provisions include:

- The definitions of executive, legislative, and administrative action as those terms are defined in Section 2 of the Lobbyist Registration Act (25 ILCS 170).
- The definition of “Collective bargaining” as defined in Section 3 of the Illinois Public Labor Relations Act (5 ILCS 315/3).
- The definition of “Contribution” as that term is defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4).
- The definitions of Local political committee, State political committee, and Political committee as defined in Section 9-1.7, 9-1.8, and 9-1.9 of the Election Code (10 ILCS 5/9-1.7 to 9-1.9).
- Section 9-3 of the Election Code (10 ILCS 5/9-3), as it applies to a “Political organization” being a party, committee, association, fund, or other organization (whether or not incorporated) that is required to file a statement of organization with the State Board of Elections or a county clerk.

If you have any questions or concerns, feel free to contact me.

This Ordinance:
AMENDS the Code of Ordinances.

ORDINANCE NO. 2004-05-053

AN ORDINANCE REGARDING CITY OFFICIALS AND EMPLOYEE ETHICS, POLITICAL ACTIVITY, AND CONFLICTS OF INTEREST

WHEREAS, the Illinois General Assembly has enacted the State Officials and Employees Ethics Act (Public Act 93-615, effective November 19, 2003, as amended by Public Act 93-617, effective December 9, 2003) (referred to in this ordinance, jointly, as the "Act"), which is a comprehensive revision of State statutes regulating ethical conduct, political activities and the solicitation and acceptance of gifts by State officials and employees, including the former State Gift Ban Act (5 ILCS 425 et.seq.); and

WHEREAS, the Act requires all units of local government to adopt ordinances or resolutions regulating the political activities of, and the solicitation and acceptance of gifts by, the officers and employees of such units "in a manner no less restrictive" than the provisions of the Act; and

WHEREAS, the Act also provides that, "A governmental entity may provide in the ordinance or resolution required by this Article for penalties similar to those provided in this Act for similar conduct" (Article 70, Section 70-10);

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

SECTION 1

That those provisions of the City of Urbana Code of Ordinances that were enacted pursuant to the former State Gift Ban Act are hereby repealed. The repealed provisions are: Sections 2-102 ("Adoption of Act"), 2-103 ("Ethics Officer"), 2-104 ("Ethics Commission; complaints"), 2-105 ("Future amendments to State Gift Ban Act"), and 2-106 ("Future declaration of unconstitutionality of State Gift Ban Act") of the City of Urbana Code of Ordinances.

SECTION 2

That the City of Urbana hereby enacts the following City Officials and Employee Ethics and Political Activity Ordinance, to be added to Chapter 2 "Administration" of the Code of Ordinances, as Article X:

ARTICLE X. CITY OFFICIALS AND EMPLOYEE ETHICS AND POLITICAL ACTIVITY

Sec. 2-200. Short title. This Ordinance may be cited as the City of Urbana Officials and Employee Ethics Ordinance.

Sec. 2-201. Definitions. As used in this Ordinance:

"*Campaign for elective office*" means any activity in furtherance of an effort to influence the selection, nomination, election, or appointment of any individual to any federal, State, or local public office or office in a political organization, or the selection, nomination, or election of Presidential or Vice-Presidential electors, but does not include activities

(i) relating to the support or opposition of any executive, legislative, or administrative action (as those terms are defined in Section 2 of the Lobbyist Registration Act),

(ii) relating to collective bargaining, or

(iii) that are otherwise in furtherance of the person's official duties.

"*Candidate*" means a person who has filed nominating papers or petitions for nomination or election to any elected federal, State or local public office, or who has been appointed to fill a vacancy in nomination, and who remains eligible for placement on the ballot at either a general primary election or general election.

"*Citizen Appointee*" means a person appointed by the Mayor and confirmed by the Council to a position in or with any of the City of Urbana's Boards, Commissions, Panels, or other Bodies, including any such Board, Commission, Panel, or other Body with respect to which the City is a participant via an intergovernmental agreement, regardless of whether the position is compensated.

"*City*" or "*City of Urbana*" means the City of Urbana, Illinois, and also includes the Urbana Free Library.

"*Collective bargaining*" has the same meaning as that term is defined in Section 3 of the Illinois Public Labor Relations Act (5 ILCS 315/3).

"*Compensated time*" for purposes of this ordinance means any time worked by or credited to an employee that counts toward any minimum work time requirement imposed as a condition of employment with the City of Urbana. However, "compensated time" for purposes of this ordinance does not include any designated holidays, vacation, or any period when the employee is on an unpaid leave of absence, but does include any time on paid administrative leave.

"*Compensatory time off*" means authorized time off earned by or awarded to an employee to compensate in whole or in part for time worked in excess of the minimum work time required of that employee as a condition of employment with the City.

"*Contribution*" has the same meaning as that term is defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4).

"*Elected Official*" means the Mayor, elected or appointed members of the City Council, the City Clerk, and any other person holding elected office with or for the City.

"*Employee*" means any person employed by the City, whether full-time, part-time, seasonally, pursuant to a contract, or otherwise, and whose employment duties are subject to the direction and control of the City with regard to the material details of how the work is to be performed, but does not include an independent contractor.

"*Gift*" means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of an officer or employee.

"*Leave of absence*" means any period during which a City employee does not receive

- (i) compensation for employment,
- (ii) service credit towards pension benefits, and
- (iii) health insurance benefits paid for by the Employer.

"*Political activity*" means any activity in support of or in connection with any campaign for elective office or any political organization, but does not include activities

- (i) relating to the support or opposition of any executive, legislative, or administrative action (as those terms are defined in Section 2 of the Lobbyist Registration Act),
- (ii) relating to collective bargaining, or
- (iii) that are otherwise in furtherance of the person's official duties.

"*Political organization*" means a party, committee, association, fund, or other organization (whether or not incorporated) that is required to file a statement of organization with the State Board of Elections or a county clerk under Section 9-3 of the Election Code (10 ILCS 5/9-3), but only with regard to those activities that require filing with the State Board of Elections or a county clerk.

"*Prohibited political activity*" means:

- (1) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.
- (2) Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.
- (3) Soliciting, planning the solicitation of, or preparing any document or report regarding any thing of value intended as a campaign contribution.
- (4) Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
- (5) Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.

- (6) Assisting at the polls on election day on behalf of any political organization or candidate for elective office or for or against any referendum question.
- (7) Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls.
- (8) Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question.
- (9) Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.
- (10) Preparing or reviewing responses to candidate questionnaires.
- (11) Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.
- (12) Campaigning for any elective office or for or against any referendum question.
- (13) Managing or working on a campaign for elective office or for or against any referendum question.
- (14) Serving as a delegate, alternate, or proxy to a political party convention.
- (15) Participating in any recount or challenge to the outcome of any election.

"Prohibited source" means any person or entity who:

- (1) is seeking official action
 - (i) by an elected official or citizen appointee or
 - (ii) by an employee, or by the elected official or another employee directing that employee;
- (2) does business or seeks to do business
 - (i) with the elected official or citizen appointee or
 - (ii) with an employee, or with the elected official or citizen appointee or another employee directing that employee;
- (3) conducts activities regulated
 - (i) by the elected official or citizen appointee or
 - (ii) by an employee, or by the elected official or another employee directing that employee; or
- (4) has interests that may be substantially affected by the performance or non-performance of the official duties of the elected official or employee.

Sec. 2-202. Applicability. This Ordinance applies only to conduct that occurs on or after the effective date of this Ordinance and to causes of action that accrue on or after the effective date of this Ordinance.

Sec. 2-203. Prohibited political activities.

(a) No employee shall intentionally perform any prohibited political activity during any compensated time.

(b) No elected official, employee, citizen appointee shall intentionally misappropriate any City property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization.

(c) At no time shall any elected official, employee, or citizen appointee intentionally require any other employee or citizen appointee to perform any prohibited political activity

(i) as part of that employee's or appointee's duties,

(ii) as a condition of City employment or appointment, or

(iii) during any time off that is compensated by the City (such as vacation, personal days, paid administrative leave, or compensatory time off).

(d) At no time shall any elected official, employee or citizen appointee intentionally require any other employee or citizen appointee to participate in any prohibited political activity in consideration for that employee or citizen appointee being awarded any additional compensation or any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment or appointment, or otherwise.

(e) No elected official, employee or citizen appointee shall be awarded any additional compensation or employee benefit, in the form of a salary adjustment, bonus, compensatory time off, continued employment, or otherwise, in consideration for the employee's or citizen appointee's participation in any prohibited political activity.

(f) Nothing in this Section prohibits activities that are otherwise appropriate for an elected official, employee or citizen appointee to engage in as a part of his or her official duties or activities, that are undertaken by an elected official, employee, or citizen appointee on a voluntary basis as permitted by law.

(g) No person either

(i) in a position that is subject to recognized merit principles of public employment, or

(ii) in a position the salary for which is paid in whole or in part by federal funds and that is subject to the Federal Standards for a Merit System of Personnel Administration applicable to grant-in-aid programs,

shall be denied or deprived of employment or tenure solely because he or she is a member or an officer of a political committee, of a political party, or of a political organization or club.

Sec. 2-204. Gift Ban.

(a) Except as permitted by this Article, no elected official, citizen appointee, or employee, and no spouse of or immediate family member living with any elected official, citizen appointee, or employee (collectively referred to herein as "recipients"), shall

intentionally solicit or accept any gift from any prohibited source, as defined herein, or which is otherwise prohibited by law or ordinance.

(b) No prohibited source shall intentionally offer or make a gift that violates this Section.

Sec. 2-205. Gift Ban Exceptions. Section 2-204 is not applicable to the following:

(1) Opportunities, benefits, and services that are available on the same conditions as for the general public.

(2) Anything for which the recipient pays the fair market value.

(3) Any (i) contribution that is lawfully made under the Election Code or (ii) activities associated with a fundraising event in support of a political organization or candidate.

(4) Educational materials and missions.

(5) Travel expenses for a meeting to discuss business.

(6) A gift to a recipient from a relative, meaning those people related to the recipient as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, domestic partner, roommate or housemate, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of the recipient's spouse, domestic partner, and the recipient's fiancée or fiancé.

(7) Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient or his or her spouse or immediate family member and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other officers or employees, or their spouses or immediate family members.

(8) Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared or (ii) catered. For the purposes of this Section, "catered" means food or refreshments that are purchased ready to consume which are delivered by any means.

(9) Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of an elected official, employee or citizen appointee), if the benefits have not been offered or enhanced because of the official position or employment of the elected official, employee, or citizen appointee and are customarily provided to others in similar circumstances.

(10) Intra-governmental and inter-governmental gifts. For the purpose of this ordinance, "intra-governmental gift" means any gift given to an elected official, employee, or citizen appointee from another elected official, employee, or citizen appointee, and "inter-governmental gift" means any gift given to an elected official, employee, or citizen appointee by an elected official, employee, or citizen appointee of another governmental entity.

(11) Bequests, inheritances, and other transfers at death.

(12) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100. Each of the exceptions listed in this Section is mutually exclusive and independent of every other.

Sec. 2-206. Disposition of Gifts. An elected official, employee, or citizen appointee, his or her spouse or an immediate family member living with the officer or employee, does not violate the Gift Ban if the recipient promptly takes reasonable action to return a gift from a prohibited source to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501 (c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, renumbered, or succeeded.

Sec. 2-207. Conflicts of Interest Prohibited.

(a) No elected official or citizen appointee may participate in, vote upon, or otherwise act on any matter in which that person is directly or indirectly financially interested. For purposes of this sub-paragraph, a person shall be deemed to be financially interested in any contract, grant, appropriation, or legislative enactment that is made with, to, or for the benefit of that person, to any firm, partnership, association, corporation, or cooperative association as to which the person is a board member, director, or officer. No conflict shall be deemed to exist under this subparagraph as to any legislative enactments that affect the elected official or citizen appointee only to the extent that members of the general public are affected.

(b) No elected official or citizen appointee may participate in, vote upon, or otherwise act on any matter in which that person has a conflict of interest as defined by any Illinois or federal law or regulation.

Sec. 2-208. Ethics Advisor.

(a) The City's Chief Administrative Officer shall designate an Ethics Advisor for the City.

(b) The Ethics Advisor shall provide guidance to the elected official, citizen appointees, and employees of the City concerning the interpretation of and compliance with the provisions of this Ordinance and State ethics laws.

Sec. 2-209. Penalties.

(a) A person who intentionally violates any provision of this Article may be fined in an amount not to exceed \$750.

(b) Any person who knowingly makes a false report alleging a violation of any provision of this article to the local enforcement authorities, the State's Attorney or any other law enforcement official may be fined in an amount not to exceed \$750.

(c) In addition to any other penalty that may be applicable, whether criminal or civil, an employee who intentionally violates any provision of this article is subject to discipline or discharge.

SECTION 3.

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

Aye: _____

Nay: _____

Abstain: _____

PASSED by the City Council this ____ day of _____, 20_____.

AYES:

NAYS:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this ____ day of _____, 20____.

Tod Satterthwaite, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the _____ day of _____, _____, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled "AN ORDINANCE REGARDING CITY OFFICIALS AND EMPLOYEE ETHICS AND POLITICAL ACTIVITY", which provided by its terms that it should be published in pamphlet form.

The pamphlet form of the Ordinance was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the _____ day of _____, _____, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this _____ day of _____, _____.

(SEAL)

Phyllis Clark, CITY CLERK