

**TOWN OF SMYRNA
CODE OF CONDUCT**

ADOPTED NOVEMBER 6, 2006

**AN ORDINANCE TO AMEND CHAPTER 2, ADMINISTRATION
BY ADDING A NEW ARTICLE 5, CODE OF CONDUCT**

BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council, duly met, that Chapter 2, Administration, of the Town Code of the Town of Smyrna be and hereby is amended as follows:

Section 1. Amend Chapter 2, Administration, by adding a new Article V, Code of Conduct, as follows:

ARTICLE V. Code of Conduct

Sec. 2-200. Applicability; statement of policy.

(a) *Applicability.* This article shall be applicable to all elected and appointed officials and all employees of the town.

(b) *Statement of policy.* The proper operation of democratic government requires that public officials and employees be independent, impartial, and responsible to the people; that

governmental decisions and policies are made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public has confidence in the integrity of its government. In recognition of these goals, there is hereby established a code of conduct for all town employees and officials. The purpose of this code of conduct is to establish ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the town and by directing disclosure by such officials and employees of private financial or other interests in matters affecting the town. The town council finds and declares as matters of public policy goals and objectives for all elected and appointed officials and all employees of the town, the following:

(1) *Public trust.* In our democratic form of government, the conduct of officials and employees of the town must hold the respect and confidence of the people. They must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

(2) *Standards.* To ensure propriety and to preserve public confidence, officials and employees of the town must have the benefit of specific standards to guide their conduct and disciplinary mechanisms to guarantee uniform maintenance of those standards. Some standards of this type are so vital to government that violation thereof should subject the violator to civil penalties.

(3) *Public service.* In our democratic form of government, it is both necessary and desirable that all citizens should be encouraged to assume public office and employment, and that, therefore, the activities of officers and employees of the town should not be unduly circumscribed.

(4) *Performance of duty.*

a. Elected town officials are obligated to uphold the fundamental legal principles of our system of government, as set forth in the United States Constitution, the state constitution, and the Town Charter, as well as all applicable provisions of federal, state and local law and court decisions. They are bound to do so, and the failure to so act shall constitute malfeasance in office.

b. All officials and employees of the town should be loyal to the objectives expressed by the electorate and the programs developed to attain those objectives. Appointive officials and employees should adhere to the rules of work and performance established as the standard for their positions by appropriate authority.

c. Officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from doing so by law or by officially recognized confidentiality of their work.

(5) *Fairness.* Town officials and employees shall strive for the highest standard of fairness in all of their activities and shall not grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.

(6) *Use of private information.* In the course of their official responsibilities, town officials and employees are often privy to categories of information which are of a private nature and are legally protected from public disclosure. Town officials and employees shall maintain the privacy of such information, and they shall not take advantage of such information for personal gain, or the personal gain of friends or family.

Sec. 2-201. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Close relative means a person's parents, spouse, children (natural or step or adopted), and siblings of the whole and half-blood.

Commission and *ethics commission* mean the town ethics commission as established by this article.

Compensation means any money, thing of value, or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by the official or employee, or by another.

Employee includes all persons who receive compensation as an employee of the town or a town department, and shall not include persons that are elected or appointed to serve as mayor, town councilmember or a member of any town committee, commission or board, whether paid or unpaid.

Financial interest. A person has financial interest in a private enterprise if:

(1) He has a legal or equitable ownership interest in the enterprise of more than ten percent (one percent or more in the case of a corporation the stock of which is regularly traded on an established securities market);

(2) He is associated with the enterprise and received from the enterprise during the last calendar year, or might reasonably be expected to receive from the enterprise during the current or the next calendar year, income in excess of \$5,000.00 for services as an employee, officer, director, trustee, or independent contractor; or

(3) He is a creditor of a private enterprise in an amount equal to ten percent or more of the debt of that enterprise (one percent or more in the case of a corporation the securities of which are regularly traded on an established securities market).

Gender Words importing the masculine gender shall include the feminine and neuter.

Matter means an application, petition, request, business dealing, contract, subcontract, or any other transaction of any sort with the town.

Official means any elected or appointed official of the town and all members of any committee, commission or board appointed by the mayor of the town or appointed by the town council.

Official responsibility means any direct administrative or operating authority at any level, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, recommend or otherwise direct action on behalf of the town.

Personal or private interest means an interest in a matter which tends to impair the independent judgment of an official or employee in the performance of his duties with respect to that matter.

Private enterprise means any activity conducted by any person, whether conducted for profit or not for profit, and includes the ownership of real or personal property. The term "private enterprise" does not include any activity of the town, of any political subdivision, or of any agency, authority, or instrumentality thereof.

Sec. 2-202. Prohibitions relating to conflicts of interest.

(a) *Restrictions on exercise of official authority.*

(1) *Prohibited participation.* No town official or employee may participate on behalf of the town in the review or disposition of any matter pending before the town in which he has a personal or private interest, provided that, upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of his duties with respect to that matter.

(2) *Impairment of judgment.* A person has an interest which tends to impair his independence of judgment in the performance of his duties with respect to any matter when:

a. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or

b. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.

(3) *Statutory responsibility.* In any case where a person has a statutory responsibility with respect to action or inaction on any matter where he has a personal or private interest

and there is no provision for the delegation of such responsibility to another person, the person may exercise responsibility with respect to such matter, provided that, promptly after becoming aware of such conflict of interest, he files a written statement with the ethics commission, fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

(b) *Restrictions on representing another's interest before the town.*

(1) *Prohibited.* No town official or employee may represent or otherwise assist any private enterprise with respect to any matter before the town.

(2) *Exception.* This subsection (b) shall not preclude any town official or employee from appearing before the town or otherwise assisting any private enterprise with respect to any matter in the exercise of his official duties.

(c) *Restriction on contracting with the town.*

(1) *Prohibited.* No town official or employee shall benefit from any contract with the town, nor solicit any contract, and shall not enter into any contract with the town (other than an employment contract).

(2) *Ownership of enterprise.* No private enterprise in which a town official or employee has a legal or equitable ownership of more than ten percent (more than one percent in the case of a corporation the stock of which is regularly traded on an established securities market) shall enter into any contract with the town (other than an employment contract) unless such contract was made or let after public notice and competitive bidding.

(d) *Post employment restrictions.* No person who has served as a town official or employee shall represent or otherwise assist any private enterprise on any matter involving the town, for a period of two years after termination of his elected or appointed status or employment with the town, if he gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of his official duties as a town employee or official, nor shall any former town official or employee disclose confidential information gained by reason of his public position, nor shall he otherwise use such information for personal gain or benefit.

(e) *Unauthorized disclosure of confidential information.* No person shall disclose any information required to be maintained confidential by the ethics commission under section 2-203(d), 2-204(b) or 2-207.

(f) *Abuse of office.*

(1) *Political contributions.* No elected town official shall agree to sponsor legislation, or to influence in any manner the formulation or passage of legislation, in exchange for political contributions or promises thereof.

(2) *Substantial interest.* No elected town official shall vote for, or promote in any manner whatsoever, legislation affecting any subject matter in which he has a substantial interest. Any such interest shall be disclosed by said elected official prior to a vote on any such legislation, and said elected official shall vote "abstain" when called upon to vote.

(3) *Use of town property.* No town official or employee shall request or permit the use of town-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such services are available to the public generally or are provided for the use of such official or employee in the conduct of official business as a matter of town policy.

(4) *Personal gain.* No town official or employee shall utilize the influence of his office or position for personal pecuniary gain, or to avoid the legal consequences of his personal conduct.

(g) *Civil penalties.* Any person who knowingly or willfully violates any provision of this section shall be punishable for each such violation by a civil penalty not to exceed \$1,000.00.

(h) *Contracts voidable by court action.* In addition to any other penalty provided by law, any contract entered into by the town in violation of this chapter shall be voidable by the Town Council; provided that in determining whether any court action should be taken to void such a contract pursuant to this subsection, the Town Council shall consider the interests of innocent third parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the Town Council has, or should have, knowledge of such violation.

Sec. 2-203. Established.

(a) *Appearance of violation.* Each town official and employee shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is engaging in acts which are in violation of his public trust and which will not reflect unfavorably upon the town and its government.

(b) *Private interest; gifts.* No town official or employee shall have any interest in any private enterprise, nor shall be incur any obligation of any nature which is in substantial conflict with the proper performance of his duties in the public interest. No town official or employee shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

- (1) Impairment of independence of judgment in the exercise of official duties;
- (2) An undertaking to give preferential treatment to any person;
- (3) The making of a governmental decision outside official channels; or

(4) Any adverse effect on the confidence of the public in the integrity of the government of the town.

(c) *Interest in private enterprise.* No town official or employee shall acquire a financial interest in any private enterprise which he has reason to believe may be directly involved in decisions to be made by him in an official capacity on behalf of the town.

(d) *Disclosure statement.* Any town official or employee who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any town department (and any town official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the town department on which he serves as an appointee) shall file with the ethics commission a written statement fully disclosing the same. Such disclosure shall be confidential and the ethics commission shall not release such disclosed information, except as may be necessary for the enforcement of this article. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the town.

(e) *Private gain.* No town official or employee shall use his public office to secure unwarranted privileges, private advancement or gain.

(f) *Confidential information; prohibited activity.* No town official or employee shall engage in any activity beyond the scope of his public position which might reasonably be expected to require or induce him to disclose confidential information acquired by him by reason of his public position.

(g) *Disclosure of information.* No town official or employee shall, beyond the scope of his public position, disclose confidential information gained by reason of his public position, nor shall he otherwise use such information for personal gain or benefit.

(h) *Sexual favors.* No town official or employee, in the course of his public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a town department.

Sec. 2-204. Waivers of restrictions and advisory opinions.

(a) *Authority of ethics commission.* Notwithstanding the provisions of sections 2-202 and 2-203, upon the written request of any town department or of any individual who is or was a town employee or town official, the ethics commission may grant a waiver to the specific prohibitions contained therein if the ethics commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this chapter or would result in an undue hardship on any employee or official. Any such waiver may be granted only by written decision of the ethics commission. Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision, provided there was a full disclosure to the ethics commission of all material facts necessary for the waiver decision.

(b) *Waiver information confidential; exceptions.* Any application for a waiver, any proceeding and any decision with respect thereto shall be maintained confidential by the ethics commission, provided that:

(1) *Applicant's request.* Public disclosure shall be made by the ethics commission upon the written request of the applicant;

(2) *Violations.* The ethics commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this chapter;

(3) *Evidence of crime.* The ethics commission shall report to appropriate federal, state and/or town authorities substantial evidence of any criminal violation which may come to its attention; and

(4) *Public record.* In the event that a waiver is granted, the waiver decision and the record of all proceedings relating thereto shall be open to public inspection.

(c) *Advisory opinion authorized.* Upon the written request of any town official or employee, the ethics commission may issue an advisory opinion as to the applicability of this chapter to any particular fact or situation. Any person who acts in good faith reliance upon any such advisory opinion shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the advisory opinion, provided there was a full disclosure to the ethics commission of all material facts necessary for the advisory opinion.

(d) *Advisory opinion confidential; exceptions.* Any application for an advisory opinion, any proceeding and any decision with respect thereto shall be maintained confidential by the ethics commission, provided that:

(1) *Applicant's request.* Public disclosure shall be made by the ethics commission upon the written request of the applicant;

(2) *Violations.* The ethics commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this article; and

(3) *Evidence of crime.* The ethics commission shall report to appropriate federal, state and/or town authorities substantial evidence of any criminal violation which may come to its attention.

Division 2. ETHICS COMMISSION

Sec. 2-205. Established; composition; removal; terms of office; vacancies; chairperson; quorum; compensation; legal counsel.

(a) *Established; composition; removal.* The town ethics commission is hereby established to administer and implement this chapter. The ethics commission shall consist of five members appointed by the mayor and confirmed by the town council. No member of the commission shall hold any elected or appointed office under the government of the United States or the state, county, or town, or be a candidate for any such office. Members of the ethics commission may be removed by the mayor, with the concurrence of the town council, for substantial neglect of duty, gross misconduct in office or a violation of this chapter.

(b) *Terms of office; vacancies.* A member of the ethics commission shall be appointed for a term of office of five years. The members shall be appointed for staggered terms of office and shall continue to serve until their successors have been appointed. When a vacancy occurs in the membership of the ethics commission, it shall be filled by appointment for the unexpired portion of the term in the same manner as the original appointment.

(c) *Chairperson; quorum.* The ethics commission shall elect a chairperson from among its membership. Three members of the ethics commission shall constitute a quorum and, if a quorum is present, a vacancy on the ethics commission shall not impair the right of the remaining members to exercise all the powers of the ethics commission. Disciplinary hearings may be conducted and sanctions may be imposed only by the affirmative action of at least three members; otherwise, the ethics commission may delegate authority to the chairperson to act for the ethics commission between meetings.

(d) *Compensation.* Members of the ethics commission shall receive no compensation.

(e) *Legal counsel.* The town solicitor shall provide legal counsel to the ethics commission and shall be the legal representative of the ethics commission in connection with its duties hereunder, on a case-by-case basis, or determine that outside counsel is needed and obtain such outside counsel for a particular matter.

Sec. 2-206. Powers and duties.

(a) The powers and duties of the ethics commission shall be:

(1) *Rules of conduct.* To recommend to the mayor and council, from time to time, such rules of conduct for public employees and officials as it shall deem appropriate.

(2) *Advisory opinions.* To issue written advisory opinions, upon the request of any town employee or official, as to the applicability of this article to any particular factual situation.

(3) *Referrals to solicitor.* To refer to the town solicitor for investigation any alleged violation of this article and, after notice and hearing, to recommend such disciplinary action as it may deem appropriate to such appropriate official or department as the ethics commission shall determine, or to take such other disciplinary action as authorized by section 2-207(d) or other provisions of the town Charter or this Code. The ethics commission may dismiss, without reference to the town solicitor, any complaint which

the ethics commission determines is frivolous or fails to state a violation.

(4) *Report of crimes.* To report to the appropriate federal, state or town authorities any substantial evidence of a violation of any criminal law which may come to its attention in connection with any proceeding, whether advisory or disciplinary.

(5) *Records.* To maintain a file of its proceedings, waiver decisions and advisory opinions with a view toward achieving consistency of opinions and recommendations subject to the confidentiality requirements of sections 2-205(d) and 2-207(h).

(6) *Procedures.* To make, adopt, and publish rules of procedure in accordance with section 2-207 which may, from time to time, be amended by action of the commission.

(7) *Witnesses, evidence.* To subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require, by subpoena, the production of books, papers, records or other evidence needed for the performance of the ethics commission's duties or exercise of its powers.

(8) *Assistance to town personnel.* To provide assistance to any town employee, official or department in administering the provisions of this article.

(9) *Provide information.* To prepare any necessary reports and studies to advance the purpose of this article, to provide any necessary materials explaining the duties of individuals covered by this article, and to supply instructions and public information materials to facilitate compliance with, and enforcement of, this article.

(10) *Request town departments for assistance.* To request appropriate town departments to provide such professional assistance as it may require in the discharge of its duties.

Sec. 2-207. Complaints; hearings; dispositions.

(a) *Investigation of violations.* Upon the sworn complaint of any person or on its own initiative, the ethics commission may refer to the town solicitor for investigation, any alleged violation of the conflict of interest provisions and of the code of conduct provisions in sections 2-202 and 2-203, respectively. The town solicitor shall be the prosecuting attorney in all disciplinary proceedings before the ethics commission. In any such investigation or proceeding, a defendant shall be given an opportunity to be heard after notice, to be advised and assisted by legal counsel, to produce witnesses and offer evidence, and to cross examine witnesses. A transcript of any such proceeding shall be made and retained, subject to the confidentiality requirements of this chapter.

(b) *Proceeding relating to member.* A member of the ethics commission shall be ineligible to participate, as a member of the ethics commission, in any ethics commission proceeding relating to his conduct. A member of the ethics commission who has been found by the ethics commission to have violated this chapter shall be ineligible to serve again as a member of the ethics commission.

(c) *Self-disqualification.* A member of the ethics commission may disqualify himself from participating in any investigation of the conduct of any person upon submission, in writing and under oath, of an affidavit or disqualification stating that he cannot render an impartial and unbiased decision in the case in which he seeks to disqualify himself.

(d) *Effect of violations of the code conduct.* Violation of any provision of the code of conduct should raise questions of conscience for the council member or other official or employee concerned as to whether voluntary resignation or other action is indicated to promote the best interest of the town. With respect to any violation with which a person has been charged and which the ethics commission has determined as proved, the violation may constitute a cause to take any one or more of the following actions:

(1) *Reprimand.* Issue a written reprimand or censure of that person's conduct.

(2) *Discipline.* With respect to a town employee, remove, suspend, demote or take other appropriate disciplinary action with respect to that person, without regard to any limits imposed by this chapter, but within the limits of the constitution, the laws of the state, the Charter of the town, and ordinances and existing collective bargaining agreements.

(3) *Recommend removal.* With respect to an appointed official, recommend that appropriate action be taken to remove the official from the appointed position.

(4) *Recommend civil penalty.* With respect to an elected town official, recommend a civil penalty not to exceed \$1,000.00.

(e) *Rights of person charged.* In any proceeding before the ethics commission, upon the request of any person charged with a violation of this chapter, such person shall be permitted to inspect, copy or photograph books, papers, documents, photographs or other tangible objects which will be used as evidence against that person in a disciplinary hearing and which are material to the preparation of his defense.

(f) *Exculpatory information.* In any proceeding before the ethics commission, if the town solicitor or ethics commission at any time receives any exculpatory information concerning an alleged violation against any person, it shall forthwith make such information available to such person.

(g) *Subpoenas.* Any person charged with a violation of this chapter may apply to the ethics commission for the issuance of subpoenas for the appearance of witnesses and for the production of documents on his behalf. The application shall be granted upon a concise showing by such person that the proposed testimony or evidence is relevant (or is reasonably calculated to lead to the discovery of relevant evidence) and is not otherwise available. The application shall be denied if not made at a reasonable time or if the testimony or evidence would be merely cumulative.

(h) *Confidentiality of proceedings.*

(1) *Town employee.* All proceedings before the ethics commission relating to a violation of this chapter by a town employee shall be maintained confidential by the ethics commission, unless:

- a. Public disclosure is requested, in writing, by the person charged; or
- b. The ethics commission determines after a hearing that a violation has occurred.

(2) *Town official.* All proceedings before the ethics commission relating to a violation of this chapter by a town official, appointed or elected, shall be maintained confidential by the ethics commission, unless:

- a. Public disclosure is requested, in writing, by the person charged; or
- b. The ethics commission determines after a hearing that a violation has occurred.

(3) *Appeals; public inspection.* Notwithstanding the confidentiality requirements of subsections (h)(1) and (2) of this section, the ethics commission shall make available for public inspection the record of all proceedings relating to any decision of the ethics commission which is appealed to the superior court and the ethics commission shall report to appropriate federal, state and/or town authorities any substantial evidence of a violation of any criminal law which comes to its attention in connection with any proceeding under this chapter.

(4) *Confidentiality procedures.* The chairperson of the ethics commission shall, with the approval of the ethics commission, establish such procedures as, in the chairperson's judgment, may be necessary to prevent the disclosure of any record of any proceedings or other information received by the ethics commission, except as permitted by this chapter.

Sec. 2-208. Judicial review.

In the event that the ethics commission finds that any person has violated any provision of this chapter, said person shall have a right of appeal to the superior court of any such finding, and of any sanctions imposed with respect thereto, by filing a notice of appeal with the superior court within 30 days of the final action by the ethics commission in a particular case. The appeal shall be on the record without a trial de novo. If the court determines that the record is insufficient for its review, it shall remand the case to the ethics commission for further proceedings on the record. The court's review, in the absence of actual fraud, shall be limited to a determination of whether the ethics commission's decision was supported by substantial evidence on the record. The burden of proof in any such appeal shall be on the appellant.

EFFECTIVE DATE: November 21, 2006

