



# DuPage Water Commission

600 E. Butterfield Road, Elmhurst, IL 60126-4642  
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## AGENDA

**ADMINISTRATION COMMITTEE  
THURSDAY, JUNE 12, 2008  
7:00 P.M.**

**600 EAST BUTTERFIELD ROAD  
ELMHURST, IL 60126**

## COMMITTEE MEMBERS

L. Hartwig, Chair  
D. Zeilenga  
E. Chaplin  
W. Murphy

- I. Roll Call
- II. Approval of Minutes of May 8, 2008
- III. Purchasing Policy
- IV. Ethics Policy
- V. Other
- VI. Adjournment

Board/Agendas/Administration/ADM0806.DOC

All visitors must present a valid drivers license or other government-issued photo identification, sign in at the reception area and wear a visitor badge while at the DuPage Pumping Station.

**MINUTES OF A MEETING OF THE  
ADMINISTRATION COMMITTEE  
OF THE DUPAGE WATER COMMISSION  
HELD ON MAY 8, 2008**

The meeting was called to order at 7:00 P.M. at the Commission's office located at 600 East Butterfield Road, Elmhurst, Illinois.

Committee members in attendance: E. Chaplin, W. Murphy, and L. Hartwig

Committee members absent: D. Zeilenga and L. Rathje (*ex officio*)

Also in attendance: R. Martin and M. Crowley

Commissioner Chaplin moved to approve the Minutes of the April 10, 2008, Administration Committee meeting. Seconded by Commissioner Murphy and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

With respect to Resolution No. R-25-08: A Resolution Amending the Personnel Manual, the Staff Attorney explained that even though it was not necessary to amend the Personnel Manual to incorporate the April 10, 2008, amendment to the Commission's Tuition Reimbursement Policy (limiting reimbursement to \$4,000.00 per employee per fiscal year), it would prudent to incorporate such a cap to avoid confusion among the employees.

In response to Commissioner Murphy's question, General Manager Martin distributed a memorandum concerning the cost of higher education. Based upon the data contained in the memorandum, Commissioner Murphy commented that the Commission's new reimbursement limit of \$4,000.00 per employee per fiscal year would only cover one or two classes at Devry and, thus, as one employee is currently doing, it would take nine years for an employee attending Northern to garner a graduate degree.

Commissioner Murphy questioned whether the General Manager verified job-relatedness as part of the process. General Manager Martin responded in the affirmative. Commissioner Hartwig inquired whether anyone had ever been turned down. General Manager explained that no one had ever been turned down because all employees taking advantage of the program were working toward obtaining business degrees.

Commissioner Murphy suggested that perhaps the Commission should consider tying the cap to a percentage of the cost. Commissioner Chaplin disagreed, noting that reimbursement amounts would vary depending upon where an employee chose to go to school, raising discrimination concerns and seeming inequitable.

Commissioner Murphy asked Commissioner Hartwig whether Addison's 75% cost limitation had ever caused such problems. Commissioner Hartwig responded in the negative but noted that Addison has a \$3,000.00 per employee per fiscal year cap in addition to a 75% cost limitation.

Minutes 05/08/08 Administration Committee Meeting

Commissioner Chaplin commented that the Commission needs to be respectful of taxpayers; that the program was never intended to be a full reimbursement program; and that the majority of the Board agreed at the April meeting that a \$4,000.00 per employee per fiscal year cap was reasonable. Commissioner Chaplin added that she failed to see how any graduate degree was job-related for any position other than perhaps the Staff Attorney and the General Manager.

Commissioner Hartwig asked how the cost of an MBA was calculated in the memorandum. General Manager Martin advised that the data was obtained from the university. After confirming with Commissioner Murphy the typical number of credit hours required for an MBA, Commissioner Hartwig advised that the cost identified in the memorandum was not calculated correctly unless books and other incidentals were included.

Commissioner Hartwig then asked Commissioner Murphy how much tuition reimbursement Woodridge provides. Commissioner Chaplin advised that she had checked and the amount was capped at \$3,000.00.

After (1) the Staff Attorney re-confirmed that even though it was "cleaner" to amend the Personnel Manual to incorporate the cap, it was not critical to do so, and (2) Commissioner Murphy expressed his strong disagreement with the cap, Commissioner Chaplin moved to recommend to the Board approval of Resolution No. R-25-08: A Resolution Amending the Personnel Manual. Seconded by Commissioner Hartwig and approved by a Voice Vote.

All voted aye except Commissioner Murphy voted nay. Motion passed.

There being no further discussion, Commissioner Murphy moved to adjourn the meeting at 7:25 P.M. Seconded by Commissioner Chaplin and unanimously approved by a Voice Vote.

All voted aye. Motion carried.



# DuPage Water Commission

## MEMORANDUM

TO: Administration Committee  
Finance Committee

CC: Commissioners

FROM: Maureen A. Crowley *mac*  
Staff Attorney

DATE: June 5, 2008

SUBJECT: Purchasing Policy

In response to Commissioner Chaplin's request, and to assist in your deliberations in Committee, attached is a copy of the Commission's purchasing policy, which is contained within Article VIII and Article IX (as amended by Ordinance O-1-05) of the Commission's By-Laws.

In essence, the procurement procedures contained in the Commission's By-Laws require all contracts for supplies, material, or work in excess of \$20,000.00 (except contracts for personal services or services rendered in a professional capacity such as accounting, engineering or legal services and contracts for the construction of the Commission's water supply system) to be made only after the solicitation of at least two sealed quotations. However, pursuant to Article XII, Section 3, of the Commission's By-Laws, the procurement procedures of the Commission's By-Laws (among other things) may be waived by a two-thirds majority vote of the Commissioners present at the meeting at which a non-conforming contract is awarded. In addition, Board approval is required for all contracts

- For professional services
- For the acquisition, construction, extension, repair or replacement of the Waterworks System in excess of \$100,000
- For supplies, material, or work in excess of \$20,000.00 if (a) the procurement procedures of the Commission's By-Laws were not followed; or (b) only one sealed quotation is received; or (c) the vendor is a sole source; or (d) the purchase was not included in Annual Management Budget or would exceed the amount budgeted

As a unit of local government, the Commission is also subject to the requirements of the Local Government Professional Services Selection Act and its qualification-based selection process whenever the Commission desires to procure non-emergency

architectural, engineering, or land surveying services from entities with whom the Commission has no satisfactory pre-existing relationship at a reasonably estimated cost of \$25,000.00 or more.<sup>1</sup>

Finally, the Commission is subject to a statutory competitive bidding requirement but that requirement is only applicable to “. . . contracts for the construction of a waterworks system or of a common source of supply of water, or both. . . .” 65 ILCS 5/11-135-5.<sup>2</sup>

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<sup>1</sup>Under the Local Government Professional Services Selection Act, a public body must generally advertise for proposals unless the public body has a satisfactory pre-existing relationship with an architect, engineer, or land surveyor (as the case may be). Once the public body has received proposals for the specific project, the public body may conduct discussions and hold public presentations with the proposers. Based upon the public body's evaluation of the proposals received and the discussions and public presentations, the public body then ranks the top three proposals. Thereafter, contract negotiations with the most favorably ranked proposer begin. If the public body cannot come to terms with the most favorably ranked proposer, it then negotiates with the next most favorably ranked proposer. If the public body cannot negotiate a contract with any of the three most favorably ranked proposers, the public body reevaluates the project and then creates a second list of three proposals with respect to which the public body will commence negotiations (in the same rank order as was the case with the first list).

<sup>2</sup>In order to achieve the goals and objectives of competitive bidding statutes, the solicitation of contract procedure must be specific, binding, and prohibit post-bid or post-offer negotiations of material issues. The plans and specifications for the work must be sufficiently detailed so as to enable bidders to determine the true nature of the work to be performed, but not so specific as to preclude competitive bidding by limiting the number of potential bidders. *Smith v. Intergovernmental Solid Waste Disposal Association*, 239 Ill. App. 3d 123 (4<sup>th</sup> Dist. 1992).

~~Commissioners. Task force membership may include, but need not be limited to Commissioners.~~

## ARTICLE VIII

### PURCHASING PROCEDURES

Section 1. Coverage. These procedures shall cover all contracts for supplies, material or work being purchased by the Commission except as herein set forth.

Section 2. Definitions. For the purpose of these procedures, "supplies, material or work" shall mean and include, except as hereinafter limited, all work, labor or services; other contracts for services; supplies, equipment or other materials; and the rental, repair or maintenance of equipment, machinery and other personal property. The term "work" shall not include personal services or services rendered in a professional capacity such as accounting, engineering or legal services.

Section 3. Minor Purchases. The General Manager shall have the authority to purchase on behalf of the Commission supplies, material or work requiring an expenditure of the sum provided for in Ill. Rev. Stat. ch. 24, § 8-9-1 or less pursuant to such procedures as he or she deems calculated to insure the best interests of the Commission, without a specific solicitation of quotations or advertisement for bids; provided, however, that this section shall not apply to contracts for construction of the Commission's water supply system, which shall be governed by Section 5 below.

Section 4. Purchases Requiring Quotations. All purchases of supplies, material or work included in the Annual Management Budget and requiring an expenditure in excess of the sum provided for in Ill. Rev. Stat. ch. 24, § 8-9-1 shall be made only after the solicitation of at least two written quotations. All such quotations shall be submitted sealed to the Commission and shall be opened in public at a date and time set by the General Manager. A tabulation of all quotations received shall be presented to the Board of Commissioners. In cases where only one quotation is received, there is only a single source for the supplies, materials or work or the purchase was not included in the Annual Management Budget, the expenditure may only be authorized by the Board of Commissioners. This section shall not apply to contracts for construction of the Commission's water supply system, which shall be governed by Section 5 below. The General Manager shall keep a record of all such purchases and the quotations submitted pursuant to the solicitation therefor.

Section 5. Water Supply System Contracts. All contracts for the construction of the Commission's water supply system shall be entered into only after advertising for bids in the manner required by the Water Commission Statute.

Section 6. Bid Deposits. When deemed necessary by the General Manager and Board of Commissioners, bid deposits shall be required.

Section 7. Specifications. The following shall apply to specifications.

- a. Specifications shall be available to all bidders;
- b. Specifications shall be general in nature and not so specific as to limit a bidder to a specific brand; and
- c. The Commission shall reserve the right to make clarifications, corrections or changes in specifications at any time prior to the time bids are opened so long as all bidders or prospective bidders are informed of said clarifications, corrections or changes in the specifications.

Section 8. Bid Opening Procedure.

- a. ~~Sealed~~ Sealed. Bids shall be submitted sealed to the Commission and shall be identified as bids on the envelopes. The date and time the bid was received shall be recorded on the envelope of the bid.
- b. Opening. Bids shall be opened in public at the time and place stated in the public notices.
- c. Tabulation. A tabulation of all bids received shall be posted for public inspection.

Section 9. Acceptance or Rejection of Bids. Except when expressly and specifically limited by the terms of a particular bid solicitation, the Board of Commissioners shall have the authority to accept the bid which, in its judgment, is the best



bid and most favorable to the interests of the Commission and the public; to reject the low bid; to accept any item of any bid; to reject any and all bids; to accept and incorporate corrections or clarifications following bid opening when to do so would not, in the Commission's opinion, prejudice the bidding process or create any improper advantage to bidders; and to waive irregularities and informalities in any bid submitted or in the bidding process.

Section 10. Bidders in Default to Commission. The Board of Commissioners shall not accept the bid of a contractor who is or has been in default on a contract with the Commission or in the payment of monies due the Commission.

Section 11. Award of Contract.

a. Authority in Board of Commissioners. The Board of Commissioners shall have the authority to award all contracts for the construction of the Commission's water supply system.

b. Awards. Contracts shall be awarded to the bidder whose proposal is found to be in the best interests of the Commission. In determining the bidder who is to receive the award, the Commission shall consider the following factors in addition to price:

(i) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(ii) Whether the bidder has the requisite facilities, plant, organization and staffing to enable the bidder to perform the contract or provide the service successfully and promptly, within the time specified, without delay or interference;

(iii) The character, integrity, reputation, judgment, experience and efficiency of the bidder;

(iv) The quality of the bidder's performance of previous contracts or services;

(v) The previous and existing compliance by the bidder with the laws and ordinances relating to the contract or services;

(vi) The sufficiency of the financial resources and ability of the bidder to perform the contract or to provide the services;

(vii) The quality, availability, adaptability and capabilities of the supplies, material or work to the particular use required;

(viii) The ability of the bidder to provide future maintenance and service for the subject of the contract, if applicable.

(ix) Any other factor that the Commission may legally consider in determining the proposal that is in the best interests of the Commission.

c. Subsequent Awards. Contracts awarded to a bidder who fails to comply with all conditions precedent to formal execution of the contract agreement may be annulled. Upon annulment of an award, the Commission may award the contract to any other bidder whose proposal is found to be in the best interests of the Commission in accordance with subpart (b), above, or the Commission may advertise anew for bids.

Section 12. Single Bids. The Board of Commissioners desires competitive bids; however, where there is only one bid, that fact alone shall not prevent the Board of Commissioners from accepting that bid.

Section 13. Performance and Payment Bonds. The Board of Commissioners may require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interests of the Commission. The Board of Commissioners shall require a payment bond in such amount as it shall find reasonably necessary to secure payment for material used and labor performed in connection with a public work.

Section 14. Change Orders. All contract change orders shall be considered and approved or disapproved by the Commission

during the regular course of its conduct of business except in the following circumstances.

a. By General Manager: The General Manager shall have the authority to approve any contract change order:

- (i) based entirely upon approved unit prices; or
- (ii) in an amount not in excess of \$100,000 when in the judgment of the General Manager and the Commission's consulting engineer such change order requires immediate approval to avoid the incurring of unnecessary and excessive costs by the Commission.

A full written description and explanation of any change order so approved by the General Manager shall be distributed to the Board of Commissioners as soon as possible following its approval.

b. By Commission at Special or Emergency Meeting. When in the judgment of the General Manager a change order in an amount in excess of \$100,000 requires a more immediate approval than the Commission's regular meeting schedule would permit in order to avoid the incurring of unnecessary and excessive costs by the Commission, or when, in any other

case, in the judgment of the General Manager a change order requires the immediate attention of the Commission, the General Manager may call a special or emergency meeting of the Commission for the consideration of such change order.

Section 15. Prohibition Against Subdivision. No contract or change order shall be subdivided to avoid the requirements of these By-Laws. This prohibition shall not prevent the repetitive purchase of supplies, material or work which is purchased over a period of time as needed.

Section 16. Emergencies. In case of an apparent emergency which requires immediate purchase of supplies, material or work to protect persons or property, the General Manager shall be authorized to secure any supplies, material or work necessary to address such emergency by whatever means deemed necessary without regard to the procedures otherwise required under these By-Laws. A full written description and explanation of any such emergency purchase shall be distributed to the Board of Commissioners as soon as possible following the emergency.

Section 17. Bid Item Must Be Budgeted. Contracts or purchase orders cannot be executed and are invalid and void unless the amounts due thereunder have been budgeted by the Board of Commissioners.

Section 18. Cooperative Purchasing Arrangements. Nothing in this Article VIII shall be interpreted to prohibit the Commission from participating with other public bodies,

associations, or agencies, or with other units of government in any cooperative purchasing arrangements subject to bidding or other processes that assure the protection of the best interests of the Commission. Supplies, materials or work purchased through such arrangements shall be exempted from the requirements of this Article.

## ARTICLE IX

### DISBURSEMENTS

Section 1. No Disbursement Without Authority. No funds, monies or other things of value in the hands of the Commission shall be paid out, disbursed or delivered except upon warrant, draft or order approved and signed as herein provided.

*AMENDED  
0-1-05*  
Section 2. Authorization. All disbursements in excess of the amount provided for in Ill. Rev. Stat. ch. 24, § 8-9-1 shall be approved in advance by the Board of Commissioners. The General Manager is authorized to incur and pay contingency expenditures up to and including said amount without the prior approval of the Board of Commissioners.

*AMENDED  
0-1-05*  
Section 3. Required Signatures. All checks shall be signed by one of the following: the Chairman, the Treasurer or the Finance Committee Chairman. All checks shall be co-signed by one of the following: the General Manager, the Assistant to the General Manager or the Financial Administrator.

Section 4. Designation of Fund and Payee. For each check issued by the Commission, a record shall be kept which specifies

the particular fund or appropriation to which it is chargeable and the person or other entity to whom it is payable.

## ARTICLE X

### BUDGET AND AUDIT

Section 1. Fiscal Year. The fiscal year of the Commission shall begin May 1 and shall end April 30 of the following year.

Section 2. Tentative Management Budget. In accordance with the Commission's obligations under the Water Purchase and Sale Contract dated as of June 11, 1986 between the Commission and Charter Customers (the "Customer Contract") and the budget covenant contained in Ordinance No. 0-1-87 entitled an Ordinance of the DuPage Water Commission, Counties of DuPage, Cook and Will, Illinois, Authorizing the Issuance and Sale of Water Revenue Bonds and Providing The Terms of and Security for Repayment (the "Revenue Bond Ordinance"), the General Manager and Administrative Staff shall prepare and submit to the Board of Commissioners and the Commission's Charter Customers a tentative Management Budget not less than 60 days prior to the beginning of the fiscal year. The tentative Management Budget shall contain in reasonable detail an estimate of (i) revenues of the Waterworks System and any other funds to be deposited in the Water Fund (as defined in the Revenue Bond Ordinance), (ii) Fixed Costs (as defined in the Customer Contract) to be payable by each Charter Customer in a stated aggregate dollar amount per month for each, and (iii) Operations and Maintenance Costs (as defined in the Customer Contract) in a stated price per 1000 gallons of

DUPAGE WATER COMMISSION

ORDINANCE NO. O-1-05

AN ORDINANCE AMENDING THE  
BY-LAWS OF THE DUPAGE WATER COMMISSION  
(Amending Sections 2 and 3 of Article IX)

WHEREAS, the Board of Commissioners of the DuPage Water Commission has determined that it is appropriate and in the best interests of the Commission to amend the Commission's By-Laws, as restated in Ordinance No. O-5-92 and amended by Ordinance Nos. O-1-93, O-1-94, O-14-94, O-10-99, O-7-00, O-11-02, O-2-04, O-11-04, and O-12-04 to modify check processing including electronic signatures, more frequent payments to vendors and the option of having two managers sign checks;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE:    Recitals. The foregoing recitals are hereby incorporated herein as findings of the Board of Commissioners of the DuPage Water Commission.

SECTION TWO:    Amendment. Section 2, entitled "Authorization," of Article IX, entitled "Disbursements," of the Commission's By-Laws shall be, and it hereby is, amended in its entirety so that said Section 2 shall hereafter be and read as follows:

"Section 2. Authorization. All disbursements in excess of the amount provided for in 65 ILCS 5/8-9-1 shall be approved in advance by the Board of Commissioners except for disbursements made in accordance with the payment provisions of contracts for services, supplies, material, or work purchased by the Commission, which contracts were either approved by the Board of Commissioners or procured in accordance with the purchasing procedures of these By-Laws. The General Manager is authorized to incur and pay contingency expenditures up to and including the amount provided for in 65 ILCS 5/8-9-1 without the prior approval of the Board of Commissioners."

SECTION THREE: Amendment. Section 3, entitled "Required Signatures," of Article IX, entitled "Disbursements," of the Commission's By-Laws shall be, and it



hereby is, amended in its entirety so that said Section 3 shall hereafter be and read as follows:

"Section 3. Required Signatures. All checks shall be manually or electronically signed by any two of the following: the Chairman, the Treasurer, the Finance Committee Chairman, the General Manager, the Financial Administrator or the Staff Attorney."

SECTION FOUR: Effective Date. This Ordinance shall be in full force and effect from and after its adoption.

AYES: R. Benson, E. Chaplin, R. Ferraro, L. Hartwig, G. Mathews,  
W. Mueller, W. Murphy, A. Poole, J. Vrdolyak, D. Zeilenga,  
and M. Vondra

NAYS: None

ABSENT: T. Feltes and G. Wilcox

ADOPTED this 10th day of February 2005

  
\_\_\_\_\_  
Chairman

ATTEST:

  
\_\_\_\_\_  
Clerk



# DuPage Water Commission

## MEMORANDUM

TO: Administration Committee

CC: Commissioners

FROM: Maureen A. Crowley  
Staff Attorney

DATE: June 5, 2008

SUBJECT: Ethics Policy

Attached are copies of Article XI of the Commission's By-Laws (as amended by Ordinance O-11-04) and Section 4.29 of the Commission's Personnel Manual which collectively comprise the Commission's ethics policy.

In addition, Commission officers and employees are subject to certain statutes governing prohibited interests in contracts.\*

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\* Section 3 of the Public Officer Prohibited Activities Act provides in relevant part:

"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. 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." 50 ILCS § 105/3(a).

Similarly, Section 2 of the Water Commission Act of 1985, 70 ILCS 3720/2, provides in relevant part:

"No commissioner or employee of the commission . . . shall be interested directly or indirectly in any contract or job of work or materials, or the profits thereof, or services to be performed for or by the commission. A violation of any of the foregoing provisions of this subsection is a Class C misdemeanor. A conviction is cause for the removal of a person from his office or employment." 70 ILCS § 3720/2(c)(iii).

Conflict of interest statutes such as these have uniformly been interpreted to require a certain, definable, pecuniary or proprietary interest, financial in nature. *Robertson v. Binno*, 56 Ill. App. 3d 390 (3<sup>rd</sup> Dist. 1978).

~~such fiscal year from all sources, an estimate of expenditures contemplated for such fiscal year, and a statement of estimated cash expected to be on hand at the end of such year. The Board of Commissioners shall hold at least one public hearing on the preliminary Combined Annual Budget and Appropriation Ordinance prior to final action thereon, in compliance with the Municipal Budget Law, Section 801 et seq. of Chapter 85 of Illinois Revised Statutes.~~

~~Section 5. Adoption of Combined Annual Budget and Appropriation Ordinance Pursuant to the Illinois Municipal Budget Law Act. The Board of Commissioners shall approve and adopt the Combined Annual Budget and Appropriation Ordinance on or before July 31 each year.~~

~~Section 6. Audit. The Board of Commissioners shall provide for an annual audit to be made by an independent certified public accountant in accordance with the Illinois Audit of Accounts Act (Ill. Rev. Stat. ch. 85, § 701 et seq.). The Commission's Finance Committee shall from time to time interview and recommend to the Board of Commissioners independent certified public accountants to perform the annual audit; provided, however, that no such accountant shall perform more than five successive annual audits.~~

## ARTICLE XI

### CONDUCT OF THE COMMISSIONERS, OFFICERS AND EMPLOYEES OF THE COMMISSION

Section 1. Disqualification. No Commissioner who has a financial or other material personal interest in any matter

before the Commission shall participate in any way in the deliberations or decision on such matter and, furthermore, shall remove himself or herself from any meeting or hearing while such matter is under consideration.

Section 2. Interest in Contracts. The Commissioners and all employees and appointees of the Commission shall act and conduct themselves in such a manner that they do not violate any statute, ordinance, rule or regulation of the Commission, the State of Illinois, or the federal government dealing with interest in contracts, jobs, work or materials or the profits thereof, or services to be performed for or by the Commission.

*AMENDED  
0-11-04*  
Section 3. Gifts and Rebates. The Commissioners and all employees and appointees of the Commission are expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any contract or purchase order is or might be awarded any gift, rebate, money or any other item of value.

Section 4. Commitments. No Commissioner, committee, task force, employee or appointee of the Commission shall in any way bind the Commission to do or not to do any certain thing unless expressly authorized to do so and no act of any such person or body shall in any way be binding upon or recognized by the Commission unless expressly ratified or approved by the Board of Commissioners.

Section 5. Claims and Actions. The Commission shall defend and indemnify its Commissioners, employees and appointees against claims or actions based upon injuries allegedly arising out of

any act, error or omission occurring within the exercise of their lawful duties or scope of employment, as the case may be. This section shall not, however, apply to provide defense or indemnification to any such Commissioner or employee in any action instituted by or on behalf of the Commission against such Commissioner, employee or appointee.

## ARTICLE XII

### MISCELLANEOUS

Section 1. Conflict. In the event of any conflict between these By-Laws and any other ordinance, resolution, rule, regulation or order of the Commission, these By-Laws shall control.

Section 2. Amendment. In adopting these By-Laws, the Commissioners of the DuPage Water Commission recognize that the organizational guidelines and rules herein set forth may require revision and adjustment as experience will dictate. Amendments may be proposed by any Commissioner. Any proposal to amend these By-Laws shall be submitted in writing to each Commissioner for consideration at a regular Commission meeting. No such proposal shall be passed at the same meeting at which it is initially considered. Any amendment to these By-Laws shall be effected by ordinance, which ordinance may take effect immediately upon its passage and approval, unless the terms of such ordinance provide otherwise.

Section 3. Suspension of the Rules. The Commission may, by a two-thirds majority vote of the Commissioners present, determine to suspend any of the Rules contained in Article VI through

DUPAGE WATER COMMISSION

ORDINANCE NO. O-11-04

AN ORDINANCE AMENDING THE  
BY-LAWS OF THE DUPAGE WATER COMMISSION  
(Amending Article XI)

WHEREAS, the DuPage Water Commission (the "Commission") is a county water commission and as such a political subdivision and unit of local government organized and existing under the laws of the State of Illinois for the public purpose of acquiring and operating a common source of supply of Lake Michigan water; and

WHEREAS, on May 31, 2003, the General Assembly adopted the State Officials and Employees Ethics Act, which Act became effective on November 19, 2003; and

WHEREAS, on November 20, 2003, the General Assembly adopted Senate Bill 702, which Senate Bill amended the State Officials and Employees Ethics Act, repealed the State Gift Ban Act, and became effective on December 9, 2003 (the State Officials and Employees Ethics Act, as amended, is hereinafter collectively referred to as the "Act"); and

WHEREAS, the Act regulates (i) the political activities of certain governmental officials and employees and (ii) the soliciting and accepting of gifts from any prohibited source; and

WHEREAS, the Act requires that units of local government adopt local policies regulating the political activities of its officers and employees and the solicitation and acceptance of gifts that are no less restrictive than the provisions of the Act; and

WHEREAS, in order to comply with the Act, the Board of Commissioners of the DuPage Water Commission has determined that it is appropriate and in the best interests of the Commission to amend the Commission's By-Laws, as restated in Ordinance No. O-5-92 and amended by Ordinance Nos. O-1-93, O-1-94, O-14-94, O-

10-99, O-7-00, O-11-02, and O-2-04, to adopt new regulations regarding the political activities of its officers and employee and to amend its existing regulations regarding the solicitation and acceptance of gifts by officers and employees of the Commission;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE: Recitals. The foregoing recitals are hereby incorporated herein as findings of the Board of Commissioners of the DuPage Water Commission.

SECTION TWO: Amendment. Section 3, entitled "Gift Ban," of Article XI, "Conduct of the Commissioners, Officers and Employees of the Commission," of the Commission's By-Laws shall be, and it is hereby, amended in its entirety, including the caption thereof, so that said Section 3, including the caption thereof, shall hereafter be and read as follows:

"Section 3. Gift Ban and Prohibited Political Activities

- (a) Definitions: Whenever the following words or terms are used in this Section 3, they shall have the meanings ascribed to them below:

CAMPAIGN FOR ELECTIVE OFFICE: 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,<sup>1</sup> (ii) relating to collective bargaining,<sup>2</sup> or (iii) that are otherwise in furtherance of the person's official duties.

CANDIDATE: Any person who has filed nominating papers or petitions for nomination or election to an elected 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.

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<sup>1</sup> As those terms are defined in Section 2 of the Lobbyist Registration Act, 25 ILCS 170/2.

<sup>2</sup> As defined in Section 3 of the Illinois Public Labor Relations Act, 5 ILCS 315/3.

**COMPENSATED TIME:** With respect to an employee, any time worked by or credited to an employee that counts toward any minimum work time requirement imposed as a condition of his or her employment but, for purposes of this Section 3, does not include any designated holidays, vacation periods, personal time, compensatory time off, or any period when the employee is on a leave of absence. With respect to officers or employees whose hours are not fixed, compensated time includes any period of time when the officer or employee is on the premises under the control of the employer and any other time when the officer or employee is executing his or her official duties, regardless of location.

**COMPENSATORY TIME OFF:** Any 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 his or her employment.

**EMPLOYEE:** All full-time, part-time, and contractual employees of the Commission.

**GIFT:** 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.

**INTRA-OFFICE GIFT:** Any gift given to an officer or employee of the Commission from another officer or employee of the Commission.

**INTER-OFFICE GIFT:** Any gift given to an officer or employee of the Commission from a member of the Illinois General Assembly; or from the Governor, the Lieutenant Governor, the Attorney General, the Secretary of State, the Controller, the Treasurer or the Auditor General of the State of Illinois; or from a member, officer, appointee, or employee of any State Agency as defined in the State Officials and Employees Ethics Act,<sup>3</sup> or of any federal agency, or of any unit of local government or school district.

**LEAVE OF ABSENCE:** Any period during which an employee does not receive (i) compensation for employment, (ii) service credit towards pension benefits, and (iii) health insurance benefits paid for by the Commission.

**OFFICER:** All appointed and elected officials of the Commission, regardless of whether the official is compensated.

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<sup>3</sup> 5 ILCS 430/1-1 *et seq.*



POLITICAL: 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, (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person's official duties.

POLITICAL ORGANIZATION: 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,<sup>4</sup> but only with regard to those activities that require filing with the State Board of Elections or a county clerk.

PROHIBITED POLITICAL ACTIVITY:

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.

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<sup>4</sup> 10 ILCS 5/9-3.

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 in connection with a campaign for elective office or on behalf of a political organization for political purposes.
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: Any person or entity who:

1. is seeking official action by the Commission or by an officer or employee of the Commission;
2. does business or seeks to do business with the Commission or with an officer or employee of the Commission;
3. conducts activities regulated by the Commission or by an officer or employee of the Commission;

4. has interests that may be substantially affected by the performance or non-performance of the official duties of the Commission or an officer or employee of the Commission; or
5. is registered or required to be registered with the Secretary of State under the Lobbyist Registration Act., except that an entity does not become a prohibited source merely because a registered lobbyist is one of its members or serves on its board of directors.

RELATIVE: Those people related to the officer or employee as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, 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 officer's or employee's spouse and the officer's or employee's fiancé or fiancée.

(b) Gifts:

1. Gifts Prohibited: Except as otherwise provided in Paragraph 3(b)2 below, no officer or employee, spouse of an officer or employee, or immediate family member living with an officer or employee, shall intentionally solicit or accept any gift from any prohibited source or in violation of any federal or state statute, rule, or regulation. No prohibited source shall intentionally offer or make a gift that violates this subsection.
2. Exceptions: The restrictions set forth in Subsection 3(b)1 above shall not apply to the following:
  - A. Opportunities, benefits, and services that are available on the same conditions as for the general public.
  - B. Anything for which the officer or employee pays the market value or anything not used and promptly disposed of as provided in Paragraph 3(b)3 below.
  - C. A contribution, as defined in Article 9 of the Illinois Election Code,<sup>5</sup> that is lawfully made under that Code or under the State Officials and Employees Ethics Act, or activities

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<sup>5</sup> 10 ILCS 5/9-1 *et seq.*

associated with a fundraising event in support of a political organization or candidate.

- D. Educational materials and missions.
- E. Travel expenses for a meeting to discuss Commission business.
- F. A gift from a relative of an officer or employee.
- G. Anything provided by an individual on the basis of a personal friendship unless the officer or employee has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the officer or employee and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the officer or employee 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 officer or employee 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 officer or employee the individual who gave the gift also at the same time gave the same or similar gifts to other officers or employees.
- H. Food or refreshments not exceeding \$75.00 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) Purchased ready to eat and delivered by any means.
- I. Food, refreshments, lodging, transportation, and other benefits resulting from the outside business or employment activities (or outside activities that are not connected to the duties of the officer or employee as an office holder or

employee) of the officer or employee, or the spouse of the officer or employee, if the benefits have not been offered or enhanced because of the official position or employment of the officer or employee and are customarily provided to others in similar circumstances.

- J. Intra-office and inter-office gifts.
- K. Bequests, inheritances, and other transfers at death.
- L. Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.00.

- 3. Disposition of Gifts: An officer or employee that is a recipient of a gift that is given in violation of this Section 3 may, at his or her discretion, return the item to the donor or give the item 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.

(c) Prohibited Political Activities:

- 1. No officer or employee shall intentionally perform any prohibited political activity during any compensated time. No officer or employee shall intentionally use any property or resources of the Commission in connection with any prohibited political activity.
- 2. At no time shall any officer or employee intentionally require any other officer or employee to perform any prohibited political activity (i) as part of that employee's duties, (ii) as a condition of employment, or (iii) during any compensated time off.
- 3. No officer or employee shall be required at any time to participate in any prohibited political activity in consideration for that officer or employee being awarded any additional compensation or any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment, or otherwise., nor shall any officer or employee be awarded additional compensation or any benefit in consideration for the officer's or employee's participation in any prohibited political activity.
- 4. Nothing in this Subsection 3(c) prohibits activities that are otherwise permissible an officer or employee to engage in as a part of his or

her official or employment duties or activities that are undertaken by an officer or employee on a voluntary basis as permitted by law.

5. 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.

(d) Ethics Officer: The General Manager, or the General Manager's designee, shall be designated the Ethics Officer for the Commission. The Ethics Officer's duties and responsibilities shall include:

1. providing guidance to officers and employees in completing statements of economic interest before they are filed with the appropriate office; and
2. providing guidance to officers and employees in the interpretation and implementation of this Section 3 and the requirements of Section 5-15 and Article 10 of the State Officials and Employees Ethics Act; and
3. providing guidance to officers and employees in the interpretation and implementation of other applicable statutes, ordinances, rules, or regulations of the Commission, the State of Illinois, or the federal government dealing with ethics, conflicts of interest, interests in contracts, jobs, work, or materials, or the profits thereof, or services to be performed for or by the Commission.

Without needing prior authorization from the Board of Commissioners, the Ethics Officer shall have the authority to retain the services of Special Counsel for the Commission, at a cost not to exceed the sum of \$10,000 except as authorized by the Board of Commissioners, in the event the Ethics Officer determines that legal counsel and advice beyond the expertise of the Staff Attorney or the General Counsel of the Commission is required in performing the duties and responsibilities of the Ethics Officer.

(e) Interpretation: It is the intent of the Commission that the provisions of this Section 3 shall be substantially in accordance with the requirements of Section 5-15 and Article 10 of the State Officials and Employees Ethics Act. To the extent that Section 5-15 or Article 10 of the State Officials and Employees Ethics Act may, from time to time, be more restrictive than the

requirements of this Section 3, the provisions of Section 5-15 and Article 10 of the State Officials and Employees Ethics Act shall control. This Section 3 does not repeal or otherwise modify Section 105, entitled "Employment Ethics," of the Commission's Personnel Manual (the "Existing Regulations"). To the extent that the Existing Regulations are less restrictive than Section 5-15 or Article 10 of the State Officials and Employees Ethics Act and this Section 3, the provisions of Section 5-15 and Article 10 of the State Officials and Employees Ethics Act and this Section 3 shall control."

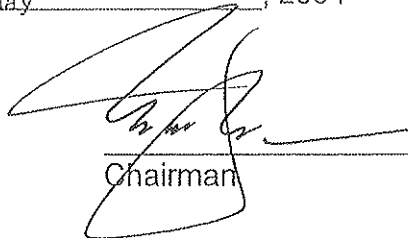
SECTION THREE: Effective Date. This Ordinance shall be in full force and effect from and after its adoption.

AYES: R. Benson, E. Chaplin, R. Ferraro, L. Hartwig, G. Mathews,  
W. Murphy, J. Vrdolyak, D. Zeilenga and M. Vondra

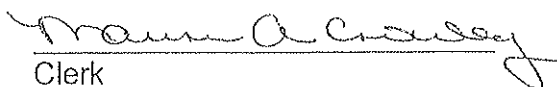
NAYS: None

ABSENT: T. Feltes, A. Poole and G. Wilcox

ADOPTED this 13th day of May, 2004

  
Chairman

ATTEST:

  
Clerk

~~Upon termination of employment for any reason, the employee immediately must turn over to the Commission all confidential information (including copies and duplicates) which is in the employee's possession or otherwise subject to his or her control. Employees may not retain any copy, duplicate, or note memorializing any confidential information of the Commission.~~

~~"Confidential information" includes, without limitation, information about Commission operations, facilities, equipment, security, materials, products, designs, plans, ideas, data, employees, future facility expansions or modifications, water quality, real estate, financial estimates that are not yet publicly available, and legal matters.~~

#### **4.29 Business Ethics; Conflict of Interest; Gifts and Gratuities**

The Commission is subject to the State Officials and Employees Ethics Act, 5 ILCS 430/1 *et seq.*, which requires the Commission to adopt local policies regulating political activities of its officers and employees and the solicitation and acceptance of gifts. Pursuant to this Act, the Commission has adopted Ordinance No. 0-11-04, amending the By-laws of the Commission (which may be amended from time-to-time), and all employees are required to comply with this Ordinance and the By-laws as amended from time-to-time.

All employees are expected to conduct their business affairs in accordance with a strict code of business ethics. Conflicts of interest – real and perceived – are to be avoided. A conflict of interest will be deemed to exist whenever an employee has a relationship or interest that might adversely affect his or her judgments or decisions on behalf of the Commission. Employees have an obligation to avoid actual and potential conflicts of interest. An actual or potential conflict of interest occurs when an employee is in a position to influence a decision that may result in a personal gain for that employee or for any person related by blood or marriage, or having a relationship equivalent to blood or marriage, to that employee. Any question as to whether a conflict of interest might exist should be referred to the General Manager.

Employees are expected to deal with all persons doing business with the Commission without favor or preference based on any personal considerations or opportunities for personal gain. If you have any questions as to whether a gift is appropriate, you should consult the General Manager.

No employee shall have any direct or indirect financial or personal interest in, nor shall any employee violate any statute, ordinance, rule, or regulation of the Commission, the State of Illinois, or the United States dealing with such an interest in: (1) any contract, purchase, lease, or other transaction involving the Commission; (2) any job, work, or materials of the Commission; (3) any services to be performed for or by the Commission; or (4) any profits of any of the foregoing.

Interests in contracts and work of the Commission that are expressly exempted from the prohibitions of the Illinois Public Officers Prohibited Activities Act shall also be exempt from the prohibitions of this Subsection.