



Legislation Text

File #: 23-0478, Version: 1

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Pass the ordinance repealing Section 1-13-1:1 of the Naperville Municipal Code striking the regulation requiring public disclosure of certain campaign contributions

DEPARTMENT: Legal Department

SUBMITTED BY: Michael DiSanto, City Attorney

BOARD/COMMISSION REVIEW:

N/A

BACKGROUND:

Summary of Existing Conflict of Interest Regulations for Local Public Officials

Generally, conflicts of interest are regulated by: 1) state law (Illinois Compiled Statutes); 2) local law (Naperville Municipal Code); and 3) common law. Below is a general description of applicable conflict of interest regulations from each of those areas of law.

1. State Law (Illinois Compiled Statutes)

a. Prohibited Interest in Contracts Act, 50 ILCS 105/3 ("PICA")

PICA prohibits elected public officials from having an interest in contracts (with exceptions for relatively insignificant interests). It generally prohibits elected officials from being financially interested in a contract entered by the municipality and violations of PICA carry criminal penalties. It states, in part:

- i. "No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote."
- ii. "No such officer may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void."

b. State Officials and Employees Ethics Act, 5 ILCS 430/1 (“SOEEA”)

All public employees and officials in Illinois must comply with the SOEEA. Municipalities are required to pass ordinances governing ethics that are at least as strict as the standards in the SOEEA. Naperville has adopted, by reference, the applicable provisions of the SOEEA and made them applicable to public officials and employees (see, 1-13-9 of the Naperville Municipal Code). The SOEEA establishes standards for the type and amount of gifts that may be accepted (Gift Ban Act) and restricts employees from engaging in political work on paid public time.

Additionally, there are other state ethics regulations contained within the Illinois Compiled Statutes, including the Illinois Governmental Ethics Act, the Lobbyist Registration Act, and the Public Officers Prohibited Activities Act.

2. Local Law (Naperville Municipal Code)

a. Conflict of Interest, 1-13, Naperville Municipal Code

Title 1, Chapter 13, Section 1 of the Naperville Municipal Code states that if a City Council member has accepted a relevant campaign contribution in excess of \$750 from any interested entity, said City Council member shall publicly disclose having received a relevant campaign contribution and the amount of said relevant campaign contribution prior to voting on said matter pending before the City Council.

“Relevant Campaign Contribution” is defined as money, employment, goods, services, or objects with any intrinsic value, including without limitation, campaign contributions, loans, offsets to expenditures, contributions in-kind, and independent expenditures by interested entities on behalf of the candidacy of a City Council member as filed with and recorded by the Illinois State Board of Elections pursuant to the Illinois Campaign Disclosure Law, provided that such thing of value was received during the period of the Council member's most recent past Naperville Mayoral or City Council election campaign through the present.

“Interested Entity” is defined as any individual person, organization, union, partnership, proprietorship, firm or corporation who is a petitioner; public participant; or agent or representative of a petitioner or public participant, concerning an agenda item pending before the City Council. Relevant campaign contributions made by an individual person who serves as officer of any of the interested entities referenced above shall be considered as campaign contributions on behalf of said individual person as well as on behalf of the entity for which said individual person serves as an officer. Relevant campaign contributions made by individual officers shall be calculated cumulatively on behalf of the applicable interested entity.

“Public Participant” is defined as any individual person, organization, union, partnership, proprietorship, firm or corporation who signs up for public participation related to an agenda item pending before the City Council, including publicly submitting comments, questions or a position in support or opposition, in writing or via verbal comments, as part of the City Council meeting record.

The ordinance also provides an opportunity to “cure” the conflict, by providing that the total amount of relevant campaign contributions from an interested entity that are returned or

reimbursed by a Council member to the interested entity prior to the election date of the Council members' most recent past City of Naperville Mayoral or City Council election shall not be considered under this Section.

The ordinance requires a Council member who has accepted a Relevant Campaign Contribution of more than \$750 from an Interested Entity to publicly disclose having received said contribution when the matter is called on the Council agenda. Even though the Council member would not be required to recuse, the Council member may choose to voluntarily recuse to avoid the appearance of impropriety.

b. Conduct of Members, 1-5-6-2, Naperville Municipal Code

Section 1-5-6-2 of the Naperville Municipal Code states, in part:

- i. “[a]ll members of the City Council shall perform their duties for the benefit of the citizens with integrity and impartiality, without allowing prejudice, favoritism or the opportunity for personal gain to influence their decisions or actions or to interfere with serving the public interest or to interfere with the professional operation of the City.”; and
- ii. “[n]o Council Member shall use his/her office or any City employee to promote his/her private enterprises whether compensation is received or not.”

c. State Officials and Employees Ethics Act, 5 ILCS 430/1 (“SOEEA”)

As stated above, the City has adopted, by reference, the applicable provisions of the SOEEA. Naperville public officials and employees must comply with SOEEA (see, 1-13-9, Naperville Municipal Code).

3. Common Law

Under Illinois law, this type of conflict of interest is called “common law” because there is no statute describing the prohibited conduct. Rather, the law in this area consists of various appellate court rulings which have considered allegations of conflicts of interest. This common law doctrine arises from an elected official’s fiduciary position which requires him/her to faithfully perform his/her duties and prohibits the official from using his/her decision making/voting power to advance his/her individual interests. Common law conflicts of interest are solvable by disclosure and recusal from any discussion or consideration of the conflicted matter.

DISCUSSION:

On December 15, 2020, by a vote of 5-4, the Naperville City Council passed an ordinance amending the Naperville Municipal Code to add a regulation requiring Council members to make a public disclosure of certain campaign contributions (see, section 2.a. above).

At the March 21, 2023 City Council meeting, under New Business, Mayor Chirico directed staff to prepare an ordinance for Council consideration that repeals said regulation requiring public

disclosure of certain campaign contributions.

On April 5, 2023, Council held the first reading of the proposed ordinance. A variety of comments were made by Council members, including a comment that suggested that instead of rescinding the ordinance, Council could amend it to address donations made to public action committees (PACs) when Council members are officers of said PAC. It was suggested that the ordinance could be amended to expand the definition of "Relevant Campaign Contribution" to include:

money, employment, goods, services, or objects with any intrinsic value, including without limitation, campaign contributions, loans, offsets to expenditures, contributions in-kind, and independent expenditures by interested entities on behalf of the candidacy of a City Council member, or on behalf of a public action committee (PAC) of which a City Council member is an officer, as filed with and recorded by the Illinois State Board of Elections pursuant to the Illinois Campaign Disclosure Law, provided that such thing of value was received during the period of the Council member's most recent past Naperville Mayoral or City Council election campaign through the present.

Although there were many comments, there was no Council consensus concerning any changes.

FISCAL IMPACT:

N/A