

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 appointed Town officials, and 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 ENACTED 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the Town of Forest Heights Ethics Law originally approved by the Mayor and Council on January 20, 1982, as amended, is repealed and reenacted, as follows.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 all Town officials and employees.

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 in accordance with the Maryland Public Information Act, and shall be available for public inspection during normal business hours.

(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.

(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 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.

(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 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 Annotated Code of Maryland, State Government Article, Section 10-501 et seq., (Open Meetings Act) permits closed sessions, any item of business discussed by the 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 the Annotated Code of Maryland, State Government Article, Section 10-611 et seq. (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.

SECTION 14.5 Financial Disclosure.

(a) 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.

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

(c) 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.

(a) 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.

(b) 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.

(c) 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.

(a) 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:

(1) 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.

(2) 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.

(b) 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.

(c) 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 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:

(a) Constitute an unreasonable invasion of privacy;

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

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

SECTION 14.9 Enforcement.

(a) Upon direction from the 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:

(1) To have the court issue an order to cease and desist from the violation;

(2) 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.

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.

SECTION 14.11 Short Title.

This ordinance shall be known as the Town Public Ethics Ordinance or Article 14 and may be cited as such.

BE IT FURTHER ENACTED AND ORDAINED by the Mayor and Town Council of Forest Heights, Maryland that the Town of Forest Heights Ethics Ordinance approved by the Mayor and Council on January 20, 1982, as amended, which is repealed in its entirety by this ordinance, shall remain in force and effect until the effective date of this ordinance.

BE IT FURTHER ENACTED AND ORDAINED by the Mayor and Council of Forest Heights, Maryland that this Ordinance shall become effective at the expiration of 30 days following approval by the Mayor and Council.

AYES: ____ NAYES: _____ ABSENT: ____

INTRODUCED and read in a public session of the Mayor and Town Council on this 20th day of October, 2004 by the Charter and Ordinance Committee of the Town Council.

ORDAINED, APPROVED AND finally passed by the Mayor and Town Council of Forest Heights, Maryland on this ____ day of 20 ____, by:

Paula R. Noble, Mayor _____

Approved as to form:

Kevin J. Best, Esq., Town Attorney _____

Attest:

Bonita Anderson, Town Clerk _____

ORDINANCE SCHEDULE

ORDINANCE INTRODUCTION DATE: _____

ENACTMENT DATE (6 TO 60 DAYS AFTER INTRO.): _____

EFFECTIVE DATE (30 DAYS AFTER ENACTMENT): _____

ORDINANCE SUMMARY PUBLICATION DATES: 1. _____

(FOREST HEIGHTS NEWS) 2. _____

COURTESY COPY SENT TO STATE ETHICS COMMISSION: _____