

ORDINANCE NO. O-24-10

AN ORDINANCE TO REPEAL AND RENACT WITH AMENDMENTS TO  
CHAPTER 7A OF THE CITY CODE ENTITLED "ETHICS CODE"

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that certain sections of Chapter 7A of the City Code, are hereby amended to read as follows:

**Sec. 7A-1.1. Findings and Purpose.**

a. The Council finds that:

1. Officials, employees and representatives of the City shall maintain the highest standards of political and professional responsibility and maintain the highest respect for the interests of the citizens and the City.
2. Representative government depends upon the citizens having the highest trust in their public officials.
3. The trust, necessary to our system of government, is dangerously eroded not only by improper conduct by employees and officials of government but by the appearance of improper conduct, as well.
4. In order to maintain the fact and appearance of high standards of conduct, it is necessary to have clearly articulated standards of conduct, a procedure for resolving questions that may arise concerning the propriety of specific acts and a forum for receipt and review of complaints and questions, whether raised by concerned citizens, employees or those doing business with the City.
5. The citizens have a right to expect that decisions made in the name of the government of the City of Gaithersburg will be made for the general welfare of the citizens of Gaithersburg, rather than for the private gain or personal motives of the official or employee making the decision.
6. Employees and officials of government have a right to know that the government clearly articulates the standards of conduct by which their actions will be measured.
7. Employees and officials of government have a right to expect that their personal lives, choices, associations and those of their families

will not unduly or unnecessarily be burdened because of their choice to serve the City.

8. Full and timely disclosure to the Ethics Commission as required by this Chapter of information and private activities that could affect the nature of public decisions allows the public to be aware of real or actual conflicts and make its own judgments about such conflicts.
- b. In order to meet these needs and to articulate the balance which the Council has struck between the needs and expectations of the citizens, employees and those with whom the City does business, the Council has enacted this Ethics Chapter.
- c. On behalf of the citizens of the City of Gaithersburg, the Council intends that this Chapter be liberally construed to accomplish these goals without unduly restricting the rights of the officials and employees and their families.

#### **Sec. 7A-1.2 Applicability of chapter.**

The provisions of this chapter shall apply to all city employees, all elected officials, as well as officials appointed to the following Boards and Commissions:

Planning Commission  
Board of Appeals  
Board of Supervisors of Elections  
Ethics Commission  
Landlord-Tenant Commission  
Animal Control Board  
Personnel Review Board  
Historic District Commission

~~Officials and employees, as defined and described in section 60 of the Charter, unless otherwise indicated.~~

In addition, Section 7A-6 of this chapter applies to lobbyist.

#### **Sec. 7A-1.3 Definitions.**

(a) *Business Relationship* – A relationship that may include, but is not limited to, any of the following:

1. The commitment or securing of \$1,500 or more of City funds, with the exception of funds expended on charitable organizations and trade associations.

2. Prospective employment with the City in any capacity.

3. Approval of a zoning entitlement or building permit application until such time construction has received all final approvals.

(b) *Community event* – An event to which the public is invited that takes place in the City of Gaithersburg or Montgomery County.

(c) *Gift* – Unless otherwise provided in this Chapter, the transfer of anything of economic value valued at fifty dollars (\$50) or more or a combination of transfers from any person or entity within a one calendar year period valued at one hundred dollars (\$100) or more. A Gift does not include campaign contributions or contributions or donations to the City or sponsorships of City events or programs.

(d) *Honoraria* – Payments of money or anything of value given to an individual for services for which fees are not legally or traditionally required, such as speeches and attending a meeting or event.

#### **Sec. 7A-2. Ethics commission.**

There shall be a city ethics commission, which shall be composed of three (3) members appointed by the mayor and subject to confirmation by the city council. The commission shall be advised by the city attorney and shall have the following responsibilities:

- (a) To review all forms generated by this chapter ~~as to~~ for compliance with the provisions of this chapter.
- (b) To provide published advisory opinions to persons subject to this chapter as to the applicability of the provisions of this chapter to them.
- (c) To process and make determinations as to complaints filed by any person alleging violations of this chapter.

#### **Sec. 7A-3. Responsibilities of city ~~manager~~ attorney.**

The city ~~manager~~ attorney shall have the following responsibilities:

- (a) To ~~devise~~ create and maintain all forms generated by this chapter.
- (b) To provide staff assistance to the city ethics commission.

- (c) To provide information, guidance, and training on a regular basis in order to promote understanding and compliance with respect to the purposes and implementation of this chapter.
- (d) To maintain all forms and disclosure statements filed pursuant to this chapter for at least five (5) years as public records available for inspection and copying.

#### **Sec. 7A-4. Conflicts of interest.**

~~City officials and employees~~ Persons who are subject to this chapter shall not:

- (a) Participate on behalf of the city in any matter which would, to their knowledge, have a direct financial impact on:
  - (i) ~~them, as distinguished from the public generally,~~
  - (ii) ~~their spouses, or dependent~~
  - (iii) their children;
  - (iv) their siblings;
  - (v) their parents;
  - (vi) any other relative who shares the person's legal residence or over whose financial affairs the person has legal or actual control; or
  - (vii) any business entities with which they are affiliated, as distinguished from the public generally.
- (b) Hold or acquire interests of either five (5) percent or greater in business entities that have or are negotiating contracts of ~~two five~~ five thousand ~~five hundred~~ dollars (~~\$2,500.00~~ 5,000.00) or more with the city or are regulated by their agency, except as exempted by the commission pursuant to section 7A-7.
- (c) Be employed by business entities that have or are negotiating contracts of more than ~~two five~~ five thousand ~~five hundred~~ dollars (~~\$2,500.00~~ 5,000.00) with the city or are regulated by their agency, except as exempted by the commission pursuant to section 7A-7.
- (d) Hold any outside employment relationships that would directly impact their impartiality or independence of judgment with regard to their official capacities.
- (e) Represent any parties, for contingent fees, before any city agency or department.

(f) Within one year following termination of city service, act as compensated representatives of others in connection with any specific matters within their official responsibilities in which they participated substantially as city officials or employees.

(g) Solicit any gift from any person or business entity.

(h) Accept any gift from any person or business entity, except as provided herein, that has or ~~is negotiating a contract~~ seeks a business relationship with the city or is regulated by their agency office, department or board, except where such gifts would not violate this chapter. ~~present a conflict of interest as determined by the commission. For purposes of section 7A-4 and 7A-5 of this chapter, the term "gift," unless otherwise provided, means the transfer of anything of economic value, regardless of form, without adequate and lawful consideration. "Gift" does not include campaign contributions or a gift from members of the immediate family, including children and parents of the person making the statement of a purely personal or private nature which would not be detrimental to the impartial conduct of business.~~

Unless a gift of any of the following would tend to impair the impartiality and the independence of judgment of the official or employee receiving it or, ~~if of significant value~~ would give the appearance of doing so, or, ~~if of significant value~~, the recipient official or employee believes, or has reason to believe, that it is designed to do so, subsections ~~(g)~~ and (h) of this section does not apply to:

(1) Meals and beverages valued at up to fifty dollars (\$50) consumed in the presence of the donor;

(2) Ceremonial gifts or awards which have insignificant monetary value;

(3) ~~Unsolicited g~~Gifts of nominal value or trivial items of informational value;

(4) Reasonable expenses for food, travel, lodging and scheduled entertainment of the official or the employee for a meeting which is given in return for participation in a board, committee, panel or speaking engagement at ~~the~~a meeting;

(5) Gifts of tickets or free admission extended by the sponsoring entity of the event that does business with the City to an elected official ~~or~~ employee to attend a ~~profession or intercollegiate sporting event,~~ charitable, community, cultural or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the office;

(6) A specific gift or class of gifts which ~~the city council or the~~ commission exempts from the operation of this section upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the City of Gaithersburg ~~and/or~~ that the gift is purely personal and private in nature;

(7) ~~Gifts from a person related by blood or marriage, or including, but not limited to a spouse, child, ward, financially dependent parent, or other relative person who shares the official's or employee's legal residence, or a child, ward, parent or other relative over whose financial affairs the person has legal or actual control; Gifts that are purely personal and private in nature from family and household members that would not be detrimental to the impartial conduct of the business of the City; or~~

(8) Honoraria, provided the honorarium is limited to reasonable expenses for the official's or employee's meals, travel, and lodging and provided that:

(i) The payor of the honorarium does not have an interest that may be affected substantially and materially, in a manner distinguishable from the public generally, by the performance or nonperformance of the official's or employee's official duties; and

(ii) The offering of the honorarium is not related in any way to the official's or employee's official position.

(i) Use the prestige of their ~~offices~~ position except to aid or benefit the public generally.

(j) Use confidential information acquired in their official city positions for their own benefit or that of others.

(k) While employed with or in the service of the city or within one (1) year following termination of city service, purchase any property or equipment from the city, either directly or through a third party such as an auction house, unless the purchase is subject to prior written approval by the city manager.

#### **Sec. 7A-5. Financial statements and disclosure statements.**

(a) A financial statement is required from all elected officials, all appointed officials designated in Sec. 7A-1.2, the city manager, the city attorney, the assistant city manager(s), the heads of all departments,

and all candidates for elective office. Statements shall be filed on an annual basis by no later than January 31 for the preceding year and shall be under oath. In addition, a disclosure statement shall be filed by all persons subject to this chapter for each incident when there is non-compliance with the requirements of this chapter. The statement shall identify the date of occurrence, donor, gift, value and reason for acceptance. The statement must be filed with the ethics commission for review within thirty (30) days of each occurrence. All occurrences in which Honoraria in excess of the gift limit have been accepted must be reported. Every city official and employee listed in subsection (c) of this section shall file annually, no later than January 31 of each calendar year during which he holds office, a statement with the commission disclosing any gifts, the value of which is ten (\$10.00), received during the preceding calendar year from any person having a contract with the city or any person regulated by their agency. The statement shall identify the donor of the gift and its approximate retail value at the time of receipt. For the purposes of this section, "gifts" shall not mean the provision or transfer without consideration of the following things, the value of which does not exceed ten dollars (\$10.00)

~~(1) Meals and beverages received as part of official, ceremonial or public functions extended as a courtesy to the office;~~

~~(2) Unsolicited ceremonial gifts or awards;~~

~~(3) Unsolicited trivial items of informational value;~~

~~(4) Unsolicited tickets or admissions to nonprofessional sporting events or charitable, cultural or political event extended as a courtesy to the office;~~

(b) Candidates for elective office listed in subsection (c) of this section shall file statements consistent with the requirements of subsection (a) of this section at the time that they file their certificates of candidacy.

~~(c) Officials and employees required to file shall be as follows:~~

~~(1) The mayor and members of the city council.~~

~~(2) The city manager and assistant city managers.~~

~~(3) Department heads within the city government.~~

~~(4) Members of the following city agencies:~~

~~a. City planning commission.~~

- ~~b. City board of appeals.~~
- ~~c. City board of supervisors of election.~~
- ~~d. City ethics commission.~~
- ~~e. City landlord-tenant commission.~~
- ~~f. City downtown review committee.~~
- ~~g. City animal control board.~~
- ~~h. City historic district commission preservation advisory committee.~~
- ~~i. City personnel review board.~~

~~(5) City Attorney.~~

~~(d)~~ (c) All city officials and candidates for elective office subject to this chapter shall file a statement with the commission disclosing any interest or employment, the holding of which would require disqualification from participation pursuant to section 7A-4, sufficiently in advance of any anticipated action to allow adequate disclosure to the public.

~~(e) Disclosure statements filed pursuant to this section shall be maintained by the commission for a minimum of five years as public records available for public inspection and copying.~~

#### **Sec. 7A-6. Lobbying disclosures.**

(a) Any person who personally appears before any city official with the intent to influence that person in performance of his official duties and who, in connection with such intent, expends funds on food, entertainment or ~~other~~ gifts for such officials, shall file a registration statement with the commission no later than January 15 of the calendar year or within five (5) days after making such appearances.

(b) The registration statement shall include complete identification of the registrant and of any other person or entity on whose behalf the registrant acts. It shall also identify the subject matter on which the registrant proposes to make such appearances and shall cover a defined registration period, not to exceed one calendar year.



(c) Registrants under this section shall file a report with the City Attorney's Office within thirty (30) days after the end of any calendar year during which they were registered, disclosing the value, date and nature of any food, entertainment or ~~other~~ Gift provided to a city official. ~~For the purposes of this section 7A-6, the term "gift" shall mean the transfer of anything of economic value, regardless of form, without adequate and lawful consideration for the purposes set forth in subsection (a) of this section valued at fifty dollars (\$50) or more or a combination of transfers from any person or entity within a one calendar year period valued at one hundred dollars (\$100) or more. "Gift" shall not include campaign contributions which are subject to state and local laws regulating the conduct of elections or the receipt of political campaign contributions.~~

(d) The registrations and reports filed pursuant to this section shall be maintained by the commission as public records, available for public inspection and copying.

#### **Sec. 7A-7. Exemptions and modifications.**

The commission may grant exemptions and modifications to the provisions of sections 7A-4 and 7A-5, if it determines that application of those provisions would:

- (a) Constitute an unreasonable invasion of privacy;
- (b) Significantly reduce the availability of qualified persons for public service; and
- (c) Not be required to procure the purposes of this chapter.

#### **Sec. 7A-8. Enforcement of chapter; violations and penalties.**

(a) The commission may issue a cease and desist order against any person found to be in violation of this chapter and may seek enforcement of such order in the circuit court of the county. The court may issue a cease and desist order and may also impose a fine of up to five hundred dollars (\$500.00) for any intentional violation of the provisions of this chapter.

(b) ~~A city official~~ Persons found to have violated this chapter may be subject to disciplinary or other appropriate personnel action, including suspension of city salary or other compensation and suspension and/or removal from office.

(c) Violations of this chapter shall be a misdemeanor, subject to the provisions of section 1-7.

**~~Sec. 7A-9. Effective date.~~**

~~This chapter shall take effect on March 1, 1982.~~

ADOPTED this 18<sup>th</sup> day of October, 2010 by the City Council of Gaithersburg, Maryland.

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SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 18<sup>th</sup> day of October, 2010. APPROVED by the Mayor of the City of Gaithersburg, this 18<sup>th</sup> day of October, 2010.

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Sidney A. Katz, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the 18<sup>th</sup> day of October, 2010 and that the same was approved by the Mayor of the city of Gaithersburg on the 18<sup>th</sup> day of October, 2010. This ordinance will become effective on the 8<sup>th</sup> day of November, 2010.

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Angel L. Jones, City Manager