

DRAFT 5
OCCMA Rules for Enforcement
of the ICMA's Code of Ethics

Section 1. ICMA Code of Ethics

The ICMA Code of Ethics (Code) define the principles that serve as the foundation for the local government management profession and set the standard for excellence. Article 11 of the OCCMA Bylaws adopts the Code which requires OCCMA members to govern their conduct in accordance with the Code and its associated guidelines, and provides that members will submit to peer review for any allegations of unethical behavior. The Board shall have the authority to take disciplinary action up to and including expulsion from the Association, against any member which, in its judgment, may be appropriate to maintain the professional standards of the Association. Disciplinary action for violations of the Code may include public censure in which notice is given to members of OCCMA, the governing body of the member's, employer, and media, indicating that the Association strongly disapproves of such conduct.

- A.) **OCCMA Ethics Committee.** Article 9 of the OCCMA Bylaws creates a standing Ethics Committee to assist the OCCMA Board of Directors in adjudicating ethics complaints.

- B.) **Ethics Committee Membership.** the OCCMA President shall make appointments of OCCMA members to serve on the Ethics Committee. All members shall serve a term of one year.

- C.) **Ethics Committee Chair.** The OCCMA President shall appoint an Association member to serve as Ethics Committee Chair. The Chair shall not be the OCCMA President or OCCMA Past-president, since both officers have specific responsibilities in reviewing ethics complaints.

Section 2. Complaints Against Oregon ICMA Members

Any complaints against members of OCCMA who are also members of the International City/County Management Association (ICMA) shall be forwarded by the OCCMA President to ICMA. Ethics complaints can also be directly submitted to ICMA. The rules of procedure for ICMA will apply to the investigation of reported violations of the Code for all ICMA members. The President of OCCMA will appoint a fact-finding committee, when requested by ICMA, to investigate any ethics complaints of OCCMA members who are also members of ICMA. OCCMA will not conduct a separate investigation of these complaints for those who are members of both organizations. OCCMA will accept sanctions as final for ethics violations made by ICMA. If ICMA issues a sanction of expulsion, permanent bar from future membership, or membership suspension, those same actions will be applied to OCCMA membership. A copy of the ICMA sanctions shall be kept by the Secretary/Treasurer of OCCMA for OCCMA members as provided by this policy.

Section 3. Complaints Against OCCMA Members

OCCMA is responsible for the investigation of ethics complaints against members of OCCMA who are not members of ICMA. The following policy outlines OCCMA's process to enforce provisions of the Code, including investigation and enforcement of any complaints and/or violations of the Code of Ethics. The OCCMA Board of Directors (Board) shall be responsible for making final decisions on matters pertaining to the enforcement of the Code of Ethics. The OCCMA Ethics Committee (Committee) shall be responsible for implementing these rules and shall have specific duties as set forth in this policy.

- A. **Timelines.** It is the intention that this policy be carried out carefully but expeditiously to minimize the time during which a member may be subject to possible disciplinary action while also ensuring the fairness of the process.
- B. **Conflicts of Interest.** No person may participate in the investigation or adjudication of a complaint brought under these Rules if that person's participation would otherwise create, or appear to create, a conflict of interest.
- C. **Ethics as a Foundation of Membership.** All active members of the OCCMA are subject to the Code and are subject to sanctions for any violations whereof which occur during their membership. As a condition of membership, the OCCMA membership application shall include a provision that requires OCCMA members to acknowledge and adhere to the ICMA Code of Ethics. A member may be subject to sanctions for a violation, which continues while he or she is a member even though the conduct in question originated prior to admission for membership.
- D. **Former OCCMA Members.** If a complaint is made against a person who was an OCCMA member at the time the alleged violation occurred, but who is not a member of the OCCMA at the time the complaint is made, the complaint will be processed under this policy only if the former member agrees in writing. In no event shall consideration be given for an individual's re-admission to membership in OCCMA until an outstanding and unresolved complaint against the individual for conduct while formerly an OCCMA member has been reviewed in accordance with this policy. The OCCMA shall retain jurisdiction over an investigation of a respondent who, before the conclusion of the investigation, resigns from the OCCMA or otherwise allows his or her membership to elapse.

Section 4. Ethics Complaint Resolution

- A. Complaints shall be received by the President of OCCMA, or the President-elect, if the President has a conflict of interest relating to the complaint. The form of complaint may be a written complaint or other written information, including media articles or email from any source indicating that a violation of the Code may have occurred. The complaint must be accompanied by documentation that supports the allegation of a violation of the Code. The complainant may remain anonymous.
- B. **Complaint Evaluation Process.** The guidelines for addressing complaints received of violations of the Code are as follows:

1. Receipt of the Complaint. The complaint is directed to the OCCMA President. The President will determine whether the subject of the complaint (respondent) is an ICMA member or an OCCMA member.

2. Complaints Regarding Members.

a) If the subject of the complaint is an ICMA member, the complaint will be forwarded to the ICMA Executive Director or designee for review by ICMA by the Committee on Professional Conduct (CPC). ICMA may request that the OCCMA President appoint a fact-finding committee to interview the member and gather public information relative to the allegations in the complaint as necessary. If a sanction is made by ICMA, then the President will be notified, and this communication will be placed in a confidential file with the Secretary/Treasurer of OCCMA in accordance with these provisions.

b) If the subject of a complaint is an OCCMA member who is not an ICMA member, then the President will call a meeting of the President, Past-President, and Ethics Chair to review the complaint. If the complaint demonstrates the member's conduct may have violated the Code and contains the appropriate documentation, then the complaint will proceed to the next step. If additional information is required, the Ethics Chair will request information from the complainant, and once this information is reviewed, the President, Past-president and Ethics Chair will make a determination that, if the alleged violation occurred, could constitute a violation of the Code of Ethics. If that determination is made, the complainant will be investigated as provided in this policy. If a determination is made that the facts in the complaint do not constitute a violation of the Code, then the President will notify the complainant of this conclusion and the matter will be closed.

3. Notification to the Respondent.

a) The Chair of the Ethics Committee will provide written notification via registered mail marked 'Personal and Confidential' to the respondent that a complaint has been received regarding possible violations of the Code by that respondent. The notification should include:

- The nature of the complaint, including the Code Tenets that may have been violated;
- A copy of the complaint, if not submitted anonymously, or a summary of the complaint, if the complaint would reveal the confidentiality of the complainant;
- The documentation submitted as the basis for the complaint;
- A copy of the Code with guidelines;
- A copy of the OCCMA Rules of Enforcement of the Code.

b) The respondent will be provided 30 days to provide a response to the complaints and any questions posed by the Ethics Committee Chair. If there is no response, the complaint will proceed to subsection 6.

4. Respondent's Reply.

a) If the respondent indicates that the facts as outlined in the complaint are correct, then the complaint will go to subsection 6 for review by the Ethics Committee.

b) If the respondent contests the facts as provided in the complaint, then the Ethics Committee Chair will appoint a fact-finding committee of members of

the Ethics Committee, or other members, including senior advisors, who will investigate and objectively review the facts of the case. The Fact-finding Committee will consist of at least three members.

5: Fact-Finding Committee Responsibilities.

a) The Fact-finding Committee will conduct an investigation to gather the facts surrounding the allegations in the complaint by offering to interview the member and using the records request process, and preparing a summary report for the Ethics Committee. The Fact-finding Committee members are encouraged to use non-governmental email addresses and other private communications to avoid creating public records that could be subject to a public records request and to protect the confidentiality required for this review.

b) The Fact-finding Committee will request the OCCMA Secretary/Treasurer to review the ethics files to determine if any previous complaints have been investigated regarding the respondent. If a previous investigation has occurred, the Secretary/Treasurer will provide a copy of the materials to the Fact-finding Committee for their review.

c) The Fact-finding Committee will contact the respondent to offer the opportunity to interview with the fact-finding committee and may contact the complainant to clarify issues relating to the complaint. The Fact-finding Committee may collect any additional information or interview other potential witnesses as to the facts surrounding the complaint. The Fact-finding Committee will be aware of maintaining the confidentiality of the complaint and investigation in their efforts to collect necessary information.

d) The Fact-finding Committee will gather the facts of the case but will not make a recommendation regarding possible sanctions that could be imposed to address any possible violations.

e) The Fact-finding Committee will forward their report to the Ethics Committee Chair. The Ethics Committee Chair will forward a copy of the confidential report to members of the Ethics Committee, and also provide the respondent a copy of the report. If the complaint was filed anonymously, all references that would identify the complainant will be redacted from the copy of the report forwarded to the respondent by the Ethics Committee Chair.

f) The respondent will have 15 days to provide a written response to the Ethics Committee Chair regarding the findings of the Fact-finding Committee. This response, if provided, will be provided to the Ethics Committee as part of their review.

6. Ethics Committee Review.

a) The Ethics Committee will meet in executive session to review the information provided by the Fact-finding Committee, the respondent's response, if provided, and the Committee will determine whether any additional information needs to be obtained. If the matter is referred back to the Fact-finding Committee, no determination will be made as to whether a violation of the Code has occurred until a following meeting is scheduled by the Ethics Committee Chair to review any additional requested information on the complaint. The Fact-finding Committee will participate in this meeting.

b) If the Ethics Committee determines that the facts of the complaint are sufficiently clear, then the Committee will report to the OCCMA Board of Directors as to whether a violation occurred, and if a violation occurred, recommend an appropriate sanction to the OCCMA Board for consideration. The Ethics Committee Chair will prepare a written report for the OCCMA President who will schedule an executive session of the Board for review of the findings of the Ethics Committee. The report will be shared as a confidential report to the Board of Directors prior to the executive session.

7. OCCMA Board of Directors Review of Ethics Committee Report.

a) The OCCMA Board will meet in executive session with the Ethics Committee Chair and the Fact-finding Committee to review the report from the Ethics Committee. Following the review, discussion, investigation, and recommendation from the Ethics Committee, the Board may:

- Refer the matter back to the Ethics Committee for further information;
- Determine that a violation of the Code did not occur to close out the complaint;
- Determine that a violation of the Code did occur, and determine the appropriate sanctions for the violation.

b) If the Board determines that a violation of the Code did not occur, the President will provide notice to the respondent of this finding and notice provided to the complainant indicating that this matter has been closed.

c) If the Board determines that a violation occurred, notice will be sent to the respondent by the President of this determination. The letter will include the sanctions imposed to address the Code violations. The respondent will have 15 days in which to request a hearing of the determination of the Board. If no response is provided, then the determination previously issued stands as the final communication to the respondent. A letter will be sent to the complainant indicating the outcome of this action.

d) If the respondent requests a hearing, then the hearing will be scheduled with an executive session for the Board, Ethics Committee Chair, and the Fact-finding Committee to meet with the respondent as provided in Section 5 'Ethics Hearings.' Following the hearing, the Board will meet to determine final action on the Ethics complaint. The President will prepare a letter to be sent to the respondent, and a letter to the complainant indicating the outcome of this complaint, and any sanctions imposed.

Section 5 Ethics Hearings

- A. **Requested Hearings.** In the event a respondent requests a hearing, the following procedure shall govern conduct pursuant to this policy. The hearing shall be conducted by the Board, which shall be convened by the OCCMA President. The hearing shall be conducted as an executive session. Hearings may be virtual or in-person.
- B. **Hearing Notice.** Within thirty (30) calendar days of receiving a request for a hearing, the President shall notify the respondent by registered or certified mail that a hearing has been scheduled before the Board. The hearing date shall not

be earlier than thirty (30) calendar days after the date the notice is postmarked. The notice shall also state that the respondent has a right:

1. To appear personally at the hearing;
 2. To be accompanied and represented at the hearing by an attorney or other representative;
 3. To review all documentary evidence, against him or her, in advance of the hearing (unless the complaint has been requested to be anonymous in which case identifying information will be redacted);
 4. To cross-examine any witness who testifies against him or her at the hearing; and
 5. To submit documentary evidence and to present testimony, including the respondent's, in his or her defense, at the hearing.
 6. The respondent may request witnesses appear at the hearing. The President will determine if the witnesses are germane to determine whether a violation of the Code has occurred.
 7. The meeting may be conducted virtually as determined by the President.
- C. **Rules of Evidence.** The Board shall not be bound by any formal rules of evidence but may accord appropriate weight to the evidence based on its relevance and reliability.
1. The Fact-finding Committee report shall be admissible evidence at the hearing.
 2. The Board may not hear evidence of any alleged ethics violation by the respondent that was not related to the initial investigation.
- D. **Hearing Agenda.** At any hearing conducted under these Rules, the Chair of the Ethics Committee or designee, shall first present evidence in support of the subcommittee's report and the Ethics Committee's recommendation. Upon conclusion of the presentation, the respondent shall have the opportunity to present evidence in his or her defense, and the Chair of the Ethics Committee shall have the right to question or cross-examine any witness testifying at the hearing.
- E. **Decision of the Board.** Within thirty (30) calendar days of the conclusion of the hearing, the Board shall render a decision in the case. The decision shall be in writing, communicated by the OCCMA President, and shall include a statement of the reasons therefore. Only evidence which was put before the Board and the Ethics Committee may be considered as a basis for the decision.

Section 6. Sanctions for Code Violations

- A. **Violation Sanctions.** The Board may impose sanctions on an OCCMA member who is found to have violated the Code in accordance with these Rules. In determining the kind of sanction to be imposed, the following factors may be considered: the nature of the violation, prior violations by the same individual, the willfulness of the violations, the level of professional or public responsibility of the individual, and any other factors, which bear upon the seriousness of the violation.

- B. **Sanction Types.** The following sanctions may be imposed singularly or in combination at the end of an investigation and/or hearing under these rules:
1. **Private Censure.** A letter to the respondent and the complainant indicating that the respondent has been found to have violated the Code of Ethics, that the OCCMA disapproves of such conduct, and that, if it is repeated in the future, it may be cause for more serious sanctions.
 2. **Public Censure.** Written notification to the respondent, the complainant, ICMA, local governing bodies affected by the circumstances, and the news media, indicating that a violation of the Code took place, that the OCCMA strongly disapproves of such conduct, and the nature of the sanction(s) imposed. Notice shall also be published in the OCCMA newsletter.
 3. **Expulsion.** Written notification to the respondent, the complainant, ICMA, local governing bodies affected by the circumstances, and the news media indicating that the respondent's membership privileges in the OCCMA have been revoked. Notice shall also be published in the OCCMA newsletter.
 4. **Membership Bar.** If the respondent is no longer a member of the OCCMA, written notification to the respondent, the complainant, ICMA, local governing bodies affected by the circumstances, and the news media that the respondent has been barred from re-admission. Notice shall also be published in the OCCMA newsletter.
- C. **Criminal Conduct.** Upon receiving documented evidence that (1) a member has been found guilty of criminal conduct after trial by a judge or a jury, (2) the member's conduct violates the Code of Ethics, and (3) the conduct occurred while the person was a member of the OCCMA, the President may (a) ask the Ethics Committee to commence an investigation in accordance with the Initiation of Procedures section of this policy; or (b) defer consideration until the person has exhausted all legal appeals or the time for legal appeals has expired.

Section 7 Confidentiality

- A. **Confidentiality.** OCCMA, the Board of Directors, Ethics Committee, Fact-finding Committee, and others involved on behalf of OCCMA with the investigation and hearings shall treat all aspects of complaints, investigations, hearings, and procedures as confidential. All meetings involving the investigation, and determining sanctions, shall be held in confidential executive sessions.
- B. **Private Censure.** Private Censure shall be kept confidential with the complainant and respondent being notified of the results as outlined in the Code's guideline on confidentiality. The issuance of a private censure will be acknowledged in the OCCMA Board of Director's minutes with a brief summary describing the action that violated the Code's tenets, provided that no names or local governments identifying other details are disclosed. This summary may be published in the OCCMA newsletter or used for ethics training purposes.
- C. **Other Actions.** Public censure, expulsion, and membership ban shall be handled in accordance with Section 4 of this policy.

- D. **Association Business.** Investigations of other complaints are associated with membership in OCCMA. Communications relating to an ethics complaint shall be conducted using non-governmental email addresses and other private communications to avoid creating public records that could be subject to a public records request.

Section 8 Use of Legal Counsel

- A. **Legal Counsel.** The Board is authorized to secure legal counsel to represent the OCCMA and, more specifically, the Ethics Committee and any subcommittees it may establish during an investigation of alleged violations against the Code of Ethics. OCCMA shall provide professional liability coverage to assist and protect the OCCMA and the participants in this process.

Section 9 Ethics Investigation Records

- A. **Records of Investigation.** Upon conclusion of an ethics investigation, all materials will be placed in a sealed envelope or file labeled 'Confidential Ethics Investigation.' Ethics Complaints that are unfounded or result in a private censure should be sealed. The envelope or file will include the name of the respondent only, and will not indicate whether sanctions were imposed by the Board. Public censures, membership bars and expulsion should be kept in a file that is subject to review, and will identify a date thirty years from the closure of the investigation of the Board's decision on an ethics matter. The Secretary/Treasurer will destroy the file after this date.
- B. **Access to Ethic Complaint Files.** Envelopes shall remain sealed unless there is a subsequent ethics complaint being investigated by the Ethics Committee of the member previously investigated. In this event, the Secretary /Treasurer will provide a copy of the contents of the envelope to the Ethics Committee Chair. Information regarding past ethical violations will be considered when investigating the new complaint. Upon completion of the investigation, the files will be returned to the Secretary/Treasurer for inclusion in the most recent ethics violation investigation. Ethics records for membership bars and expulsions shall be reviewed by the Secretary/Treasurer when an application is received for membership to OCCMA to determine the applicant's eligibility for membership. In addition, ICMA should be notified by the Secretary/Treasurer if a propose member to ICMA has been barred from membership to OCCMA due to an ethics violation.

Section 10 ICMA Ethics Decisions

- A. **Retention of Records.** A copy of ethics sanctions imposed on OCCMA members by ICMA will be kept on file by the OCCMA Secretary/Treasurer in accordance with the provisions described in Section 9 Ethics Investigation Records.
- B. **Public Censures, Membership Bars, and Expulsion.** OCCMA members who receive a public censure or expulsion from ICMA, or non-members who receive a

membership bar or expulsion from ICMA, are subject to the same sanctions by OCCMA. The OCCMA Ethics Committee will review the decision made by ICMA without conducting an independent investigation and will recommend sanctions to be imposed by the OCCMA Board of Directors. The Board of Directors will impose appropriate sanctions based on the record compiled by ICMA. The decision of the Board of Directors is final.