

Cottage Grove

ORDINANCE NO. 21

An ordinance of the City (Town) of Cottage Grove, Tennessee to adopt the following Code of Ethics.

First reading on 10 day of April 2007 Vote: John Holcomb / Dorothy Miller /
Machelle Operia / Horace Morton JR. / Passed

Signed John Wick
MAYOR

Attested Paul Schuler
City Recorder

Second reading on 8 day of May 2007 Vote: John Holcomb / Dorothy Miller /
Machelle Operia / Horace Morton JR. / Passed

This ordinance is adopted this 8th day of May 2007

Signed Machelle Operia
VICE MAYOR

Attested Paul Schuler
CITY RECORDER

RECEIVED
2007 MAY 11 AM 9:11
TENNESSEE
ETHICS COMMISSION

Code of Ethics¹

SECTION 1. Applicability. This chapter is the code of ethics for personnel of the municipality. It applies to all 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 municipality. The words "municipal" and "municipality" include these separate entities.

SECTION 2. Definition of "personal interest." (1) For purposes of Sections 3 and 4, "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), step parent(s), grandparent(s), sibling(s), child(ren), or step child(ren).

(2) The words "employment interest" include a situation in which an official or employee or a designated family member is negotiating possible employment with a person or organization that is the subject of the vote or that is to be regulated or supervised.

(3) 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.

¹ State statutes dictate many of the ethics provisions that apply to municipal officials and employees. For provisions relative to the following, see the Tennessee Code Annotated (T.C.A.) sections indicated:

Campaign finance – T.C.A. Title 2, Chapter 10.

Conflict of interests – T.C.A. §§ 6-54-107, 108; 12-4-101, 102.

Conflict of interests disclosure statements – T.C.A. § 8-50-501 and the following sections.

Consulting fee prohibition for elected municipal officials – T.C.A. §§ 2-10-122, 124.

Crimes involving public officials (bribery, soliciting unlawful compensation, buying and selling in regard to office) – T.C.A. § 39-16-101 and the following sections.

Crimes of official misconduct, official oppression, misuse of official information – T.C.A. § 39-16-401 and the following sections.

Ouster law – T.C.A. § 8-47-101 and the following sections.

A brief synopsis of each of these laws appears in the appendix of the municipal code.

SECTION 3. **Disclosure of personal interest by official with vote.** 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 himself² from voting on the measure.

SECTION 4. **Disclosure of personal interest in non-voting matters.** An official or employee who must exercise discretion relative to any matter, other than casting a vote, 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 recorder. In addition, the official or employee may, to the extent allowed by law, charter, ordinance, or policy, recuse himself from the exercise of discretion in the matter.

SECTION 5. **Acceptance of gratuities, etc.** An official or employee may not accept, directly or indirectly, any money, gift, gratuity, or other consideration or favor of any kind from anyone other than the municipality:

(1) 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

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

SECTION 6. **Use of information.** (1) 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.

(2) 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.

SECTION 7. **Use of municipal time, facilities, etc.** (1) 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.

(2) 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 governing body to be in the best interests of the municipality.

SECTION 8. **Use of position or authority.** (1) An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.

² Masculine pronouns include the feminine. Only masculine pronouns have been used for convenience and readability.

(2) An official or employee may not use or attempt to 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.

SECTION 9. 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.

SECTION 10. Ethics complaints. (1) 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.

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

(b) The city attorney may request the governing body to hire another attorney, individual, or entity to act as ethics officer when he has or will have a conflict of interests in a particular matter.

(c) When a complaint of a violation of any provision of this chapter is lodged against a member of the municipality's governing body, the governing body shall either determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has sufficient merit to warrant further investigation. If the governing body determines that a complaint warrants further investigation, it shall authorize an investigation by the city attorney or another individual or entity chosen by the governing body.

(3) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics.

(4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation or a civil service policy, rule, or regulation, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this code of ethics.

SECTION 11. Violations. An elected official or appointed member of a separate municipal board, commission, committee, authority, corporation, or other instrumentality 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. An appointed official or an employee who violates any provision of this chapter is subject to disciplinary action.

Code of Ethics

Section-by-Section Summary and Explanation

SECTION 1. This section provides that the code of ethics adopted by the municipal governing body applies to all full-time and part-time elected and appointed officials, whether compensated or not. It also applies to members and employees of separate boards, authorities, and commissions created by the municipality. This includes school boards, planning commissions, boards of zoning appeals, beer boards, airport authorities, and housing authorities among others. These applications of the code of ethics are mandated by the ethics act passed by the General Assembly.

SECTION 2. The ethics act passed by the General Assembly requires that "personal interests" that affect or appear to affect the actions of municipal officials and employees must be disclosed, but the state statute does not define "personal interests." This section defines those interests. This is a broad definition and is much more encompassing than the state's conflict of interests laws. It includes ANY financial, ownership, or employment interest of an official or employee in a business or entity the municipality does business with, regulates, or supervises. It also includes these interests of the listed family members of the official or employee. It includes situations in which the official, employee, or family member is negotiating employment with an affected entity. There is some overlap with indirect interests under state law, but most of the situations to which this provision in the code of ethics will apply will not be covered by the conflicts of interests laws. An example would be a family member of a member of the governing body who is an employee of a business seeking to do business with the municipality. This would not be a direct or indirect conflict of interests under the state law, but it would be a personal interest that would have to be disclosed under this definition. This section provides that when there is an overlap with the conflicts of interest laws, those laws take precedence.

SECTION 3. This section requires an official with the responsibility to vote to disclose any of his/her personal interests that might affect his/her discretion before the vote so they appear in the minutes. The state statute does not require that an official with a personal interest recuse himself/herself from voting. The implication of the statute is to the contrary and that after disclosure the official may vote. Nevertheless, this section allows, but does not require, the official to recuse himself/herself.

SECTION 4. This section applies to employees and officials who must exercise discretion in matters that do not require a vote. The official or employee should when possible disclose the personal interest before the exercise of the discretion. Again, recusal is not required, but this section allows this when it is permitted by law, charter, ordinance, or policy of the municipality.

SECTION 5. This section prohibits an official or employee from taking any money, gift, favor, or other gratuity from anyone other than the municipality for the performance of an official's or employee's regular duties or that gives the appearance of

attempting to influence the actions of the official or employee in carrying out municipal business. This is a somewhat modified version of a provision that most municipalities already had on the books.

An alternative to this gift prohibition that is allowed by the state ethics statute would be to allow gifts and gratuities up to a certain amount but to require reporting of those items. MTAS decided on prohibition because it is simpler to implement and because most cities already had similar provisions.

SECTION 6. This section prohibits officials and employees from disclosing confidential information, and from disclosing any other information with the intent to result in financial gain. Again, these are common provisions in ethics ordinances that some cities had already adopted.

SECTION 7. This section prohibits officials and employees from using or authorizing the use of municipal time and facilities for their own financial gain. It also prohibits this for other entities or individuals unless this is authorized by contract or lease determined by the governing body to be in the best interests of the municipality. This is a provision similar to ones that have been adopted by many municipalities.

SECTION 8. This section prohibits officials and employees from using their position to make private purchases in the name of the municipality and from using their position to gain privileges or exemptions that are not authorized by charter, general law, ordinance, or policy. These provisions are similar to provisions adopted by many municipalities.

SECTION 9. This section prohibits outside employment by officials or employees if the outside work interferes with municipal duties or is in conflict with any provision of the charter, any ordinance, or policy of the municipality. Many municipalities have adopted similar provisions.

SECTION 10. This section provides methods for bringing and investigating complaints of violations of the code of ethics. The city attorney is designated as the ethics officer and may issue opinions when requested in writing on whether certain conduct would comply with the code of ethics and other applicable law. The city attorney is designated to receive and investigate complaints about officials and employees who are not members of the governing body. The attorney may request the governing body to designate another person or entity to act as ethics officer when he/she has a conflict of interests. The governing body must determine the merit of complaints against its members. If the governing body determines a complaint warrants further investigation, it must authorize the investigation by the city attorney or another person or entity chosen by the governing body.

Because many municipalities already have personnel policies that deal with some of the same behaviors regulated by the code of ethics, this section also provides that when a violation of the code of ethics also constitutes a violation of a personnel or civil service

policy, rule, or regulation, the violation would be handled as a violation of the personnel provisions rather than as a violation of the code of ethics.

This section also provides for a "reasonable person" interpretation and enforcement of the code of ethics.

An alternative to appointing the city attorney as ethics officer would be to appoint another individual, such as another attorney or a retired judge. If a municipality chose to do this, it would probably want to provide for the appointment of the ethics officer after each municipal election. The position could be compensated or uncompensated, although it is unlikely many individuals would be willing to serve if the position is not compensated. Another acceptable alternative would be to establish a Board of Ethics to perform these functions. For municipalities that choose this alternative, MTAS suggests a three (3) member board to be appointed by the governing body. Terms should probably be three (3) years.

MTAS chose the above provisions for designating the ethics officer and for handling ethics complaints for the model code of ethics because they seemed simpler, less costly, and most appropriate for most Tennessee municipalities.

SECTION 11. This section provides for punishment for violations. Elected officials and appointed members of boards and commissions are punishable as already provided by law and in addition are subject to censure by the governing body. Appointed officials and employees are subject to disciplinary action.