

Proposed Replacement Ethics Ordinance

The Town Attorney has prepared a complete revision to the Town's Article 14 Ethics Ordinance. The Charter and Ordinance Committee reviewed the attorney's draft and have proposed some further changes to it in the following pages. The original text of the attorney's draft is presented in Times New Roman font. Deletions from the original text are shown with ~~strikeouts~~, and new text is presented in Arial Font.

Additional comments, annotations and reference information are shown in text boxes.

Ordinance No. 1 - 2004

**Town of Forest Heights, Maryland
Public Ethics Ordinance - Article 14**

AN ORDINANCE TO REPEAL AND REENACT THE TOWN OF FOREST HEIGHTS PUBLIC ETHICS ORDINANCE IN ITS ENTIRETY.

WHEREAS, the Mayor and Town Council of Forest Heights (hereinafter "the Town") are empowered to enact certain public ethics provisions concerning conflicts of interest, financial disclosure, and lobbying, that in its discretion substantially comports with Annotated Code of Maryland, State Government Article, Title 15 (Public Ethics), Subtitle 8 (Local Government Provisions) and Code of Maryland Regulations, Title 19A, Appendix B; and

WHEREAS, the State Ethics Commission on July 24, 1992, in accordance with the exemption provisions of the Maryland Public Ethics Law granted the Town an exemption from the mandate that it enact a municipal ethics ordinance; and

WHEREAS, notwithstanding the aforesaid exemption, the Mayor and Town Council wishes to update and simplify the Town's current Public Ethics Ordinance in order to improve the administration and interpretation of the ordinance, and ensure that all elected and certain appointed Town officials, and certain Town employees, act in the best interests of the Town in the performance of their official duties, and to foster a high level of trust and confidence in the citizenry with regard to the functioning of the Town government;

NOW THEREFORE, BE IT ENACT ED AND ORDAINED, by the Mayor and Town Council of Forest Heights, Maryland, that Article 14, §§ 14.1 through 14.7, of the Town of Forest Heights Ethics Law originally approved by the Mayor and Council on January 20, 1982, as amended, is repealed and reenacted, as follows.

SECTION 14.1 Applicability.

The provisions of this Article apply to the following Town officials and employees:

Mayor	Chief of Police
Council President	Code Enforcement Officer
Councilmen	Administrator
Clerk	Treasurer

SECTION 14.2 Purpose and Policy.

(a) The Mayor and Council recognize that our system of representative government heavily relies upon the continued maintenance of personal and professional integrity by each of its officers and employees and the right of the people of this municipality to be assured that the impartiality and independent judgment of its public officials and employees will be secured.

(b) For the purpose of guarding against improper influence, the Mayor and Council enacts this Article to require Town officials and employees to disclose their financial affairs and to set minimum standards for their conduct of Town business.

SECTION 14.3 Administration.

(a) *Interpretation.* The Town Attorney shall be responsible for interpreting this Article and advising persons subject to its application.

(b) *Ethics Records Custodian.* The Town Clerk shall be the custodian of all forms, disclosure statements, lobbying registration statements, advisory opinions and complaints submitted by any person in accordance with this Article. The Town Clerk shall retain documents filed with it as public records for at least four years from the date of receipt. Requests to inspect or copy these records should be made to the Town Clerk, and shall be available for public inspection during normal business hours. ~~The Town Clerk shall maintain a log showing the name of each person reviewing the aforesaid public records, the date that such review occurred, and which records were reviewed. Upon request, the Town Clerk shall provide each person whose records were reviewed pursuant to this Section with a copy of the Clerk's log information related to such review within ten (10) working days of such request.~~

Wiggers' Comment: The requirement to maintain a log of persons inspecting and/or obtaining a copy of a public document does nothing to protect the official from wrongdoing as the person obtaining a copy is free to distribute the document to the public without any further constraint. On the other hand, the requirement can have a chilling effect on citizens wishing to investigate and learn about officials elected to represent them.

(c) *Advisory Opinions.* Any official or employee subject to the provisions of this Article may request the Town Attorney for an advisory opinion concerning the application of this Article. The Town Attorney shall respond promptly to these requests, providing interpretations of this Article based on the facts provided or reasonably available to him. Copies of advisory opinions, with the identity deleted, shall be made available to the public in accordance with the Maryland Public Information Act.

(d) *Complaints.* Any person may file with the Town Attorney a complaint alleging a violation of any of the provisions of this Article. All complaints shall be in writing and given under oath. If,

upon review and investigation, the Town Attorney determines that there are insufficient facts upon which to base a determination of a violation, he or she may dismiss the complaint and so notify the complainant in writing. If there is a reasonable basis for believing a violation has occurred, the Town Attorney shall notify the alleged violator of the nature and circumstances of the alleged violation in writing and shall advise the person of the steps necessary to be taken to comply with the provisions of this Article. In the case of a complaint regarding the Mayor, the Town Attorney shall notify members of the Town Council regarding the nature of the complaint and ultimate disposition of the case. After a complaint is filed and until a final determination by the Town Attorney, all actions regarding a complaint shall be treated confidentially.

Wiggers' Comment: This provision gives the public direct access to the Town Attorney, in that it provides that "any person" may file a complaint with the Attorney. In the past, some Town officials have complained that citizens filing Public Information Act requests were placing a heavy financial burden on the Town because of the involvement of the Town Attorney in responding to those requests.

With regard to the notification to the Council in a case involving the Mayor, the Mayor can presumably fire the Town Attorney under: "Section 33-18 (b) Appointments. The Mayor, with the approval of the Council, shall appoint the heads of all offices, departments, and agencies of the Town government as established by this Charter or by ordinance. All office, department, and agency heads shall serve at the pleasure of the Mayor." Also: Section 33-65. Town Attorney. The Mayor with the approval of the Council shall appoint a Town Attorney. The Town Attorney shall be a member of the bar of the Maryland Court of Appeals. The Town Attorney shall be the legal adviser of the Town and shall perform such duties in this connection as may be required by the Council or the Mayor. In the case of an alleged conflict of interest by the Mayor, a further conflict can arise with the Town Attorney inasmuch the Mayor is a presumed client of the Town Attorney. (An example of this type of conflict is when President Nixon fired the special prosecutor Archibald Cox who was investigating the Watergate affair.)

Unlike the provision under the finance section of the charter regarding the Town Treasurer, there is no provision that the Town Attorney serves at the pleasure of the Town Council. To avoid any appearance of conflict in duties, the Town Attorney should be bound to notify all Council members in the advent of an allegation against the Mayor.

(e) Limitation on actions. No complaint shall be processed if filed more than ninety (90) days after the date a violation is alleged to have occurred. A complaint may only be filed thereafter if it is filed within ninety (90) days after the alleged violation is discovered, or would have been discovered in the exercise of reasonable diligence on the part of the complainant, whichever such period is shorter.

(f) Alternative Procedure. In addition to the above described complaint procedure, any person may, if they so desire, notify the State's Attorney, Attorney General of Maryland or Special State Prosecutor concerning an alleged violation of any of the provisions of this Article.

SECTION 14.4 Conflicts of Interest.

Town officials and employees who are subject to this Article shall not:

(a) Participate on behalf of the Town in any matter which would, to their knowledge, have a direct financial impact, as distinguished from the public generally, on them, their spouse or dependent children, or a business entity with which they are affiliated.

(b) Hold or acquire an interest of either \$1,000.00 or 5% or greater in a business entity that has or is negotiating a contract of \$1,500.00 or more with Town; or, is regulated by the Town or an agency of the Town, except as exempted by the ~~Mayor and~~ Town Council pursuant to Section 14.8 of this Article.

(c) Hold any outside employment relationship that would impair their impartiality or independence of judgment. However, elected officials may continue outside employment with any employer that is doing business with the Town, is seeking or may potentially seek to do business with the Town, would be regulated by the Town or regulate the Town in the case of another government agency, provided that:

(1) the official discloses the employment relationship in a statement to the Town Clerk upon filing for nomination for elective office (or upon election if a write-in candidate) or upon commencement of employment, whichever is later, and

(2) recuse himself or herself from any discussion or voting on any matter related to or affected by that employment.

Wiggers' Comments: Elected officials are part-time employees and would likely have other full-time employment. As an employee of a company, government agency, or other organization, they may not have control over their employers decision to do business with the Town or otherwise affect Town affairs in the case of a government entity. An example: An employee of a developer is elected to the Town Council, and subsequently the developer decides to build a house in the town that requires a zoning variance. The Town does not have zoning responsibility, but it may wish to testify before the PG zoning commission regarding the developers request for a variance. Furthermore, the Town must issue permits for the work if the variance is granted. In this case, the revised wording would permit the elected official to continue to serve on the Town Council but the official could not be involved in any Council discussion or voting related to the developer's interest in the Town.

Presumably, elected officials could be exempted from this provision under Section 14.8 of Article 14 but this could require an elected official to seek an exemption prior to their becoming elected when the actions of their employer may not yet be known. Furthermore, if the Town Council refused to grant an exception for a case where the employer took action after the person was elected, to comply with Section 14.4 (c), the elected official would have to terminate their employment with the outside employer. Section 14.8 could be applied, however, if the Town Council wanted to exempt the official from the requirement to recuse him or her self from the requirement to be recused from any deliberation on the matter.

Another example would be the case of a PG County, Maryland State, or Federal employee who serves on the Town Council. If the non-Town government agency which employs the elected official has some action with the Town, the official could be in a conflict of interest and should recuse him or her self from any deliberations regarding the other government's programs or matters involving the Town.

Finally, a more difficult situation would arise if the employer conflict arose with the Mayor's employer. As the Town's chief executive, it may not be possible for the Mayor to recuse him or her self from actions that require an action by the Mayor as the CEO as distinct from being a member of the legislative body, the Town Council. In those situations, the Mayor would either have to resign from being Mayor or be granted an exemption by the Town Council.

(d) Represent any party, for a fee or any other form of compensation before any Town body.

(e) Within one year following termination or completion of Town service, act as a compensated representative of another in connection with any specific matter in which he or she participated substantially as a Town official or employee.

(f) Solicit any gift or accept gifts of greater than \$25.00 in value, from any person that has or is negotiating a contract with the Town; or, is regulated by the Town or an agency of the Town, except when these gifts would not present a conflict of interest as determined by the ~~Mayor and~~ Town Council. Except as enumerated herein, for purposes of this Section, a gift includes the

transfer of anything of value regardless of form without adequate and lawful consideration. For the purposes of this Section, a gift does not include ceremonial awards of nominal value; reasonable expenses for food, travel or lodging when an official or employee is scheduled to participate in training activities as a speaker or panelist; gifts of persons related by blood or marriage; or free admission to charitable, cultural or political events, if the purpose of such a gift or admission is a courtesy extended to the office by the event organizer.

(g) Use the prestige of their office for their own benefit or that of another. The performance of usual and customary constituent services, without additional compensation, does not constitute the use of the prestige of office for private gain or that of another.

(h) Use confidential information acquired in their official Town position for their own benefit or that of another. Where the Town Charter and Maryland State Article §§ 10-510 through 10-512 (Open Meetings Act) permits closed sessions, any item of business discussed by the Mayor and Town Council in executive session is considered confidential information, except:

(1) Any information that the Council agrees to release to the public that is not otherwise prohibited from public release under Maryland law, and

(2) Any information that is already available to the public under Maryland State Article §§ 10-611 through 10-625 (Public Information Act).

Any confidential information revealed by an employee or Town official that was an item of business which served as the basis cited for conducting a closed session will be rebuttably presumed to have been used for their benefit or that of another.

(i) Any conflict of interest falling under Section 33–71, CONFLICTS OF INTEREST of the Town Charter, shall also be a violation of this ordinance, and be subject to the penalties herein.

Wiggers' Comment: The effect of adding subsection (i) above is to increase the penalties associated with Section 33-71 of the charter: Any person who by himself or with others wilfully or corruptly violates any of the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars (100.00), or by imprisonment for a term not exceeding thirty days, or by both such fine and imprisonment, to the penalties found in Section 33-2, a fine not exceeding five hundred dollars (\$500.00) or imprisonment for not exceeding ninety days. See also the comment box after section 14.9 of this draft ordinance.

SECTION 14.5 Financial Disclosure.

(i) The Town officials and employees listed in Section 14.1 of this Article shall file annually not later than the third Wednesday in April of each calendar year during which they hold office, a statement with the Town Clerk disclosing any gifts received during the preceding calendar year from any person having a contract with the Town or any person regulated by their agency. The

statement shall identify the donor of the gift and its approximate retail value at the time of receipt.

(ii) Candidates for elective offices listed in Section 14.1 of this Article shall file statements consistent with the requirements of Subsection ~~(a)~~ (i) of this Section.

(iii) All Town officials and employees or candidates for elective office to positions subject to this Section shall file a statement with the Town Clerk disclosing any interest or employment the holding of which would require disqualification from participation pursuant to Section 14.4(b) of this chapter, sufficiently in advance of any anticipated action to allow adequate disclosure to the public.

SECTION 14.6 Lobbying Disclosure.

(i) Any person who personally appears before any Town official or employee with the intent to influence that person in performance of his official duties, and who, in connection with such intent expends or reasonably expects to expend in a given calendar year in excess of \$100.00 on food entertainment or other gifts for such officials, shall file a registration statement with the Town Clerk within 5 days after first making these appearances and not later than the third Wednesday in April.

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

(iii) Registrants under this Section shall file a report not later the third Wednesday in April, disclosing the value, date, and nature of any food, entertainment or other gift provided to a Town official or employee. When a gift or series of gifts to a single official or employee exceed \$100.00 in value, the official or employee shall also be identified.

SECTION 14.7 Discrimination against Complainant and False Statements.

(i) The Town of Forest Heights, acting through its authorized personnel, shall not discharge or discriminate against or threaten to discharge or discriminate against a Town official or employee regarding compensation, terms, conditions, location or the privilege of employment with the Town because:

i) The Town official or employee, whether acting as a complainant or on behalf of a complainant, reports or is about to report orally or in writing any alleged violation of this Article.

ii) The Town official or employee, whether acting as a complainant or on behalf of a complainant, participates in an investigation, or inquiry held by the Town Attorney in conjunction with a complaint filed under this Article, or any related court action.

(ii) This section shall not apply to a Town official or employee who knowingly files a false complaint or makes a false statement to the Town Attorney with respect to an alleged violation of this Article.

(iii) The Town of Forest Heights shall not discriminate or retaliate against any person filing a complaint with respect to Town services, regulatory matters, or other benefits generally provided to Town residents and property owners.

SECTION 14.8 Exemptions and Modifications.

The ~~Mayor and~~ Town Council may grant exemptions and modifications to the provisions of Sections 14.4 and 14.5 of this Article if it determines that application of those provisions would:

(i) Constitute an unreasonable invasion of privacy;

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

(iii) Not to be required to preserve the purposes of this Article.

Wiggers' Comment: In one sense, the term "Mayor and Town Council" is redundant, because the Section 33-3 of the Town Charter "All legislative powers of the Town shall be vested in a Council consisting of the Mayor and six Councilmen..." defines the Mayor as also being a member of the Town Council. However, another interpretation of the term could be construed to mean that both the Mayor and the Town Council must approve of an action, in effect giving the Mayor a veto over the matter, regardless of the number of Council members who would approve or disapprove of a matter. By simply stating "the Town Council" without specific reference to the Mayor means that the Mayor would have a vote on the matter, but the matter would still be approved if the Mayor voted no, while four or more member os the Council voted yes. (See similar change to Section 14.9). This distinction is particularly important in those cases where the Mayor is the person accused of having a conflict of interest.

SECTION 14.9 Enforcement.

(a) Upon direction from the ~~Mayor and~~ Town Council, the Town Attorney may file a petition for injunctive or other relief in the Circuit Court for the County, or any other court having proper venue for the purpose of requiring compliance with the provisions of this Article. The Town Attorney may seek:

- (i) To have the court issue an order to cease and desist from the violation;
- (ii) To have the court void an official action taken by an official or employee with a conflict of interest prohibited by this Article when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within 120 days of the occurrence of the official action, if the court deems voiding the action to be in the best interests of the public; provided, however, that the court may not void any official action appropriating public funds, levying taxes, or providing of the issuance of bonds, notes or other evidence of public obligation.

(b) Violation of this Article shall be a misdemeanor subject to the maximum fine or maximum period of imprisonment or both a fine and imprisonment up to and including the maximum penalty permitted by Charter and awarded by the court in its discretion.

For reference purposes, the following is the maximum penalty permitted by the Charter:

Section 33–22. Enforcement of powers.

- (a) To ensure the observance of the ordinances of the Town, the Council shall have the power to provide that violation thereof shall be a misdemeanor and shall have the power to affix thereto penalties of a fine not exceeding five hundred dollars (\$500.00) or imprisonment for not exceeding ninety days, or both such fine and imprisonment. Any person subject to any fine, forfeiture, or penalty by virtue of any ordinance passed under the authority of this Charter shall have the right of appeal within ten days to the Circuit Court of the County in which the fine, forfeiture, or penalty was imposed. The Council may provide that, where the violation is of a continuing nature and is persisted in, a conviction for one violation shall not be a bar to a conviction for a continuation of the offense subsequent to the first or any succeeding conviction.
- (b) To further ensure the observance of the ordinances of the Town, the Council shall have the power to provide that violation thereof be a municipal infraction enforceable as provided under the general laws of the State and shall have the power to affix thereto a penalty of a fine not exceeding one hundred dollars (\$100.00) for the first offense and a fine of two hundred dollars (\$200.00) for each repeat offense. (Ch. Res. No. 1., August 21, 1963, sec. 22; Res. No. 6, October 7, 1982)

SECTION 14.10 Severability.

Severability is intended throughout and within the provisions of the Ordinance. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

Additional Wiggers' Comments:

(1) While this revised ordinance may reduce the problems of a lay Ethics Commission that may not fully understand the ordinance and their duties, it raises other potential conflicts and may weaken the current ethics ordinance.

(2) Suggest a different and consistent paragraph enumeration system

(A)

(1)

(a)

(i)

Problem of lower case i being confused with roman numeral i (one).

Town Attorney's Transmittal Memo

October 6, 2004

BY EMAIL AND BY U.S. MAIL

Ms. Cynthia Farrar, Administrator The Town of Forest Heights. 5508 Arapaho Drive
Forest Heights, Maryland 20745-1998

Re: Proposed New Town Ethics Ordinance Dear Ms. Farrar:

Per the Mayor's authorization, I have prepared a newly proposed ethics ordinance for the Town of Forest Heights to be introduced as legislation for the Mayor and Town Council's adoption. By enacting this ordinance, the old ethics law will be repealed in its entirety and the new one will take its place. Some of the main highlights in the new ordinance include disbanding the current Ethics Commission and a general simplification of the ordinance provisions and readability of the ordinance. This new ordinance should improve the professional administration of the Town's public ethics law.

As you may recall, the Town possesses a waiver from the State mandate to have such an ordinance. However, it is still advisable for your municipality to have an ethics ordinance in place. Under this new proposed ordinance, the Town Attorney will provide interpretations of the ordinance and under the direction of the Mayor and Council, if necessary, the Town Attorney will prosecute violations in the Circuit Court of Prince George's County.

As you know, this draft is simply a proposal and should be carefully reviewed, and if necessary, debated in public session by the Town's elected officials.

Very truly yours,

LINOWES AND BLOCHER LLP
Kevin J. Best
KJB: sbw Enclosure