

**DEPARTMENT OF HUMAN RESOURCES
ETHICS OFFICE
ETHICS
AUDIT 06-10
JANUARY 10, 2007**



CITY OF TAMPA

Pam Iorio, Mayor

Internal Audit Department

Roger Strout, Internal Audit Director

January 10, 2007

Honorable Pam Iorio
Mayor, City of Tampa
1 City Hall Plaza
Tampa, Florida

RE: Ethics, Audit 06-10

Dear Mayor Iorio:

Attached is the Internal Audit Department's report on Ethics.

The Department of Human Resources has already taken positive actions in response to our recommendations. We thank the management and staff of the Ethics Office for their cooperation and assistance during this audit.

Sincerely,

Roger Strout
Internal Audit Director

cc: Kimberly Crum, Director of Human Resources
Darrell Smith, Chief of Staff
Sarah Lang, Employee Relations Manager/Ethics Officer
Bonnie Wise, Revenue and Finance Director

**DEPARTMENT of HUMAN RESOURCES
ETHICS
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INTRODUCTION

Florida Statutes, Chapter 112, Part III (the Statute), provides the Code of Ethics for Public Officials and Employees, both state and local. City of Tampa Code Chapter 2, Article VIII, provides for the City of Tampa Ethics Code (the Code).

The current Code was effective in 2004, and the latest amendment made in January, 2006. The Code expands disclosure requirements set forth in the Statute both in breadth and depth, by including more personnel than the Statute, and by requiring additional types of disclosures.

The Code requires specified personnel to provide disclosure of:

- Personal financial interests.
- Real estate holdings within or near the City.
- Gifts.
- Contacts with lobbyists.

All City personnel must report and obtain approval of any non-city employment or engagement in a private business entity. If there is none, City procedure requires that this be reported as well.

The Code further provides standards of ethical conduct, which include:

- Political activity/campaign ethics.
- Voting conflicts.
- Misuse of position and City property.
- Fraternalization.
- Post employment restrictions.

All of the reporting requirements assume truthful disclosure by the employee or official filing the disclosure. There is no requirement under the Code or the Statute that disclosure information be verified, nor is there a practical means to do so in most cases. However, disciplinary action could be taken should a violation be reported or otherwise discovered.

STATISTICS

Approximate number of personnel required to file:

	By Code	By Statute
Financial Disclosure	150	80 ¹
Real Estate Disclosure	250	0
Outside Employment	5,200	0

STATEMENT OF OBJECTIVES

This audit was conducted in accordance with the Internal Audit Department's FY06 Audit Agenda. The objectives of this audit were to determine if:

1. Required Real Estate disclosure forms were being filed in a timely manner.
2. Required Financial Disclosure forms were in proper form and had been filed in a timely manner.
3. Employees had submitted Non-City Employment /Private Business Entity disclosure forms and if approval was obtained when required.
4. Lobbyists' visits were being recorded in accordance with City policy and required reports were being filed.
5. Gift reporting procedures were properly disseminated to affected personnel.

¹ Includes approx 65 appointed board members required by the Statute but not the Code.

STATEMENT OF SCOPE

This audit included required filings and other reporting events occurring during the period January 1, 2005, through June 30, 2006. There were no elections during the audit period; therefore, disclosures required of candidates for elected office were not reviewed. Report filing data available on the website for the Florida Commission on Ethics was compared to City records when applicable. The Hillsborough County Property Appraiser tax base was compared to the Real Estate disclosure when appropriate. Original records as well as copies and electronic media were used as evidence and verified through physical examination.

As stated in the Introduction section of this report, compliance with the Statute and the Code are largely dependent upon the integrity of the reporting individual. In some cases, such as gift reporting, it is up to the individual to initiate reporting. If disclosure reports are filed, the completeness and accuracy are the responsibility of the individual.

STATEMENT OF METHODOLOGY

Sampling methods varied between objectives:

- For Objectives 1 & 2, a random sample of 24 employees (from a universe of approximately 150) meeting these reporting criteria was selected and reports were reviewed. Additionally, a judgmental sample of appointed board members was tested for compliance. The Hillsborough County Property Appraiser's website was accessed with respect to Objective 1. The Florida Commission on Ethics' website was accessed with respect to Objective 2².
- For Objective 3, a random sample of 50 was selected (from the population of 5,200) and existence of reports was verified for reporting year 2005. For the following year, a fixed interval sample of those reporting outside employment (every 20th response of an alphabetical listing) was selected resulting in observation of 60 responses.³
- For Objective 4, a judgmental sample was taken from the database and traced to the filed report.
- For Objective 5, no gift reports had been submitted; therefore, testing was not possible.

To achieve the audit's objectives, reliance was placed on computer-processed data contained in the City's PeopleSoft® system. The system was previously determined to be reliable and no additional work was necessary.

² Filings required by F.S. § 112.3145.

³ Testing method changed because 2006 was the first year in which supervisory approval was required. Prior to that only disclosure was required.

STATEMENT OF AUDITING STANDARDS

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to afford a reasonable basis for our judgments and conclusions regarding the organization, program, activity, or function under audit. An audit also includes assessments of applicable internal controls and compliance with requirements of laws and regulations when necessary to satisfy the audit objectives. We believe that our audit provides a reasonable basis for our conclusions.

AUDIT CONCLUSIONS

Based upon the test work performed and the audit findings noted below, we conclude that:

1. Real Estate Disclosures were filed in accordance with Code. However, the Code does not require any filings after the initial report, if changes in Real Estate holdings should occur.
2. Financial Disclosure reports were not always prepared in accordance with the Code or the Statute. Additionally, there is no requirement that these disclosures be reviewed for possible conflicts.
3. Non-City Employment/Business Entity Disclosures were being filed in accordance with the Code.
4. Lobbyists' visits were properly recorded and the required reports were filed. However, lobbying disclosure appears to be inconsistent between City operating departments. The reporting requirements appear to be unnecessarily cumbersome for both lobbyists and the Ethics Office.
5. No gift reports were filed. We cannot determine if any were required to be filed, but some employees may not be aware that they are subject to the provisions of this section of the Code.

While the findings discussed below may not, individually or in the aggregate, significantly impair the operations of the Ethics Office, they do present risks that can be more effectively controlled.

NOTEWORTHY ACCOMPLISHMENT

The Ethics Office and the Office of Cable Communication have jointly produced a 45 minute training video which will be shown to all City employees and officials. While it is impractical to address every aspect of the Ethics Code, the video addresses areas likely to be relevant to most personnel. The video uses personnel in the Ethics and Legal departments as well as four of the Department liaisons. It is an informative, professional production.

REAL ESTATE DISCLOSURE

The Code § 2-518 requires disclosure of Real Estate by:

- Elected officials.
- Division Directors and Deputy Directors.
- City Attorney and all Assistant City Attorneys (including part time).
- Appointed members of City boards.

The disclosure requires listing all property within the City or within 500 feet of the City. In the event that no such property is owned, the report must state that.

Our tests indicated compliance with this requirement. However, the Code only requires the disclosure to be reported once, either when the provision was implemented, or upon employment or appointment. There is no requirement for any further reporting. This overlooks the fact the property ownership can and does change from time to time.

RECOMMENDATION 1

Annual reporting of Real Estate and/or upon any acquisition or disposition of reportable property should be considered. If the change is adopted, the Code will need to be amended.

AUDITEE RESPONSE

Concur. This matter has been previously pointed out to the Ethics Commission, the Legal Department, and other personnel when discussing the real estate disclosure section of the Ethics Code. As pointed out in the recommendation, to implement this change does require an amendment to the Ethics Code by City Council. With or without the updated real estate disclosure, officials and employees are prohibited from making decisions or participating in matters that would be a conflict.

FINANCIAL DISCLOSURE

The Statute⁴ requires limited financial disclosure by elected officials, several designated Department Directors, and appointed members of certain City boards. The Code⁵ requires full financial disclosure by elected officials. It also requires limited financial disclosure by:

- All Department Directors and Deputy Directors.
- All Division Directors and Deputy Directors.
- City Attorney and all Assistant City Attorneys (including part time).

Limited disclosure requires reporting primary sources of income, holdings of real or intangible property (such as stocks, mutual funds and bonds), business interests, and liabilities. Thresholds are established and dollar amounts are not reported. Full disclosure has lower thresholds and requires dollar amounts to be reported. (This is a brief overview; the actual reporting requirements for both limited and full disclosure are much more detailed.)

Our testing included three employees in our sample that had separated from the City during 2006 prior to the filing deadline. They were still required to meet the July 15th filing deadline, but none of the three had done so. The Ethics Office is pursuing reasonable means to obtain the disclosure forms. All of the other personnel in our sample who were required to file had done so. However, we noticed a number of cases in which the intangible assets were not adequately described. We attribute this to lack of understanding of the requirements and lack of review.

RECOMMENDATION 2

Training regarding reporting requirements should be provided. Initiate an administrative procedure to review disclosure reports as they are submitted. Such a review should ensure proper form and completeness. We further recommend that a copy be provided to the filer's supervisor or other designated official, who could review for any apparent conflict of interest.

Consideration should be given to incorporating these review procedures into the Code.

AUDITEE RESPONSE

Concur. The planned ethics training addresses the financial disclosure requirement but not at the level of detail recommended by the audit. Several pages of information and instructions defining the various reporting requirements and financial terminology are included with the financial disclosure forms (state of Florida information). The Ethics Office can initiate a basic review of the forms for completeness and provide copies as recommended.

⁴ F.S. § 112.3144 & 112.3145.

⁵ Code § 2-566 through 2-568;

LOBBYISTS

Lobbyists⁶ are required to file a Lobbyist Disclosure Form upon contacting a City official or employee. Lobbying generally includes contact with the intent to influence legislation or the expenditure of City funds. This includes sales persons if they initiate contact with a City official or employee who has the authority to materially influence purchasing decisions.

Most of the reported contacts were with a relatively small number of legislative or senior executive officials. We also noted two operating divisions, Fleet Maintenance and the Parking Division, were reporting lobbyist activity by sales personnel by submitting sign in sheets to the Ethics Office. Follow up is taken as needed to obtain the Lobbyist Disclosure Form. It seems likely that other Divisions have the same type of sales contacts but are not submitting sign in sheets to the Ethics Office.-

There is also a requirement for an Annual Expenditure Report from each lobbyist. The report must be under oath and notarized, and must be filed whether there are reportable expenditures or not. In 2005, 207 contacts by 97 different lobbyists were recorded. Only 4 reported incurring expenditures. These totaled \$85 for the year for costs of meals or promotional items provided to City personnel. Such expenditures do not violate the code, and the reporting requirement creates a considerable amount of administrative work for both the Ethics Office and the lobbyist.

RECOMMENDATION 3

The appropriate reporting requirements for contacts with sales persons should be determined, along with specific examples, and disseminated to City personnel so lobbyist reporting will be consistent throughout the City.

AUDITEE RESPONSE

Concur. The lobbyist sign-in sheets are not required by the Code, but were designed and utilized per recommendations from the Legal Department in order to effect due diligence required by Section 2-580. Further training on the process with the department ethics liaisons is in order as well as establishing periodic follow-up with the departments to ensure that their personnel understand the sign-in sheets and the lobbyist meeting disclosure forms. There are examples of sales personnel in the ethics training and additional examples can be added for further understanding.

⁶ Code § 2-580; there is no requirement under the Statute with respect to local officials or employees.

RECOMMENDATION 4

The Lobbyist Disclosure Form should be redesigned to include a section that indicates whether any expenditures have been incurred. If none have been incurred, as is usually the case, the need for the Annual Expenditure Report could be eliminated. This would require an amendment to the Code.

AUDITEE RESPONSE

Concur. Revision of the Ethics Code to have the lobbyist disclose the meeting and, at the same time and on the same form, disclose any financial expenditures would eliminate an administrative burden for the Ethics Office. It would abolish the Ethics Office's requirement to annually verify separately the receipt of the financial filings and to notify delinquent filers on the dates specified in the Ethics Code.

GIFT REPORTING

The City has adopted the Florida Gift Law⁷ by reference and added additional provisions⁸. The Gift reporting requirement generally applies to:

- Elected officials.
- Appointed employees (who are required to file Financial Disclosure).
- Procurement employees.
- Permitting employees.
- Zoning employees.

In general City officials and employees are prohibited from accepting:

- Gifts which are intended or can be reasonably inferred as intended to influence the performance of an official act.
- Gifts from a vendor or contractor if the value is greater than \$100.
- Gifts from a lobbyist if the value is greater than \$100.

There are some exclusions, such as gifts from relatives as defined in the Statute.

Gifts which are permitted and not excluded from the reporting requirement must be reported if the value is greater than \$100. This includes gifts from persons or entities that have no business association with the City. To date, no such disclosures have been filed.

Considering the number of personnel subject to the reporting requirement, we consider it reasonable that some employees might have been subject to the reporting requirement. If this has occurred, it is likely that employees are not aware of the requirement.

“Procurement Employee” is defined:

“Procurement employee means any employee of the city who participates through decision, approval, disapproval, recommendation or preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation or auditing or in any other advisory capacity in the procurement of contractual services or commodities...”⁹

The City’s definition could be interpreted as including anyone who can request a requisition or who has a Purchasing Card. The language closely parallels the Statute as it applies to State personnel. The City is only obligated to use this definition by its own choice, and appears to be overly broad. Further, we were informally advised by the State Ethics Commission that the Purchasing Card question has not been resolved as it applies to State personnel.

⁷ F.S. § 112.3148.

⁸ Code § 2-560 through 2-564.

⁹ Code § 2-502.

GIFT REPORTING (continued)

RECOMMENDATION 5

Consider redefining “Procurement Employee” to personnel in a position to reasonably affect significant purchasing decisions. Input from the Purchasing Department and other appropriate officials should be solicited when developing the definition.

AUDITEE RESPONSE

Concur. This was discussed at length with the Legal Department during staff and citywide departmental review of the draft Ethics Code resulting in determination that any person with purchasing (ADPICS) authorization should be included in order to meet the intent of having a comprehensive ethics code. Further discussion to redetermine if the level of purchasing responsibility is realistic is in order.

RECOMMENDATION 6

Personnel who meet the “Procurement Employee” criteria, as defined in the Ethics code, should be reminded that they fall under this provision.

AUDITEE RESPONSE

Concur. All employees received by email and by paycheck flyer the Ethics Update #1 Gifts (December 2003) which was followed by Ethics Update #3 Gifts (May 2004), also by both email and paycheck flyer. Update #3 was issued because of the amendment to the gift section of the Ethics Code. Both updates provided a tutorial regarding the acceptance of gifts and included a copy of the applicable sections of the Ethics Code pertaining to gifts, including the reporting requirement. Additionally, the entire Ethics Code is available on the Internet and the INET. Most importantly, with the video training, the training handbook includes a copy of the Ethics Code and Ethics Update #3, Gifts, for each employee.

ETHICS TRAINING

The Code is lengthy and complex, and some parts of it, such as financial disclosure, do not apply to most employees. However, other provisions could apply to some employees in certain circumstances. Although, employees are responsible for knowledge of the Code and compliance to particular provisions of it, training has not been provided to them. The first step, preparing the training video, has been accomplished. The next step is to schedule the employees to view the video.

Employees are responsible for knowledge of the Code provisions and to comply with them (even those parts that may not be included in the formal training program). To do so, they need to have access to it. The Code is available to employees with access to the INET; however, not all employees have direct online access to it.

RECOMMENDATION 7

Ethics training should be conducted for everyone subject to the code. Additionally, employees should be instructed annually that they remain subject to the provisions of the Code. All employees should have ready access to the Code.

AUDITEE RESPONSE

Concur. As stated in an earlier response, the Ethics Code is available on the Internet and the INET (and all employees were notified of this by email and by paycheck flyers on three occasions). Most importantly, with the video training, the training handbook includes a copy of the Ethics Code and will be given to each employee. This training is required by the Ethics Code. Following the implementation of the training, further communication including the suggested annual reminder would be appropriate and beneficial.