

Starting in just a  
minute

# PLANNING ETHICS

19<sup>th</sup> Annual *Alfred B. DeBello Land Use and Sustainable Development Conference:*  
Building the Infrastructure for Our Sustainable Future

Presented by the Land Use Law Center of Pace University  
December 7, 2020



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The Land Use Law Center's 19th Annual  
Alfred B. DelBello  
Land Use and Sustainable Development Conference

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# Agenda

- Required AICP Content
- AICP Ethics Code Overview
- Focused Discussion
- Audience Discussion



# Required AICP Content

**“Please Note:** This session has been created to provide general education regarding the AICP Code of Ethics. Though examples, sample problems, and question and answer sessions are an important part of illustrating application of the code’s provisions, all certified planners should be aware that **“Only the Ethics Officer is authorized to give formal advice on the propriety of a planner’s proposed conduct.”** (AICP Code of Ethics, Section C3). If you have a specific question regarding a situation arising in your practice, you are encouraged to seek the opinion of the Ethics Officer.”

- 312-786-6360
- [www.planning.org/ethics](http://www.planning.org/ethics)
- [ethics@planning.org](mailto:ethics@planning.org) (not to discuss specific situations)

AICP

# Why Talk About Ethics

- AICP planners belong to the American Institute of Certified Planners, and **must practice in accordance with standards of practice**, including the AICP's Code of Ethics and Professional Conduct.
- Citizens have a right to expect that planners (in the public or private sectors) will help **elevate governance**, not fall to its more base level.
- Planners have **ethical responsibilities** to their colleagues, their clients and their communities.
- Planners are guided by both existing local, and sometimes state, ethics provisions. But frequently none exist, and planners must **exercise common sense**.
- Ethics scenarios are rarely “cut and dried” and often contain a high level of nuance. **Ethics discussions help develop reasoning and reflection skills** that can be applied in everyday situations.

# APA's Ethical Principles of Planning

- Adopted in 1980; Revised in 1992
- ***Guidelines*** for those who participate in the process of planning as advisors, advocates, and decision makers
  1. Serve the public interest
  2. Maintain high standards of integrity / proficiency
  3. Improve planning competence

# Overview of AICP Code of Ethics

- Aspirational Principles
  - Responsibility to Public, to Clients/Employees, and to the Profession/Colleagues
- Rules of Conduct
  - 26 Rules to which AICP Members are held accountable
- Advisory Opinions/Guidance
  - Informal Advice, Formal Advisory Opinions, Annual Report
- Complaints of Misconduct
  - Filings, Preliminary Charge/dismissal, Settlement, Decision, Appeal
- Disciplinary Actions
  - Letter of Admonition (private), Public Censure, Suspension, Revocation

What do YOU think were the most commonly cited ethics topics in 2019?



# Actual Ethics Cases and Inquiries (2019)



# Ethical Misconduct Cases in 2019

- Most commonly cited rules were “accurate information” (#1) and “confidential information” (#7)
- Seven (7) cases dismissed with no preliminary charge filed
- Two (2) cases dismissed after a preliminary charge was filed
- Ten (10) cases settled
  - Eight (8) for misuse of AICP credential
- Two (2) disciplinary action
  - Confidential Letters of Admonition
    - Disclosure of confidential information (Rule #7)
    - Secondary employment and special advantage (Rules #4, 5, 14)

AICP

# Cases of the Year

*Adapted from APA 2020-2021 Cases of the Year*



## Scenario Character Names Based on...

- **Jane Jacobs**: Author, Activist, Urbanist (1916-2006)
- **Lucio Costa**: Architect, Planner, Preservationist (1902-1998)
- **Catherine Bauer Wurster**: Educator, Housing Advocate (1905-1964)
- **Marcy Kaptur**: Planner, U.S. Congresswoman (1946 - )
- **Norman Krumholz**: Author, Educator, Planner (1927-2019)





# Confidential Information

Adapted from the 2020/21 AICP Ethics Cases of the Year



## Confidential Information

Marcy, a restaurant owner—and member of the Costaville city council—sends an email to Lucio, AICP, the planning director, inquiring about the process for conditional use permits. She's concerned about a pet grooming store opening next door to her restaurant.

Lucio tells the pet store owner about Marcy's email and, the next time the owner sees Marcy, he yells at her and accuses her of trying to stop the project.

When Marcy asks Lucio why he told the owner about her email, he says that because she is an elected official this information was public.

Marcy notes that she had inquired on her restaurant email—and not from her city council email. Further, she notes, the owner had not made any FOIA request for the emails.

Marcy says comments made by the pet store owner have had a negative impact on her business.



# Confidential Information

## Relevant AICP Code Provisions

### **AICP Ethics Code—Principles**

**#1a:** “We shall always be conscious of the **rights of others**.”

**#1b:** “We shall have special concerns for the **long-range consequences of present actions**.”

**#1h:** “We shall **deal fairly** with all participants in the planning process.”

### **AICP Ethics Code—Rules of Conduct**

**#7:** “We shall not use to our **personal advantage**, nor that of a subsequent client or employer, **information gained in a professional relationship** that the client or employer has requested be held inviolate or that **we should recognize as confidential** because its disclosure could result in **embarrassment or other detriment** to the client or employer. **Nor shall we disclose** such confidential information except when (1) required **by process of law**, or (2) required to **prevent a clear violation of law**, or (3) required to **prevent a substantial injury** to the public....”



## Confidential Information

### Survey Says...

- In the real-life case, on which this scenario was based, the Ethics Officer and the AICP Ethics Committee both agreed that Lucio should **not** have disclosed this information.
- By doing so, they said, Lucio had caused embarrassment to Marcy. Thus, it was a violation of Rule of Conduct #7 (confidential information).
- Lucio received a Confidential Letter of Admonition and the case was closed.



# Elected Office

Adapted from the 2020/21 AICP Ethics Cases of the Year



## Elected Office

Catherine, AICP, a planner with Bauerville, would like to run for city council in Wurster, where she resides.

In accordance with the AICP Ethics Code (Rule #4), she requests written permission from her town manager. But the manager is hesitant, noting that both the ICMA's Ethics Code and the AICP Ethics Code discourage such political activities.



# Elected Office

## Relevant AICP Code Provisions

### **ICMA Ethics Code "Guidelines"**

**#7c:** "Members shall not run for elected office or become involved in political activities related to running for elected office or accept appointment to an elected office."

### **AICP Ethics Code—Principles**

**#3j:** "We shall contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities."

### **AICP Ethics Code—Rules of Conduct**

**#4:** "We shall not...undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure...and having received subsequent written permission to undertake additional employment."



### Survey Says...

This scenario was based on multiple real-life cases.

- In those instances where a supervisor opposed a public planner's run for office, the planner decided not to run.
- In those cases where public planners did receive written permission to run, the planners were very careful to recuse themselves from issues that could be perceived as conflicts of interest where they worked.



# Social Equity

Adapted from the 2020/21 AICP Ethics Cases of the Year

Norman, AICP, a staff planner with Costaville, has been assigned to review the site plan for a group home for refugee immigrant children who have been separated from their parents.

The site plan meets all legal requirements, but Norman is concerned about the quality of the operation, as well as the long-term separation of the children from their parents.

Norman voices these concerns to his supervisor, Lucio, AICP, who says he is very sympathetic. But Lucio notes that the Mayor wants to get the approval done as fast as possible—“before the NIMBYs get wind of this,” says the Mayor.

Lucio tells Norman to focus just on the facts of the site plan review process in his staff report—and not to mention any of his social equity concerns.

*Relevant AICP Code Provisions*

**AICP Ethics Code—Principles**

**#1f:** “We shall **seek social justice** by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. **We shall urge the alteration of policies, institutions, and decisions that oppose such needs.**”

**#2b:** “We shall accept the decision of our client or employer...unless the course of action is **illegal** or **plainly inconsistent with our primary obligation to public interest.**”

**#2b:** “**We...shall not accept the applicability of a customary solution** without first establishing its appropriateness to the situation.”

**AICP Ethics Code—Rules of Conduct**

**#1:** “We shall not deliberately or with reckless indifference fail to provide **adequate, timely, clear and accurate information** on planning issues.”

**#2:** We shall not accept an assignment from a client or employer when the services to be performed involve conduct we know to be **illegal or in violation of these rules.**”

**#18:** We shall not direct or coerce other professionals to make analyses or reach findings **not supported by available evidence.**”



## Survey Says...

- In the real-life case, on which this scenario was based, Norman and Lucio were seeking background information from other communities that had dealt with this group home operator.
- Meanwhile, a local community group was raising its own social concerns about the project in public meetings, media stories, and social media posts.



# Virtual Public Engagement

Adapted from the 2020/21 AICP Ethics Cases of the Year



## Virtual Public Engagement

During the recent viral pandemic, Costaville moved its public meetings to web-based platforms, where public engagement was handled through online forums and chat rooms.

With continued concerns about face-to-face interactions, the Mayor has told his planning director, Lucio, AICP, to use a similar technology for an upcoming Subarea Plan workshop.

Lucio tells the Mayor this will exclude many residents who don't have access to—or proficiency with—computers. Also, some residents won't be able to access the draft documents. Finally, Lucio says, many of these same people have concerns about affordable housing, which is a key element of the draft plan.

Lucio suggests delaying the plan until an in-person workshop can be held. The Mayor, however, fearing the loss of state funding for the plan, orders him to go ahead with the virtual public workshop.



# Virtual Public Engagement

## Relevant AICP Code Provisions

### **AICP Ethics Code—Principles**

**#1f:** “We shall provide timely, adequate, clear, and accurate information on planning issues **to all affected persons and to government decision makers.**”

**#1e:** We shall give people the opportunity to have a **meaningful impact** on the development of plans and programs that may affect them. Participation should be **broad enough to include those who lack formal organization or influence.**”

**#1f:** “We shall **seek social justice** by working to expand choice and opportunity for all persons, recognizing a **special responsibility to plan for the needs of the disadvantaged** and to promote racial and economic integration. **We shall urge the alteration of policies, institutions, and decisions that oppose such needs.**”

**#2b:** “We shall accept the decision of our client or employer...unless the course of action is **illegal** or **plainly inconsistent with our primary obligation to public interest.**”



# Virtual Public Engagement

## Relevant AICP Code Provisions

### **AICP Ethics Code—Rules of Conduct**

**#1f:** “We shall not deliberately or with reckless indifference **fail to provide** adequate, timely, clear, and accurate **information on planning issues.**”

**#18:** “We shall not direct or coerce other professionals to make analyses or reach **findings not supported by available evidence.**”

**#20:** “We shall not **unlawfully discriminate** against another person.”



# Virtual Public Engagement

## Survey Says...

- This scenario, which was written early on during the Covid-19 global pandemic, was not based on a real-life situation.
- However, at least one community is facing a lawsuit by a group of residents who say they were not able to participate in a Plan Commission meeting on a controversial project during the pandemic—due to their lack of internet access.



# Personal Property

Adapted from the 2020/21 AICP Ethics Cases of the Year



## Personal Property (1)

- Norman, AICP, a staff planner with Costaville, is working on a rezoning proposal for a transit-oriented development (TOD) corridor, in accordance with a new subarea plan.
- A member of the public tells Norman he has a conflict of interest since he lives two blocks from the TOD corridor—and the rezoning could increase the value of his own house.
- Norman asks his supervisor, Lucio, AICP, if another staff planner could work on the project, given the proximity of the proposed TOD district to Norman's house.
- Lucio tells Norman that, due to staff constraints, he needs to work on the project. But, he says, Norman should disclose this potential conflict of interest at all public meetings.



## Personal Property (2)

Catherine, AICP, is the only planner for Bauerville, a small ski town. Her town manager has asked her to develop guidelines for vacation rentals, based on a growing number of complaints from community residents.

Catherine has owned a second home in Bauerville for the past five years, which she often rents out on Airbnb or VRBO.



## Personal Property (2)

### Relevant AICP Code Provisions

#### **AICP Ethics Code—Principles**

**#2c:** “We shall avoid a **conflict of interest** or even the appearance of a conflict of interest in accepting assignments from clients or employers.”

#### **AICP Ethics Code—Rules of Conduct**

**#6:** “We shall not perform work on a project if...there is a possibility for direct personal or financial gain to **us...unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.**”

**#14:** We shall not use the power of any office to seek or obtain a special advantage that is **not a matter of public knowledge or is not in the public interest.**



## Personal Property (2)

### Survey Says...

In the two real-life cases, on which these scenarios were based:

- After being charged with misconduct—based on a complaint by a resident—Norman provided evidence to the Ethics Officer that he had, in advance, notified his supervisor, Lucio, of the potential conflict of interest. Lucio then had told him to: 1) continue to work on the project and 2) fully disclose his ownership interests at all public meetings. Subsequently, the misconduct charge was dismissed.
- Catherine was still trying to decide how best to handle her vacation rental issue, since the town did not have the resources to hire a consultant. However, she was planning to disclose her property ownership, in writing, to both her supervisor and the Plan Commission.

“By far the greatest and most admirable form of wisdom is that needed to plan and beautify cities and human communities.”

- *Socrates*

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