

SUBJECT: APPROVAL OF REVISED CODE OF ETHICS FOR MEMBERS OF THE WMATA BOARD OF DIRECTORS

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, The Board of Directors is committed to continuing to improve the governance of the Authority; and

WHEREAS, Pursuant to Resolution #2013-05, the Board of Directors approved a revised Code of Ethics for Members of the WMATA Board of Directors ("Code of Ethics") to clarify definitions, the means to obtain advisory opinions and restrictions on accepting gratuities; to avoid situations that may give the appearance of nepotism; to establish the position and duties of the Ethics Officer; and to require contractors to disclose interests that may pose a conflict for Board Members; and

WHEREAS, The recently overhauled Metropolitan Washington Airports Authority (MWAA) Code of Ethics for members of its Board of Directors ("MWAA Code") is a model for good governance of Compact authorities, considering it was favorably reviewed by the Office of Inspector General for the U.S. Department of Transportation, which referred to the MWAA Code as an improvement in accountability and transparency; and

WHEREAS, WMATA should adopt, to the greatest extent practicable, Code of Ethics provisions similar to those found in the MWAA Code, and that the revised Code of Ethics should explain the nature and extent of Board Member fiduciary duties and include enhanced ethics training for Board Members; and

WHEREAS, The revised Code of Ethics should describe the processes for submitting and reviewing Board Member disclosures; for reporting potential conflicts and suspected ethics violations; for the resolution of conflicts and violations; and for the conduct of ethics investigations and hearings, in order to provide clarity for Board Members, staff and the public alike; now, therefore be it

RESOLVED, That the Board of Directors approves the attached revised Code of Ethics for Members of the Board of Directors, which supersede all prior Codes of Ethics; and be it further

RESOLVED, That staff shall develop and publish within 90 days all forms, procedures and contract provisions necessary to comply with the requirements of the Code of Ethics; and be it finally

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Kathryn H.S. Pett
General Counsel

WMATA File Structure No.:
2.1.2.0 Board Code of Ethics

PROPOSED

**CODE OF ETHICS FOR
MEMBERS OF THE WMATA BOARD OF DIRECTORS**

Article I. Policy and Scope

The Board and leadership of the Washington Metropolitan Area Transit Authority (WMATA) are responsible for fostering high ethical standards for WMATA, its officers and employees, thereby strengthening public confidence that WMATA's programs are conducted with impartiality and integrity. The Board adopts this Code of Ethics ("Code") to assure the highest degree of confidence and public trust in WMATA, and that the judgment of Board Members will not be compromised or affected by conflicting interests or the appearance of a conflict of interest. **If the Board determines that a Member has knowingly violated this Code, the Board may take the action it determines to be appropriate as specified under "Sanctions," Article XIII, part E.**

This Code governs the conduct of all Members of the Board of Directors in all their activities relating to their positions as Board Members. It also applies to all individuals, corporations and other entities in their dealings with WMATA. This Code does not supersede or abrogate any laws, rules or regulations of the United States or of the applicable state or local governing body represented by the Members of the Board of Directors.

Article II. Board Members' Fiduciary Duty

Board Members owe a fiduciary duty to WMATA. Board Members return the public's trust through loyal, diligent, honest, faithful and disinterested service.

A. Duty of Loyalty

Board Members act in the best interests of WMATA in carrying out their duties as Members of the Board, and do not engage in conduct that would bring discredit upon WMATA. Board Members owe their duty of loyalty exclusively to WMATA, and not to the person or entity which appointed them to their position. Board Members shall treat information received in or for Executive Sessions as confidential and shall not disclose such information absent approval of the Chair of the Executive Committee.

B. Duty of Care

Board members make reasonable efforts to be diligent, attentive and prudent, including due consideration of matters before making decisions for WMATA. Board Member's exercise their duty of care in the interests of WMATA and the public, and therefore consider the views and policies of public officials, government bodies, and other individual stakeholders during the decision-making process. Once a decision has

Comment [SPT1]: Sources: MWAA & WMATA.

Explanation: Combination emphasizes the Board's active role in ethical obligations.

Highlight: Added to emphasize Code Art. XIII.F.

Comment [SPT2]: Source: Fourth Circuit Court of Appeals decision regarding fiduciary duty of public officials. U.S. v. Mandel, 591 F.2d 1347, 1363 (4th Cir. 1979).

Comment [SPT3]: Article II.A. Sources: MWAA (first sentence), scholarly articles and cases (second), Code Art. VIII.A.3 (third).

Comment [SPT4]: Article II.B. Sources: scholarly articles and cases regarding duty of care; Bylaws Art. II for "one voice" language.

been voted by the Board, Board Members speak with one voice and work together to implement that decision.

C. **Duty to Avoid Conflicts of Interest**

Members avoid conflicts of interest or appearances thereof and place ethical principles and compliance with the law above private gain and personal interests inconsistent with their responsibility to WMATA. Regardless of whether specifically prohibited by this Code, Members endeavor to avoid conflicts of interest or even the appearance of conflicts of interest, refrain from using their positions for private gain, refrain from the appearance of favored treatment to any person or entity, avoid compromising independence or impartiality, refrain from making WMATA decisions outside of official channels, and avoid any other action that is likely to adversely affect the confidence of the public in the integrity of the Board or of WMATA.

Comment [SPT5]: Article II.C. Source: MWAA WMATA Employee Code of Ethics. Modified by adding general obligation regarding conflicts of interest from WMATA employee code of ethics (highlighted).

Also modified by using WMATA's, "favored treatment," instead of MWAA's "undue preferential treatment."

Article III. Definitions

Capitalized terms in this Code of Ethics are defined as follows:

A. "Board Member" or "Member" means a Director or Alternate of the Board of Directors of the Washington Metropolitan Area Transit Authority.

B. "Business Associate" means a person who is engaged with a Board Member in a venture expected to result in a benefit to the Board Member or any of the Board Member's Household Members in the form of money or other thing of value.

C. "Financial Transaction" means any arrangement from which a Party anticipates receiving or transferring money or any other thing of value including, but not limited to, arrangements for purchase, sale, lease or other transfer or conveyance of any interest in real or personal property; construction or improvement of any facility or property; and procurement of services, both personal and consulting.

Comment [SPT6]: Source: WMATA, except where indicated otherwise.

Comment [SPT7]: Note: Replaces MWAA's use of undefined "contract or agreement" and other similar phrases.

D. "Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, other item having monetary value or similar consideration for which the recipient does not pay market value or that is not offered to the public generally. A gift therefore includes, but is not limited to, cash, a meal, merchandise, services, admission to a sporting event, admission to a theatrical, musical or other spectator event, admission to an event or activity in which persons are participants (e.g., a conference or golfing event), travel, transportation and lodging. It does not matter whether a gift is provided to the recipient in kind or in the form of a ticket, a payment in advance or a reimbursement of an expense that has been incurred; in all these cases, the benefit provided is considered a Gift.

Comment [SPT8]: Source: MWAA. Modified by addition of "similar consideration" and "not offered to the public generally," from WMATA's definition of Gratuity.

E. "Household Member" means a spouse, domestic partner, dependent child, any relative over whose financial affairs the Board Member has legal or actual control or any person who resides in a Board Member's household on other than a temporary basis.

Comment [SPT9]: Note: Substantially identical to MWAA's Immediate Family, except WMATA's Household Member adds persons residing in the household on more than a temporary basis.

F. "Interested Party" means any Party that has decided to seek to enter into, that is seeking to enter into, or that has actual or prospective interest in a contract or agreement with WMATA or that has interests that can be directly affected by decisions or actions of WMATA.

Comment [SPT10]: "Interested Party" Source: MWAA. Modified to include entities seeking or about to seek a business arrangement with WMATA.

Explanation: The MWAA provision greatly simplifies and replaces WMATA's "Actual or Prospective Business Relationship" definition.

G. "Participate" means vote, address, discuss or otherwise attempt to influence a decision of the Board of Directors or any action undertaken by WMATA staff.

Comment [SPT11]: "Participate" Note: Substantially identical to MWAA.

H. "Party" means an individual, corporation, partnership or other legal entity, and any parent of a business entity. A "parent" of a business entity owns or controls more than fifty percent (50%) of that entity (i.e., by value or voting power).

Comment [SPT12]: "Party" Source: WMATA. Modified to include MWAA's parent of a business, from its "Business" definition.

Explanation: WMATA's Party is broader than MWAA's Business because it includes individuals.

I. "Property" means real property, including land, together with any structures improvements, and any rights on interests in land and/or improvements.

Comment [SPT13]: "Property" Source: MWAA.

J. "Prohibited Source" means an Interested Party or other Party whose interests may be substantially affected by the performance or non-performance of the Member's duty, and a Party offering a Gift because of the Member's position on the WMATA Board of Directors. For the purposes of this definition, "Party" also includes the officers, employees and agents of a Party.

Comment [SPT14]: "Prohibited Source" Source: MWAA. Modified by using WAMTA's "because of the Member's position on the WMATA Board of Directors," rather than MWAA: "clear that the gift would not have been offered or given were the Director not a member of the Authority Board of Directors."

K. "Substantial Interest or Duty" means any of the following:

Comment [SPT15]: "Substantial Interest or Duty" Source: MWAA. Term modified to "Substantial Interest or Duty" from MWAA "Substantial Financial Interest" because items 7 & 8 are not easily seen as financial interests.

1. Ownership of Interest in a Party. Ownership interest (e.g., shares of stock or other securities) in a Party that exceeds three percent of the total equity of the Party, has a fair market value greater than \$15,000 or yields more than \$1,000 in annual income.

2. Ownership of Interest in Property. Ownership interest in Property that has a fair market value greater than \$15,000 or yields more than \$1,000 in annual income.

3. Ownership of Interest in or Employment by a Party Receiving Income from an Interested Party. Employment by or Ownership of Interest in a Party receiving revenues from an Interested Party of at least \$10,000 or three percent of the Party's gross income for its current or preceding fiscal year, whichever is greater.

4. Income. Income in any form (whether or not deferred) from a Party or Property, including, but not limited to, wages, salaries, fringe benefits, interest, dividends or rent that exceeds or may reasonably be expected to exceed \$1,000

annually. Income also includes potential income; for example, from an upcoming job or offer of employment with a Party.

Comment [SPT16]: Comment: This clause plus paragraph 7, Personal Representation, replaces the WMATA terms "Employment" or "Employed," which "mean full-time, part-time, regular or temporary work for compensation and includes work as an independent contractor, but does not include government employment. Employment shall be deemed to exist if there is a regular relationship with a business, even if there is no relationship at the time a matter is before the Board."

5. Pledge or surety. Personal liability (incurred or assumed) on behalf of a Party that exceeds the lesser of three percent (3%) of the asset value of the Party or \$1,000.

6. Loan or debt. Personal indebtedness of \$1,000 or more to a Party, except a debt incurred in the ordinary course of business on usual commercial terms (e.g., a mortgage liability secured by a personal residence of the Member or the Member's spouse; a loan liability secured by a personal motor vehicle, household furniture or household appliances; a personal revolving line of credit or capital contribution loan liability; a debit, credit or other revolving charge account liability).

7. Personal Representation. Personally representing or providing professional services to a Party, including legal, audit, accounting, financial and consulting services, regardless of the specific subject matter of the representation or amount of compensation received.

8. Fiduciary Duty. The duty owed to a Party by a director, officer or general partner of the Party, even without financial remuneration from the Party.

9. Imputed Interest. The financial and other interests in a Party or Property held by Household Members are imputed to the Member.

Exclusions. The following financial interests are excluded from "Substantial Interest or Duty": checking or savings accounts; money market accounts and other demand deposits; government bonds; certificates of deposit; government employment; and diversified mutual funds, pension plans, employee benefit plans, trusts, estates and other similar funds, plans and entities administered by an independent party without participation by the Member or Household Members in the selection or designation of financial interests held by the fund, plan or entity.

Comment [SPT17]: Source: MWAA. Modified to also exclude government employment.

Explanation: Need to exclude government employment because WMATA Board members hold government positions that would otherwise require constant, but unnecessary disclosures.

Article IV. Conflicts of Interest

A. An Actual Conflict of Interest arises whenever a Member or Household Member has a Substantial Interest or Duty in:

Comment [SPT18]: Source: MWAA. Modified to encompass actions of the Board as opposed to MWAA's "Authority."

Explanation: WMATA's Board is involved in fewer actions (e.g. procurement) and therefore its Members' conflict arise from only Board actions.

1. an Interested Party; or
2. any other Party or Property that may realize a reasonably foreseeable benefit or detriment as a result of an action or decision of the Board.

B. An Apparent Conflict of Interest arises from conduct, not constituting an Actual Conflict, that the Member knows or reasonably should know is likely to create in the mind of a reasonable person with knowledge of the relevant facts the perception that the Member is not fairly and objectively performing his or her official duties, or would be viewed as having the capability to influence or personally benefit from an action of the Board.

C. An Apparent Conflict of Interest also exists when a benefit greater than \$25 is conveyed to a Board Member, or to a Household Member or Business Associate on behalf of the Member, by or on behalf of a Party within 2 years of the Board considering a matter that may realize a reasonably foreseeable benefit or detriment to that Party.

Article V. Resolving Conflicts of Interest: Legally-Required Participation

As set forth in this Article, Board Members shall resolve Actual Conflicts of Interest via recusal. Board Members have additional means to resolve Apparent Conflicts of Interest, with concurrence of the Ethics Committee: divesting and making a declaration. A Board Member with a conflict of interest may nevertheless Participate in a matter when that Participation is required by the Compact.

A. Recusal

1. Board Members with an Actual Conflict of Interest must recuse themselves from Participating in any matter in which they have an Actual Conflict of Interest.

2. Board Members will recuse themselves when Participating would otherwise violate the Code of Ethics, such as decisions by the Board or WMATA to hire, appoint, employ or promote, or to enter into an Financial Transaction with a Relative of the Member under Article IX.B.2, or when Participating would violate a law to which they are subject.

3. Board Members will also recuse themselves from Participating in any matter in which they have an Apparent Conflict, unless the Member believes and publicly declares in the manner described below that the Member is able to participate in the matter fairly and objectively in the interest of WMATA notwithstanding the appearance of a conflict, or the Member divests an impermissible interest in the manner described below.

4. A Board Member will promptly notify the Board or Committee Chair before whom the matter is being considered of the decision to recuse using the form attached to the Code of Ethics. The Board Member will also cause the Board's official records to reflect the Member's recusal from participating in the matter. The fact of the conflict

Comment [SPT19]: Article IV.B. Sources: MWAA and LACMTA, modified as follows.

1) Replaces LACMTA "in the mind of a reasonable observer with WMATA Employee Code of Ethics, "reasonable person with knowledge of the relevant facts," because employee code is more specific to circumstances.

2) Replaces LACMTA "used his or her public position improperly" with MWAA's "fair and objective performance of the Director's official duties."

3) Adds from Employee Code, "would be viewed as having the capability to influence or personally benefit."

MWAA: "An Apparent Conflict of Interest arises whenever a Member or Household Member has any other personal interest of which the Member is aware that could reasonably appear to conflict with the fair and objective performance of the Member's official duties."

Comment [SPT20]: Article IV.C. Source: LACMTA. Modified to state "benefit" rather than "financial interest," and reduce amount to \$25 from \$75.

Explanation: The amount, greater than \$25, is intended to dovetail with Gift provision allowing up to \$25 from a prohibited source. "Financial interest" misleadingly suggests the provision is limited to ownership and income interests.

Comment [SPT21]: Article V.A. Source: MWAA (1-3), modified to incorporate all bases for recusal, and to permit divesting to resolve conflicts.

Remainder added to further detail process or recusal, as requested by the Governance Committee.

and recusal shall be publicly announced at any meeting of the Board or a Committee at which the matter is considered.

5. A Member shall not at any time Participate in, attempt to Participate in, or discuss with other Members or WMATA personnel, any matter from which the Member is recused. (Members may, however, consult the Ethics Officer regarding compliance with the provisions of this Code at any time.) The Member may remain present for any public portion of a meeting at which the matter is considered, provided the Member does not remain at the Board or committee table or dais during the discussion and consideration. The Member may not attend any portion of an executive session closed to the public at which the matter is considered.

B. **Divesting in Lieu of Recusal**

A Board Member with an Apparent Conflict of Interest arising by an Improper Benefit (see Art.IV.C) may, with the concurrence of the Chair of the Ethics Committee, resolve the conflict by paying the giver the Benefit's market value; returning the Benefit to the giver; or in cases where paying for or returning the Benefit is impracticable, deliver the Benefit to the Ethics Officer, who will make proper disposition of it.

Comment [SPT22]: Source: New.
Explanation: WMATA Board Members need this option for situations such as mistakenly accepting a campaign contribution from a prohibited source.

C. **Declaration in Lieu of Recusal**

If a Board Member believes that he or she is able to participate in a matter fairly and objectively in the interests of WMATA notwithstanding an Apparent Conflict of Interest, the Member may Participate in the matter after obtaining approval from the Chair of the Ethics Committee and making a Declaration. In the Declaration the Member shall explain: a) the nature of the Member's personal interest in the parties or matter, and b) why the Member is able to Participate in the matter fairly and objectively in the interest of WMATA. The Declaration will be effective upon concurrence by the Chair of the Ethics Committee. The presiding Chair will read the approved Declaration into the record at any meeting of the Board or a Committee at which the matter is considered prior to action being taken.

Comment [SPT23]: Source: MWAA.
Modified to involve Chair of Ethics Committee in process to assure advance notification and appropriate oversight.

D. **Compact-Required Participation**

This section does not prohibit a Board Member from Participating in a matter if that Participation is required by Section 8(a) of the Compact in order for the decision to be made. In that case, the Board Member will make a Declaration as provided for in this section, and the Chair will read it into the record at any meeting of the Board or a Committee at which the matter is considered.

Comment [SPT24]: Article V.D. Source: LACMTA "legally-required participation."
Explanation: Because the Compact requires that each signatory cast at least one vote in order to act, the Code of Ethics should provide for participation despite a conflict in rare circumstances.

E. Facilitating Compliance with Conflict of interests Restrictions

In order to facilitate compliance with the conflict of interests provisions of this Article, the Board Secretary shall include in the materials mailed to the Board or Committee a list of Interested Parties and other Parties or Property that may be affected by a Board or Committee decision on matters scheduled for consideration at the upcoming meeting. Members are entitled to rely on the accuracy of information supplied to them by the Board Secretary pursuant to this subsection. Members shall review the information at the time it is supplied against their current holdings, and shall, as necessary, recuse themselves from participating in any matter in which they have a Conflict of Interests or, in the case of an Apparent Conflict, either recuse themselves or propose a declaration regarding the matter.

Comment [SPT25]: Article X.E. Source: MWAA, modified to eliminate quarterly reports

Explanation: MWAA also calls for a quarterly report, but such advance notice is less practical and less helpful. A report the week prior to action would permit Board Members to more timely check for conflicts.

Note: The Board Secretary will add a section within the materials prepared for Board and Committee meetings that requires the preparer to list all Interested Parties, other Parties and Property.

Article VI. Restricted Interests

A. Board Members are prohibited from being “financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the Authority is a party.” Compact § 10.

Comment [SPT26]: Source: WMATA.

B. Board Members and Household Members shall not knowingly have a Substantial Interest or Duty in an Interested Party during the Member’s term of service.

Comment [SPT27]: Article VI.B. Source: MWAA. Modified by replacing MWAA’s potentially vague “any interest” with the defined term, “Substantial Interest or Duty.”

Previous WMATA provision: “No Board Member or Household Member may singly or in combination, have a Direct Financial Interest in a Party with an Actual or Prospective Business Relationship with the Authority.”

Article VII. Gifts

A. Non-Solicitation

1. Board Members shall not, “in connection with services performed within the scope of [their] official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to [them] by the Authority.” Compact § 10.

Comment [SPT28]: Article VII.A. Source: WMATA.

Explanation: WMATA Compact requires more strict non-solicitation rules than permitted by MWAA.

2. Board Members shall not solicit a Gift from a Prohibited Source or from any WMATA employee, except when soliciting the general public by mass communication or other widely-distributed means that may incidentally be addressed to or include Prohibited Sources.

B. Limits Upon Accepting Gifts

Comment [SPT29]: Article VI.B. Source: MWAA. Modified as indicated.

1. Board Members and Household Members may not accept a Gift from a Prohibited Source, except as specifically permitted by the exceptions set forth in Appendix 1 to this Code. In addition, Board Members and Household Members should not accept Gifts even though permitted by an exception, on such a frequent or regular

Comment [SPT30]: Article VI.B.1. Modified to include Household Members as is the case in WMATA’s Code.

Note: there is an exception allowing Household Members to accept a gift when it is clearly unrelated to the Board Member’s position with the Authority.

basis that a reasonable person could be led to believe they are using their position with WMATA for personal gain or are not performing the duties of their position in an impartial manner.

2. Board Members may not designate, recommend or otherwise specify that a Gift be provided to or accepted by another Party, excluding a charitable organization or other charitable recipient approved by the Ethics Officer.

3. Members are encouraged to seek the Ethics Officer's advice when determining whether a particular offer may constitute a Gift that may not be accepted.

4. A Member who has received a Gift that may not be accepted under this Code shall do one of the following: pay the giver the Gift's market value; return the Gift to the giver; or in cases where returning the gift is impracticable, deliver the gift to the Ethics Officer, who will make proper disposition of it. Market value may be estimated by reference to the retail cost of similar items or services of like quality. The Ethics Officer should be consulted when estimating the market value of a gift. Subsequent reciprocation of the giver by the Member does not constitute payment of the market value of a gift.

Comment [SPT31]: Modified from: "in the case of perishable items delivered not by the giver but by a third party (e.g., Federal Express)" for clarity.

Article VIII. Bona Fide Religious, Charitable and Political Contributions

Provided all other provisions of this Code are satisfied, a Member or Household Member may solicit bona fide religious, charitable and political contributions. A Member may accept such contributions only to the extent consistent with the law of the Board Member's jurisdiction and where it cannot reasonably be inferred that the contribution is offered in an effort to influence the Member's action upon a WMATA matter or offered as a reward for the Member's action upon a WMATA matter.

Comment [SPT32]: Article VIII. Source: WMATA.

Explanation: Not found in MWAA Code but for charities approved by Ethics Officer under gift acceptance provision. The WMATA Code, on the other hand, should include such a provision to permit normal political activities by elected officials who serve on the Board.

Comment [SPT33]: Article IX. Sources: WMATA & MWAA, as indicated.

Comment [SPT34]: Article IX.A. Source: WMATA.

Comment [SPT35]: Article IX.A.1. Source: MWAA.

Explanation: Does not include MWAA provision permitting some referrals and recommendations, out of concern that it creates the appearance of improper influence: "Notwithstanding the foregoing, based on personal knowledge, a Director Member may: a) refer to the Authority President individuals other than Immediate Family and Relatives (as defined [below])) who may be suitable candidates for employment and individuals and entities which may be able to provide products or services of potential interest to the Authority; following such referral, the Director shall take no action to influence a decision or action by Authority management to employ or contract with such individuals or entities; and b) respond to a request for an employment recommendation or character reference for individuals other than Immediate Family who are being considered for Authority employment."

Article IX. Use of Official Position

A. Board Members shall not use, nor give the appearance that they are using, their official position with WMATA in a manner inconsistent with their responsibilities to WMATA. Board Members shall not:

1. Use their position with WMATA for their own personal financial gain, for the endorsement of any product, service or enterprise in which they have a financial interest, or for the private financial gain of friends, relatives, or individuals or entities with which they are affiliated, including nonprofit organizations of which they are officers or members, or with which they have or seek employment or business relations.

2. Use or permit others to use information not generally available to the public obtained from WMATA through the Board Member's official position with WMATA to further the Substantial Interests or Duties of a Board Member, a Household Member, a Member's Business Associate, or any Interested Party, excluding the Federal government and governmental entities within the Transit Zone;

Comment [SPT36]: Article IX.A.2. Source: WMATA. Modified to use new defined terms, e.g. "Substantial Interests or Duties," as opposed to "Direct or Indirect Financial Interests," and "Interested Party" rather than "Party to an Actual or Prospective Financial Transaction."

3. Disclose or permit others to disclose to anyone outside WMATA information obtained through their official position with WMATA and not generally available to the public except where and to the extent necessary to fulfill the Board Member's responsibility to further WMATA's interests; Board Members shall treat information received in or for Executive Sessions as confidential and shall not disclose such information absent approval of the Chair of the Executive Committee;

Comment [SPT37]: Article IX.A.3. Source: WMATA & MWAA.

Highlight: Replaces former "public responsibility."

Explanation: Restricts disclosure of information prepared for executive sessions only upon approval and to the extent necessary to further WMATA's interests (as opposed to prior Board Code "public responsibility"). WMATA has traditionally included an exception to permit Members to discuss WMATA confidences within the jurisdictions they represent to the extent necessary to ensure their jurisdictional interests are represented in Board actions. This revision clarifies that the disclosure should further WMATA's interests.

4. Use WMATA property other than for authorized purposes, nor seek assistance from other WMATA personnel, while in duty status, to assist them in connection with business enterprises (including self-employment, home-based businesses, consulting, purchase or sale of real estate or other professional services) or personal matters (non-WMATA matters including a Board Member's social, religious or educational interests);

MWAA: "Directors shall not engage in financial transactions using proprietary, sensitive or confidential information of the Authority, allow or cause the improper use of such information to further any private interest, or allow or cause such information to be disclosed to unauthorized persons or in advance of the time prescribed for its authorized disclosure, except where and to the extent necessary to fulfill the Director's responsibility as a member of the Board of Directors and where required by law."

5. Offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege in their employment with the Authority (Compact S 10); or

6. Receive compensation from WMATA except for reimbursement for necessary expenses incurred incident to the performance of their duties, in accordance with and to the extent permitted under WMATA's expense reimbursement policies. Members are expected to exercise prudence when incurring expenses in connection with official duties.

Comment [SPT38]: Article IX.A.4. Source: WMATA.

Comment [SPT39]: Article IX.A.6. Sources: WMATA & MWAA.

Note: Language Starting with "in accordance" is from MWAA.

B. Influence with Regard to Immediate Family and Relatives

1. No Member or Household Member shall be employed by WMATA during the Member's term of service. In addition, no Member, Household Member, or Party that is wholly or substantially owned or controlled by a Member or Immediate Family shall be a party to a contract with WMATA during the Member's term of service. For purposes of this section, a Party will be considered "substantially" owned or controlled if the Member or a Household Member singly or in combination owns or controls more than fifty percent (50%) of the Business (i.e., by value or voting power).

Comment [SPT40]: Article IX.B. Source: MWAA. Modified for textual consistency.

Explanation: MWAA prohibits employment of or contracting with Household Members. For more extended family, "Relatives," Board Members do not participate in hiring or contracting decisions.

Note: WMATA does not currently have a process to identify Members' Immediate Family or Parties wholly or substantially owned or controlled by them, in order to avoid incidentally contracting with them. This would be added to disclosures

2. A Member shall not Participate in a decision by the Board or WMATA management to hire, appoint, employ or promote, or to enter into a Financial Transaction with a Relative of the Member. "Relative" means a relation of the Member

who is not a Household Member and is a: father, mother, grandfather, grandmother, non-dependent child, granddaughter, grandson, brother, sister, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, son-in-law, sister-in-law or brother-in-law.

C. Post WMATA Service Restrictions. Board Members shall not, for a period of **two years** following the end of their term or effective date of their resignation, accept Employment with any private third Party to work on a matter in which the Board Member has Participated. In addition, a Board Member, his or her Household Members or any Party that is wholly or substantially owned or controlled by that Member or his or her Household Member, shall not be a party to a contract with WMATA for two years following the conclusion of the Member's term of service. For purposes of this section, a Party is "substantially" owned or controlled if the Member or Household Member singly or in combination owns or controls more than fifty percent (50%) of the Party (i.e., by value or voting power).

Comment [SPT41]: Sources: First sentence is WMATA's provision against revolving door, which most directly addresses that issue (modified to match MWAA's 2-year ban). Remainder is MWAA's contracting ban, which is not included in WMATA Code.

Article X. Disclosures and Acknowledgements

A. Within 30 days of assuming a position as a Member of the Board of Directors and annually on **April 30** thereafter, each Board Member shall submit a disclosure statement in substantially the form provided in Attachment A to the Board Secretary ("Disclosure Statement"). The Disclosure Statement shall include:

Comment [SPT42]: Source: MWAA, as unless otherwise indicated.

Note: Retains WMATA Code of Ethics organization, which gathers all disclosure responsibilities in one section.

Comment [SPT43]: Highlight: Retains WMATA's April 30 deadline, which logically follows committee assignments and tax season.

1. any Substantial Interest or Duty in an Interested Party, Party or Property held by the Board Member or Household Members at the time of filing, except for "Personal Representation" interests as defined in Article III section K part 7 of this Code;

2. any positions of employment held by the Member or Household Members during the prior calendar year, whether on a full- or part-time basis; and

3. any outside positions held by the Member or Household Members during the prior calendar year as a director, officer, general partner or trustee of any Party (including nonprofit, labor and educational organizations or institutions, although positions held in any religious, social, fraternal or political organization need not be disclosed).

B. Continuing Disclosure Obligation. Whenever a Member or Household Member acquires a disclosable Substantial Interest or Duty in an Interested Party, Party or Property not previously disclosed, the Member shall notify the Board Secretary, in writing, within 10 calendar days of the acquisition and its details, and such statement shall be maintained with the Member's most recent Disclosure Statement.

Comment [SPT44]: Note: WMATA Code also requires continuing disclosures, but on the same annual form rather than the easier supplement here.

C. Disclosure of Gifts. Members shall submit a statement in substantially the form provided in Attachment [X] to the Board Secretary regarding any Gift solicited or accepted from a Prohibited Source by the Member or Household Member pursuant to an applicable exception of this Code. Gifts shall be disclosed in writing at the time of solicitation or acceptance (or as soon as possible thereafter). The disclosure shall briefly describe the Gift, state its value and identify its source. Gift disclosures shall be maintained by the Board Secretary for compilation and filing with each Member's Annual Disclosure Statement.

Comment [SPT45]: Note: WMATA Code contains requirement to disclose over-the-limit gratuities, but on annual form that did not lend itself to be easily updated. Attachment X will need to be developed.

D. Disclosures will be submitted to the Board Secretary. The Board Secretary will review each disclosure for completeness, and request the Board Member to provide any incomplete information. The Board Secretary will provide each completed disclosure to the Ethics Officer for review and for a determination of whether the disclosure presents a Conflict of Interest. The Ethics Officer will notify the Board Member who submitted the disclosure of any conflicts and provide 5 business days to resolve them. If the conflict is timely resolved or if there are no conflicts, the Ethics Officer will return the disclosure form to the Board Secretary. If a conflict remains unresolved after 5 business days, plus any extension granted in the Ethics Officer's sole discretion, the Ethics Officer will provide the disclosure form to the Board Secretary, who will transmit it to the Ethics Committee for consideration, recommendation and subsequent Board action.

Comment [SPT46]: Source: WMATA practice.
Explanation: This revision seeks to provide more detail about the required processes.

E. Acknowledgement of Fiduciary Duties and Responsibilities. Immediately upon being sworn in as a Member of the Board of Directors, and annually on April 30 thereafter, each Board Member shall submit a statement acknowledging the Board Members understanding of his or her fiduciary obligations to the Authority in substantially the form provided in Attachment [Y] to the Board Secretary.

Comment [SPT47]: Source: In accordance with required acknowledgment of board members of public authorities in New York.
Attachment Y to be developed consistent with this Code.

F. Acknowledgement of Ethics Obligations. The Ethics Officer will provide Members with a copy of this Code of Ethics upon assuming their position as Member. Within 30 days of receiving the Code, Members shall provide the Ethics Officer with a written acknowledgement that they have read and will comply with the Code.

Comment [SPT48]: Article X.G. Highlight: to retain Board Secretary's responsibility.

Comment [SPT49]: Article XI. Source: WMATA, unless otherwise indicated.
Explanation: consolidates related provisions and details process for others to report potential conflicts and suspected violations.

G. All statements required by this section shall be available for public review in the office of the Board Secretary.

Comment [SPT50]: Article XI.A. Modified to include new defined terms and state process.

Article XI. Other Reports of Potential Conflicts and Suspected Ethics Violations

Note: Very similar to MWAA:

A. Any Interested Party shall, prior to bidding on, proposing on or entering into a Financial Transaction, file a statement in substantially the form provided in Attachment D disclosing all interests that Board Members have in that Party or in the Financial Transaction, of which the Party has knowledge or should have knowledge. These statements shall be processed in a manner similar to Board Member disclosures.

"Authority management shall also collect information from Businesses seeking a contract or agreement with the Authority that will facilitate compliance with this Code, which may include a requirement for such Businesses to identify whether, to the Business's knowledge, any Director or member of the Director's Immediate Family has a Substantial Financial Interest in the Business (including a parent entity of the Business)."

B. The WMATA Joint Development Policies and Guidelines require Parties to report suspected violations and potential Conflicts of Interest.

Comment [SPT51]: Article XI.B. Source: New.

Explanation: Recognizes another source of disclosures.

C. Board Members shall disclose to the Ethics Officer any suspected violations of the Code of Ethics.

D. Any Party may report suspected violations of the Code of Ethics or potential Conflicts of Interest. Such reports: 1) must be made in writing, 2) must involve conduct in the capacity as a member of the WMATA Board, and 3) should be materially related to a violation of this Code, law, rule, regulation or duty, as opposed to a complaint about a policy or a matter of judgment. **The report shall be submitted to the Ethics Officer and may be made anonymously.**

Comment [SPT52]: Article XI.D. Source: former WMATA Procedures Section X. Modified such that reports are made to Ethics Officer, consistent with other similar reports, as opposed to Board Chair or Vice-Chair.

Explanation: WMATA's version abbreviates the MWAA process, which is to make reports "to the Board Chairman or the Vice Chairman if the allegation pertains to the Board Chairman." They, in turn, report to Ethics Officer.

E. The Ethics Officer shall conduct a preliminary investigation of all such suspected violations and potential conflicts, and report to the Ethics Committee, including a recommendation for or against further action based on the preliminary investigation. The Ethics Committee shall review all reports and recommendations received from the Ethics Officer and may conduct further inquiry or refer any matter to the Board of Directors for further action as the Committee deems appropriate. **The Ethics Committee may also direct the Ethics Officer to attempt to resolve the matter consistent with the process for Board Member disclosures. If the matter remains unresolved after 5 business days, plus any extension granted in the Ethics Officer's sole discretion, the Ethics Officer will so report to the Ethics Committee.** The Ethics Officer will provide a copy of all reports to the Board Secretary.

Comment [SPT53]: Article XI.E. MWAA. Modified by adding process for informal resolution, and providing copies to the Board Secretary.

Article XII. Ethics Officer

Comment [SPT54]: Sources: MWAA, with non-conflicting WMATA provisions.

A. The Ethics Committee shall designate a WMATA employee to serve as the Ethics Officer, who shall continue in that position until the designation is rescinded by the Ethics Committee.

Explanation: consolidates provisions regarding ethics officer and opinions by officer, establishes broad rights to request opinions and explains process and responsibilities during ethics investigations.

B. The Ethics Officer is charged with fostering the highest ethical standards for WMATA and its Board Members and employees, thereby strengthening public confidence that the business of WMATA is conducted with impartiality and integrity. Specifically, the Ethics Officer is responsible for:

1. distributing copies of this Code to Members;
2. reviewing disclosures submitted by Members;
3. receiving allegations of violations of this Code (see Article XI), conducting preliminary investigation into all such allegations, and reporting all allegations to the

Ethics Committee with a recommendation for or against further action based on the preliminary investigation;

4. advising Members, the Ethics Committee and Board about the application of this Code of Ethics to specific questions or situations presented by Members, including providing written opinions; and

Comment [SPT55]: Modified to clarify what documentation is required by MWAA provision: "and documenting when ethics advice has been provided."

5. arranging for the preparation and delivery of ethics training materials and sessions; and

6. serving as primary support staff to the Board's Ethics Committee (see Article XIII)

C. Ethics Opinions

1. Board Members may request a written opinion from the Ethics Officer regarding the application of the Code of Ethics to specific questions or situations that they encounter. The Chair, First Vice-Chair or Ethics Committee may request an opinion regarding the application of the Code to specific questions or situations regarding other Members that are properly before them. Requests for written opinions will include a full and accurate disclosure of all material facts.

2. No Board Member shall be found to have violated this Code of Ethics if the alleged violation followed from good faith reliance on a written opinion from the Ethics Officer that was made after a full and accurate disclosure by the Member of all material facts.

D. Ethics Officer Investigations

In reviewing disclosure forms or preparing an opinion, the Ethics Officer may conduct whatever investigation of the facts the Officer deems necessary. Board Members will cooperate fully with the investigation. If such investigation reveals conduct that may be criminal in nature, the Ethics Officer shall cease investigation of such conduct, report it to the appropriate prosecutor and so advise the Board Chair and Board Secretary.

Article XIII. Ethics Committee

Comment [SPT56]: Source: WMATA practice. Also, establishes standing Ethics Committee and describes its procedures for resolving conflicts and making recommendations to the Board for unresolved conflicts. MWAA provisions where indicated.

A. Formation

The Executive Committee will serve as the Ethics Committee, except that the Board Chair will select a replacement for any member of the Executive Committee who has a potential interest in the matter, or whose Participation in the matter would create

an appearance of a conflict of interest. The Board Chair will serve as the Chair of the Ethics Committee, or in his or her discretion, designate another member of the Ethics Committee to serve as Chair. In matters involving the Board Chair, the First Vice Chair will perform these duties. Ethics Committee members may not designate alternates to act on their behalf; instead, a member who is unable to fulfill his or her role on the Committee will so inform the officer chairing the Committee, who will select a replacement Board Member.

B. Quorum and Meetings

Four members of the Ethics Committee, consisting of at least one member representing each Signatory, constitute a quorum. The Ethics Committee will meet in and follow the procedures for Executive Sessions, except that attendance is limited to the members of the Ethics Committee, the CEO, the Ethics Officer and persons the Ethics Committee deems necessary for the discussion.

C. Consideration and Recommendation by the Ethics Committee

1. Consideration of a Matter by the Ethics Committee

The Chair of the Ethics Committee will promptly schedule an executive session to consider matters before it, and notify the Ethics Officer and affected Board Member(s) of the session. If the matter is resolved prior to the scheduled executive session, such as by the affected Board Member having cured a potential conflict of interest, the session will be canceled.

A Member whose alleged conduct is the subject of Board review shall be given notice and an opportunity to be heard in writing and in person, either directly or through a representative. The Ethics Officer will attend the session to provide guidance.

Comment [SPT57]: MWAA

The Ethics Committee shall obtain outside counsel whenever the interests of WMATA and a Board Member diverge; in making this determination and selection, the Ethics Committee will consult with the General Counsel. During its proceedings, the Ethics Committee may refer specific issues for external investigative assistance.

The Ethics Committee will cease its proceedings at any time it determines that the matter has been resolved and no longer presents an issue to be considered under the Code of Ethics.

2. Ethics Committee Recommendation

If the matter is not resolved by the Ethics Committee, the Ethics Committee will request a formal written opinion from the Ethics Officer and include it as part of its written recommendation to the Board. The Committee's recommendation for action upon the matter will be based on all evidence presented to it, including evidence provided by the affected Board Member; guidance from the Ethics Officer, including formal written opinion(s); consideration of the Code of Ethics; and any other findings and deliberations. The Chair will ensure Committee's recommendation is placed on the agenda for the next regularly-scheduled Board public session.

Because its written recommendation will be part of a public record, the Ethics Committee will carefully select the information it includes, in order to incorporate only that information required to adequately inform the Board, and exclude information that might discourage appropriate ethical conduct in the future, such as voluntary disclosures of potential conflicts. The affected Board Member may provide a statement that the Ethics Committee will include with its recommendation.

D. Board Action Upon Ethics Committee Recommendation

The Board will consider in public session the Committee's recommendation. The Board may direct further proceedings by the Ethics Committee or request additional guidance from the Ethics Officer. The Board will make a written determination, including findings of fact and conclusions of law, of whether there is a Conflict of Interest or other ethics violation. The determination shall be maintained by the Board Secretary and be made publicly available.

E. Sanctions

1. If the Board determines that a Member has knowingly violated this Code, the Board may take the action it determines to be appropriate, which may include but is not limited to any or all of the following: issuing a public reprimand; **directing involuntary recusal; removal from positions held on Committees**; giving notice of the violation to the Member's appointing authority; submitting a request to the Member's appointing authority that the Member be removed; **any other appropriate action regarding the Member**; and appropriate action regarding any contract or agreement that is related to the violation (e.g. voiding or canceling a contract), to the extent permitted by law.

2. Any Board Member who willfully violates any provision of Compact § 10, shall, at the discretion of the Board, forfeit the Board Member's position with WMATA. The Board shall provide the Board Member notice and an opportunity to be heard, in

Comment [SPT58]: Source: MWAA (1 & 4).

Highlights: adds involuntary recusal and removal from positions held on Committees, as important examples of effective sanctions in some circumstances, and additional discretion in crafting appropriate sanctions.

Comment [SPT59]: Source: WMATA (2 & 3).

writing and in person, directly or through counsel, before taking official action to cause the Board Member to forfeit the position.

3. Any Financial Transaction, to which WMATA is a party, made in contravention of Compact § 10, may be declared void by the Board. The Board shall provide notice and an opportunity to be heard, in writing and in person, directly or through counsel, to any Party whose Financial Transaction with the Board or WMATA is considered to contravene these sections before taking action to void the transaction.

4. The Board may seek guidance from the Ethics Officer or General Counsel regarding appropriate sanctions.

Article XIII. Interpretation and Training

Comment [SPT60]: Source: MWAA.

A. The Board is responsible for enforcing this Code. It may seek general guidance regarding interpretation of the Code from the Ethics Officer.

B. The Ethics Officer will arrange for all Members to receive in-person ethics training and accompanying training materials within four weeks of the start of their term and thereafter on an annual basis.

Article XIV. Severability

Comment [SPT61]: Source: WMATA

The provisions of this Code of Ethics shall be severable and if any phrase, clause, sentence or provision is declared invalid, the validity of the remainder shall not be affected thereby.

Article XV. Effective Date; Duration; Amendment.

Comment [SPT62]: Sources: WMATA (first paragraph); MWAA (second).

This Code shall become effective when adopted by the Board and shall remain in effect unless and until amended or revoked by the Board in accordance with § 8 of the Compact.

The Ethics Officer, in consultation with the Board Secretary and General Counsel, shall review this Code on an annual basis and report to the Board regarding any recommendations for amending the Code or its implementing policies and procedures.

APPENDIX 1 TO CODE OF ETHICS OF THE WMATA BOARD OF DIRECTORS
EXCEPTIONS TO RULE AGAINST ACCEPTING GIFTS

1. Gifts of \$25 or Less. Board Members and Household Members may accept a Gift other than cash of \$25 or less, so long as the aggregate market value of individual Gifts a Board Member or Household Member receives from the same Prohibited Source in a calendar year does not exceed \$50. If the market value of a Gift exceeds \$25 (or the aggregate market value of multiple gifts exceeds \$50), a Member may not pay the excess value over \$25 (or \$50) in order to accept the gift.

Comment [SPT63]: Source: MWAA, unless otherwise indicated.

Comment [SPT64]: Note: Current Board rule is \$75 or less, aggregate value from a single source of \$200 or less. These higher thresholds reflect that the WMATA Board is not directly involved in procurement matters.

2. Personal Gifts. Board Members and Household Members may accept a Gift that is given under circumstances that make it clear that the Gift is motivated by a personal friendship or family relationship rather than the position of the Board Member. Relevant factors in deciding whether a Gift is motivated by a personal friendship or family relationship include the history of the friendship or relationship, and whether the cost of the gift is paid by the individual with whom the friendship or relationship exists or by the individual's employer.

3. Widely Attended Gatherings. Board Member and Household Members may accept a gift of free attendance at a widely attended gathering or any portion of such an event that is open or part of a regularly-scheduled program.

Comment [SPT65]: Source (this paragraph and next): WMATA. Modified to illustrate events that are not widely-attended, rather than provide narrow examples of widely-attended gatherings.

A gathering is not widely attended, open or part of the regularly-scheduled program if it is, for example, by invitation only or focused on a particular business rather than transit more generally.

Current Board Code: "widely-attended events that are open or part of the regularly-scheduled program for gatherings and conferences, such as those held by the American Public Transportation Association and similar organizations."

Free attendance to a widely attended gathering may include the provision of food, refreshments, entertainment, instruction and instructional materials, each of which is furnished to all attendees as an integral part of the gathering. Free attendance may not include the provision of travel or lodging.

Explanation: MWAA requires the Ethics Officer to approve widely-attended gatherings on a case-by-case basis. Recommend against this approach because it would be burdensome.

4. Speaking Engagements and Events. Board Members and Household Members may accept free attendance from the sponsor of an event at which they are speaking, presenting information or otherwise participating on behalf of WMATA. Free attendance may include food, refreshments and entertainment furnished to all attendees as an integral part of the event. Participation in the event on the day of the Board Member's or Household Member's participation is viewed as a customary and necessary part of the performance of their positions and does not constitute a Gift.

Comment [SPT66]: Modifies MWAA provision by removing "and activities (e.g. a round of golf)" from list of benefits that may be accepted.

5. WMATA-Sponsored Events. Board Members and Household Members may accept free attendance to an event that is sponsored solely by WMATA to recognize one or more Authority officers or employees or a WMATA achievement or milestone, or that is sponsored, in whole or in part, by WMATA to raise funds for a charitable organization or cause. Free attendance to such an event may include the provision of food, refreshments and entertainment.

6. Gifts to Household Members. Household Members may accept a Gift that results from the business or employment activities of the recipient, and it is clear from the circumstances that the gift is not being offered or given because of the Board Member's position with WMATA.

7. Prizes. Members may accept a gift that is a prize given to successful competitors in competitive contests or events or to persons based upon random drawings (including door prizes given randomly). Members may accept a gift, not addressed in the prior sentence, that is provided as a favor or in recognition of attendance to all attendees at a widely attended gathering or at an event identified in paragraph (4) or (5), so long as the value of the gift is less than \$25.

8. Gifts to WMATA. A Member representing or acting on behalf of WMATA may accept and use gifts of property for WMATA. Property accepted under this section and proceeds from that property must be used, as nearly as possible, under the terms of the gift, if any. These include: a) ceremonial gifts given to Members (e.g., by representatives of governmental units) while serving as a representative of WMATA that are accepted on behalf of WMATA; and b) gifts of food or refreshments provided Members at events they are attending as representatives of WMATA, where it is clearly in the interest of WMATA that it be present at the event through one or more official representatives. In the case of ceremonial gifts, Members are to turn the gifts over as soon as practicable to the Ethics Officer for disposition.

9. Approved Gifts. The Ethics Committee may, in an open public meeting, approve a Member's acceptance of a gift not otherwise falling within one of the foregoing exceptions if it determines that the acceptance would not be detrimental to the impartial conduct of the business of WMATA.

Comment [SPT67]: Modified by requiring Ethics Committee review rather than Board of Directors.