

ORDINANCE 67-2012-13

AN ORDINANCE AMENDING THE OFFICIAL CODE OF THE CITY OF CLARKSVILLE, TITLE 1 (ADMINISTRATION, OFFICERS AND PERSONNEL), CHAPTER 6 (CODE OF ETHICS), RELATIVE TO ESTABLISHMENT OF AN ETHICS COMMISSION AND ADOPTION OF PROCEDURES FOR RESOLVING ETHICS COMPLAINTS AGAINST CITY COUNCIL MEMBERS, TO INCLUDE THE MAYOR, THE CITY JUDGE, THE CITY ATTORNEY, THE CITY CLERK, THE DIRECTOR OF FINANCE, THE DIRECTOR OF INTERNAL AUDIT, AND VARIOUS DEPARTMENT HEADS

*WHEREAS*, the Clarksville City Council finds the current City Ethics Code is deficient and wholly lacking in setting forth a proper procedure for the resolution of ethics complaints against City Council members, to include the City Mayor, and the City Judge, the City Attorney, the City Clerk, and other various department heads; and

*WHEREAS*, the Clarksville City Council has determined that it is in the best interest of the City of Clarksville and its citizens to amend the City Ethics Code to remedy said deficiencies;

*NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

1. That the Official Code of the City of Clarksville, Tennessee, Title 1 (Administration, Officers and Personnel), Chapter 6 (Code of Ethics), Section 1-608 (Ethics Complaints) and Section 1-609 (Violations), are hereby amended by deleting said sections in their entirety, and by substituting instead the following:

**Section 1-608. Reserved.**

**Section 1-609. Reserved.**

**Section 1-610. Ethics Commission – Creation.**

There is hereby established an “Ethics Commission” for the City of Clarksville, Tennessee.

**Section 1-611. Ethics Commission; Organization, Membership Requirements, Terms.**

*a. Organization, Number.* The Ethics Commission shall be composed of five (5) voting members, who shall be appointed by the Mayor, subject to City Council approval by majority vote of the members present and voting.

*b. Membership Requirements.* The members of the Ethics Commission shall have been residents of the City of Clarksville, Tennessee, for not less than two years prior to any vote of the City Council on their appointment. Residency within the City shall be a requirement for continued membership on the Ethics Commission. No elected or appointed official or employee of the City, other than a member of any federal military reserve or state national guard force while not on active duty, or of any other

governmental entity, to include national, state or local government, other than a member of any federal military reserve or state national guard force while not on active duty, nor any candidate for any public office, to include national, state or local government, nor any member of any other City board, commission, authority, or other city entity, may serve as a member of the Ethics Commission. For purposes of this section, legally separate, private non-profit organizations or entities that receive City funding shall not be construed as a City entity.

*c. Term.*

(1) Terms for each member shall be for a period of three (3) years, except for initially appointed members, whose initial terms shall be as provided below to allow for staggered terms. No member may serve more than two (2) consecutive terms.

(2) With regard to initial terms for members, two (2) such members shall serve an initial term of three (3) years each; two other such members shall serve an initial term of two (2) years each; and one other such member shall serve an initial term of one (1) year.

(3) If any member, ceases to be a resident of the City of Clarksville, or qualifies as a candidate for any public office, or is elected or appointed to any public office other than a member of any federal military reserve or state national guard force while not on active duty, or accepts employment with or for any governmental entity other than a member of any federal military reserve or state national guard force while not on active duty, or refuses to continue service on, resigns from, or otherwise ceases to be a member of the Ethics Commission for any reason before the expiration of his or her term, or fails to attend and participate in at least three consecutive meetings or fails to attend at least two-thirds of all properly called meetings of the Ethics Commission within any calendar year period, a new member shall be appointed by the Mayor, subject to City Council approval, to serve the remainder of the former member's unexpired term. Service during any unexpired term shall count as a term for the purpose of computing the limit on consecutive terms.

**Section 1-612. Ethics Commission; Member Compensation.**

Members of the Ethics Commission shall not receive any monetary compensation for their service on the Commission.

**Section 1-613. Ethics Commission; Officers.**

The members of the Ethics Commission shall elect officers for the Commission. One member shall be elected to serve as Chairman of the Commission; one member to serve as Vice-Chairman of the Commission; and one member to serve as Secretary for the Commission. Officers may not hold more than one office on the Commission at the same time. Officers shall hold office for one (1) year periods. The City Clerk shall serve as custodian of records for the Commission. The City Attorney shall provide legal advice to the Commission as may be required, and may select outside counsel to provide advice in cases where the City Attorney determines he has a conflict of interest or as he may otherwise determine is required.

**Section 1-614. Ethics Commission; By-laws.**

The Commission shall adopt and make public by-laws to govern the dates, times, and places for meetings, rules of procedure not otherwise inconsistent with the provisions herein, and any other matters appropriately addressed therein.

**Section 1-615. Ethics Commission; Removal of Members.**

Any member of the Ethics Commission may be removed as a member of the Commission prior to the expiration of their term in cases of permanent disability, or misfeasance, malfeasance, or nonfeasance in relation to their duties as a member of the Commission, or for other just cause, by resolution approved by a three-fourths (3/4) majority vote of the City Council. Prior to any such vote on removal of any member from the Commission, said member shall have an opportunity to be heard on the issue of their removal in person, through counsel, and / or by submission of relevant written or other evidentiary materials, and may cross examine any witnesses against them who shall be required to testify under oath, and may request the City Council to issue a subpoena compelling the attendance and testimony under oath of any witnesses with relevant knowledge as to any material issue, but the City Council may deny said request upon a majority vote. The date, time and place for said hearing, and the requirements for submission of the resolution for removal to the City Council, shall be the same as and in accordance with the requirements for consideration of other legislative matters as set forth in the City Code.

**Section 1-617. Ethics Commission; Open Records and Open Meetings.**

All records of the Ethics Commission shall be open and subject to public inspection in accordance with the Tennessee "Open Records" law, Tenn. Code Ann. Section 10-7-503, et seq., as same may be amended from time to time; and all meetings of the Commission shall comply with the Tennessee "Open Meetings" law, Tenn. Code Ann. Section 8-44-101, et seq., as same may be amended from time to time.

**Section 1-618. Ethics Commission; No Authority to Contract or Obligate City.**

The Ethics Commission shall have no authority to contract or be contracted with or to bind or obligate the City in any way and shall not have authority to appropriate City funds for any purpose.

**Section 1-619. Ethics Commission; Jurisdiction.**

The Ethics Commission shall have jurisdiction over all ethics complaints made against any member or members of the City Council, to include the Mayor, the City Judge, the City Attorney, the City Clerk, the Director of Finance, the Director of Internal Audit, and all other department heads of the City, as well as all members of any City boards, commissions, authorities, or other like body established by the City, including entities having a separate corporate or other legal existence other than those that have their own ethics policy. The determination as to whether any individual is a department head shall be determined by the Director of the Department of Human Resources, in consultation with the City Attorney.

### **Section 1-620. Ethics Commission; Duties.**

The Ethics Commission shall have the following duties:

- a. To receive ethics complaints within its jurisdiction, and to hold hearings and conduct investigations in connection therewith as may be required pursuant to the provisions herein; and
- b. To make recommendations regarding any alleged ethics complaints within the jurisdiction of the Ethics Commission as provided herein; and
- c. To maintain records of its investigations, inquiries and proceedings.

### **Section 1-621. Procedures for Filing and Evaluation of Ethics Complaints.**

a. *Complaint procedures:*

(1) Any individual real person may submit an ethics complaint alleging that any one or more City of Clarksville officials, whether elected or appointed, or an employee, have violated the Code of Ethics.

(2) Any ethics complaint must be in writing, signed and sworn to by the complainant, under oath, as properly evidenced by a notary public, and shall contain the following:

(a) the complainant's legal name and current mailing address, and in addition may include an email address and / or phone number; and

(b) the name of any person or persons who are alleged to have committed an ethics violation; and

(c) a brief summary of the facts giving rise to the alleged ethics complaint; and,

(d) an explanation of why those facts allegedly constitute a violation of the City Code of Ethics (which may include citation to specific sections and / subsections).

(3) Any ethics complaint that does not contain the above requirements shall not be considered, except that upon receipt of any deficient ethics complaint, the City Attorney may, but is not required to, contact the complainant to inform them of the deficiency, whereupon the complainant may have a reasonable time, not to exceed ten days, within which to submit an amended complaint meeting the requirements herein.

(4) All ethics complaints shall first be filed with the City Clerk. Upon receipt, the City Clerk shall annotate the date and time of receipt on the ethics complaint, and log the receipt of the complaint into a running journal kept for the purpose of keeping track of the receipt of ethics complaints and showing the name of the person making the complaint, the date and time of receipt of the ethics complaint, and the name(s) of the person or persons against whom the complaint is made, and any other information that

will enable the City Clerk to keep accurate records pertaining to ethics complaints. The City Clerk will thereupon provide a copy of the ethics complaint to the person or persons against whom the ethics complaint is made, and to the City Attorney.

(5) The City Attorney shall determine if the ethics complaint is made against a person within the jurisdiction of the Ethics Commission, except for any ethics complaint alleged against the City Attorney, which shall always be provided by the City Clerk to the Ethics Commission for action. If the ethics complaint alleges an ethics violation against any person within the jurisdiction of the Ethics Commission, as determined by the City Attorney, then the City Clerk shall also provide a copy of the ethics complaint to the Ethics Commission for action as set forth herein. If the ethics complaint does not allege an ethics violation against any person within the jurisdiction of the Ethics Commission, but against one or more employees not within the jurisdiction of the Ethics Commission, then the City Attorney shall inquire into the matter, conduct such investigation as he deems appropriate, and make a determination as to the merits of the alleged ethics complaint, and make a recommendation to the department head of any department in which the employee works regarding his findings, and a recommendation as to any action to be taken to stop the conduct, if still occurring, or to prevent the conduct from occurring in the future, and to remedy any harm or recover any loss that may have occurred through any means deemed appropriate by the City Attorney, and to make any recommendation regarding any disciplinary action against the employee. The decision to impose disciplinary action, if any, shall be made by the department head, in accordance with the provisions of the City Code pertaining to personnel and disciplinary action.

(6) If an ethics complaint alleges an ethics violation against any person within the jurisdiction of the Ethics Commission, as determined by the City Attorney, then the Ethics Commission, upon receipt of the ethics complaint from the City Clerk, shall thereupon take action as provided herein.

(a) The chairman of the Ethics Commission shall call a meeting of the Commission, which meeting shall be open to and noticed to the public. The City Clerk shall also provide notice of the meeting to the complainant, and to the person(s) alleged to be in violation of the ethics code and named in the ethics complaint.

(b) At the Commission meeting, the Commission shall evaluate the allegations of the ethics complaint, and make a determination as to whether the allegations would constitute an ethics violation, if the facts alleged in the ethics complaint were true. If the Commission determines that the alleged facts, even if true, would not be a violation of the ethics code, the Commission may dismiss the complaint, or may request additional information from the complainant, or any other person the Commission deems to have material information, in its sole discretion, to determine whether a hearing should be held to determine the merits of the ethics complaint. If the Commission determines that the alleged facts, if true, could constitute a violation of the ethics code, then the Commission shall hold a hearing to determine whether the ethics complaint has merit.

b. *Hearing procedures:*

(1) If the Ethics Commission determines that a hearing should be held on an ethics complaint, the hearing shall be conducted as follows:

(a) The hearing shall be noticed to and open to the public; and

(b) Notice of the hearing shall be provided to the complainant and to the elected or appointed official(s) named in the complaint (together, the "parties"); and

(c) The parties may, but are not required to, submit evidentiary material to the Commission. If a party does wish to submit such evidentiary material to the Commission, the party must file the material with the City Clerk, with a copy to the City Attorney, and provide a copy of the same to the other parties, at least seven calendar days prior to the hearing, unless, for good cause shown, the Commission amends the time requirement. The City Clerk shall provide a copy of all evidentiary materials to the Commission members.

(d) The parties shall have a full and fair opportunity, but are not required, to present their positions and facts to the Commission at the hearing. Each party shall be allotted a reasonable amount of time to make its presentation to the board.

(e) Each party shall have the right to represent themselves, and to have the assistance of legal counsel at their own expense, but may not be represented by non-attorneys.

(f) All parties may call witnesses to give testimony at the hearing, which testimony shall be given under oath, with the witnesses stating their legal names. All witnesses shall be subject to cross-examination.

(g) Each party must file with the City Clerk, and provide a copy of same to the City Attorney, a list of the witnesses that the party intends to call at the hearing, and provide a copy of the same to the other parties, at least seven calendar days prior to the hearing. At the hearing, no party shall be permitted to call upon any person to give testimony if that person's name was not included on such list; however, the Commission may permit such an unlisted witness to be called by a party, if in the Commission's discretion, there was good cause for not timely naming the witness and the other parties would not be unduly prejudiced.

(h) Commission members may ask questions of any party, counsel, or witness at any time during the hearing, but the Chairman shall conduct the hearing and determine the order in which Commission members may pose questions.

(i) The committee may, in the exercise of its discretion, permit interested persons present at the hearing to offer testimony under oath, even if those persons were not called as witnesses by any party, and upon majority vote of the members, may cause the City Clerk to issue subpoenas for documents and things or for testimony of persons within the jurisdiction of the City to the maximum extent permitted by law.

(j) The committee may continue any hearing to a later date.

(k) The City Attorney, or an attorney appointed by the City Attorney, shall be present during the hearing to advise the Commission as may be necessary on all legal issues.

c. *Decision to be in Writing.* Whether or not the Commission holds a hearing on the ethics complaint, or dismisses the complaint, it shall issue a decision in writing. If the Commission holds a hearing on the ethics complaint, it shall state in writing whether it finds the ethics complaint to have merit, and if so, which section and subsection as applicable of the ethics code has been violated and by whom.

d. *Vote Required to Find Violation; Burden of Proof.* Any decision of the Commission finding an ethics complaint to have merit shall require the affirmative vote of at least four (4) members of the Commission. The complainant shall bear the burden of proof to prove a violation by a preponderance of the evidence, and the person alleged to have violated the ethics code shall not be required to prove the absence of a violation.

e. *Prohibition on Outside Communications.* Once an ethics complaint has been received by the members of the Commission, and until a written decision has been issued by the Commission, no member of the Commission shall participate in any communication regarding the allegations or merits of the complaint, outside of the Commission's public meetings or hearings.

f. *Report of Decision.* The decision of the Commission shall be submitted to the Mayor, the Clarksville City Council, the complainant, and to the person(s) alleged to have violated the ethics code as named in the ethics complaint.

#### **Section 1-622. Commission Action Upon Finding of Violation.**

a. *Report of Decision.* The decision of the Commission shall be submitted to the Mayor, the Clarksville City Council, the complainant, and to the person(s) alleged to have violated the ethics code as named in the ethics complaint.

b. If the Ethics Commission decides that an official, whether elected or appointed, or an employee, within its jurisdiction has violated the Code of Ethics, then the Ethics Committee shall take one or more of the following actions, as decided by affirmative vote of at least four of its members:

(1) Report to the City Council that a determination has been made that the Code of Ethics has been violated, setting forth which section and subsection, as applicable, of the ethics code has been violated and by whom. The Ethics Commission may also make recommendations to the City Council regarding any appropriate remedial action, including censure, that the City Council should consider; and / or

(2) Make a recommendation to the violator that he or she resign from their respective position; and / or

(3) Make a recommendation as to any action to be taken to stop the conduct, if still occurring, or to prevent the conduct from occurring in the future, and to remedy any harm or recover any loss that may have occurred through any means deemed appropriate by the City Attorney, and to make any recommendation regarding any disciplinary action against the employee.

(4) Refer the matter to the City Attorney with a request that appropriate civil action be instituted by the City of Clarksville for restitution, and/or for such other relief as the Commission deems appropriate, and/or a request that the City Attorney refer the matter to the local District Attorney General, or other state or federal law enforcement authority, for appropriate action under general criminal law.

### **Section 1-623. Ethics Commission Member Questionnaire**

Each Ethics Commission nominee will fill out the following questions for review by members of the city council. The questionnaire results will be provided to council members one week (seven (7) calendar days) before a confirmation vote. Nominees will attend the confirmation vote meeting to introduce themselves and provide answers or further information as requested by council members.

1. Nominee Name

2. Home Address

3. Occupation

4. Employment Firm/Company and Address

5. Have you lived (day-to-day residence) within the city limits of Clarksville and been a registered voter of the council ward you are assigned to for at least the past two years? Yes: \_\_\_\_ No: \_\_\_\_ If no, explain.

6. Have you or any immediate family members (spouse and other family that reside at your home address) been associated with or participate in the formation, membership, financial donation/fundraising, management, financial oversight, political planning or membership activities of any Political Action Committee or lobby/labor organization that campaigned for or against any sitting member of the City Council? Yes: \_\_\_\_ No: \_\_\_\_ If yes, explain.

7. Are you or any immediate family members (spouse and other family that resides at your home address) and the companies you may own, work for or have any financial or management interest in, currently working any professional (non-competitive bid) contracts for the City of Clarksville? Yes: \_\_\_\_ No: \_\_\_\_ If yes, explain.

8. Have you or any immediate family members (spouse and other family that resides at home address) proved money/in-kind donations or given personal time to the campaigns of any current sitting council member or those that ran as opponents against sitting council members? Yes: \_\_\_\_ No: \_\_\_\_ If yes, explain



9. Are you or any immediate family members (spouse and other family that resides at home address) currently an employee of the city or appointed as a representative of the city to any board, commission, company, authority, task force or other activity? Yes: \_\_\_\_ No: \_\_\_\_ If yes, explain. Have you served in such a capacity in the past? Yes: \_\_\_\_ No: \_\_\_\_ If yes, explain.

10. Are you a board member, employee or volunteer worker for a non-profit that receives funding from the City of Clarksville? Yes: \_\_\_\_ No: \_\_\_\_ If yes, explain.

11. Are you an elected official for any other local, state or federal function? Yes: \_\_\_\_ No: \_\_\_\_ If yes, please explain.

12. Have you ever been arrested and convicted or been found in violation of ethically standards with any activities you worked with or participated in? Yes: \_\_\_\_ No: \_\_\_\_ If yes, explain.

13. Is there any other information or activities that you may be involved in that will assist the council in reviewing your nomination?

The undersigned certifies that all of the information that has been provided is true, correct and complete to the best of my knowledge.

Signature:

Date:

<i>POSTPONED:</i>	January 29, 2013, to March Regular Session
<i>FIRST READING:</i>	March 7, 2013
<i>SECOND READING:</i>	April 4, 2013
<i>EFFECTIVE DATE:</i>	April 10, 2013