ORDINANCE NO. O-6-15

AN ORDINANCE TO REPEAL AND ENACT WITH AMENDMENTS CHAPTER 7A OF THE CITY CODE ENTITLED "ETHICS"

WHEREAS, Title 5 of the General Provisions Article of the Annotate Code of Maryland (the "Maryland Ethics Law") provides that each municipal corporation in the State of Maryland shall enact provisions to govern the public ethics of local officials relating to conflicts of interest, financial disclosure and lobbying; and

WHEREAS, §5-808 of the General Provisions Article of the Annotated Code of Maryland provides that the conflict of interest restrictions of a local ethics law for municipal elected officials shall be equivalent to or exceed the requirements for State officials and employees and for non-elected officials and employees shall be similar to the requirements for State officials and employees, but shall be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction; and

WHEREAS, §5-809 of the General Provisions Article of the Annotated Code of Maryland provides that the financial disclosure provisions of a local ethics law for municipal elected officials shall be equivalent to or exceed the requirements for State officials and employees and for non-elected officials and employees shall be similar to the requirements for State officials and employees, but shall be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction; and

WHERAS, pursuant to §5-218 of the Local Government Article of the Annotated Code of Maryland (formerly Art. 23A, §2) and §5-807 of the General Provisions Article of the Annotated Code of Maryland (formerly State Gov't Art., §15-803), the City has enacted Chapter 7A of the City Code, entitled "Ethics" to prevent conflicts of interest by its elected and appointed officials and employees; and

WHEREAS, the City desires to amend Chapter 7A to strengthen its conflict of interest restrictions and financial disclosure requirements, in the interests of maintaining the highest standards of integrity of City officials and employees and ensuring public trust in these positions; and

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
~~Single strikethrough~~	*Deleted from existing law by original bill.*
Double underlining	*Added by Amendment.*
~~Double strikethrough~~	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

WHEREAS, the Mayor and City Council, the City's Ethics Commission and City Staff have worked diligently and in good faith with the State Ethics Commission to develop an ethics law that meets the requirement of Title 5 of the General Provisions Article of the Annotated Code of Maryland; and

WHEREAS, the Mayor and City Council find that the adoption of the model ethics ordinance as proposed by the State Ethics Commission with respect to financial disclosure would be an unreasonable invasion of privacy, would reduce significantly the availability of qualified individuals for public service, and is not necessary to preserve the purposes of the Maryland Ethics Law; and that many provisions of the model ethics ordinance are not necessary or are irrelevant to the prevention of conflicts of interest in the City of Gaithersburg; and

WHEREAS, the Mayor and Council find that the provisions of the ethics law set forth herein for elected officials are equivalent to or exceed the requirements of the Maryland Ethics Law for State officials and employees as modified to the extent necessary in consideration of the City's structure of government and the powers and duties of its elected officials to make the provisions relevant to the conflicts of interest in Gaithersburg.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that Chapter 7A of the City Code, are hereby amended to read as follows:

Sec. 7A-1.1. - Findings and purpose.

(a) The council finds that:

(1) Officials, employees and representatives of the city shall maintain the highest standards of political and professional responsibility and maintain the highest respect for the interests of the citizens and the city.

(2) Representative government depends upon the citizens having the highest trust in their public officials.

(3) The trust, necessary to our system of government, is dangerously eroded not only by improper conduct by employees and officials of government but by the appearance of improper conduct, as well.

(4) In order to maintain the fact and appearance of high standards of conduct, it is necessary to have clearly articulated standards of conduct, a procedure for resolving questions that may arise concerning the propriety of specific acts and a forum for receipt and review of complaints and questions, whether raised by concerned citizens, employees or those doing business with the city.

(5) The citizens have a right to expect that decisions made in the name of the government of the City of Gaithersburg will be made for the general welfare of the

citizens of Gaithersburg, rather than for the private gain or personal motives of the official or employee making the decision.

(6) Employees and officials of government have a right to know that the government clearly articulates the standards of conduct by which their actions will be measured.

(7) Employees and officials of government have a right to expect that their personal lives, choices, associations and those of their families will not unduly or unnecessarily be burdened because of their choice to serve the city.

(8) Full and timely disclosure to the ethics commission as required by this chapter of information and private activities that could affect the nature of public decisions allows the public to be aware of real or actual conflicts and make its own judgments about such conflicts.

(b) In order to meet these needs and to articulate the balance which the council has struck between the needs and expectations of the citizens, employees and those with whom the city does business, the council has enacted this ethics chapter.

(c) On behalf of the citizens of the City of Gaithersburg, the council intends that this chapter be liberally construed to accomplish these goals without unduly restricting the rights of the officials and employees and their families.

Sec. 7A-1.2. - Applicability of chapter.

The provisions of this chapter shall apply to all city employees, all elected officials, as well as officials appointed to the following boards and commissions:

Planning Commission;

Board of Appeals;

Board of Supervisors of Elections;

Ethics Commission;

Landlord-Tenant Commission;

Animal Control Board;

Personnel Review Board;

Historic District Commission.

In addition, section 7A-6 of this chapter applies to lobbyist.

Sec. 7A-1.3. - Definitions.

~~(a) *Business relationship.* A relationship that may include, but is not limited to, any of the following:~~

~~(1) The commitment or securing of one thousand five hundred dollars ($1,500.00) or more of city funds, with the exception of funds expended on charitable organizations and trade associations.~~

~~(2) Prospective employment with the city in any capacity.~~

~~(3) Approval of a zoning entitlement or building permit application until such time construction has received all final approvals.~~

(a) *Commission.* The City of Gaithersburg Ethics Commission established under Sec. 7A-2 of this Chapter.

(b) *Community event.* An event to which the public is invited that takes place in the City of Gaithersburg or Montgomery County.

(c) *Doing business with.* Doing business with or does business with includes:

(1) Having or negotiating a contract that involves the commitment, either in a single or combination of transactions, of five thousand dollars ($5,000.00) or more of city funds;

(2) Being regulated by the city; or

(3) Being a registered lobbyist

(~~c~~d) *Gift.* Unless otherwise provided in this chapter, the transfer of anything of economic value, regardless of the form, without adequate and lawful consideration ~~valued at fifty dollars ($50.00) or more or a combination of transfers from any person or entity within a one calendar year period valued at one hundred dollars ($100.00) or more~~. A gift does not include political campaign contributions regulated under the Gaithersburg City Code or county, state or federal law~~or contributions or donations to the city or sponsorships of city events or programs~~.

~~(d) *Honoraria.* Payments of money or anything of value given to an individual for services for which fees are not legally or traditionally required, such as speeches and attending a meeting or event.~~

(e) Immediate family. An individual's spouse and dependent children.

(f) Interest.

(1) A legal or equitable economic interest that is owned or held wholly or partly, jointly or severally, or directly or indirectly, whether or not the economic interest is subject to an encumbrance or condition.

(2) Interest does not include:

(i) an interest held in the capacity of agent, custodian, fiduciary, personal representative, or trustee, unless the holder has an equitable interest in the subject matter;

(ii) an interest in a time or demand deposit in a financial institution;

(iii) an interest in an insurance policy, endowment policy, or annuity contract by which an insurer promises to pay a fixed amount of money in a lump sum or periodically for life or a specified period;

(iv) a mutual fund that is publicly traded on a national scale unless the mutual fund is composed primarily of holdings of stocks and interests in a specific section or area that is regulated by the City.

(g) Qualified relative. A spouse, parent, child, or sibling.

Sec. 7A-2. - Ethics commission.

There shall be a city ethics commission, which shall be composed of three (3) members appointed by the mayor and subject to confirmation by the city council. The commission shall be advised by the city attorney and shall have the following responsibilities:

(a) To review all forms generated by this chapter for compliance with the provisions of this chapter.

(b) To provide published advisory opinions to persons subject to this chapter as to the applicability of the provisions of this chapter to them.

(c) To process and make determinations as to complaints filed by any person alleging violations of this chapter.

(d) To certify to the State Ethics Commission on or before October 1 of each year that the City is in compliance with the requirements of the Maryland Ethics Law, General Provisions Article, Title 5, of the Annotated Code of Maryland, as amended from time to time.

Sec. 7A-3. - Responsibilities of city attorney.

The city attorney shall have the following responsibilities:

(a) To create and maintain all forms generated by this chapter.

(b) To provide staff assistance to the city ethics commission.

(c) To provide information, guidance, and training on a regular basis in order to promote understanding and compliance with this chapter.

(d) To maintain all forms and disclosure statements filed pursuant to this chapter for at least five (5) years as public records available for inspection and copying.

Sec. 7A-4. - Conflicts of interest.

Persons who are subject to this chapter shall not:

(a) Participate in:~~on behalf of the city in any matter which would, to their knowledge, have a direct financial impact on:~~

~~(i) Them;~~

~~(ii) Their spouse;~~

~~(iii) Their children;~~

~~(iv) Their siblings;~~

~~(v) Their parents;~~

~~(vi) Any other relative who shares the person's legal residence or over whose financial affairs the person has legal or actual control; or~~

~~(vii) Any business entities with which they are affiliated, as distinguished from the public generally.~~

(i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.

(ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

(A) A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

(B) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

(C) A business entity with which the official or employee, or to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment;

(D) If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is party to a contract with a qualified relative;

(E) An entity, doing business with the City, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

(F) A business entity that:

a. The official or employee knows is a creditor or oblige of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

b. As a creditor or oblige, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(iii) A person who is disqualified from participating under paragraphs (i) or (ii) of this subsection shall disclose the nature and circumstances or the conflict and may participate or act if:

(A) The disqualification leaves a body with less than a quorum capable of acting;

(B) The disqualified official or employee is required by law to act; or

(C) The disqualified official or employee is the only person authorized to act.

(iv) The prohibitions of paragraphs (i) and (ii) of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(b) Hold or acquire interests of either ~~five (5)~~three (3) percent or greater in business entities that have or are negotiating contracts of five thousand dollars ($5,000.00) or more with the city or are regulated by their agency, except as exempted by the commission pursuant to section 7A-7.

(c) ~~Be employed by business entities that have or are negotiating contracts of more than five thousand dollars ($5,000.00) with the city or are regulated by their agency, except as exempted by the commission pursuant to section 7A-7.~~ Except as exempted by the Commission pursuant to section 7A-7:

(i) Be employed by or have a financial interest in any entity:

(A) that is subject to the authority of the official or employee or the City board or commission with which the official or employee is affiliated; or

(B) that is negotiating or has entered a contract with the City.

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee

~~(d) Hold any outside employment relationships that would directly impact their impartiality or independence of judgment with regard to their official capacities.~~

~~(e) Represent any parties, for contingent fees, before any city agency or department.~~

(~~f~~d) ~~Within one year f~~Following termination of city service, ~~act as compensated representatives of others in connection with any specific matters within their official responsibilities in which they participated substantially as city officials or employees.~~ assist or represent any party other than the city for compensation in a case, contract, or other specific matter involving the city if that matter is one in which the former official or employee significantly participated as an official or employee.

(e) Assist or represent another party for compensation in a matter that is the subject of legislative action for a period of one year after a member of the City Council leaves office. This subsection is applicable to elected officials only.

(~~g~~f) Solicit any gift from any person or business entity or directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(~~h~~g) Knowingly a~~A~~ccept any gift from any person or business entity, except as provided herein, that ~~has or seeks a business relationship with the city or is regulated by their office, department or board~~is doing business with the city, has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee, is engaged in an activity regulated or controlled by the official's or employee's governmental unit, or is a lobbyist with respect to matters within the jurisdiction of the official or employee, except where such gifts would not violate this chapter.

Unless a gift of any of the following would tend to impair the impartiality and the independence of judgment of the official or employee receiving it or, is of significant value that would give the appearance of doing so, or, the recipient official or employee believes, or has reason to believe, that it is designed to do so, subsection (~~h~~g) of this section does not apply to:

(1) Meals and beverages valued at up to fifty dollars ($50.00) consumed in the presence of the donor;

(2) Ceremonial gifts or awards which have insignificant monetary value;

(3) Unsolicited g~~G~~ifts of nominal value that do not exceed twenty dollars ($20.00 in cost or trivial items of informational value;

(4) Reasonable expenses for food, travel, lodging and scheduled entertainment of the official or the employee for a meeting which is given in return for participation in a ~~board, committee,~~ panel or speaking engagement at a meeting;

(5) Gifts of tickets or free admission extended by the sponsoring entity of the event that does business with the city to an elected official to attend a charitable, community, cultural or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the office;

(6) A specific gift or class of gifts which the commission exempts from the operation of this section upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the City of Gaithersburg or that the gift is purely personal and private in nature;

(7) Gifts that are purely personal and private in nature from family and household members that would not be detrimental to the impartial conduct of the business of the city; or

~~(8) Honoraria, provided the honorarium is limited to reasonable expenses for the official's or employee's meals, travel, and lodging and provided that:~~

~~(i) The payor of the honorarium does not have an interest that may be affected substantially and materially, in a manner distinguishable from the public generally, by the performance or nonperformance of the official's or employee's official duties; and~~

~~(ii) The offering of the honorarium is not related in any way to the official's or employee's official position.~~

(~~i~~h) Intentionally u~~U~~se the prestige of ~~their~~ office or public position ~~except to aid or benefit the public generally~~for the private gain of that official or employee or the private gain of another. This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

(~~j~~i) Use confidential information acquired in their official city positions for their own benefit or that of others.

(~~k~~j) While employed with or in the service of the city or within one year following termination of city service, purchase any property or equipment from the city, either directly or through a third party such as an auction house, unless the purchase is subject to prior written approval by the city manager.

(k) Participate in procurement:

(i) An individual or a person that employs an individual who assists a city agency or unit in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitted a bid or proposal for the procurement.

(ii) The Commission may establish exemptions from the requirements of this subsection for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

Sec. 7A-5. - Financial statements and disclosure statements.

(a) A financial disclosure statement is required from all elected officials, all appointed officials designated in section 7A-1.2, the city manager, the city attorney, the assistant city manager(s), the heads of all departments, and all candidates for elective office. Statements shall be filed with the Commission on the form provided by the Commission. ~~on an annual basis by no later than January 31 for the preceding year and shall be under oath. In addition, a disclosure statement shall be filed by all persons subject to this chapter for each incident when there is non-compliance with the requirements of this chapter. The statement shall identify the date of occurrence, donor, gift, value and reason for acceptance. The statement must be filed with the ethics commission for review within thirty (30) days of each occurrence. All occurrences in which honoraria in excess of the gift limit have been accepted must be reported.~~

(i) An incumbent official or employee shall file a financial disclosure statement annually no later than April 30 of each year for the preceding year.

(ii) An official or employee who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within thirty (30) days after appointment.

(iii) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving office. The statement shall cover all time served by the individual from the date of the individual's last annual filing to the date of the individual's last day in office.

(b) Candidates for elective office shall file ~~statements consistent with the requirements of subsection (a) of this section at the time that they file their certificates of candidacy.~~ a financial disclosure statement each year beginning with the year in which a petition of candidacy is filed through the year of the election, which shall be filed:

(i) In the year the petition of candidacy is filed, no later than the filing of the petition;

(ii) In all other years for which a statement is required, on or before April 30.

(c) Financial statements for elected officials and candidates for elective office shall include:

(i) Interests in real property.

(A) A schedule of all interests in real property located in the city or located elsewhere if acquired from or in conjunction with a person or business entity that is regulated by the city or does business with the city or has done business with the city during the preceding five (5) years.

(B) For each interest in real property:

(1) The location by street address, mailing address, or legal description;

(2) Whether the property is used for residential or commercial purposes;

(3) Whether the property is held solely by the individual reporting and, if not, the extent of the reporting person's interest in the property;

(4) Whether there are any encumbrances on the property and, if so, a description of each encumbrance.

(5) The date on which the interest was acquired;

(6) The identity of the person from whom the interest was acquired;

(7) The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

(8) If the interest was transferred, in whole or in part, during the report period, the identity of the person to whom the interest was transferred, and if the transferee is a person or business entity that is regulated by or is doing business with the city or has done business with the city in the preceding five (5) years, the amount of the consideration received for the interest; and

(9) The identity of any other person or business entity with an interest in the property and the extent of such interest, if such person or business entity is regulated by or is doing business with the city or has done business with the city in the preceding five (5) years.

(ii) Interests in business entities.

(A) A schedule of any interest in any business entity that is regulated by the city or doing business with the city or has done business with the city in the preceding five (5) years.

(B) For each interest in a business entity:

(1) The name and address of the principal office of the business entity;

(2) The nature and amount of the interest held, including any conditions and encumbrances on the interest;

(3) If any interest was transferred, in whole or in part, at any time during the reporting period, the nature of the interest transferred, the identity of the person to whom the interest was transferred, and if the transferee is a person or business entity that is regulated by or is doing business with the city or has done business with the city in the preceding five (5) years, the amount of the consideration received for the interest; and

(4) With respect to any interest acquired during the reporting period:

1. The date on which the interest was acquired and the identity of the person or business entity from whom the interest was acquired; and

2. The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(C) In lieu of reporting the dollar amount of the interest held, an individual may report:

(1) For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

(2) For an equity interest in a partnership, the percentage of equity interest held.

(D) Interests in mutual funds may be excluded from the disclosure on interests in business entities otherwise required by this subsection.

(iii) Gifts.

(A) A schedule of each gift in excess of $20 in value or a series of gifts totaling $100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with or is regulated by the city.

(B) For each gift reported, the schedule shall include:

(1) A description of the nature and value of the gift; and

(2) The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(iv) Employment by entities doing business with the city.

(A) A schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the city.

(B) For each position reported under this subsection, the schedule shall include:

(1) The name and address of the principal office of the business entity; and

(2) The title and nature of the office, directorship, or salaried employment held and the date it commenced.

(v) Indebtedness to entities doing business with the city.

(A) A schedule of all liabilities, excluding retail credit accounts, to persons or entities doing business with the city owed at any time during the reporting period:

(1) By the individual; or

(2) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

(B) For each liability reported under this subsection, the schedule shall include:

(1) The identity of the person or business entity to whom the liability was owed and the date the liability was incurred;

(2) The amount of the liability owed as of the end of the reporting period;

(3) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

(4) The security given, if any, for the liability.

(vi) Family members. A schedule of the immediate family members of the individual employed by the city in any capacity at any time during the reporting period.

(vii) Sources of earned income.

(A) A schedule of the name and address of each place of employment and each business entity of which the individual was a sole or partial owner and from which the individual received earned income, at any time during the reporting period.

(B) An immediate family member's employment or business ownership need not be disclosed if the city does not regulate, license, or contract with the place of employment or business entity or has not done business with the place of employment or business entity in the preceding five (5) years.

(viii) Additional information. A schedule of additional interests or information that the elected official making the statement wishes to disclose.

(d) Financial statements for appointed officials and employees listed in subsection (a) of this section shall include disclosure of any conflicts of interest specified in section 7A-4.

(e) All city officials and candidates for elective office subject to this chapter shall file a statement with the commission disclosing any interest or employment, the holding of which would require disqualification from participation pursuant to section 7A-4, sufficiently in advance of any anticipated action to allow adequate disclosure to the public.

Sec. 7A-6. - Lobbying disclosures.

(a) Any person who personally appears before any city official with the intent to influence that person in performance of his official duties and who, in connection with such intent, expends funds on food, entertainment or Gifts for such officials, shall file a registration statement with the commission no later than January 15 of the calendar year or within five (5) days after making such appearances.

(b) The registration statement shall include complete identification of the registrant and of any other person or entity on whose behalf the registrant acts. It shall also identify the subject matter on which the registrant proposes to make such appearances and shall cover a defined registration period, not to exceed one calendar year.

(c) Registrants under this section shall file a report with the city attorney's office within thirty (30) days after the end of any calendar year during which they were registered, disclosing the value, date and nature of any food, entertainment or Gift provided to a city official.

(d) The registrations and reports filed pursuant to this section shall be maintained by the commission as public records, available for public inspection and copying.

Sec. 7A-7. - Exemptions and modifications.

The commission may grant exemptions and modifications to the provisions of sections 7A-4 and 7A-5, if it determines that application of those provisions would:

(a) Constitute an unreasonable invasion of privacy;

(b) Significantly reduce the availability of qualified persons for public service; and

(c) Not be required to procure the purposes of this chapter.

Sec. 7A-8. - Enforcement of chapter; violations and penalties.

(a) The commission may issue a cease and desist order against any person found to be in violation of this chapter and may seek enforcement of such order in the circuit court of the county. The court may issue a cease and desist order and may also

impose a fine of up to five hundred dollars ($500.00) for any intentional violation of the provisions of this chapter.

(b) Persons found to have violated this chapter may be subject to disciplinary or other appropriate personnel action, including suspension of city salary or other compensation and suspension and/or removal from office.

(c) Violations of this chapter shall be a misdemeanor, subject to the provisions of section 1-7.

ADOPTED by the City Council this 17th day of August, 2015.

JUD ASHMAN, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg this 17th day of August, 2015. APPROVED by the Mayor of the City of Gaithersburg this 17th day of August, 2015.

JUD ASHMAN, MAYOR

THIS IS TO CERTIFY, that the foregoing Ordinance was adopted by the City Council of the City of Gaithersburg, in public meeting assembled on the 17th day of August, 2015; and that the same was APPROVED by the Mayor of the City of Gaithersburg on the 17th day of August, 2015. This Ordinance will become effective on the 6th day of September, 2015.

Tony Tomasello, City Manager