



# Code of Ordinances Chapter 1-9

## Code of Ethics

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### Sec. 1-9-1. Purpose.

The purpose of this code of ethics is to:

- (a) Encourage high ethical standards in official conduct by city officials and employees;
- (b) Establish guidelines for ethical standards of conduct for all city officials and employees by setting forth those acts or actions that are incompatible with the interest of the city;
- (c) Require disclosure by city officials and employees of private financial or other interest in matters affecting the city; and
- (d) Serve as a basis for disciplining those who refuse to abide by its terms.

### Sec. 1-9-2. Scope.

The provisions of this code of ethics shall be applicable to all city officials and employees.

Notwithstanding anything herein to the contrary, state law and the Charter of the city shall be controlling in the event of an actual conflict with the provisions of this code of ethics. This chapter shall be interpreted to supplement, and not replace, said provisions of state law and the Charter.

### Sec. 1-9-3. Definitions.

Solely for the purpose of this code of ethics:

*City official or official* means any person who is an elected official of the city.

*City official or official*, unless otherwise expressly defined, does not include city employees but does mean the mayor, members of the city council, municipal court judges (including substitute judges), city manager, city clerk, city attorney, and all other persons holding positions designated by the City Charter, as amended. The term "city official" also includes all individuals, including city employees, appointed by the mayor and/or city council as appropriate to city authorities, commissions, committees, boards, task forces, or other bodies which can or may vote or take formal action or make official recommendations to the mayor and/or city council.

*Decision* means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the city council or other city board or commission, as well as the discussions or deliberations of the council, board, or commission which can or may lead to a vote or formal action by that body.



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*Employee* means any person who is a full-time or part-time employee of the city.

*Immediate family* means the spouse, mother, father, grandparent, brother, sister, son or daughter of any city official related by blood, adoption or marriage. The relationship by marriage shall include in-laws.

*Incidental interest* means an interest in a person, entity or property which is not a substantial interest as defined herein and which has insignificant value.

*Remote interest* means an interest of a person or entity, including a city official, which would be affected in the same way as the general public. For example, the interest of an official in the property tax rate, general city fees, city utility charges or a comprehensive zoning ordinance or similar matters is deemed remote to the extent that the official would be affected in common with the general public.

*Substantial interest* means an interest, either directly or through a member of the immediate family, in another person or entity, where:

- (1) The interest is ownership of five (5) percent or more of the voting stock, shares or equity of the entity or ownership of five thousand dollars (\$5,000.00) or more of the equity or market value of the entity;
- (2) The funds received by the person from the other person or entity during the previous twelve (12) months either equal or exceed:
  - a. Five thousand dollars (\$5,000.00) in salary, bonuses, commissions or professional fees, or five thousand dollars (\$5,000.00) in payment for goods, products or services, or
  - b. Ten (10) percent of the recipient's gross income during that period, whichever is less;
- (3) The person serves as a corporate officer or member of the board of directors or other governing board of a for-profit entity other than a corporate entity owned or created by the city council; or
- (4) The person is a creditor, debtor, or guarantor of the other person or entity in an amount of five thousand dollars (\$5,000.00) or more.



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#### Sec. 1-9-4. Prohibitions.

- (a) No city official or employee shall use such position to secure special privileges or exemptions for himself or herself or others, or to secure confidential information for any purpose other than official duties on behalf of the city.
- (b) No city official or employee, in any matter before the council or other city body, relating to a person or entity in which the city official or employee has a substantial interest, shall fail to disclose for the record such interest prior to any discussion or vote or fail to recuse himself/herself from such discussion or vote as applicable.
- (c) No city official or employee shall act as an agent or attorney for another in any matter before the city council or other city body.
- (d) No city official or employee shall directly or indirectly receive, or agree to receive, any compensation, gift, reward, or gratuity in any matter or proceeding connected with, or related to, the duties of his office except as may be provided by law.
- (e) No city official or employee shall enter into any contract with, or have any interest in, either directly or indirectly, the city except as authorized by state law.
  - (1) This prohibition shall not be applicable to the professional activities of the city attorney in his or her work as an independent contractor and legal advisor on behalf of the city.
  - (2) This prohibition shall not be applicable to an otherwise valid employment contract between the city and a city official who is not elected (such as, by way of example, a city manager, city administrator or chief of police).
  - (3) Any city official or employee who has a proprietary interest in an agency doing business with the city shall make that interest known in writing to the city council and the city clerk.
- (f) All public funds shall be used for the general welfare of the people and not for personal economic gain.
- (g) Public property shall be disposed of in accordance with state law.
- (h) No city official or employee shall solicit or accept other employment to be performed, or compensation to be received, while still a city official or employee if the employment or compensation could reasonably be expected to impair such city official or employee's judgment or performance of city duties.



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- (i) If a city official or employee accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the city official or employee might reasonably be expected to act, investigate, advise, or make a recommendation, the city official or employee shall disclose the fact to the city council and shall recuse himself/herself and take no further action on matters regarding the potential future employer.
- (j) No city official or employee shall use city facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.
- (k) No city official or employee shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large.
- (l) A city official or employee shall not directly or indirectly make use of, or permit others to make use of, official information not made available to the general public for the purpose of furthering a private interest.
- (m) A city official or employee shall not use his or her position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to such city official, employee or persons within the city official or employee's immediate family, or those with whom the city official or employee has business or financial ties amounting to a substantial interest.
- (n) A city official or employee shall not order any goods and services for the city without prior official authorization for such an expenditure. No city official or employee shall attempt to obligate the city nor give the impression of obligating the city without proper prior authorization.
- (o) No city official or employee shall draw travel funds or per diem from the city for attendance at meetings, seminars, training or other educational events and fail to attend such events without promptly reimbursing the city therefor.
- (p) No city official or employee shall attempt to unduly influence the outcome of a case before the Municipal Court of the City of Gainesville.

#### **Sec. 1-9-5. Conflict of interest.**

- (a) A city official or employee may not participate in a vote or decision on a matter affecting an immediate family member or any person, entity, or property in which the official or employee has a substantial interest.
- (b) A city official or employee who serves as a corporate officer or member of the board of directors of a nonprofit entity must disclose their interest in said entity to the mayor and council prior to participating in a vote or decision regarding funding of the entity by or through the city.



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- (c) Where the interest of a city official or employee in the subject matter of a vote or decision is remote or incidental, the city official or employee may participate in the vote or decision and need not disclose the interest.

#### **Sec. 1-9-6. Board of Ethics.**

- (a) The board of ethics of the city shall consist of five (5) residents of the city, appointed by the mayor and approved by a majority of the city council.
- (b) All members of the board of ethics shall be residents of the city for at least one (1) year immediately preceding the date of taking office and shall remain a resident while serving on the board.
- (c) All members of the board of ethics shall serve a four-year term.
- (d) No person shall serve as a member of the board of ethics if the person has, or has had within the preceding one-year period, any interest in any contract or contracting opportunity with the city or has been employed by the city.
- (e) Members of the board of ethics with any permit or rezoning application pending before the city, or any pending or potential litigation against the city or any city official charged in the complaint shall be disqualified from serving on the board of ethics for that complaint. An alternate member of the board of ethics shall be selected in the same manner as the disqualified individual.
- (f) The members of the board of ethics shall serve without compensation. The governing body shall provide meeting space for the board of ethics and, subject to budgetary procedures and requirements of the city, such supplies and equipment as may be reasonably necessary for the board to perform its duties and responsibilities.
- (g) No person shall serve on the board of ethics who has been convicted of a felony involving moral turpitude in this state or any other state, unless such person's civil rights have been restored and at least ten (10) years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude.
- (h) No person shall serve on the board of ethics who is less than twenty-one (21) years of age, who holds a public elective office, who is physically or mentally unable to discharge the duties of a member of the board of ethics, or who is not qualified to be a registered voter in the city.
- (i) Upon appointment, members of the board of ethics shall sign an affidavit attesting to their qualification to serve as a member of the board of ethics.
- (j) Members of the board of ethics may be removed by vote of the governing body.



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#### Sec. 1-9-7. Receipt of complaints.

- (a) All complaints against city officials shall be filed with the city clerk, who will give it to the mayor and council. The governing body may require that oral complaints, and complaints illegibly or informally drawn, be reduced to a memorandum of complaint in such form as may be prescribed by the governing body. Upon receipt of a complaint in proper form, the city clerk or the clerk's designee shall forward a copy of the complaint to the city official or officials charged in the complaint within no more than seven (7) calendar days.
- (b) All complaints shall be submitted and signed under oath, shall be legibly drawn and shall clearly address matters within the scope of this chapter.
- (c) Upon receipt of a complaint in proper form, the board shall review it to determine whether the complaint is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary jurisdiction of the governing body. The board of ethics is empowered to dismiss in writing complaints that it determines are unjustified, frivolous, patently unfounded or fail to state facts sufficient to invoke the disciplinary jurisdiction of the governing body; provided, however, that a rejection of such complaint by the board of ethics shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official. For complaints that are not dismissed, the board of ethics is empowered to collect evidence and information concerning any complaint and add the findings and results of its investigations to the file containing such complaint.
- (d) Upon completion of its investigation of a complaint, the board of ethics is empowered to dismiss in writing those complaints which it determines are unjustified, frivolous, patently unfounded or which fail to state facts sufficient to invoke the disciplinary jurisdiction of the governing body; provided, however, that a rejection of such complaint by the board of ethics shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official.
- (e) The board of ethics is empowered to conduct investigations, to take evidence, and to hold hearings to address the subject matter of a complaint.
- (f) The board of ethics is empowered to adopt forms for formal complaints, notices, and any other necessary or desirable documents within its jurisdiction where the governing body has not prescribed such forms.
- (g) Findings of the board of ethics shall be submitted to the governing body for final action.



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#### **Sec. 1-9-8. Service of complaint.**

The city clerk shall cause the complaint to be served on the city official charged as soon as practicable but in no event later than seven (7) calendar days after receipt of a proper, verified complaint. Service may be by personal service, by certified mail, return receipt requested or by statutory overnight delivery. A hearing shall be held within sixty (60) calendar days after filing of the complaint. The board of ethics shall conduct hearings in accordance with the procedures and regulations it establishes but, in all circumstances, at least one hearing shall include the taking of testimony and the cross-examination of available witnesses. The decision of the board of ethics shall be rendered to the governing body within seven (7) calendar days after completion of the final hearing. At any hearing held by the board of ethics, the city official who is the subject of inquiry shall have the right to written notice of the hearing and the allegations at least seven (7) calendar days before the first hearing, to be represented by counsel, to hear and examine the evidence and witnesses and, to oppose or try to mitigate the allegations. The city official subject to the inquiry shall also have the right but not the obligation of submitting evidence and calling witnesses. Failure to comply with any time deadlines in this section of the chapter shall not invalidate any otherwise valid complaint or in any way affect the power or jurisdiction of the board of ethics or the governing body to act upon any complaint.

#### **Sec. 1-9-9. Right to appeal.**

- (a) Any city official or complainant adversely affected by the final action of the governing body or the board of ethics may obtain judicial review of such decision as provided in this section.
- (b) An action for judicial review may be commenced by filing an application for a writ of certiorari in the Superior Court of Hall County within thirty (30) days after the final action of the governing body or of the board of ethics.

#### **Sec. 1-9-10. Penalty.**

Any person violating any provision of this article is subject to:

- (1) Public reprimand or censure by the governing body; or
- (2) Request for resignation by the governing body.

*Revised: 9/11/17 ag*