

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING)	ORDINANCE No. 98-738A
ETHICAL REQUIREMENTS FOR METRO)	Introduced by Councilors McLain,
OFFICIALS AND FOR LOBBYISTS)	McFarland and Naito

The Metro Council ordains as follows:

SECTION 1.

Chapter 2.17, Code of Ethics and Requirements for Lobbyists, is added to and made a part of Metro Code Title II, to be numbered, titled, and to read as follows:

Chapter 2.17

Code of Ethics and Requirements for Lobbyists

Code Section 2.17.010 Purpose and Policy

(a) The Metro Council hereby declares that the purpose of this Chapter is to ensure that Metro serves the public and informs the public fully concerning its decision making. In accordance with such purposes, this Chapter establishes a Code of Ethics for Metro and requirements for lobbyists appearing before Metro.

(b) In adopting this Chapter, the Metro Council intends:

(1) to be consistent with and to add to current public policy established by the Oregon Legislative Assembly;

(2) to require Metro officials and Metro employees to operate under high ethical standards;

(3) to require Metro officials and Metro employees to treat their offices and positions as a public trust whose powers and resources are to be used for the benefit of the public and not for any personal benefit; and

(4) to require individuals and entities appearing before Metro to identify themselves and the interests they represent.

(c) This chapter shall not be construed to permit any activity that is otherwise prohibited by any other statute, rule, ordinance or other law.

Code Section 2.17.020 Definitions.

For the purposes of this Chapter, unless the context requires otherwise, the following terms shall have the meaning indicated:

(a) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain.

(b) "Business with which the Metro official is associated" means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year, but excluding any income-producing not-for-profit corporation that is tax exempt under Section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity.

(c) "Consideration" includes a gift, payment, distribution, loan, advance or deposit of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable.

(d) "Department director" means any person employed by Metro in a position on a permanent basis which is subject to appointment by the executive officer and confirmation by the Metro council.

(e) "Doing business" means entering into a direct contractual relationship with a business with which the Metro official is associated.

(f) "Elected official" means any person elected or appointed as a member of the Metro council, the executive officer, or the auditor.

(g) "Ethics" means positive principles of conduct, some of which are also enforced by federal, state or other local law.

(h) "Exercise of official authority" means: Metro elected officials and the General Counsel have authority to exercise official responsibility over any Metro matter. Appointed commissioners have authority over any matter over which the relevant commission has jurisdiction. Department directors have authority over any matter related to the department they administer. Metro employees have authority over matters as assigned to them by their supervisors.

(i) "Gift" means "Gift" as defined in ORS 244.020(8).

(j) "Legislative action" means introduction, sponsorship, testimony, debate, voting or any other official action on any ordinance, resolution, amendment, nomination,

appointment or report, or any matter which may be the subject of action by the Metro Council or any committee thereof.

(k) "Legislative or administrative interest" means an economic interest other than the receipt of wages or salary from Metro, distinct from that of the general public, in one or more ordinances, resolutions, regulations, proposals or other matters subject to the action or vote of a Metro official or Metro employee.

(l) "Lobbying" means influencing, or attempting to influence, legislative action through oral or written communication with Metro officials, solicitation of others to influence or attempt to influence legislative action or attempting to obtain the good will of Metro Councilors.

(m) "Lobbyist" means: (a) Any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying; and (b) Any employee of a business, not-for-profit corporation, association, organization or other group, who engages in lobbying.

(n) "Metro" means all of Metro including any department or branch of Metro including any Metro commission.

(o) "Metro commissioner" means any person appointed to a position on a commission created pursuant to an ordinance adopted by the Metro council whose appointment is subject to confirmation by the Metro council.

(p) "Metro employee" means any person other than a Metro official who receives wages or salary from Metro.

(q) "Metro facilities" means meeting rooms, meeting areas or other Metro property generally available to the public.

(r) "Metro official" means any department director, elected official or Metro commissioner.

(s) "Person" means any individual, business, association, corporation, organization or other group.

(t) "Public agency" means any governmental body, including but not limited to the Federal Government, the State of Oregon, any other state of the United States of America, or any public agency or municipal corporation thereof.

(u) "Public official" means any member or member-elect of any public agency and any member of the staff or an employee thereof.

(v) "Relative" means relative as defined in ORS 244.020(16).

(w) "Whistleblowing" means disclosing information pursuant to the protective provision of The Oregon Whistleblower Law (ORS 659.505 through 659.545). In addition, whistleblowing shall include disclosing information regarding the violation of any provision of the Metro Charter or Metro Code.

Code Section 2.17.030 Giving and Receiving Gifts Prohibited.

(a) All Metro officials, Metro employees and persons with a legislative or administrative interest shall comply strictly with the following requirements:

(1) No Metro official or Metro employee shall solicit or receive, whether directly or indirectly, a gift from any source who could reasonably be known to have a legislative or administrative interest in Metro over which the Metro official or Metro employee exercises any official authority.

(2) No person shall offer any gift to any Metro official or Metro employee if the person has a legislative or administrative interest in Metro over which the Metro official or Metro employee exercises any official authority.

Code Section 2.17.040 Whistleblowing.

(a) The Council specifically recognizes the provisions of The Oregon Whistleblowing Law (ORS 659.505 through ORS 659.545). The Council directs the Executive Officer, pursuant to ORS 659.540(b), to establish for Metro the specific regulations and procedures to implement the Oregon Whistleblowing Law.

(b) Metro officials shall recognize whistle-blowing as appropriate. However, this provision shall not preclude taking disciplinary action against any Metro employee when it is appropriate to do so for independent reasons.

Code Section 2.17.050 Financial Reporting Requirements.

(a) Elected officials shall comply with the reporting requirements established by ORS 244.060, including the filing of a Statement of Economic Interest on an annual basis as required by state law. A copy of the Statement of Economic Interest shall be filed with the council clerk at the time of filing with the appropriate state agency. The Statement shall also include a report of all meals and entertainment at events sponsored by non-profit, tax exempt organizations received from any person having a legislative or administrative interest in Metro.

(b) All department directors and Metro commissioners shall file annually with the council clerk a Statement of Economic Interest which is substantially consistent with that required by ORS 244.060. The Statement shall include a report of all meals and entertainment at events sponsored by non-profit, tax exempt organizations received from any person having a legislative or administrative interest in Metro.

Code Section 2.17.060 Restrictions on Meals and Entertainment.

(a) No Metro official shall solicit or receive meals or entertainment from any person who has a legislative or administrative interest in Metro if the Metro official exercises any authority over the legislative or administrative interest of the person.

(b) Except as provided in subsections (c) and (d) of this section, no person who has a legislative or administrative interest in Metro shall furnish to a Metro official any meal or entertainment if the Metro official exercises any authority over the legislative or administrative interest of the person.

(c) However, Metro officials may eat meals that are furnished at any public meeting, and, subject to the reporting requirements of Section 2.17.050, may receive meals and entertainment at events sponsored by non-profit, tax exempt organizations.

(d) This section does not prohibit receipt of food specifically authorized by Section 2.17.070.

Code Section 2.17.070 Reimbursement for Attendance at Events

Metro officials may not accept food, lodging and travel from any person with a legislative or administrative interest in Metro when participating in an event which bears a relationship to the Metro officials' office when appearing in their official capacities unless the cost of the food, lodging, or travel would have been eligible for payment as a Metro expense and the incurrence of the expense with Metro funds has been approved prior to the event by the appropriate authority.

Code Section 2.17.080 Abuse of Public Office.

(a) No Metro official or Metro employee shall use Metro furnished offices, equipment, or Metro facilities for personal gain or to avoid the occurrence of personal expense.

(b) Metro officials and Metro employees shall not remove Metro equipment from Metro facilities or enter or remain at their place of work at other than normal work hours except when performing official duties.

Code Section 2.17.090 Prohibition Against Doing Business With Certain Former Metro Officials

(a) Except as provided for in subsections (b) and (c), Metro may not do business with any Metro official while the official is in office or within one year after the Metro official ceases to be a Metro official. Any contract entered into in violation of this provision is void.

(b) Upon the request of the executive officer or a Metro commission, the council may waive the effect of the prohibition contained in subsection (a) upon making written findings that:

(1) It is in the best interests of Metro to do business with the Metro official.

(2) The Metro official took no action while in office that directly related to the preparation of the terms and conditions in the contract documents that may give an appearance of impropriety or favoritism.

(3) Other factors exist which are explicitly found by the council to benefit Metro that outweigh the policy considerations of ensuring that no appearance of favoritism exists in the award of Metro contracts.

(c) This section applies only to Metro officials who first take office or are re-elected or re-appointed to an office after September 7, 1995. This section does not apply to Metro Commissioners who do business with Metro if the Metro Commissioner did not have authority to exercise official responsibility in the matter.

Code Section 2.17.100 Council Employees.

(a) In addition to the requirements of this Chapter, all employees of the Metro Council shall comply strictly with the following requirements:

(1) In the event that the financial interest of any employee of the Metro Council is specifically affected by a resolution or ordinance before the Council, that individual shall provide written notice of such interest affected to the Presiding Officer of the Council. A copy of the notice should be placed on file with the Office of General Counsel.

(2) Employees of the Metro Council shall avoid the appearance of bias or favoritism and shall respect cultural differences.

Code Section 2.17.110 Registration of Lobbyists.

(a) Within three working days after exceeding the limit of time specified in Code Section 2.17.120 (a)(5), each lobbyist shall register with the Executive Officer by filing with the Executive Officer a statement containing the following information:

(1) The name and address of the lobbyist.

(2) The name and address of each person or agency by whom the lobbyist is employed or in whose interest the lobbyist appears or works, a description of the trade, business, profession or area of endeavor of that person or agency, and a designation by each such person or agency that the lobbyist is officially authorized to lobby for that person or agency.

(3) The name of any member of the Metro Council who is in any way employed by the lobbyist employer designated in paragraph (b) of this subsection or who is employed by the lobbyist or whether the lobbyist and member are associated with the same business. Ownership of stock in a publicly traded corporation in which a member of the Metro Council also owns stock is not a relationship which need be stated.

(4) The general subject or subjects of the legislative interest of the lobbyist.

(b) The designation of official authorization to lobby shall be signed by an officer of each such corporation, association, organization or other group or by each individual by whom the lobbyist is employed or in whose interest the lobbyist appears or works.

(c) A lobbyist must revise the statements required by subsection (a) of this section, if any of the information contained therein changes within 30 days of the change.

(d) A lobbyist registration expires two years after the date of filing or refiling and must be renewed by application accompanied by the fees described in Code Section 2.17.130.

Code Section 2.17.120 Exemptions to lobbyist registration requirements

(a) The requirements of Code Section 2.17.110 through Code Section 2.17.130 do not apply to the following:

(1) News media or their employees or agents, who in the ordinary course of business publish or broadcast news items, editorials or other comments or paid advertisements which directly or indirectly urge legislative action if such persons engage in no other activities in connection with such legislative action.

(2) Any Metro official or Metro employee acting in an official capacity.

(3) Public officials acting in their official capacity as a member or employee of a public agency.

(4) Any individual who receives no additional consideration for lobbying and who limits lobbying activities solely to formal appearances to give testimony before Metro Council or any of its committees, and who, if the individual testifies, registers an appearance in the records of the Council or its committees.

(5) Any person who spends not more than 10 hours during any calendar quarter lobbying, excluding travel time.

Code Section 2.17.130 Registration Fees.

(a) The Executive Officer shall impose and collect a lobbyist registration fee of \$50 for each person described in Section 2.17.110 (a) and registered with the Executive Officer.

(b) All Fees received by the Executive Officer under this section are nonrefundable and shall be paid into the Metro General Fund to the credit of the Executive Officer and used for the administration and enforcement of this Chapter.

Code Section 2.17.140 Verification of Reports, Registrations and Statements.

(a) Each report, registration or statement required by this Chapter shall contain or be verified by a written declaration that it is made under the penalties of false swearing.

(b) No person shall willfully make and subscribe any document which contains or is verified by a written declaration for false swearing which the person does not believe to be true and correct to every matter.

Code Section 2.17.150 Public Nature of Reports, Registrations and Statements.

All information submitted to the Executive Officer or Council Clerk in any report, registration or statement required by this Chapter is a public record.

Code Section 2.17.160 Sanctions for Violations.

Notwithstanding any other provision of the Metro Code, a person who violates any provision of this Chapter or fails to file any report, registration or statement or to furnish any

information required by this Chapter shall be subject to a civil penalty in an amount not greater than \$500.

SECTION 2

Metro Code Sections 2.02.240 and 2.04.032 are repealed.

ADOPTED by the Metro Council this _____ day of _____ 1998.

TABLED
Jon Kvistad, Presiding Officer

APPROVED AS TO FORM:

Daniel B. Cooper, General Counsel

GOVERNMENTAL AFFAIRS COMMITTEE REPORT
CONSIDERATION OF ORDINANCE NO. 98-738, FOR THE PURPOSE OF ADOPTING
ETHICAL REQUIREMENTS FOR METRO OFFICIALS AND FOR LOBBYISTS

Date: June 2, 1998

Presented by: Councilor McLain

Committee Action:

At its June 1, 1998, meeting, the Governmental Affairs Committee voted to recommend to the full council adoption of Ordinance No. 98-2663. Councilors McLain, Naito and McFarland voted in favor.

Committee Discussion:

The Committee initially moved to substitute Ordinance No. 98-738A for the original ordinance. The Committee then added several technical and substantive amendments, consistent with their discussion of the ordinance last meeting and with the advice of General Counsel. The following is a summary of Ordinance No. 98-738A, as amended.

Ordinance 98-738A

GIFTS

The gift restriction section has changed significantly. In a complex formula for Metro councilors, MERC commissioners and department directors, the "A" version uses the state law definition of gift that defines certain things as non-gifts, then prohibits the acceptance of gifts, meals or entertainment, with specific exceptions. Metro employees may not accept gifts, as state law defines them.

Under state law, gift is defined as follows:

"Gift" is something of economic value given to a public official or the public official's relative without valuable consideration of equivalent value, including forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

However, gift does not mean:

- (a) campaign contributions;
- (b) gifts from family members;
- (c) the giving or receiving of food, lodging and travel when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity, subject to state reporting requirements;
- (d) the giving or receiving of food or beverage if the food or beverage is consumed by the public official or the public official's relatives in the presence of the purchaser or provider; or
- (e) the giving or receiving of entertainment if the entertainment is experienced by the public official or the public official's relatives in the presence of the purchaser or provider thereof and the value of the entertainment does not exceed \$100 per person on a single occasion and is not greater than \$250 in a year.

Using this definition combined with the other provisions of the ordinance, Ordinance 98-738A allows the following for Metro elected officials, MERC commissioners and Metro department directors:

- receipt of campaign contributions
- receipt of gifts from family members
- receipt of meals at public meetings
- receipt of meals and entertainment at events sponsored by non-profit groups (payment for the meals and entertainment may come from anyone, including for-profit entities with legislative/administrative interest, but such payment must be reported on the Metro official's annual Statement of Economic Interest)
- receipt of food, lodging and travel when participating in the event as a Metro official, as long as it would have been otherwise eligible for payment as a Metro expense and was approved as such prior to the event
- receipt of anything, except meals or entertainment, that is given to others who are not public officials on the same terms or conditions (i.e. handouts at a meeting, etc.)

Ordinance 98-738A prohibits the following for Metro elected officials, department directors and MERC commissioners:

- receiving of gifts, meals or entertainment from anyone who has a legislative or administrative interest in something over which the Metro official exercises authority, except as provided above

"Legislative or administrative interest" is defined as an economic interest other than the receipt of wages or salary from metro, distinct from that of the general public, in an ordinance, resolution, regulation, proposal or other matter subject to the action or vote of the Metro official or Metro employee.

"Relatives" include spouses and children, brothers, sisters or parents of the public official or official's spouse.

Similarly, persons with a legislative or administrative interest in Metro are prohibited from furnishing gifts, meals or entertainment, except as provided above.

WHISTLEBLOWING

Ordinance 98-738A recognizes the state whistleblowing law and directs the Executive Officer to establish specific regulations and procedures to implement that law.

ABUSE OF OFFICE

Metro officials and employees are prohibited from using Metro offices, equipment or facilities for personal gain or to avoid the occurrence of personal expense. Metro officials and employees are also prohibited from removing Metro equipment from Metro facilities and from using their offices after hours for other than official reasons.

FINANCIAL INTEREST DISCLOSURE

The section on conflict of interest disclosure for Metro Council employees was amended to delete any reference to personal interest. As amended, Metro Council employees who have a financial interest in legislation before the Council, must disclose that interest to the Presiding Officer and give written notice to the Office of General Counsel.

LOBBYIST REGISTRATION

To eliminate the possibility that volunteers would be inadvertently included, "lobbyist" is now defined to mean:

- (a) any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying; and
- (b) any employee of a business, not-for-profit corporation, association, organization or other group, who engages in lobbying.

In the lobbyist registration section, the requirement for annual expense statements by lobbyists and their employers was deleted. Because gift-giving by lobbyists is essentially eliminated, the need for expense statements no longer exists.

Registration fee requirements were changed so that anyone who is required to register must pay the \$50 fee. Lobbyist registration requirements do not apply to:

- (1) news media, as specified;
- (2) any Metro official acting in an official capacity;
- (3) public officials acting in their official capacity;
- (4) any individual who receives no additional consideration for lobbying and who limits lobbying activities solely to formal appearances to give testimony before Metro Council or any of its committees, and who if the individual testifies, registers an appearance in the records of the Council or its committees; or
- (5) any person who spends not more than 10 hours during any calendar quarter lobbying, excluding travel time.

PROHIBITION AGAINST DOING BUSINESS WITH CERTAIN FORMER METRO OFFICIALS

This language was originally included as a housekeeping measure, but the committee made a few amendments. Unless the Council makes specific findings, the amended language prohibits doing business with any Metro official while the official is in office or within one year after the official leaves Metro, regardless of whether the official exercised official authority in the matter. Councilor Naito requested this amendment to delete this subject matter loophole. This section does not apply to MERC commissioners doing business with Metro who did not have authority to exercise official responsibility in the matter. This exception was made to avoid discouraging businesspersons from serving on MERC.

VIOLATIONS

Violations of any provision in this chapter are subject to a fine of up to \$500. Ordinance No. 98-738A deletes the Council as the body that determines whether there has been a violation and the amount of the fine.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING ETHICAL)	ORDINANCE No. 98-738
REQUIREMENTS FOR METRO OFFICIALS)	Introduced by Councilors McLain,
AND FOR LOBBYISTS)	McFarland and Naito

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1

Metro Code Section 2.02.240 is repealed.

SECTION 2

Sections 3 through 15 of this ordinance are added to and made a part of Metro Code Title II.

SECTION 3

Purpose and policy

(a) The Metro Council hereby declares that the purpose of Metro is to serve the public and to inform the public fully concerning its decision making. In accordance with such purposes, this chapter establishes a Code of Ethics for Metro officials and requirements for lobbyists appearing before Metro.

(b) In adopting this chapter, the Metro Council intends to:

(1) be consistent with and to add to current public policy established by the Oregon Legislative Assembly;

(2) require Metro officials to operate under the highest ethical standards in the state of Oregon;

(3) require Metro officials to treat their offices and positions as a public trust whose powers and resources are to be used only for the benefit of the public and not for any personal benefit; and

(4) require individuals and entities appearing before Metro to identify themselves and the interests they represent.

SECTION 4

Definitions

(a) For the purposes of Sections 1 through 13, unless the context requires otherwise, the following terms shall have the meaning indicated:

(1) "Consideration" includes a gift, payment, distribution, loan, advance or deposit of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable.

(2) "Ethics" means positive principles of conduct, some of which are also enforced by federal, state or other local law.

(3) "Gift" means any thing of economic value given to a Metro official or to any family member of the Metro official without valuable consideration of equivalent value. "Gift" does not include:

(A) beverages;

(B) tickets for or meals at an event sponsored by a non-profit organization;

(4) "Legislative Action" means introduction, sponsorship, testimony, debate, voting or any other official action on any ordinance, resolution, amendment, nomination, appointment or report, or any matter which may be the subject of action by the Metro Council or any committee thereof.

(5) "Lobbying" means influencing, or attempting to influence, legislative action through oral or written communication with Metro officials, solicitation of others to influence or attempt to influence legislative action or attempting to obtain the good will of Metro Councilors.

(6) "Lobbyist" means:

(A) any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying; and

(B) any person not otherwise subject to paragraph (A) of this subsection who provides personal services as a representative of a corporation, association, organization or other group, for the purpose of lobbying.

(7) "Metro Facilities" means rooms, meeting areas and other Metro property generally available to the public.

(8) "Metro Official" means any employee, officer, elected official or appointed member of a board, commission or committee of Metro.

(9) "Person" means any individual, association, corporation, organization or other group.

(10) "Public Agency" means a commission, board, advisory committee, agency or other governmental body.

(11) "Public Official" means any member or member-elect of any public agency and any member of the staff or an employee thereof.

(12) "Whistle-blowing" means disclosing information that the disclosing party reasonably believes is evidence of :

(A) a violation of any federal or state law, rule or regulation or of any provision of the Metro Charter or Metro Code; or

(B) mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of any federal, state, regional or local government.

SECTION 5

Ethical requirements of Metro public officials

(a) In addition to complying with all requirements of state law, including but not limited to all provisions of ORS 240.010 to 244.400 all Metro officials shall comply strictly with the following requirements:

(1) No Metro official or any member of the family of any Metro official shall accept any Gift from any individual or entity seeking Legislative action.

(2) Metro officials shall recognize whistle-blowing as appropriate.

(3) No Metro official shall conduct political campaigns on Metro time or property. Inquiries concerning whether any act or behavior constitute the conduct of political campaigns on Metro time or property may be reviewed with the Office of General Counsel.

(4) No Metro official shall use any Metro property or equipment, including telephone equipment, computers, electronic mail or any other device, except in the performance of Metro business for public benefit. Notwithstanding this section, Metro officials may make *de minimis*, discreet and infrequent personal use of telephone equipment and electronic mail.

(5) No Metro official shall use any Metro facilities for personal use except as may be specifically designated by other policy of the Metro Council, the Executive Officer or the Auditor.

(b) Failure by any employee of Metro to comply with the provisions of subsection (a) shall be grounds for disciplinary action.

(c) The Executive Officer, the Auditor and every member of the Metro Council shall be required to comply with the reporting requirements established by ORS 244.060,

including the filing of a Statement of Economic Interest on an annual basis as required by state law. A copy of the Statement of Economic Interest shall be filed with the Council clerk at the time of filing with the appropriate state agency.

(d) All members of the Metropolitan Exposition-Recreation Commission and employees filling positions requiring Council confirmation as set forth in section 2.02.080(e) shall file annually with the Council clerk a Statement of Economic Interest which is substantially consistent with that required by ORS 244.060.

(e) In addition to the requirements of this Section, all employees of the Metro Council shall comply strictly with the following requirements:

(1) In the event that the financial or personal interest of any employee of the Metro Council is specifically affected by a resolution or ordinance before the Council, that individual shall provide written notice of such interest affected to the Presiding Officer of the Council. A copy of the notice should be placed on file with the Office of General Counsel. For purposes of this subsection, "personal interest" means an interest evidenced by an affiliation with an advocacy organization outside of Metro which may create the perception of bias.

(2) Employees of the Metro Council shall avoid the appearance of bias or favoritism and shall respect cultural differences.

SECTION 6

Registration of Lobbyists

(a) Within three working days after exceeding the limit of time or expenditure specified in Section 7(a)(5) each lobbyist shall register with the Executive Officer by filing with the Executive Officer a statement containing the following information:

(1) The name and address of the lobbyist.

(2) The name and address of each person or agency by whom the lobbyist is employed or in whose interest the lobbyist appears or works, a description of the trade, business, profession or area of endeavor of that person or agency, and a designation by each such person or agency that the lobbyist is officially authorized to lobby for that person or agency.

(3) The name of any member of the Metro Council who is in any way employed by the lobbyist employer designated in paragraph (b) of this subsection or who is employed by the lobbyist or whether the lobbyist and member are associated with the same business. Ownership of stock in a publicly traded corporation in which a member of the Metro Council also owns stock is not a relationship that need be stated.

- (4) The general subject or subjects of the legislative interest of the lobbyist.
- (b) The designation of official authorization to lobby shall be signed by an officer of each such corporation, association, organization or other group or by each individual by whom the lobbyist is employed or in whose interest the lobbyist appears or works.
- (c) A lobbyist must revise the statements required by subsection (a) of this section, if any of the information contained therein changes within 30 days of the change.
- (d) A lobbyist registration expires two years after the date of filing or refiling and must be renewed by application accompanied by the fees described in Section 8.

SECTION 7

Exemptions to lobbyist registration requirements

- (a) The requirements of Sections 4 through 10 of this ordinance do not apply to the following:
 - (1) News media or their employees or agents, who in the ordinary course of business publish or broadcast news items, editorials or other comments or paid advertisements which directly or indirectly urge legislative action if such persons engage in no other activities in connection with such legislative action.
 - (2) Any Metro official acting in an official capacity.
 - (3) Public officials acting in their official capacity as a member or employee of a public agency.
 - (4) Any individual who receives no additional consideration for lobbying and who limits lobbying activities solely to formal appearances to give testimony before Metro Council or any of its committees, and who, if the individual testifies, registers an appearance in the records of the Council or its committees.
 - (5) Any person who spends not more than 10 hours during any calendar quarter lobbying, excluding travel time, and who does not spend an amount in excess of \$100 lobbying during any calendar quarter excluding the cost of personal travel, meals and lodging.

SECTION 8

Registration fees

- (a) The Executive Officer shall impose and collect a lobbyist registration fee of \$50 for each person described in Section 6(a) and registered with the Executive Officer.

(b) Notwithstanding subsection 8(a), there shall be no registration fee for any person described in Section 6(a) who is registered with the Executive Officer and who is not compensated for the person's services as a representative of a corporation, association, organization or other group.

(c) All fees received by the Executive Officer under this section are nonrefundable and shall be paid into the Metro General Fund to the credit of the Executive Officer and used for the administration and enforcement of this ordinance.

SECTION 9

Statements of lobbying expenses

(a) Any lobbyist who engages in any lobbying activities shall file with the Executive Officer on January 31 of each year a statement showing:

(1) The total amount of all moneys expended by the lobbyist for the purpose of lobbying in the preceding year by general category, including but not limited to:

- (A) food, refreshments and entertainment;
- (B) printing, postage and telephone;
- (C) advertising and public relations, education and research;
- (D) miscellaneous expenses; and

(2) The name of any Metro official to whom or for whose benefit, on any one occasion, any expenditure is made for the purposes of lobbying, and the date, name of payee, purpose and amount of that expenditure.

(b) Statements required by this section need not include amounts expended by the lobbyist for personal living and travel expenses and office overhead, including salaries and wages paid for staff and secretarial assistance, and maintenance expenses.

SECTION 10

Employers of lobbyists expense statements

(a) Any person which employs a lobbyist who was registered, or who was required to register with the Executive Officer at any time during the preceding calendar year, shall file with the Executive Officer, by January 31, a statement showing for the preceding calendar year:

(1) the total amount of all moneys expended for lobbying activities in the employer's behalf, excluding living and travel expenses incurred; and

(2) the name of any Metro official to whom or for whose benefit, on any one occasion, any expenditure for the purpose of lobbying is made by the employer, but not including information previously reported in compliance with Section 9, and the date name of payee, purpose and amount of expenditure.

SECTION 11

Verification of reports, registrations and statements

(a) Each report, registration or statement required by this ordinance shall contain or be verified by a written declaration that it is made under the penalties of false swearing.

(b) No person shall willfully make and subscribe any document which contains or is verified by a written declaration for false swearing which the person does not believe to be true and correct to every matter.

SECTION 12

Public nature of reports, registrations and statements

All information submitted to the Executive Officer in any report, registration or statement required by this ordinance is a public record.

SECTION 13

Sanctions for violations

Notwithstanding any other provision of the Metro Code, a person who violates any provision of this ordinance or fails to file any report, registration or statement or to furnish any information required by this ordinance shall be subject to a civil penalty as determined by the Metro Council in an amount not greater than \$500.

SECTION 14.

Metro Code Section 2.04.032 is repealed and Section 15 of this Ordinance is enacted in lieu thereof.

SECTION 15.

Prohibition against doing business with certain former Metro officials

(a) Except as provided for in subsection (d), Metro may not do business with any Metro official while the official is in office or within one year after the Metro official ceases to be a Metro official if the official had authority to exercise official responsibility in the matter. Any contract entered into in violation of this provision is void.

(b) Metro officials shall be deemed to have authority to exercise official responsibility as follows:

(1) Elected officials have authority to exercise official responsibility over any Metro matter.

(2) Appointed commissioners have authority over any matter over which the relevant commission has jurisdiction.

(3) Department directors have authority over any matter related to the department they administer.

(c) Definitions: For the purpose of this Section undefined terms used herein shall be construed as defined in ORS chapter 244; the following terms shall have the following meaning:

(1) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity.

(2) "Business with which the Metro official is associated" means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

(3) "Department director" means any person employed by Metro in a position on a permanent basis which is subject to appointment by the Executive Officer and confirmation by the Metro Council.

(4) "Doing business" means entering into a direct contractual relationship with a business with which the Metro official is associated.

(5) "Elected official" means any person elected or appointed as a member of the Metro Council, or as the Executive Officer or the Auditor.

(6) "Metro" means all of Metro including any department or branch of Metro including any Metro commission.

(7) "Metro commissioner" means any person appointed to a position on a commission created pursuant to an ordinance adopted by the Metro Council whose appointment is subject to confirmation by the Metro Council.

(8) "Metro official" means any department director, elected official or Metro commissioner.

(d) Upon the request of the Executive Officer or a Metro commission, the Council may waive the effect of the prohibition contained in subsection (a) upon making written findings that:

(1) It is in the best interests of Metro to do business with the Metro official.

(2) The Metro official took no action while in office that directly related to the preparation of the terms and conditions in the contract documents that may give an appearance of impropriety or favoritism.

(3) Other factors exist which are explicitly found by the Council to benefit Metro that outweigh the policy considerations of ensuring that no appearance of favoritism exists in the award of Metro contracts.

(e) This section applies only to Metro officials who first take office or are re-elected or re-appointed to an office after September 7, 1995. This section shall not be construed to permit any activity that is otherwise prohibited by any other statute, rule, ordinance, or other law.

ADOPTED by the Metro Council this ____ day of _____ 1998.

Jon Kvistad, Presiding Officer

APPROVED AS TO FORM:

ATTEST:

Daniel B. Cooper, General Counsel

Recording Secretary

GOVERNMENTAL AFFAIRS COMMITTEE REPORT

CONSIDERATION OF ORDINANCE 98-738, FOR THE PURPOSE OF ADOPTING ETHICAL REQUIREMENTS FOR METRO OFFICIALS AND FOR LOBBYISTS.

Date: March 17, 1998

Presented by: Councilor Naito

Committee Action:

At its March 16, 1998, meeting, the Governmental Affairs Committee completed several weeks of work on an ethics ordinance that applies to both Metro officials and to those seeking to influence Metro action. The Committee unanimously agreed to introduce the work as an ordinance, No. 98-738, authored by all of them: Councilor McFarland, Councilor McLain and Councilor Naito.

Existing Law:

The Metro Code currently prescribes a code of behavior consistent with state law, including a requirement providing that Metro elected officials and employees may not solicit or accept gifts in excess of \$100 from a single entity in any one year. The Auditor and Executive Officer adopted policies last year to cover employees in the Auditor's office and the agency generally which include broad behavioral prescriptions covering the topics of trust, objectivity, leadership and accountability.

Analysis:

This ordinance is essentially composed of three parts. This first element involves a code of ethics for Metro officials; the second part outlines a system for lobbyist registration; and the third restates current law regarding the prohibition against doing business with certain former Metro officials.

I. Ethics

A. Intent

This ordinance creates a Code of Ethics, the intent of which is to:

- (1) be consistent with and supplement state law;
- (2) require Metro officials to operate under the highest ethical standards;
- (3) require Metro officials to treat their office as a public trust whose powers and resources are to be used only for the benefit of the public; and
- (4) require individuals and entities communicating with Metro to identify themselves and the interests they represent.

Earlier language taken from the Executive Officer's Code of Ethics stated that staff and elected officials should act to avoid the appearance of impropriety. Councilor McFarland objected to the subjectivity of this language arguing that it was an impossible standard to meet. In response, Councilor Naito suggested the current language that requires Metro officials to operate under the highest ethical standards in the state. The committee agreed that this language represented its intent: to go beyond the requirements of state law and set a clear standard.

The fourth intention listed above was the impetus behind Councilor Naito's suggestion for registration of lobbyists. Councilor McLain strongly agreed that it is often unclear what entities lobbyists are representing and that registration of

lobbyists would inform Councilors better as to the interests of persons soliciting specific actions from the Council.

B. Requirements for Metro officials

The ethical requirements of this ordinance apply to any employee, officer, elected official or appointed member of a board, commission or committee of Metro.

This ordinance provides that Metro officials may not accept gifts from any individual or entity seeking legislative action. Gifts do not include beverages or tickets for or meals at an event sponsored by a non-profit organization.

Metro officials are also prohibited from using Metro facilities, property and equipment for personal use. *De minimis*, discreet and infrequent use of telephones and email is allowed.

Finally, whistle-blowing is recognized and conducting political campaigns on Metro time and property is prohibited. Metro Council employees are subject to strict requirements regarding bias. Those Council employees who have a financial or personal interest in a particular piece of legislation are required to disclose that interest to the Presiding Officer. Council employees must avoid any appearance of bias or favoritism and respect cultural differences.

Employees who fail to comply with any of the ethical provisions of the ordinance are subject to discipline.

The exceptions to the gift rule allow Metro officials to have casual meetings over coffee, for example, with those wishing to discuss Metro issues and to attend and eat at non-profit events.

II. Lobbyist Registration

A. What it is

The ordinance requires lobbyists to register with the Executive Officer in the same manner that lobbyists are required to register at the state level with the Oregon Standards and Practices Commission.

B. Who it covers

Lobbyist is defined as any individual who agrees to provide personal services for money or any other consideration for the purpose of influencing, or attempting to influence, legislative action. Lobbyists also includes persons who provide personal services as representatives of corporations, associations, organizations or other groups for the purpose of influencing, or attempting to influence, legislative action.

The following categories are exempt from the definition of lobbyist:

- (1) news media or their employees;
- (2) any Metro official acting in an official capacity;
- (3) public officials acting in their official capacity as a member or employee of a public agency;

- (4) unpaid volunteers who limit lobbying to testimony at committees and/or Council meetings and who register with the clerk; and
- (5) persons who spend not more than ten hours or \$100 during any quarter on lobbying, excluding personal expenses and travel time.

These provisions allow Metro employees and elected officials to work together on legislation without having to register; and they allow mayors and other city and county officials to work with Metro officials on legislation without having to register. Also, citizens are allowed to testify before Metro committees and the Council as frequently as they choose without registering with the Executive Officer and anyone with a desire to discuss legislation with Metro elected officials or employees who does not spend more than 10 hours or \$100 doing so in a three month period need not register. The intent of these provisions is to avoid any inconvenience to citizens or to Metro's local government partners who wish to participate in the process.

C. Information required

Beyond the standard information regarding location, representation and issue of interest, registered lobbyists and their employers are also required by this ordinance to file a statement of lobbying expenses.

D. Fee

A registration fee of \$50 is imposed on compensated lobbyists. No fee is imposed on unpaid volunteers who must register under these provisions. The fee is deposited into the General Fund to be used to pay the expenses incurred by the Executive Officer in implementing this ordinance.

This fee arrangement is essentially identical to the state's system.

E. Sanctions for violation

Violations of this ordinance may result in fines up to \$500 as determined by the Metro Council.

Councilor Naito suggested the \$500 civil fine to eliminate any possibility that a criminal sanction could be imposed as it is for other violations of the Metro Code.

II. Prohibitions against doing business with certain former Metro officials

In drafting this ordinance, legal counsel reorganized the current Metro Code provisions regarding ethics. This section of the ordinance is current law, but is added in this ordinance as part of the chapter reorganization. This section clarifies the circumstances under which Metro may do business with former Metro department directors, elected officials or commissioners.