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ARTICLE IX. CODE OF ETHICS ^[25]

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Sec. 2-971. Statement of purpose and policy.

- (a) The purpose of this article is to promote the welfare of the citizens of the city through the adoption of a code of ethics to govern all public officials of the city.
- (b) Our system of representative government depends, in part, on the people maintaining the highest trust in their officials and employees. The people have a right to public officials who are impartial and use independent judgment.
- (c) The confidence and trust of the people is eroded when the conduct of city business is subject to improper influence or even the appearance of improper influence.
- (d) To guard against improper influence, or the appearance of such improper influence, the city council finds it necessary and appropriate to enact this article, which is intended to establish comprehensive standards for the ethical conduct of city business.

(Code 1994, § 2-461; Ord. No. 98-8304, § 1, 8-5-1998)

Sec. 2-972. Definitions.

As used in this article, the following words and terms shall have the following definitions, unless the context clearly requires otherwise:

Advisory board member means any person appointed to any city board, commission, committee, or authority by the city council.

Business associate means any person or entity engaged in or carrying on a business enterprise with a public official, public employee or candidate, as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.

Business entity means any profit or nonprofit corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, self-employed individual, association, trust, or political action committee whether fictitiously named or not, doing business in this state.

City employee means any person employed by the city, or any of its departments, agencies, commissions, authorities or boards, whether on a full-time or part-time basis. "City employee" shall not be construed to include unpaid volunteers.

City managerial employee means the city manager, the city clerk, and the following city department directors:

- (1) Human resources director;
- (2) Planning director;
- (3) Police chief;
- (4) Community services director;
- (5) Utilities director;
- (6) Streets and stormwater director;
- (7) Finance director;
- (8) Technology services director;
- (9) Building official; and
- (10) Fire chief.

Conflict or conflict of interest means a situation in which regard for a private interest tends to lead to a disregard of a public duty or interest.

Elected officer means any member of the city council.

Gift.

- (1) **For purposes of this article, "gift" means** that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days, including:
 - a. Real property.
 - b. The use of real property.
 - c. Tangible or intangible personal property.
 - d. The use of tangible or intangible personal property.
 - e. A preferential rate or terms on a debt, loan, goods or services, which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin.
 - f. Forgiveness of an indebtedness.
 - g. Transportation, other than that provided to a public official by the city in relation to officially approved governmental business, lodging, or parking.
 - h. Food or beverage.**
 - i. Membership dues.
 - j. Entrance fees, admission fees, or tickets to events, performances, or facilities.
 - k. Plants, flowers, or floral arrangements.
 - l. Services provided by persons pursuant to a professional license or certificate.
 - m. Other personal services for which a fee is normally charged by the person providing the services.
 - n. Any other similar service or thing having an attributable value not already provided for in this subsection.
- (2) **"Gift" does not include:**

- a. Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the donee's employment, business, or service as an officer or director of a corporation or organization.
- b. Contributions or expenditures reported pursuant to F.S. ch. 106, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party.
- c. An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service.
- d. An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization.
- e. The use of a public facility or public property, made available by a governmental agency, for a public purpose.
- f. Transportation provided to a public officer or employee by an agency in relation to officially approved governmental business.
- g. Gifts provided directly or indirectly by a state, regional, or national organization which promotes the exchange of ideas between, or the professional development of, governmental officials or employees, and whose membership is primarily composed of elected or appointed public officials or staff, to members of that organization or officials or staff of a governmental agency that is a member of that organization.

Governmental body means the city council and any of its departments, agencies, commissions, authorities or boards.

Indirect or indirect interest means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the person required to file under F.S. ch. 112, part III (F.S. § 112.311 et seq.).

Material interest means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity. For the purposes of this article, indirect ownership does include ownership by a spouse and/or minor child.

Nominal intrinsic value means anything with a value less than \$50.00.

Public official means any and all elected officers, advisory board members, city managerial employees, and the city attorney (whether serving as an employee/in-house counsel or as outside counsel).

Relative unless otherwise specified in this article, means an individual who is related to a public official or employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, halfbrother, halvesister, grandparent, great-grandparent, grandchild, great-grandchild, step-grandparent, step-great-grandparent, step-grandchild, step-great-grandchild, person who is engaged to be married to the public official or employee or who otherwise holds themselves out as or is generally known as the person whom the public official or employee intends to marry or with whom the public official or employee intends to form a household, or any other natural person having the same legal residence as the public official or employee.

Represent or representation means actual physical attendance on behalf of a client in a city proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with public officials or employees on behalf of a client.

Special private gain or loss means any gain or loss to a public official involving an interest in real property located within the jurisdiction of the city or involving an investment in a business entity, a source of income or a position or employment, office, or management in any business entity located within the

jurisdiction or doing business within the jurisdiction of the city which is or will be affected in a different manner or degree than the manner or degree in which the public in general will be affected. If the gain or loss affects only a special class of persons, then it would be considered a special private gain or loss if the public official's interest represents more than 1 percent of the special class. The public official's interest will be determined on the basis of percentage of total value or number of individuals or business entities involved in the special class, whichever yields the greater percentage interest.

(Code 1994, § 2-462; Ord. No. 98-8304, § 2, 8-5-1998; Ord. No. 03-10256, § 9, 11-19-2003; Ord. No. 12-13070, § 1, 3-7-2012)

Cross reference— Definitions generally, § 1-2.

Sec. 2-973. Conflict of interest.

No public officer or employee shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of or is doing business with the city; nor shall an officer or employee have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between the officer's or employee's private interests and the performance of the officer's or employee's public duties or that would impede the full and faithful discharge of the officer's or employee's public duties. Any member of the city council or any city officer or employee who willfully violates this section shall be guilty of malfeasance in office or position and shall forfeit such person's office or position. Violation of this section with the knowledge, express or implied, of the person or corporation contracting with or making a sale to the city shall render the contract or sale voidable by the city manager or the city council.

(Laws of Fla. ch. 59-1598, § 15.3; Laws of Fla. ch. 70-819, § 26; Code 1994, § 2-72; Ord. No. 3034, § 1, 7-19-1978)

Sec. 2-974. Standards of conduct for public officials and employees.

(a) *Prohibitions.*

- (1) Public officials and employees shall not solicit or accept, directly or indirectly, any fee, compensation, gift, gratuity, favor, food, entertainment, loan, or any other thing of monetary value, from anyone who the public official or employee knows or reasonably should know:
 - a. Has, or is seeking to obtain, contractual or other business or financial relations with the city department or board with which the public official or employee is affiliated.
 - b. Conducts or represents a person or entity that conducts operations or activities that are regulated by the city department or board with which the public official or employee is affiliated.
 - c. Is seeking zoning, permitting, or inspection approval from the city department or board with which the public official or employee is affiliated.
 - d. Has interests that may be substantially affected by the performance or nonperformance of duties of the city public official or employee.
 - e. Is in any way attempting to affect the official actions of the city public official or employee.

This subsection is not intended to prohibit a public official from obtaining a loan from a financial institution at a rate and terms available to all other similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin.

- (2) A public official or employee shall not solicit a contribution from another person for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from a subordinate public official or employee. However, this subsection does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, birth of a child, illness, or retirement. Nor does this subsection prohibit public officials from participating in fund-raising activities for charitable purposes.

- (b) *Doing business with the city.* A public official or employee shall neither directly nor indirectly purchase, rent, or lease any realty, goods, or services for the city from any business entity of which the public official or employee or the official's or employee's spouse or child is an officer, partner, director, or proprietor or in which such public official or employee, or their spouse or child, has a material interest. No public official or employee shall, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the city. This section shall be applicable to advisory board members effective December 2, 1998. No person shall be held in violation of this subsection if:
- (1) A contract was entered into prior to:
 - a. Qualification for elected office.
 - b. Appointment to public office.
 - c. Beginning public employment.
 - (2) The business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city.
- (c) *Misuse of public position.* No public official or employee shall use or attempt to use such official's or employee's official position or any property or resource which may be within the official's or employee's trust, or perform the official's or employee's official duties, to secure a special privilege, benefit, or exemption for such official or employee or others. This subsection shall not be construed to conflict with F.S. § 104.31.
- (d) *Conflicting employment or contractual relationship.*
- (1) No elected city officer or city managerial employee shall have or hold any employment or contractual relationship with any individual or business entity which is doing business with, or routinely seeks zoning, permitting, or inspection approval from the department of the city with which the elected officer or city managerial employee is affiliated. Excluded from this provision are those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the city. Nor shall a public official or employee have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between the official's or employee's private interests and the performance of the official's or employee's public duties or that would impede the full and faithful discharge of the official's or employee's public duties.
 - (2) While serving as a public official or employee, no public official or employee shall personally represent another person, group, or business entity before the governmental body. This provision, however, is not intended to preclude and shall not preclude an elected officer or advisory board member from interacting with and coordinating with city staff as part of such elected officer's or advisory board member's representation of another person, group or business entity in the normal course of building permit applications, interpretations from staff relating to construction codes, conversations with staff relating to construction codes and similar functions conducted in the normal course of business. An elected officer or advisory board member shall not, however, be permitted to pursue a variance to any city code on behalf of or represent, another person, group or business entity, in a variance process.
- (e) *Disclosure or use of certain information.* No public official or employee shall disclose or use information not available to members of the general public and gained by reason of such official's or employee's official position for the official's or employee's personal gain or benefit or for the personal gain or benefit of any other person or business entity.
- (f) *Post-employment restrictions.*
- (1) No elected official or city managerial employee shall personally represent, for compensation, another person, group, or business entity before the governmental body for a period of 2 years following vacation of office, resignation of employment, or termination of employment, as applicable, except for the purposes of collective bargaining.
 - (2) An elected officer or city managerial employee is prohibited from engaging in or having an employment or contractual relationship with any person or business entity, or their

representative, if such elected officer or city managerial employee, within 2 years immediately preceding the vacancy from elected office or termination/resignation from employment, personally or substantially participated in a recommendation or decision relating to any contracting or zoning approvals sought or received by any such person or business entity. Such prohibition on an employment or contractual relationship shall be for a period of 2 years after the vacancy from elected office or termination/resignation from employment, as applicable, of such elected officer or city managerial employee.

- (3) The provisions of this subsection (f) relating to post-employment restrictions shall be applicable to the following categories of public officials:
 - a. Elected officers upon the effective date of the ordinance from which this article is derived;
 - b. Immediately upon employment date for any city managerial employees hired after the effective date of the ordinance from which this article is derived;
 - c. For current city managerial employees, the effective date will be January 1, 2000.
- (4) By majority vote of city council, the post-employment restrictions may be waived. Request for waiver must be made by the specific city managerial employee involved, appear on an advertised regular agenda of city council, and be approved by majority vote of council.

(Code 1994, § 2-463; Ord. No. 98-8304, § 3, 8-5-1998; Ord. No. 98-8419, §§ 1, 2, 12-2-1998; Ord. No. 99-8538, § 1, 5-19-1999)

Sec. 2-975. Voting conflicts.

No elected officer or advisory board member shall vote in an official capacity upon any measure which would inure to such officer's or member's special private gain or loss; or which the elected officer or advisory board member knows, or should know, would inure to the special private gain or loss of any principal by whom the elected officer or advisory board member is retained, or to the parent organization or subsidiary or a corporate principal by which the elected officer or advisory board member is retained (other than the City of Naples, a municipal corporation), or to a relative or business associate of the elected officer or advisory board member. Such elected officer or advisory board member shall, prior to the vote being taken, publicly state to the assembly the nature of the official's interest in the matter from which the elected officer or advisory board member is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of the elected officer or advisory board member's interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(Code 1994, § 2-464; Ord. No. 98-8304, § 4, 8-5-1998)

Sec. 2-976. Contracts for professional and construction services.

- (a) **Required contract language.** Except as otherwise prohibited by law, all contracts with persons or business entities providing construction or professional services to the city shall contain 1 or more contractual provisions, unless specifically waived by the city council, which:
 - (1) Provide assurances to the city that the contracting person or entity will not employ or offer to employ any elected official or city managerial employee who in any way deals with, coordinates on, or assists with the construction or professional services provided, for a period of 2 years after termination of all provisions of the construction or professional services contract;
 - (2) Provide restrictions on the ability of the person or business entity contracting with the city to also provide services for compensation to another party other than the city on the same subject matter, same project, or scope of services without city council approval and;
 - (3) Provide covenants that the contracting person or other entity will not disclose or use information not available to members of the general public and gained by reason of such

person or business entity's contractual relationship with the city for the special gain or benefit of the contracting person or entity, or for the special gain or benefit of any other person or business entity, except as specifically contemplated or authorized by the contract.

- (b) *Damage provision.* In addition to the penalty provided for in [section 1-15](#), a contract with a person or business entity providing construction or professional services to the city shall, except as otherwise prohibited by law or specifically waived by the city council, contain a damages provision which shall require a payment of damages for violation of subsection (a)(1) of this section in an amount equal to any and all compensation which is received by the former elected official or city managerial employee from the contracting person or entity, or an amount equal to the former employee's last 2 years of gross compensation from the city, whichever is greater.
- (c) *Applicability.* The provisions of this section shall be applicable to all contracts as described above which are entered into by the city on or after September 30, 1998.

(Code 1994, § 2-465; Ord. No. 98-8304, § 5, 8-5-1998)

Sec. 2-977. Applicability to law firms serving as city attorney.

The provisions of this article shall be applicable to a law firm serving as the city's general attorney to the extent specifically addressed in the retention agreement or legal services contract between the city and the law firm.

(Code 1994, § 2-466; Ord. No. 98-8304, § 6, 8-5-1998)

Sec. 2-978. Interpretation.

Written requests for interpretive rulings concerning the applicability of this article may be submitted by any public official to the city attorney, who will respond with a written opinion.

(Code 1994, § 2-467; Ord. No. 98-8304, § 7, 8-5-1998)

Sec. 2-979. Complaints.

Information concerning any incident or situation which demonstrates that any public official may have engaged in conduct contrary to this article may be forwarded by complaint affidavit to the state attorney for the 20th Judicial District for investigation and appropriate action.

(Code 1994, § 2-468; Ord. No. 98-8304, § 8, 8-5-1998)

Sec. 2-980. Article supplemental to state law; conflicts with state law.

This article is a supplement and addition to the requirements of F.S. ch. 112, part III (F.S. § 112.311 et seq.), entitled "Code of Ethics for Public Officers and Employees." This article shall not be construed to authorize or permit any conduct or activity which is in violation of F.S. ch. 112, part III. In the event of a conflict between the provisions of this article and F.S. ch. 112, part III, the more restrictive provisions shall apply.

(Code 1994, § 2-471; Ord. No. 98-8304, § 11, 8-5-1998)

Sec. 2-981. Liberal construction.

It is intended that the provisions of this article be liberally construed to accomplish the purpose and intent of this article, except where such liberal construction is specifically prohibited by law.

(Code 1994, § 2-472; Ord. No. 98-8304, § 12, 8-5-1998)

FOOTNOTE(S):

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State Law reference— Code of ethics, F.S. § 112.311 et seq. [\(Back\)](#)