

PART II - CODE OF ORDINANCES

CHAPTER 2 - ADMINISTRATION

Article IV. - Code of Ethics

Sec. 2-91. Policy.

- a. The public judges its government by the way public officials and employees conduct themselves in the posts to which they are elected or appointed.
- b. The people have a right to expect that every public official and employee will conduct himself in a manner that will tend to preserve public confidence in and respect for the government he represents.
- c. Such confidence and respect can best be promoted if every official and employee as hereinafter defined will:
 1. Obey all applicable laws regarding official actions taken as a board member;
 2. Uphold the integrity and independence of the board member's office;
 3. Avoid impropriety in the exercise of the board member's official duties;
 4. Faithfully perform the duties of the office; and
 5. Conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

(Ord. No. S2010-011, § 1, 11-8-2010)

Effective on: 11/18/2013

Sec. 2-92. Definitions.

The terms used in this code of ethics are hereby defined as follows:

Advisory Opinion means an opinion issued by the ethics commission regarding whether the past, present or proposed conduct by an elected or appointed official or employee of the city violates or would violate the provisions of section 2-94.

Effective on: 11/18/2013

Appointed Official shall mean any person appointed to any board or commission of the city.

Effective on: 11/18/2013

Business and Transaction mean any purchase of supplies or services, or the construction of any public facility or project by a public body.

Effective on: 11/18/2013

Complaint means a written request under oath seeking an investigation by the ethics commission into the past or present conduct of an elected or appointed official or employee on a form approved by the ethics commission. At a minimum, the form shall contain the name(s) and home address(es) of the person(s) seeking such an investigation; the name(s) of the person(s) who is(are) the subject of the investigation; a detailed statement of the facts and reasons why the subject(s) should be investigated; a description of the City Code provision which may have been violated; and a statement that the person(s) requesting such an investigation knows and/or believes such information is true.

Effective on: 11/18/2013

Confidential Information means any drawings, specifications, cost estimates, oral communications or other documents or information relative to a business or transaction not available to the general public.

Effective on: 11/18/2013

Elected Official shall mean the mayor and members of the Fayetteville City Council.

Effective on: 11/18/2013

Employee shall mean a full-time or part-time employee of the City of Fayetteville.

Effective on: 11/18/2013

Ethics Commission means the members of the ethics commission appointed by the mayor and city council.

Effective on: 11/18/2013

Ethics Commission's Purview means those provisions of the Fayetteville City Code contained in sections 2-91 through 2-94.

Effective on: 11/18/2013

Financial Interest means an interest which shall yield, directly or indirectly, a monetary or other material benefit (other than the duly authorized salary or compensation for his services to the city) to the elected or appointed official or employee, or to any person employing or retaining the services of the elected or appointed official or employee.

Effective on: 11/18/2013

Inquiry means a written request under oath for an advisory opinion which shall be submitted on a form approved by the ethics commission. At a minimum, the form shall contain the name(s) and home address(es) of the person(s) seeking the inquiry; a detailed statement of the facts and reasons why the advisory opinion is being requested; a description of the City Code provision, if any, which may be violated based on the facts submitted; and a statement that the person(s) requesting such an investigation knows and/or believes such information is true.

Effective on: 11/18/2013

Personal Interest means any interest arising from blood or marriage relationship or any financial interest.

Effective on: 11/18/2013

Public Body means the City Council, or any agency, board, body, commission, committee, department or office of the city.

Effective on: 11/18/2013

(Ord. No. S2010-011, § 1, 11-8-2010)

Cross reference— Definitions generally, § 1-2.

Effective on: 11/18/2013

Sec. 2-93. Fair and Equal Treatment.

No elected or appointed official or employee shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or to make available to the public at large.

(Ord. No. S2010-011, § 1, 11-8-2010)

Effective on: 11/18/2013

Sec. 2-94. Conflict of Interest.

a. *Participation in business transaction involving public funds.* No appointed official or employee shall become an undertaker, or make any contract for his own benefit, under such authority, or be in any manner concerned or interested in making such contract, or in the profits thereof, either privately or openly, singly or jointly with another, unless the contract is authorized pursuant to [G.S. 14-234](#), and the following conditions are met:

1. The appointed official or employee has not been privileged to any confidential information relating to the business or transaction;
2. The appointed official or employee shall make a public disclosure of their financial interest and not participate in any deliberations or voting on such business or transaction;
3. The public body on which the appointed official or employee works or serves is not the initiator, recipient, user of the supply or service, or public body involved with the purchase, implementation, construction or management of the public project or facility.

If an elected or appointed official or employee no longer serves or works for the public body, the business or transaction cannot be one for which such official or employee had voted upon or been privilege to confidential information while in office or employed by the public body.

- b. *Voting.* No elected or appointed official shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct. On all other cases, failure to vote by a member who was physically present at a meeting, or who has withdrawn without being excused by a majority of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowance of members of the board or commission is not a matter involving a member's own financial interest or official conduct.
- c. *Incompatible employment.* No elected or appointed official or employee shall engage in private employment with, or render services for, any private person, firm, or corporation who has business transactions with any public body unless the same is permitted by [G.S. 14-234](#), and he/she shall first make full public disclosure of the nature and extent of such employment or services.
- d. *Representation of private persons.* No elected or appointed official or employee shall appear as an advocate or agent of any person, other than himself, before any public body in the city. This shall not preclude a member of the governing body from participating in deliberations or voting on a matter where that member has first brought the matter to the attention of the public body and but for this limited involvement has no other interest in the matter for which other provisions of this Code would require disclosure.
- e. *Gifts and favors.* No elected or appointed official or employee shall knowingly accept from any person, firm, or corporation, a gift whether in the form of money, things, favor, loan or promise that would not be offered or given to such elected or appointed official or employee if they were not an elected or appointed official or employee. This section is not intended to prevent the gift and receipt of the following by an elected or appointed official or employee:
 1. Honorariums in an amount not to exceed \$50.00, or expenses to include meals, travel and lodging for participating at meetings, seminars, conferences, grand openings, or anniversary celebrations of businesses, or other similar activities where the elected or appointed official or employee is either a speaker, participant or invited in his official capacity;
 2. Nominal advertising items or souvenirs of \$25.00 or less in value, or meals furnished at banquets;
 3. Customary gifts or favors received from their friends, relatives or employer where it is clear that it is the relationship of the donor which is the motivating factor for the gift or favor;
 4. Discounts offered by retail merchants, places of entertainment or similar commercial enterprises where the discount is offered to all elected or appointed officials or employees or similar categories of elected or appointed officials or employees of other units of government;
 5. Gift certificates, merchandise or services not to exceed an amount of \$200.00 per donor to be offered as prizes at the annual city employee picnic;
 6. Gifts to nonsupervisory employees no more than once a year not to exceed a value of \$25.00.
All such gifts knowingly made or received as permitted in this section and made by a contractor, subcontractor or supplier currently doing business directly or indirectly with the city shall be reported to the city manager or the city council as appropriate within ten days of receipt.
- f. *Confidential information.* Unless required or permitted by law, no elected or appointed official or employee shall, without prior formal authorization of the public body having jurisdiction, disclose any confidential

information concerning any other elected or appointed official or employee, or any other person, or any property or governmental affairs of the city. Whether or not it shall involve disclosure, no elected or appointed official or employee shall use or permit the use of any such confidential information to advance the financial or personal interest of himself or any other person.

- g. *Neptotism.* No elected or appointed official or employee shall appoint or vote for appointment of any person related to him by blood or marriage to any clerkship, office, position, employment or duty when the salary, wages, pay or compensation is to be paid out of public funds.

(Ord. No. S2010-011, § 1, 11-8-2010)

Effective on: 11/18/2013

Sec. 2-95. Ethics Commission.

- a. *Creation and organization.* There is hereby created an ethics commission to consist of five members, all of whom shall be known for their personal integrity and all of whom shall be residents of the City of Fayetteville.
- b. *Membership.* The ethics commission shall be composed of:
1. One member selected by the Cumberland County Bar Association, chosen from the attorney members of the association;
 2. One member selected by the Sandhill Chapter of Certified Public Accountants, chosen from the members of the organization;
 3. One member selected from among the universities/colleges of Fayetteville State University, Methodist University, and Fayetteville Technical Community College; and
 4. Two members selected by the city council from the general citizenry.
- c. *Terms of members.* Each member shall serve for a term of three years; however the initial terms of the Cumberland County Bar Association and Sandhill Chapter of Certified Public Accountants shall be for three years and the initial terms of the first appointee from the universities/colleges and the two members appointed by the city council from the general citizenry shall be for two years. The members shall serve without compensation.
- d. *Election of chair and vice chair.* The ethics commission shall elect:
1. *A chair by majority vote of the serving members.* Each chair will serve a one-year term and shall be eligible to serve as chair in successive years.
 2. *A vice chair to preside in the absence of the chair.* The vice chair will serve a one-year term and shall be eligible to serve as vice chair in successive years. The chair shall preside at the meetings and decide all points of order, procedure and evidence.
- e. *Meetings and minutes.* All meetings of the ethics commission shall be conducted in accordance with the Open Meetings Law, [G.S. 143-318.9](#), et seq. Rules of procedure for consideration of a complaint or an inquiry shall be as established by the ethics commission; otherwise, the meetings of the ethics commission will be governed by the Parliamentary Rules of Procedure for City Council, as prescribed in section 2-4 of this Code of Ordinances. Written minutes of all ethics commission meetings shall be taken by the city clerk and after approval, filed with the city clerk.
- f. *Quorum and decisions; vacancies.* The ethics commission shall conduct its business only with a quorum. Any hearing pursuant to subsection 2-95(i), shall require a quorum of at least four members of the ethics commission. Otherwise, a quorum shall be the majority of the actual members of the ethics commission, excluding vacant seats. A majority opinion of the members sitting at any hearing shall govern as to decisions of the ethics commission. Vacancies shall be filled as soon as is practicable, in accordance with the procedure for appointment of members under subsection (b) of this section.
- g. *Political activities.* The members of the ethics commission shall be prohibited from engaging in any city election political activities and from making campaign contributions to candidates in city elections during their terms as commission members. Violations of this subsection shall result in removal from board membership.

h. *Intake and screening of inquiries.* Any person, elected or appointed official, or employee may file an inquiry to obtain an advisory opinion as follows:

1. Inquiries to the ethics commission must be submitted to the city clerk or the city's human resources development department.
2. All inquiries to the ethics commission shall initially be reviewed by one or more designees from the city's human resources development department within three business days of receipt by the human resources development director.
3. A record shall be made and kept of all such inquiries.
4. Inquiries that fall within the ethics commission's purview to any degree shall be forwarded to the ethics commission and placed upon the agenda for consideration at the next regularly scheduled meeting. If the subject matter of the inquiry appears to be a violation of a criminal statute, the matter shall be referred to the appropriate law enforcement agency or the district attorney.
5. Inquiries deemed not to fall within the ethics commission's purview shall be forwarded to such other departments within the city or other authorities as is appropriate. Summaries outlining the substance of these inquiries shall be prepared by designees from the city's human resources development department. These summaries shall be presented to the ethics commission and placed upon the agenda for review at the next regularly scheduled meeting. The ethics commission may, however, review any inquiry in its entirety. At the ethics commission's request, any matter presented in summary fashion shall be presented in its entirety and placed upon the agenda for the next regularly scheduled meeting.
6. The inquiry shall be submitted to the city clerk or the human resources development department. The inquiry will be deemed "received" by the ethics commission when it is first reviewed by the ethics commission pursuant to subsection 2-95(h).
7. The ethics commission or its designee may request any additional information deemed necessary to render an advisory opinion. If it deems necessary, the ethics commission may conduct a fact-finding hearing to assist in rendering an advisory opinion.
8. The ethics commission shall render an advisory opinion in writing no later than six weeks from the time it receives the request, unless the person who requests the opinion has withdrawn the request in writing, or unless the requested additional information has not been received by the ethics commission, or unless the ethics commission has given written notice to the requestor explaining the reason for the delay and stating an expected issuance date. The advisory opinion will be issued to the person who requests the opinion.
9. The ethics commission may publish advisory opinions with such deletions as may be lawful and necessary to prevent disclosure of records which are exempt pursuant to the North Carolina Public Records Act or confidential pursuant to [G.S. 160A-168](#). The ethics commission may also publish guidelines based on an advisory opinion if the subject of the opinion may be of general interest and guidance.
10. All ethics commission advisory opinions shall be forwarded in writing to the individual who requested the advisory opinion and the city manager or city council, as deemed appropriate by the ethics commission, and if permitted by law, the city manager or city council shall report any action taken as a result of said advisory opinion.

i. *Complaints.*

1. Any person, elected or appointed official, or employee may file a complaint with the city clerk or the human resources development department.
2. Complaints will be deemed "filed" when they are received by the city clerk in writing or when received by the city's human resources development department. Complaints will be deemed "received" by the ethics commission when they are first reviewed by the ethics commission.
3. The ethics commission or its designee may request any additional information deemed necessary to screen the complaint or to render a decision.

4. No complaints shall be accepted or considered which relate to actions that took place more than one year prior to the date of filing unless recurring benefits or consequences attributable to such actions are apparent.
5. The ethics commission's designee must notify the person who is the subject of the complaint no more than three business days from the day the complaint was filed. The notification shall include a copy of the full complaint; and a copy of any portion of the code of ethics that may have been or that may be violated.
6. The ethics commission shall provide the subject of the complaint with a copy of the complaint before it provides copies to any other parties.
7. Screening pursuant to subsection 2-95(h)(2) shall occur no more than five business days from the date a complaint is filed. If the complaint is deemed to fall within the purview of the ethics commission, the ethics commission shall convene to review the complaint at a properly noticed meeting under the Open Meetings Law. If the subject matter of the complaint appears to be a violation of a criminal statute, the matter shall be referred to the appropriate law enforcement agency or the district attorney.
8. The ethics commission may immediately dismiss a complaint at any time if:
 - a. The ethics commission has no jurisdiction over the subject matter or the alleged violator;
 - b. The alleged violation, if true, would not constitute a violation of the code of ethics;
 - c. The alleged violation is de minimis;
 - d. The complaint is, on its face, frivolous, groundless, or brought for purposes of harassment;
 - e. The matter has become moot because the person who is the subject of the complaint is no longer an official or employee. If the ethics commission determines that the public interest would be served by publishing an advisory opinion, it shall subsequently issue an opinion.
 - f. The person who is the subject of the complaint had obtained an advisory opinion under section 2-95 permitting the conduct; or
 - g. The ethics commission deems the supervisor or department head has already dealt satisfactorily with the allegation which is the subject of the complaint.

All dismissals shall be in writing, contain the reason for the dismissal, and be made available to the public.

9. If, after initial review by the ethics commission, the complaint has not been dismissed pursuant to subsection 2-95(i), the commission shall prepare and issue a notice of hearing, which shall set forth in reasonable detail the alleged violations of the code of ethics and the facts supporting the allegations. The notice of hearing shall be mailed to the person filing the complaint (complainant) and to the subject of the complaint (complaint subject) within five days of its approval by the chair of the ethics commission. The notice shall provide the complaint subject an opportunity to prepare and file an answer to the notice of hearing within ten days, unless an extension is granted for good cause. When received by the ethics commission, the answer shall be promptly mailed to the complainant.
10. Within ten days of the receipt of the answer, the city clerk shall issue a notice setting forth a date and place for the hearing. The ethics commission will attempt to accommodate the parties in selecting a date that is mutually agreeable.
11. The ethics commission shall stay the inquiry and refer the entire matter to the appropriate law enforcement agency when credible evidence of a crime is discovered.
12. At least ten days before the hearing, the parties or their representatives shall submit to the ethics commission a proposed list of witnesses and a list of possible documentary evidence to be introduced at the hearing, as well as an estimate of the length of time needed to present the testimony and evidence.
13. The ethics commission may request its attorney to subpoena witnesses and documents after having made a written request to appear or provide the records. Subpoenas shall be issued pursuant to North Carolina State Law. Persons who are subpoenaed or whose records are subpoenaed may object to testimony or the

production of documents on the grounds that such information is privileged under North Carolina State Law.

14. Any elected or appointed official or employee of the City of Fayetteville who is called before the ethics commission for a hearing shall be required to participate in providing information that is in their custody unless such information is protected by a privilege under North Carolina State Law.
15. After the notice of hearing has been issued, none of the parties or their representatives may communicate with the ethics commission or any ethics commission member on any matter pertaining to the inquiry. All communications pertaining to the inquiry shall be sent to the commission's attorney.
16. At any time after the issuance of the notice of hearing, the ethics commission, at its discretion, may make a finding solely on the basis of written arguments without holding a public hearing if it determines that there is no significant discrepancy in the facts. However, the complaint subject shall have the right to demand a hearing which may be open to the public.
17. At any time after the issuance of the notice of hearing, the ethics commission may dismiss a complaint without a finding for or against the complaint subject if it finds that the person committed the violation due to oversight and comes into voluntary compliance.
18. The ethics commission may dismiss a complaint if the complainant does not appear at the hearing and if, in the opinion of the ethics commission, it would be unfair to the subject of the complaint not to have the opportunity to examine the complainant. Nothing herein shall prevent the ethics commission from conducting the hearing where there is reason to believe that the code of ethics has been violated.
19. At the hearing, the complainant or the complainant's representative will be provided the opportunity to make an opening statement and presentation of the evidence in support of the allegations set forth in the notice of hearing. The inquiry subject or their representative shall be entitled to cross-examine witnesses called by the complainant or the commission's attorney.
20. At the conclusion of the evidence offered by the complainant or the complainant's representative, the subject of the complaint or their representative shall have the opportunity to make an opening statement and present evidence. The complainant or their representative shall have the opportunity to cross-examine witnesses called by the complaint subject. Either party shall be allowed sufficient time to examine and respond to any evidence not presented to them in advance of the hearing. At the conclusion of the evidence, the parties may make closing statements or, with the consent of the ethics commission, submit written summaries of their respective positions.
21. The chair of the ethics commission and, in the absence of the chair, the vice chair shall preside at the hearing, administer oaths or accept affirmations from witnesses, and decide all points of order, procedure and evidence. The hearing need not be conducted according to technical rules of evidence, and any relevant evidence, including hearsay, of probative value shall be admitted at the discretion of the chair. Incompetent, immaterial, or unduly repetitious evidence may be excluded.
22. An electronic or stenographic record of the hearing shall be made and kept by the city clerk.
23. At the conclusion of the hearing, the ethics commission shall deliberate towards a decision. Upon a majority vote of the members present for the hearing, the matter shall be decided. The ethics commission shall then direct its attorney to draft findings, conclusions and recommendations for approval at the following regularly scheduled meeting.
24. The ethics commission shall conduct a hearing of all complaints within 90 days of receipt of the complaint by the ethics commission. Procedural delays caused by the subject of the inquiry shall toll the 90-day time limit.
25. Within 30 days of the conclusion of deliberations, the ethics commission shall issue and publish its decision to include findings, conclusions and recommendations. In the alternative, the ethics commission where it deems appropriate may issue an advisory opinion in lieu of making findings and recommendations.

26. The commission's attorney shall send a written copy of the ethics commission's findings and recommendations to the inquiry subject and the complainant and, unless provided otherwise in these rules, in the code of ethics, or in state law, shall make the findings and recommendations public.

27. The complaint subject shall have the right to be represented by legal counsel in the hearing or any other proceeding, before the ethics commission.

j. *Conflict of interest questionnaire.* All elected officials, members of the city senior management team, and a random sample of city employees shall be required to complete the conflict of interest questionnaire sent by the city's internal auditor and certify that they have read the City of Fayetteville Code of Ethics.

k. *Conflict of laws.* Nothing in this section is intended to circumvent, repeal, or otherwise supersede other provisions of the Fayetteville City Code. To the extent that there is a conflict between the provisions of this section and other sections of the Fayetteville City Code, the North Carolina General Statutes, the North Carolina Constitution, or the Constitution of the United States, those provisions will control.

l. *Public record.* No inquiry or complaint may be released to the public in violation of [G.S. 160A-168](#), or it if is protected from public disclosure by Chapter 132 of the North Carolina General Statutes.

(Ord. No. S2010-011, § 1, 11-8-2010)

Effective on: 11/18/2013

Sec. 2-96. Violations; Appeals.

a. If a decision of the ethics commission finds the person to be in violation of this article or failing to comply with an opinion rendered by the ethics commission, and the person is:

1. An elected official, the matter shall be referred to the city council for consideration of censure;
2. An appointed official, he/she may be subject to public reprimand by the ethics commission, and/or may be referred by the ethics commission to the city council for consideration of removal; and
3. An employee, the ethics commission may recommend disciplinary action to the employee's supervisor, department head and city manager.

b. The decision of the ethics commission after a hearing shall be final. Any appeal shall be made within ten days and shall be taken to superior court and subject to review by writ of certiorari.

(Ord. No. S2010-011, § 1, 11-8-2010)

Effective on: 11/18/2013

Secs. 2-97—2-120. Reserved.

Effective on: 11/18/2013

Article Footnote(s)

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Editor's note— Ord. No. S2010-011, § 1, adopted Nov. 8, 2010, amended art. IV in its entirety to read as herein set out. Former art. IV, §§ 2-91—2-96, pertained to similar subject matter and derived from: Code 1961, §§ 2-50—2-55; and Ord. No. S2009-008, §§ 1—3, adopted Sept. 28, 2009.

State Law reference— Conflicts of interest involving public funds, [G.S. 14-234](#).

Effective on: 11/18/2013