

CHAPTER 13

ETHICS COMMISSION

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SECTION

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13-1-101. Applicability.

This chapter is the Code of Ethics for personnel of the City of Mt. Juliet, Tennessee. It applies to full-time and part-time elected or appointed officials and employees, whether compensated or not, including those of any separate board, commission, committee, authority, corporation, or other instrumentality appointed or created by the City of Mt. Juliet, Tennessee.

13-1-102. Definitions.

- (1) "Censure" means an expression of severe criticism or reproach;
- (2) "Complaint" means a valid complaint for consideration under this ordinance.
- (3) "Employment interest" includes a situation in which an official or employee or a designated family member is negotiating possible employment or has applied for employment with a person or organization that is the subject of the vote or that is to be regulated or supervised.
- (4) "Ethics Commission" refers to the City of Mt. Juliet's Ethics Commission, as established herein.

(5) "Gift" means the transfer of anything of economic value, regardless of form, without reasonable consideration given in exchange. "Gift" may include a subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value, whether conveyed or transferred. "Gift" does not include political campaign contributions which are solicited or accepted in accordance with applicable laws and regulations.

(6) "Official" means the members of the Board of Commissioners, as well as members appointed thereby to city boards, commissions, committees, authorities or instrumentalities established by law or this Code. "Official" also includes the City Judge.

(7) "Personal interest" means:

(a) Any financial, ownership, or employment interest in the subject of a vote by a municipal board not otherwise regulated by state statutes on conflicts of interests; or

(b) Any financial, ownership, or employment interest in a matter to be regulated or supervised; or

(c) Any such financial, ownership, or employment interest of the official's or employee's spouse, parent(s) (including natural, step, or adoptive, as well as in-laws), grandparent(s), sibling(s) (including natural, step, or adoptive), child(ren) (including natural, step or adoptive), grandchildren, and in-laws, and any other individual residing within the employee's household who is the legal dependent of the employee or official for income tax purposes.

In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter.

13-1-103. Abstentions by Officials and Disclosure of Personal Interest by Official with Vote.

(1) An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's vote on the measure. In addition, the official may recuse himself from voting on the measure.

(2) The City shall not be prohibited from doing business with an entity that employs an immediate relative of an official or employee, provided that such business relationship does not violate this chapter or any other law or ordinance and is disclosed fully in writing.

13-1-104. Disclosure of personal interest by employees.

An employee who must exercise discretion relative to any matter, and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion, shall disclose before the exercise of the discretion when possible the interest on a form provided by and filed with the City Recorder. Copies of such forms filed with the City Recorder shall be provided to the City Manager and filed in the employee's personnel file. In addition, the employee may, to the extent allowed by law, charter, ordinance, or policy, recuse himself from the exercise of discretion in the matter.

13-1-105. Acceptance of gratuities, consideration or favors

(1) No official or employee may knowingly solicit, receive benefit from, accept or agree to accept any gratuity, gift, honoraria, loan, favor, promise, or anything of value, either directly or indirectly:

(a) For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or

(b) That might reasonably be interpreted as an attempt to influence his action, or reward him for past action, in executing municipal business.

(2) Notwithstanding any other provision of this Chapter, employees and officials may accept meals, gifts, promotional items or mementos that are unsolicited and of a de minimis value or are otherwise authorized by state law. For the purposes of this section, a "de minimis value" is deemed to be a value, on a per occurrence or per event basis, of twenty-five dollars or less.

13-1-106. Use of information.

An official or employee may not disclose any information obtained in his official capacity or position of employment that is made confidential under state or federal law except as authorized by law.

An official or employee may not use or disclose information obtained in his official capacity or position of employment with the intent to result in financial gain for himself or any other person or entity.

13-1-107. Use of municipal time, facilities, equipment or supplies

An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself.

An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the Board of Commissioners or City Manager to be in the best

interests of the municipality.

13-1-108. Use of position or authority.

An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.

An official or employee may not use his position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.

Nothing in this chapter shall be interpreted to prevent an official from making inquiry or, or discussing with, an employee the applicable laws, codes, or policies affecting any matter before, within, or under consideration by, the City.

No official or employee shall provide commercial or advertising endorsements in such a manner as to convey the City's approval of any private for-profit enterprise; provided, however, that an official or employee may respond to inquiries seeking information as to the City's experience with a vendor or other private enterprise.

13-1-109. Outside employment.

An official or employee may not accept or continue any outside employment if the work unreasonably inhibits the performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy. No official's outside employment shall be considered to unreasonably inhibit the performance of an affirmative duty if such official has the option or duty to refrain from voting on issues involving such employer.

13-1-110. Ethics Officer.

The city attorney is designated as the ethics officer of the municipality. Upon the written request of an official or employee potentially affected by a provision of this chapter, the city attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.

13-1-111. Ethics Complaints.

(1) Any complaint alleging violation of any of the provisions of this chapter must be filed with the city attorney. If such complaint alleges violation by an employee other than the City Manager, the city attorney shall forward a copy of such complaint to the City Manager as soon as practicable. If such complaint alleges violation by an official, a copy of such complaint shall be forwarded by the city attorney as soon as practicable to the ethics commission created by this chapter and by registered mail or hand delivery to the official against whom the

complaint was filed.

(2) Unless a complaint complies with the requirements of this chapter, such complaint is not valid for consideration, and no action may be taken to investigate or determine the disposition of such a complaint.

(3) Complaints alleging violation of any provisions of this chapter must satisfy all of the following requirements:

(a) Complaints must be filed in writing, be made under oath that all statements contained in the complaint are true, and bear the original signature, name, address, and telephone number of the person filing the complaint;

(b) Complaints must identify the person or persons who committed the alleged violation, present facts which give rise to the complaint, and explain why those facts constitute a violation of this chapter. Complaints must be based on personal knowledge of the facts presented in the Complaint, must affirmatively state that the complainant has personal knowledge of the facts presented in the complaint, shall set forth such facts as would be admissible in evidence in a court of law, and shall show affirmatively that the complainant is competent to testify as to the facts set forth. Any documents referred to in the complaint must be attached to the complaint;

(c) Complaints must be filed within thirty (30) days of the date the alleged violation is said to have occurred, or in case of concealment or nondisclosure of personal interests by the employee or official who is the subject of the complaint, within six (6) months of the date the alleged violation should have been discovered after due diligence by the complainant; and

(d) In the event that the city attorney makes an initial determination that a complaint filed is technically deficient or incomplete, the city attorney shall submit a copy of this Chapter to the complainant and offer the complainant the opportunity to correct the deficiencies and resubmit the complaint within seven (7) days prior to any review or investigation of the complaint.

(4) Any person who files a false complaint will be subject to the penalties of perjury, in accordance with Tennessee Code Annotated § 39-16-702 *et seq.*

(5) Except as otherwise provided in this subsection, the city attorney shall investigate any credible complaint against an employee charging any violation of this chapter, or may undertake an investigation on his own initiative to acquire information indicating a possible violation, and make recommendations to the City Manager for action to end or seek remedies for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.

(6) The Board of Commissioners may hire another attorney, or the city

attorney may ask that the city commission hire another attorney, individual, or entity to act as ethics officer or to provide general counsel to the ethics commission after an affirmative vote of the majority of the city commission. This action may occur after cause has been found to believe that a conflict may exist, or another section of this ordinance may find the city attorney is not the proper person to conduct the investigation.

13-1-112. Ethics Commission.

(1) There is hereby created a five-member ethics commission to be approved by the Board of Commissioners. Each Commissioner shall nominate a member for appointment to the ethics commission who is a resident of his/her district, and the Mayor shall nominate a member for appointment to the ethics commission who is a resident of the City. Such appointments shall be confirmed by a majority vote of the Board of Commissioners.

(2) Members of the ethics commission shall each serve a term of three (3) years or until their successors are appointed, whichever is later. Members of the ethics commission shall serve without compensation. Should any vacancies occur, the nominating member of the Board of Commissioners shall nominate a replacement, and the Board of Commissioners shall appoint a replacement member.

(3) A person is eligible to serve as a member of the ethics commission if the person has never been convicted of a felony, resides in the city while serving as specified in Paragraph 1 of this subsection and is a registered voter in Wilson County, is not an employee of the City of Mt. Juliet government, does not hold any elected or appointed office in Wilson County government or in the City of Mt. Juliet government, does not hold any elected office in Tennessee State government or the United States government, and is not a candidate for any elected office in Wilson County government, City of Mt. Juliet government, Tennessee State Government, or the United States government. A person is not eligible to serve as a member of the ethics commission if that person has a personal interest as defined in this chapter.

(4) The Board of Commissioners may remove a member of the ethics commission on the grounds of neglect of duty, misconduct in office, a disability rendering the member unable to discharge the duties of the office as specified in this chapter, or engagement in political activity as defined in this chapter. Before initiating the removal of a member from the ethics commission, the Board of Commissioners shall give the member written notice of the reason for the intended action, and the member shall have an opportunity to reply within ten (10) days of receipt of such notice. Thereafter, the Board of Commissioners shall afford such member, upon written request, an opportunity for a hearing.

(5) There shall be no regularly scheduled meetings of the ethics commission. By majority vote, or by call of the chairman, the ethics commission may call a special

meeting, if necessary.

(6) When a complaint of a violation of any provision of this chapter is lodged against an official, an ethics commission, properly constituted, shall convene to determine the disposition of such complaints.

(7) The conduct of all meetings of the ethics commission shall be conducted in accordance with the most recently published edition of Robert's Rules of Order, Newly Revised.

(8) No member of the ethics commission shall comment on, discuss, or engage in conversation about pending complaints and investigations, except during the commission's meetings.

(9) Officials shall not participate in the investigation of pending complaints, except as requested by the ethics commission or attorney charged with investigation of complaints.

(10) The ethics commission shall be governed by and subject to this chapter. Members of the ethics commission who have a personal interest as defined by this chapter must disqualify themselves under this ethics code. Members of the ethics commission shall not take part in any matter in which a judge, similarly situated, would have to recuse himself or herself.

(11) A member of the ethics commission shall not take an active part in political management or in a political campaign for office in Wilson County or Mt. Juliet during the period of their term of appointment to the ethics commission. Display of a campaign sign shall not be considered as taking an active part in a political campaign.

(12) The ethics commission shall receive and hear complaints of violations of this chapter by an official or the City Manager. The ethics commission may make investigation as it deems necessary to determine whether any person has violated this ethics code upon the affirmative vote of a majority of the ethics commission to conduct such investigation. The ethics commission may receive and review ethics reports and may request and receive legal advice from the City Attorney regarding any provision of this Chapter.

(13) The ethics commission may authorize the city attorney to investigate a complaint which meets the requirements of this chapter or may hire another attorney to complete such investigation, or the city attorney may ask that the ethics commission hire another attorney, individual, or entity to act as ethics officer or to provide general counsel to the ethics commission. The ethics commission is authorized to incur expenses in connection with investigations in an amount not to exceed ten thousand dollars (\$10,000) annually. The ethics commission must request from the Board of Commissioners a budget amendment to appropriate additional monies to fund the expense of investigations exceeding this annual limit.

(14) Upon receipt of a complaint which satisfies the requirements of this chapter and alleges that an official has violated this Chapter, the official against whom the complaint was filed may reply in writing to the complaint within thirty (30) days, unless such time for reply is shortened or extended by the ethics commission. The official's response must be based on personal knowledge, must set forth such facts as would be admissible in evidence in a court of law, and must show affirmatively that the official is competent to testify to the matters stated therein. All documents referred to in the response should be attached to the response. However, in order to ensure the right to a fair trial and the right of the accused against self-incrimination, the ethics commission shall not schedule a hearing for the violation of this Chapter while criminal investigation is in progress or while criminal charges are pending.

(15) Within sixty (60) days of receipt of a complaint which satisfies the requirements of this chapter, the ethics commission shall conduct a formal public hearing, upon proper public notice of such hearing.

(16) After reviewing the complaint, conducting such investigation as properly authorized under this chapter, and conducting a public hearing, the ethics commission must determine, by majority vote whether no specific, substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of this chapter. If the ethics commission so determines that such evidence does not exist, the ethics commission shall dismiss the complaint. If the ethics commission so determines that such evidence does exist, then the ethics commission shall render a written decision stating facts supporting that finding, conclusions of law, and censure as appropriate. Upon the affirmative finding by 4 of the 5 members of the ethics commission that a violation of this Chapter has occurred, and upon the issuance of its written decision, the ethics commission may make referral for removal of an Official found to have violated this chapter to the appointing authority, or for removal or ouster of a member of the Board of Commissioners pursuant to Tennessee Code Annotated § 6-20-220 and/or Tennessee Code Annotated § 8-47-102, or for dismissal of the City Manager to the Board of Commissioners.

(17) Any official against whom a decision of the ethics commission is rendered may obtain judicial review of the decision by writ of certiorari. The application for the writ must be filed within thirty (30) days of the issuance of the written decision by the ethics commission. Judicial review shall be based upon the record before the ethics commission. No party shall be entitled to a de novo appeal.

(18) The ethics commission may make recommendations to the Board of Commissioners or City Manager for the adoption of any revisions of amendments to this chapter. The Board of Commissioners may adopt revisions or amendments to this Chapter without a recommendation by the ethics commission.

(19) The ethics commission shall render an advisory opinion when requested in writing by any member of the Board of Commissioners. Such advisory opinion

shall be rendered pursuant only to a written request, fully setting forth the factual circumstances to be reviewed by the ethics commission.

(20) The proceedings of the ethics commission pursuant to this chapter shall be held in public, and all records of the ethics commission, excluding those protected by law, shall be a public record.

13-1-113. Violation. When a violation of this code of ethics by an employee also constitutes a violation of the City's Personnel Ordinance or personnel policy, rule, or regulation, the violation may be dealt with as a violation of the Personnel Ordinance. Any employee who violates any provision of this chapter is subject to disciplinary action including, but not limited to, termination. No employee is entitled to an appeal hearing except as may be set forth in the Charter or Personnel Ordinance. An official who violates any provision of this chapter is subject to punishment as provided by the municipality's charter or other applicable law, and in addition is subject to censure by the governing body. The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics.

13-1-114. Reporting; Whistleblower Protection; Abuse of Process; Complicity.

(1) It is the intent of this ordinance to encourage employees and officials to report suspected ethical violations to the city attorney.

(2) No officer or employee shall use or threaten to use any official authority or influence to discourage, restrain, or interfere with any other person for the purpose of preventing such person from acting in good faith to report information relating to an ethics violation of investigation.

(3) No official or employee shall file a complaint with the city attorney absent a good faith basis for their allegations based on first hand knowledge.

(4) No official or employee shall falsely accuse another official or employee of failing to comply with this chapter.

(5) No official or employee may knowingly induce, encourage, or aid anyone to violate any provision of this chapter.

(6) Any violation of this subsection shall be subject to investigation and action in accordance with this chapter.