

James R. Johnson
City Administrator

Randy A. Wetmore
Deputy City Administrator



CITY OF FRANKLIN
TENNESSEE

LAW DEPARTMENT

Karen Beyke
City Attorney
Admitted to TN, CA, GA

Shauna Billingsley
Assistant City Attorney
Admitted to TN, TX

May 11, 2007

Mr. Bruce A. Androphy
Executive Director
Tennessee Ethics Commission
SunTrust Bank Bldg.
201 4th Ave N., Suite 1820
Nashville, TN 37243

Re: City of Franklin, TN adoption of Ethics ordinances

Dear Mr. Androphy:

It is with great pleasure (and, I have to say, some relief) that I enclose for your approval the City of Franklin's Ethics Ordinance and Ethics Commission Ordinance pursuant to the Comprehensive Governmental Ethics Reform Act of 2006 (Public Chapter No. 1 of the Extraordinary Session of the 2006 General Assembly). These ordinances were adopted unanimously by the Board of Mayor and Aldermen during its regularly scheduled meeting on May 8, 2007.

I became familiar with the MTAS model as Mr. Dennis Huffer was drafting it, understanding that some of my suggested revisions would not fit municipalities of all sizes. Therefore, in crafting these ordinances tailored to the City of Franklin, I slightly amended procedure, added an Ethics Commission and made some changes, but retained all essential elements of the MTAS model. I am attaching both with redline versions to show exactly what provisions differ from the MTAS model. I welcome the opportunity to discuss these changes with you.

Finally, our ordinance incorporates by reference any decisions issued by the Tennessee Ethics Commission as guidance in interpreting our ordinances. If the possibility exists that we could be informed of these decisions as they are issued (e.g. mail distribution list), we would welcome the information gladly.

ETHICS COMMISSION
RECEIVED
2007 MAY 30 AM 8:53

Letter to Mr. Androphy
Page 2

Again, thank you for the opportunity to meet you. If my office can be of any assistance or if you need further clarification, please let me know.

Yours very truly,

A handwritten signature in cursive script that reads "Karen Beyke". The signature is written in black ink and has a fluid, connected style.

Karen Beyke
City Attorney

Encl. Ordinances 2007-69, 2007-70
Redline versions (compared to MTAS model)

cc Jay Johnson, City Administrator

ORDINANCE 2007-69

TO BE ENTITLED: "AN ORDINANCE AMENDING THE FRANKLIN MUNICIPAL CODE TO ADD CHAPTER 7 TO TITLE 1, ESTABLISHING A CODE OF ETHICS AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the Comprehensive Governmental Ethics Reform Act of 2006 (Public Chapter No. 1 of the Extraordinary Session of the 2006 General Assembly), requires municipalities to adopt a Code of Ethics by Ordinance, and

WHEREAS, the Act requires such Code of Ethics shall apply to all Boards, Commissioning, Authorities, Corporations, and other entities created or appointed by the municipality, and

WHEREAS, the Code of Ethics must be adopted on or before July 1, 2007, and filed with the Tennessee Ethics Commission.

NOW THEREFORE:

SECTION I: BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that the following Chapter 7 of Title 1 be added to the Franklin Municipal Code:

TITLE 1 CHAPTER 7 ETHICS

1-701. Applicability and interpretation.

(1) This chapter is the code of ethics for the City of Franklin and 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. 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 except as may be required by law. In any situation in which a personal interest is also a conflict of interest under state law, the more restrictive regulation shall apply. Any action or inaction governed by this chapter may also constitute state and federal crimes. This chapter is not intended to supersede state or federal law.

(2) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics. The interpretations of the Tennessee Ethics Commission shall serve as guidance in interpreting this chapter.

1-702. Definitions and interpretation.

"Censure" means an expression of severe criticism or reproach.

"Employment interest" includes 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.

"Ethics commission" refers to the City of Franklin's Ethics Commission.

"Gift" means the transfer of anything of economic value, regardless of form, without adequate and lawful consideration. Such term does not include the solicitation, acceptance, receipt or regulation of political campaign contributions. A gift shall be further defined in this chapter and includes a subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value, conveyed or transferred. It does not include a campaign contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person's immediate family or from a relative within the third degree of consanguinity of the person or of the person's spouse, or from the spouse of any such relative. It does not include the waiver of a registration fee for a conference or educational seminar.

"Giver" means that person, firm, entity or institution that gives for the purpose of lobbying a gift, honorarium or other thing of value that meets the definition of lobbyist, as these terms are found in T.C.A. §3-6-301.

"Honorarium" means payment of money or any thing of value for an appearance, speech or article, but does not include actual and necessary travel expenses, meals and lodging associated with such appearance, speech or article.

"Officer" or "Official" means the members of the board of mayor and aldermen, as well as members appointed thereby to city boards, commissions, etc. Unless otherwise stated, it does not include city employees.

"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 or immediate family. For the purposes of this chapter,

"immediate family" includes parent(s), stepparent(s), grandparent(s), siblings(s), child(ren), or stepchild(ren) or the spouses thereof.

1-703. 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 himself or herself from voting on the measure.

1-704. Disclosure of personal interest in nonvoting 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 or herself from the exercise of discretion in the matter.

1-705. Acceptance of gifts, gratuities, honoraria, etc.; exceptions; reporting.

(1) Except as provided in this section, no officials or employees, either for themselves or for their immediate family, or for any other person, may knowingly solicit, receive benefit from, accept or agree to accept any gratuity, gift, honoraria, loan, favor, promise or any thing of value for themselves, any other person or any member of the immediate family of such official. In addition, it shall also be a violation of this ethics code for any gift as defined in this chapter to be received by any such person as specified in this section if:

- (a) It tends to influence the official or employee in the discharge of official duties or gives a reasonable basis for the impression of improper influence over the discharge of official duties; or
- (b) The official or employee has financial interest which may be substantially and materially affected, by performance or nonperformance of official duties.

(2) The gifts, gratuities, honoraria and other things listed in the Tennessee Ethics Commission Act (specifically but not exclusively T.C.A. §3-6-305(b)) shall not be prohibited.

(3) If an official attends an event and accepts a prohibited gift or honorarium, then the giver who knows or has reason to know that it has been provided in violation of this chapter, then, within seven (7) days following the event, the giver shall electronically report the following information to the ethics commission

- (a) Name of the official or family member
- (b) Nature and purpose of the event;
- (c) Name, address and business of the person or entity that provided the gift;

- (d) Description of the gift; and
- (e) Cost of the gift; however, if the cost of the gift is unknown and not reasonably discernible by the giver, then the giver shall report a good faith estimate of the cost of the gift.

1-706. Use of information.

- (1) Officials or employees may not disclose any information obtained in their official capacity or position of employment that is made confidential under state or federal law except as authorized by law.
- (2) Officials or employees may not use or disclose information obtained in their official capacity or position of employment with the intent to result in financial gain for themselves or any other person or entity.

1-708. Use of municipal time, facilities, etc.

- (1) Officials or employees may not use or authorize the use of municipal time, facilities, equipment or supplies for private gain or advantage to themselves.
- (2) Officials or employees 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.

1-709. Use of position or authority.

- (1) Officials or employees may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.
- (2) Officials or employees may not use or attempt to use their position to secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the municipality. No officer shall intimidate, threaten, coerce, discriminate against, or give the appearance of or attempt to intimidate, threaten, coerce or discriminate against any employee for the purpose of interfering with that person's freedom of choice in the regular discharge of official duties.
- (3) No official or employee shall endorse, in such a manner as to convey the City's approval of, any private for-profit enterprise without the approval of the board of mayor and aldermen.

1-710. 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. The prohibition of this section shall not apply to:

- (1) An officer or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to it; or

- (2) An officer or employee whose government duties are ministerial, if the private employment or financial interest does not create a conflict of interest.
- (3) An officer who abstains to avoid the conflict of interest as provided in this chapter.

1-711. Abstention to avoid conflicts of interest.

(1) It shall be a violation of this chapter for any city official to participate, directly or indirectly, through decision, approval, disapproval, recommendation or in any other manner, upon the following, each of which is deemed to be a conflict of interest:

(a) Any proceeding, application, vote, request for ruling, claim, controversy, contract or any other matter involving an immediate family member.

(b) Any matter in which the officer has a financial interest, a fiduciary interest, a corporate interest, or an employment interest.

(2) Except as otherwise provided by law, no officer shall, in such capacity, participate in the discussion, debate, deliberation or vote, or otherwise take part in the decision-making process on any item in which the officer has a conflict of interest.

(3) It is hereby declared that it is not the intent of this ethics code to prohibit an immediate family member of an officer from being engaged in gainful employment in this city. The city shall not be prohibited from doing business with an entity which employs an immediate relative of an officer, provided that:

(a) Such business relationship does not violate this chapter;

(b) Such business relationship is fully disclosed in writing; and

(c) Where applicable, the affected business entity shall be required to fulfill all public bidding requirements when conducting business with the city.

1-712. 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) Except as otherwise provided in this subsection, the city attorney shall investigate any credible complaint against an employee charging any violation of this chapter, or may undertake an investigation to acquire information indicating a possible violation and make recommendations for action to end or seek remedies for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.

(3) The city attorney may request that the governing body hire another attorney, individual, or entity to act as ethics officer or to provide general counsel to the ethics commission.

1-713. Ethics Commission.

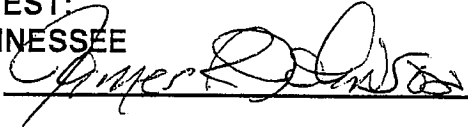
An ethics commission, properly constituted, shall convene to determine all ethics complaints against the board of mayor and aldermen as provided in Chapter 3, Title 2 of the Franklin Municipal Code.

1-714. Violations.

(1) 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 and/or other applicable law and in addition is subject to censure by the governing body. In addition to any other remedy provided by law, an appointed official or an employee who violates any provision of this chapter is subject to disciplinary action including but not limited to termination in the case of an employee.

(2) A gift made contrary to this chapter, shall not be a violation if the official, employee or immediate family member does not use the gift and returns it to the donor within the latter of ten (10) days of receipt or ten (10) days of having knowledge that the gift was a violation or pays consideration of equal or greater value within the latter of ten (10) days of receipt or ten (10) days of having knowledge that the gift was a violation."

SECTION II: BE IT FINALLY ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that this Ordinance shall take effect January 1, 2007, the health, safety and welfare of the citizens of Franklin requiring it.

ATTEST:
TENNESSEE
BY: 

JAMES R. JOHNSON
CITY RECORDER/ADMINISTRATOR

PASSED FIRST READING:
PASSED SECOND READING:

CITY OF FRANKLIN,

BY: 

THOMAS R. MILLER
MAYOR

April 10, 2007
May 8, 2007

ORDINANCE 2007-70

TO BE ENTITLED: "AN ORDINANCE AMENDING THE FRANKLIN MUNICIPAL CODE TO ADD CHAPTER 3 OF TITLE 2 ESTABLISHING AN ETHICS COMMISSION AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, a Code of Ethics must be adopted on or before July 1, 2007, and filed with the Tennessee Ethics Commission pursuant to Public Chapter No. 1 of the Extraordinary Session of the 2006 General Assembly; and

WHEREAS, the Board of Mayor and Aldermen of the City of Franklin, Tennessee desire to create an impartial ethics commission to hear complaints.

NOW THEREFORE:

SECTION I: BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that the following Chapter 7 of Title 1 be added to the Franklin Municipal Code:

"TITLE 2 CHAPTER 3 ETHICS COMMISSION

2-301. Created; composition.

There is hereby created a five-member ethics commission recommended by the mayor and approved by the board of mayor and aldermen.

2-302. Terms; vacancies.

Members of the ethics commission shall each serve a term of three (3) years until their successors are appointed, without compensation. Should any vacancies occur, the board of mayor and alderman shall at that time choose an alternate member mutually agreed upon to temporarily serve until the position is permanently filled as provided in this chapter.

2-303. Qualifications of members.

A person is eligible to serve as a member of the ethics commission if the person, while serving,:

- (1) Resides in the city and is a registered voter.
- (2) Is not an employee of the city government.
- (3) Does not hold any elected or appointed office and is not a candidate for office of the United States, this state or this city.
- (4) Has no conflicts of interest as defined in Chapter 7 of Title 1.

2-304. Removal of member.

The board of mayor and aldermen may remove a member of the ethics commission on the grounds of neglect of duty, misconduct in office, a disability rendering the member unable to discharge the powers and duties of the office as specified in this chapter, or engagement in political activity as defined in this chapter. Before initiating

the removal of a member from the ethics commission, the board of mayor and aldermen shall give the member written notice of the reason for the intended action, and the member shall have an opportunity to reply within ten (10) days. Thereafter, the board of mayor and aldermen shall afford such member an opportunity for a hearing.

2-305. Organization.

- (1) Members of the ethics commission shall not be compensated.
- (2) There shall be no regularly scheduled monthly or bimonthly meetings of the ethics commission. By majority vote, or by call of the chairman, the ethics commission may call a special meeting, if necessary.
- (3) Robert's Rules of Procedure Newly Revised 10th Edition, shall govern matters of parliamentary procedure.

2-306. Adherence to ethics code; disqualification of member.

The ethics commission and its attorney shall be governed by and subject to this chapter, if members of the ethics commission have a conflict of interest or must disqualify themselves under this ethics code or by law, the remaining members shall at that time choose an alternate person(s) mutually agreed upon to hear that matter.

2-307. Prohibition against political activity.

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

- (a) "Member of the ethics commission" means an individual who occupies the position of a member of the ethics commission or a prospective new member of the ethics commission.
- (b) "Political party" means a national political party, a state political party, a political action committee and/or any affiliated organization.
- (c) "Election" includes a primary, special and general election.
- (d) "Nonpartisan election" means:
 - a. An election at which none of the candidates is to be nominated or elected as representing a political party, any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; and
 - b. An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a governmental ordinance, or any question or issue of a similar character.
- (e) "Partisan" when used as an adjective, refers to a political party.
- (f) "Contribution" means any gift, subscription, loan, advance, deposit of money, allotment of money or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan, by pledge or promise, whether or not enforceable, or otherwise.

(2) Permissible activities. All members of the ethics commission are free to engage in political activity to the widest extent consistent with the restrictions imposed in this chapter. Each member of the ethics commission retains the right to:

- (a) Register and vote in any election;
- (b) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization or of a similar organization;
- (c) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;
- (d) Attend a political convention, rally, fundraising function or other political gathering;
- (e) Sign a political petition as an individual;
- (f) Make a financial contribution to a political party or organization;
- (g) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;
- (h) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a governmental ordinance or any other question or issue of a similar character;
- (i) Serve as an election judge or clerk or in a similar position to perform nonpartisan duties as prescribed by state or local law; and
- (j) Otherwise participate fully in public affairs in a manner which does not materially compromise his efficiency or integrity as a member of the ethics commission or the neutrality, efficiency or integrity of the ethics commission.

(3) Prohibited activities.

- (a) A member of the ethics commission may not take an active part in political management or in a political campaign, except as permitted by subsection (b) of this section.
- (b) A member of the ethics commission shall not take part in or be permitted to do any of the following activities:
 - 1. Serve as an officer of a political party, a member of a national, state or local committee of a political party, an officer or member of a committee of a partisan political club, or be a candidate for any of these positions;
 - 2. Organize or reorganize a political party organization or political club or political action committee operating in the city;
 - 3. Directly or indirectly solicit, receive, collect, handle, disburse or account for assessments, contributions or other funds for a candidate for city office;
 - 4. Organize, sell tickets to, promote or actively participate in a fundraising activity of a candidate in a city election;
 - 5. Take an active part in managing the political campaign of a candidate for city office;
 - 6. Become a candidate for, or campaign for, a city election;
 - g. Solicit votes in support of or in opposition to a candidate for city office in a city election;

- h. Drive voters to the polls on behalf of any candidate in a city election;
- i. Endorse or oppose a candidate for city office in an election or a candidate for city office in a political advertisement, broadcast, campaign literature, or similar material;
- j. Address a convention, caucus, rally or similar gathering of a political party in support of or in opposition to a partisan candidate for a city office;

(4) Nothing contained in this section shall prohibit activity in political management or in a political campaign by any member of the ethics commission connected with a nonpartisan election or a nonpartisan issue of any type.

2-308. Duties and powers.

The ethics commission shall have the following duties and powers:

- (1) To establish any procedures, rules and regulations governing its internal organization and conduct of its affairs, including, but not limited to, scheduling meetings as needed.
- (2) To receive and hear complaints of violations of standards required by the ethics code.
- (3) To make investigations as it deems necessary to determine whether any person has violated this ethics code, but only after the affirmative vote of majority of the ethics commission have voted to conduct the investigation.
- (4) To take such action as provided in the ethics code as deemed appropriate because of any violation of this ethics code.
- (5) To make proposals or recommendations to the board of mayor and aldermen for the adoption of any revisions or amendments to this ethics code.
- (6) To receive and review ethics reports.
- (7) To perform any other function authorized by this ethics code.

2-308. Advisory opinions.

The ethics commission shall render an advisory opinion based on a real or hypothetical set of circumstances when requested in writing by any named officer, and it shall be a responsibility of the ethics commission for the interpretation of the ethics code. Such advisory opinion shall be rendered pursuant only to a written request, fully setting forth the circumstances to be reviewed by the ethics commission. The proceedings of the ethics commission pursuant to this section shall be held in public, and the final opinions of the ethics commission shall be a public record.

2-309. Complaints.

The ethics commission shall be responsible for hearing and deciding any written and signed complaints filed regarding alleged violation of this chapter by any person. The following procedure shall be followed when filing a complaint:

(1) Any person may file a complaint alleging violation of any of the provisions of this chapter by filing it with the city recorder's office, who shall immediately deliver such complaint to the city attorney and to the chairman of the ethics commission or his designee. A copy of such complaint shall immediately be forwarded by registered mail to the official against whom the complaint was filed.

(2) The complaint must be based on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the complainant is competent to testify to the matters stated therein. All documents referred to in the complaint must be attached to the complaint.

(3) A complaint must be filed within thirty (30) days of the date the alleged violation is said to have occurred, or in case of concealment or nondisclosure within six (6) months of the date the alleged violation should have been discovered after due diligence. The commission shall not hear untimely complaints.

(4) In the event the ethics commission makes an initial determination that a complaint is technically deficient or incomplete, the commission shall submit a list of deficiencies to the complainant and offer the complainant the opportunity to correct the deficiencies within seven (7) days prior to the ethics commission's investigatory review of the complaint.

(5) Upon receipt of a complaint alleging misconduct, the official against whom the complaint was filed may reply in writing to the complaint within thirty (30) days, unless such time for reply is shortened or extended by the ethics commission. The official's response must be based on personal knowledge, must set forth such facts as would be admissible in evidence, and must show affirmatively that the official is competent to testify to the matters stated therein. All documents referred to in the response should be attached to the response. However, in order to ensure the right to a fair trial and the right of the accused against self-incrimination, the commission shall not schedule a hearing for the violation of any law while criminal investigation is in progress or while criminal charges are pending. Once criminal proceedings are final, the commission need not be bound by the conclusions of the Court and may hold a censure hearing.

(6) Within sixty (60) days of receipt of a complaint, the ethics commission shall conduct a formal public hearing in accordance with the requirements of due process. The ethics commission is authorized to subpoena and swear witnesses.

(7) If after reviewing the complaint the ethics commission by majority vote determines that no specific, substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of the ethics code or determines that no violation occurred, it may dismiss the complaint. If the ethics commission determines that specific, substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of the ethics code, then it shall render a written decision stating facts supporting that finding, conclusions of law and censure, as appropriate,

(8) Nothing in this chapter shall be construed to limit or encumber the right of the ethics commission to initiate an investigation on its own cognizance as it deems necessary to fulfill its obligations under this chapter.

2-310. Judicial review.

(1) Any party against whom a decision of the ethics commission is rendered may obtain judicial review of the decision by writ of certiorari. The application for the writ must be filed within thirty (30) days from the date of the decision. Judicial review shall be based upon the record. No party shall be entitled to a de novo appeal.

(2) Upon failure to timely request judicial review of the decision by writ of certiorari as provided in this section, the decision shall be binding and final upon all parties."

SECTION II: BE IT FINALLY ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that this Ordinance shall take effect on second and final reading, the health, safety and welfare of the citizens of Franklin requiring it.

ATTEST:
TENNESSEE

BY: James R. Johnson

**JAMES R. JOHNSON
CITY RECORDER/ADMINISTRATOR**

PASSED FIRST READING:
PASSED SECOND READING:

CITY OF FRANKLIN,

BY: Thomas R. Miller

**THOMAS R. MILLER
MAYOR**

April 10, 2007
May 8, 2007

ORDINANCE 2007-69

TO BE ENTITLED: "AN ORDINANCE AMENDING THE FRANKLIN MUNICIPAL CODE TO ADD CHAPTER 7 TO TITLE 1, ESTABLISHING A CODE OF ETHICS AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the Comprehensive Governmental Ethics Reform Act of 2006 (Public Chapter No. 1 of the Extraordinary Session of the 2006 General Assembly), requires municipalities to adopt a Code of Ethics by Ordinance, and

Deleted:
Deleted: 1

WHEREAS, the Act requires such Code of Ethics shall apply to all Boards, Commissioning, Authorities, Corporations, and other entities created or appointed by the municipality, and

WHEREAS, the Code of Ethics must be adopted on or before July 1, 2007, and filed with the Tennessee Ethics Commission.

NOW THEREFORE:

SECTION I: BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that the following Chapter 7 of Title 1, be added to the Franklin Municipal Code:

Deleted: .

Deleted: .

Deleted: personnel of the municipality. It

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**TITLE 1
CHAPTER 7
ETHICS**

Deleted: ¶

¶ SECTION 2.

Interpretation. If any part of this code of ethics is capable of more than one interpretation, the interpretation providing the most restrictive standard of conduct applies. ¶

SECTION 3. **Definition of "**

1-701. Applicability and interpretation.

(1) This chapter is the code of ethics for the City of Franklin and 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. 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 except as may be required by law. In any situation in which a personal interest is also a conflict of interest under state law, the more restrictive regulation shall apply. Any action or inaction governed by this chapter may also constitute state and federal crimes. This chapter is not intended to supersede state or federal law.

Deleted: ¶ (1) For purposes of Sections 4 and 5, "personal interest" means:

Deleted: (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), sibling(s), or child(ren). ¶

(2) The words "employment interest" include

(2) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics. The interpretations of the Tennessee Ethics Commission shall serve as guidance in interpreting this chapter.

1-702. Definitions and interpretation.

"Censure" means an expression of severe criticism or reproach.

"Employment interest" includes 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,

Deleted:

"Ethics commission" refers to the City of Franklin's Ethics Commission.

Deleted: SECTION 4.

"Gift" means the transfer of anything of economic value, regardless of form, without adequate and lawful consideration. Such term does not include the solicitation, acceptance, receipt or regulation of political campaign contributions. A gift shall be further defined in this chapter and includes a subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value, conveyed or transferred. It does not include a campaign contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person's immediate family or from a relative within the third degree of consanguinity of the person or of the person's spouse, or from the spouse of any such relative. It does not include the waiver of a registration fee for a conference or educational seminar.

"Giver" means that person, firm, entity or institution that gives for the purpose of lobbying a gift, honorarium or other thing of value that meets the definition of lobbyist, as these terms are found in T.C.A. §3-6-301.

"Honorarium" means payment of money or any thing of value for an appearance, speech or article, but does not include actual and necessary travel expenses, meals and lodging associated with such appearance, speech or article.

"Officer" or "Official" means the members of the board of mayor and aldermen, as well as members appointed thereby to city boards, commissions, etc. Unless otherwise stated, it does not include city employees.

"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 or immediate family. For the purposes of this chapter, "immediate family" includes parent(s), stepparent(s), grandparent(s), siblings(s), child(ren), or stepchild(ren) or the spouses thereof.

1-703. 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 himself or herself from voting on the measure.

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1-704. Disclosure of personal interest in nonvoting 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 or herself from the exercise of discretion in the matter.

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1-705. Acceptance of gifts, gratuities, honoraria, etc.; exceptions; reporting.

(1) Except as provided in this section, no officials or employees, either for themselves or for their immediate family, or for any other person, may knowingly solicit, receive benefit from, accept or agree to accept any gratuity, gift, honoraria, loan, favor, promise or any thing of value for themselves, any other person or any member of the immediate family of such official. In addition, it shall also be a violation of this ethics code for any gift as defined in this chapter to be received by any such person as specified in this section if:

Deleted: . 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:

- (a) It tends to influence the official or employee in the discharge of official duties or gives a reasonable basis for the impression of improper influence over the discharge of official duties; or
- (b) The official or employee has financial interest which may be substantially and materially affected, by performance or nonperformance of official duties.

Deleted: (1) For the performance of an act, or refraining from performing 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. ¶

(2) The gifts, gratuities, honoraria and other things listed in the Tennessee Ethics Commission Act (specifically but not exclusively T.C.A. §3-6-305(b)) shall not be prohibited.

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(3) If an official attends an event and accepts a prohibited gift or honorarium, then the giver who knows or has reason to know that the it has been provided in violation of this chapter, then, within seven (7) days following the event, the giver shall electronically report the following information to the ethics commission

- (a) Name of the official or family member

- (b) Nature and purpose of the event;
- (c) Name, address and business of the person or entity that provided the gift;
- (d) Description of the gift; and
- (e) Cost of the gift; however, if the cost of the gift is unknown and not reasonably discernible by the giver, then the giver shall report a good faith estimate of the cost of the gift.

1-706. Use of information.

(1) Officials or employees may not disclose any information obtained in their official capacity or position of employment that is made confidential under state or federal law except as authorized by law.

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(2) Officials or employees may not use or disclose information obtained in their official capacity or position of employment with the intent to result in financial gain for themselves or any other person or entity.

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1-708. Use of municipal time, facilities, etc.

(1) Officials or employees may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to themselves.

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(2) Officials or employees 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.

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1-709. Use of position or authority.

(1) Officials or employees may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.

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(2) Officials or employees may not use or attempt to use their position to secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the municipality. No officer shall intimidate, threaten, coerce, discriminate against, or give the appearance of or attempt to intimidate, threaten, coerce or discriminate against any employee for the purpose of interfering with that person's freedom of choice in the regular discharge of official duties.

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(3) No official or employee shall endorse, in such a manner as to convey the City's approval of, any private for-profit enterprise without the approval of the board of mayor and aldermen.

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1-710. 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. The prohibition of this section shall not apply to:

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- (1) An officer or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to it; or
- (2) An officer or employee whose government duties are ministerial, if the private employment or financial interest does not create a conflict of interest.
- (3) An officer who abstains to avoid the conflict of interest as provided in this chapter.

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SECTION 11. Ethics
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1-711. Abstention to avoid conflicts of interest.

- (1) It shall be a violation of this chapter for any city official to participate, directly or indirectly, through decision, approval, disapproval, recommendation or in any other manner, upon the following, each of which is deemed to be a conflict of interest:
 - (a) Any proceeding, application, vote, request for ruling, claim, controversy, contract or any other matter involving an immediate family member.
 - (b) Any matter in which the officer has a financial interest, a fiduciary interest, a corporate interest, or an employment interest.
- (2) Except as otherwise provided by law, no officer shall, in such capacity, participate in the discussion, debate, deliberation or vote, or otherwise take part in the decision-making process on any item in which the officer has a conflict of interest.
- (3) It is hereby declared that it is not the intent of this ethics code to prohibit an immediate family member of an officer from being engaged in gainful employment in this city. The city shall not be prohibited from doing business with an entity which employs an immediate relative of an officer, provided that:
 - (a) Such business relationship does not violate this chapter;
 - (b) Such business relationship is fully disclosed in writing; and
 - (c) Where applicable, the affected business entity shall be required to fulfill all public bidding requirements when conducting business with the city.

1-712. 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) Except as otherwise provided in this subsection, the city attorney shall investigate any credible complaint against an employee charging any violation of this chapter, or may undertake an investigation to acquire information indicating a possible violation, and make recommendations for action to end or seek remedies for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.

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(3) The city attorney may request that the governing body hire another attorney, individual, or entity to act as ethics officer or to provide general counsel to the ethics commission.

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SECTION 12.

1-713. Ethics Commission.

An ethics commission, properly constituted, shall convene to determine all ethics complaints against the board of mayor and aldermen as provided in Chapter 3, Title 2 of the Franklin Municipal Code.

1-714. Violations.

(1) 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 and/or other applicable law, and in addition is subject to censure by the governing body. In addition to any other remedy provided by law, an appointed official or an employee who violates any provision of this chapter is subject to disciplinary action including but not limited to termination in the case of an employee.

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(2) A gift made contrary to this chapter, shall not be a violation if the official, employee or immediate family member does not use the gift and returns it to the donor within the latter of ten (10) days of receipt or ten (10) days of having knowledge that the gift was a violation or pays consideration of equal or greater value within the latter of ten (10) days of receipt or ten (10) days of having knowledge that the gift was a violation."

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SECTION II: BE IT FINALLY ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that this Ordinance shall take effect January 1, 2007, the health, safety and welfare of the citizens of Franklin requiring it.

ATTEST:	CITY OF FRANKLIN,
TENNESSEE	
BY:	BY:
JAMES R. JOHNSON	THOMAS R. MILLER
CITY RECORDER/ADMINISTRATOR	MAYOR

PASSED FIRST READING: _____
PASSED SECOND READING: _____