



Legislation Text

File #: 20-1360B, Version: 1

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Consider two options concerning regulation of conflicts of interest:

OPTION 1: Pass the ordinance amending the Naperville Municipal Code's regulation of conflicts of interest

OPTION 2: Direct staff to include access, via the City of Naperville website, to City Councilmember Campaign Committee Contribution reports on file with the Illinois Board of Elections

DEPARTMENT: Legal Department

SUBMITTED BY: Michael DiSanto, City Attorney

BOARD/COMMISSION REVIEW:

N/A

BACKGROUND:

Under New Business at its September 1, 2020 meeting, the City Council directed staff to prepare a text amendment to the Conflict of Interest section of the Municipal Code. The amendment would require the mayor and councilmembers to recuse themselves on any matter if an interested party had donated more than \$500 to said councilmember's most recent campaign for local office. This change would begin with the Consolidated General Election on April 6, 2021.

First readings of alternative ordinances, one requiring recusal and one requiring disclosure, were held on November 17, 2020. By consensus, the Council directed staff to draft an ordinance requiring public disclosure if an interested party had donated more than \$500 to said councilmember's most recent campaign for local office to be considered at the December 15, 2020 meeting. Council also directed staff to include an option whereby the Council may direct staff to include on the City's website access to councilmembers' Campaign Committee Contribution reports on file with the Illinois Board of Elections.

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 of the Naperville Municipal Code addresses conflicts of interest. Subject to some narrow exceptions, under “Prohibited Interests” (1-13-2), it states:

“No member of the City Council shall have an ownership interest, an employment interest, or a family interest in any of the following matters:

- i. Any contract, business, or transaction of the City or in the sale of any article to the City where the expense, price, or consideration is paid either from the City's treasury or by an assessment levied by the City;

- ii. Any purchase of goods, articles, or property belonging to the City; or
- iii. Any purchase of property sold for delinquent taxes or assessments of the City or sold by legal process at the suit of the City.”

This section of the Code has been in place, and not updated, since at least 1987. It is substantially like Illinois’ Prohibited Interest in Contracts Act, which currently regulates Naperville public officials. The difference is that Naperville’s Conflict of Interest section has not been regularly updated, has not been interpreted by the courts like state law, and is more restrictive than the state law as it extends the conflict of interest to include a Council Member’s “wife, husband, son, daughter, father, mother, brother, or sister.” For these reasons (redundancy, over-broad, and being antiquated), staff recommends striking this section from the Municipal Code.

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.”

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:

OPTION 1: Pass the ordinance amending the Naperville Municipal Code’s regulation of conflicts of interest.

The proposed ordinance accomplishes the following:

1. It updates the existing Conflict of Interest section, by removing language that prohibits the Council from having “an ownership interest, an employment interest, or a family interest” in a variety of matters. This section of the Municipal Code was adopted at least as early as 1987 and has not been revised since. In staff’s opinion, this section is: 1) redundant because conflicts of interest are already adequately covered under state law and common law (see above); 2) more restrictive than state law and over-broad as it extends the conflict of interest to include a councilmember’s “wife, husband, son, daughter, father, mother, brother, or sister”; and 3) antiquated - making it difficult to understand/interpret.

Staff recommends the Council adopt this “housekeeping / clean-up” portion of the ordinance regardless of whether the second mandatory disclosure portion, described below is adopted.

2. It adds a new regulation concerning “Relevant Campaign Contributions” of more than \$500 from any “Interested Entity” accepted or received by a councilmember, a member of that councilmember’s immediate family (includes spouse, children and spouse of any child), or an organization formed to support the candidacy of that councilmember.

“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 councilmember 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 councilmember’s most recent past election 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.

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 councilmember to the Interested Entity prior to the election date of the councilmembers’ most recent past City of Naperville Mayoral or City Council election shall not be considered.

The proposed ordinance requires a councilmember who has accepted a Relevant Campaign Contribution of more than \$500 from an Interested Entity to publicly disclose having received said contribution when the matter is called on the Council agenda. Even though the councilmember would not be required to recuse, the councilmember may choose to voluntarily recuse to avoid the appearance of impropriety.

Three changes have been made to the proposed ordinance since its first reading:

- a. The "Relevant Campaign Contribution" definition has been amended to specify that the Relevant Campaign Contributions are those file with and recorded by the Illinois State Board of Elections pursuant to the Illinois Campaign Disclosure Law.
- b. The "Relevant Campaign Contribution" definition has also been amended to specify that the Relevant Campaign Contributions are those received during the period of the councilmember's most recent past Naperville Mayoral or City Council election campaign through the present.
- c. The original ordinance covered donations from petitioners, petitioner's agents and public "objectors." After the meeting, it was determined that if the ordinance covers public "objectors" it should also encompass donations from public "supporters." Further valid concerns were raised over those terms being undefined.

To address that issue, the ordinance has been revised, removing "objector" altogether and instead using the term "Public Participant." A 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.

Much like how the campaign contribution reports on file with the Illinois State Board of Elections will be the record for identifying relevant campaign contributions under the ordinance; the City Council meeting speaker sign-in sheet, which gets incorporated into the minutes, will be the record for Public Participants under this change to the ordinance.

OPTION 2: Direct staff to include access, via the City of Naperville website, to City Councilmember Campaign Committee Contribution reports on file with the Illinois Board of Elections

When running for elected office, council candidates form election committees that receive campaign donations in support of the candidate. The Illinois State Board of Elections ("BOE") regulates Illinois campaigns for public office and it requires election committees to report to the BOE all campaign donations received by a candidate's election committee. If directed by the Council, staff can include on the City's website access to councilmembers' campaign committee contribution reports on file with the Illinois Board of Elections.

FISCAL IMPACT:

N/A