

**City of Fort Smith
Code of Business Conduct**

This Code of Business Conduct sets out basic principles and standards of conduct to guide all elected officials, appointed officials, employees and volunteers who represent the City in any capacity. The Code is to promote public confidence in the integrity of City government and its effective and fair operation. This Code is a means to employ independent, objective judgment in the performance of municipal duties. Municipal matters are to be based on merit, free from avoidable conflicts whether real or apparent.

The City of Fort Smith is committed to treating public services as a public trust. The City desires to use the power and resources of public service to advance the public trust and not for the purposes of attaining personal or private benefit.

The City does not want this policy to discourage anyone from serving the City in any appointed, elected or volunteer position. Some municipal representatives, such as independent contractors, vendors, and volunteers, may conduct business with the City in their capacity as business persons. However, under this policy, those same municipal representatives would be required to abstain or recuse themselves when a decision they influence may provide personal benefit or gain to them.

The Code of Business Conduct addresses standards for ethical behavior by municipal representatives. As with any policy, it is not possible to provide guidance for all improper business practices. If a situation arises which is ambiguous or is not specifically addressed by this Code, municipal representatives should avoid the conflict of interest or compromising action. If a municipal representative has questions or concerns, he or she may contact the City's Internal Auditor for guidance.

I. Definitions

- A. Appointed officials – persons appointed to serve or confirmed to serve on any municipal board, commission, authority or committee as authorized in the City of Fort Smith Code of Ordinances and Arkansas law, specifically including, without limitation, boards, commissions, authorities or committees having status as a public body corporate and politic independent of the City of Fort Smith.
- B. Arkansas Ethics Commission- the Commission established by Arkansas statute A. C. A. § 7-6-217 to review reported violations of conduct by elected and appointed officials.
- C. Business entity- any of the following entities whether or not carried on for the purpose of profit: business, sole proprietorship, firm, partnership, unincorporated association, venture, trust, or corporation.

I. Definitions (continued)

- D. Contract- any arrangement or agreement pursuant to which any material, service or other thing of value is to be furnished for a valuable consideration or is to be sold or transferred. For purposes of this Code, "Contract" does not include:
1. Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;
 2. Merchandise sold to the highest bidder at public auctions;
 3. Investments or deposits in financial institutions which are in the business of loaning or receiving monies;
 4. Contracts with a corporation in which a municipal representative exercising an official action holds a de minimus interest, i.e. 5% or less.
- E. Employee- any person holding any paid position of employment with the City.
- F. Fiduciary Duty – a responsibility of, relating to, or involving a confidence or public trust.
- G. Gift- any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefore. Per state law, an allowable gift to public officials is anything which is \$50 or less in value.
- H. Independent contractor- a person or entity other than an officer or employee who is paid for services rendered to the City pursuant to a contract for services and any officer, employee, agent, volunteer or subcontractor of such people or entity.
- I. Interest- a substantial interest held by an individual that is:
1. An ownership in a business;
 2. A creditor interest in an insolvent business;
 3. An employment or a prospective employment for which negotiations have begun;
 4. An ownership interest in real or personal property;
 5. A loan or any other debtor interest; or
 6. A directorship or officership in a business.

I. Definitions (continued)

The term "Interest" is intended to reflect a pecuniary, property, or commercial benefit, or any other benefit the primary significance of which is economic gain or the avoidance of economic loss, but does not include any matter in which a similar benefit is conferred to all persons or property similarly situated. An interest of the following persons and entities will be deemed to constitute an interest of a municipal representative:

- a. Any relative of a municipal representative; or
- b. Any business entity in which the municipal representative is an officer, director, employee, partner or owner; or
- c. Any business entity in which the municipal representative owns or controls shares of stock, the aggregate of which constitutes more than 1% of the shares of the business entity then outstanding. Participation in a stock mutual fund shall not be considered an interest in a business entity of which the mutual fund owns or controls shares of stock.

- J. Municipal representative- An officer, elected official, appointed official, employee, independent contractor, or volunteer of the City, including candidates for elected positions.
- K. Officer- all elected or appointed officials including but not limited to:
1. Mayor;
 2. Director;
 3. District Judge;
 4. City Administrator;
 5. Treasurer;
 6. Attorney;
 7. City Clerk;
 8. Police Chief; and
 9. Fire Chief.
- L. Relative- any person related to a municipal representative by blood or marriage, in any of the following degrees: parents, spouse, children, stepchildren, brothers, sisters, parents-in-law, nephews, nieces, aunts, uncles, first cousins, grandparents, grandchildren and children-in-law. A separation between spouses shall not be deemed to terminate relationships described herein.

I. Definitions (continued)

- M. Verified complaint- a written complaint containing a statement signed by a person indicating he or she has personal knowledge of the allegations of the complaint and knows them to be true.
- N. Volunteer- any person who is appointed or authorized to act on behalf of the City in any manner without compensation.

II. Code of Business Conduct

- A. **Conflicts of Interest**
Municipal representatives must avoid conflicts of interest involving the City or its business. A conflict of interest occurs when an individual's private interest interferes in any way, or even appears to interfere, with the interests of the City as a whole. A conflict situation can arise when a municipal representative takes actions or has interests that may make it difficult to perform his or her work for the City objectively and effectively. Conflicts of interest also arise when a municipal representative or their relatives receive improper personal benefits with the City. In accordance with state laws, officers will disclose financial interests and they will abstain from participating in deliberations and decision-making where conflicts may exist.

In the event that a municipal representative considers that a personal association may cause or appear to cause a potential conflict of interest, he or she may declare such in writing and request that the declaration be kept on file.
- B. **Impartiality in the performance of duties.**
Municipal representatives shall perform their duties without regard for personal benefit.
- C. **Financial Interests**
A municipal representative is prohibited from engaging in a financial transaction for his or her private business purposes as it relates to City business. Furthermore, a municipal representative shall not perform an official act, to its economic benefit, a business or other undertaking in which he or she either has an interest or is engaged as counsel, consultant, representative or agent.

II. Code of Business Conduct (continued)

- D. Representation before boards, committees or commissions
A municipal representative shall not appear before the City Board or any commission or committee on matters for which or over which he or she sits or has supervisory or advisory responsibilities, except in the official representation of the City.
- E. Political Activities
Officers are non-partisan. There shall be no partisan references or campaigning for political office at meetings of the Board or any City commission or committee. Partisanship will not be a factor in any official action of any municipal representative.
- Laws governing employee involvement in political activities shall be adhered to in accordance with federal and state laws. Specifically, Arkansas statute A. C. A. § 21-1-501 through § 21-1-503 will be followed.
- F. Misuse of Position
All municipal representatives have a fiduciary duty to refrain from using their positions in any manner for personal or private gain or which is detrimental to the public good. Municipal representatives must be mindful that the appearance of impropriety can be as corrosive as an actual impropriety, and must strive to avoid situations which may create an appearance of impropriety.
- G. Misuse of City Assets
Municipal representatives must not request, direct or permit for personal use the use of any City vehicle, equipment, or facilities not available to the general public. City funds and resources shall not be directed for personal use or gain by municipal representatives.
- H. Confidential Information
Municipal representatives shall respect the confidentiality of information concerning City property, personnel or proceedings of the City. They shall neither disclose confidential information without proper authorization, nor use such information to advance their personal interests.

II. Code of Business Conduct (continued)

I. Nepotism

1. Employment Procedures. It shall be a violation of the Code to engage, hire or appoint a relative of a municipal representative unless the City's personnel policies applicable to such employment appointment have been followed.

2. Terms of Engagement. Municipal representatives are prohibited from influencing or attempting to influence the compensation, benefits, or other terms and conditions or engagement by or service to the City applicable to any relative of a municipal representative.

J. Gifts

Gifts in value greater than \$50 shall not be accepted by municipal representatives for services or official actions while performing official duties of his or her position. The acceptance of cash or the equivalent is never permitted. Municipal representatives shall not solicit gifts. The City follows state law regarding the definition of gifts in Arkansas statutes § 21-8-401 through § 21-8-804.

K. Outside Employment or Service

Municipal representatives shall not engage in or accept any employment or service, other than employment by the City, if such employment or service reasonably would tend to impair the municipal representative's independence of judgment in the performance of his or her duties. Outside employment by employees must follow applicable City personnel policies.

L. Fund-raising Activities

Political fund-raising is prohibited by municipal representatives on City time, in a City uniform, and in a City workplace. Charitable fund-raising by employees in a City workplace and on City time must be approved by the City Administrator.

M. Contracts with the City

Municipal representatives shall not be engaged as a vendor or independent contractor with the City when their City position is a factor in the decision-making process and the relationship would create a conflict of interest.

N. Crimes

Municipal representatives may be removed from their position if convicted of a felony or a misdemeanor which relates directly to their official duties.

II. Code of Business Conduct (continued)

- O. **Discrimination**
Municipal representatives shall not violate any federal, state or City laws prohibiting discrimination.
- P. **Sexual Harassment**
Municipal representatives shall not violate any federal, state or City laws prohibiting sexual harassment.
- Q. **Retaliation**
Municipal representatives shall not violate any federal, state or City laws prohibiting retaliation, including retaliation against whistle blowers or those filing claims against the City. Specifically, A.C. A. § 21-1-601 through § 21-1-609 will be enforced.
- R. **Similar Conduct**
Other similar conduct which threatens the public confidence in the integrity of government including but not limited to illegal conduct, conduct which puts self interest before public interest, or conduct involving dereliction of duties is prohibited
- S. **Other Policies or Rules of Conduct**
A municipal representative may be required to follow more stringent policies or rules of conduct, such as departmental personnel policies. The more stringent policies or rules must be followed.

III. Enforcement

- A. **Complaints**
A verified complaint in writing, signed by someone with personal knowledge of the facts giving rise to the complaint, which states the name of any person alleged to have committed a violation of the Code and which sets forth the particulars thereof shall be reported to:
 - 1. Arkansas Ethics Commission for violations involving elected officials;
 - 2. City Board of Directors for violations involving appointed officials and volunteers; and

III. Enforcement (continued)

3. Director of Human Resources for violations involving employees.

The filing of a frivolous complaint by a municipal representative shall be a violation of this code.

B. Investigation

Following receipt of an internal or external verified complaint or upon the receipt of other information, whether or not under oath, that provides a reasonable basis to believe that a violation of the Code has been committed or that an investigation of a possible violation is warranted, the City Internal Auditor will provide a written report within five business days of receiving the complaint. If evidence exists that a violation has occurred, the violator shall be notified and the report shall be presented to the appropriate level of authority.

C. Corrective Action and Sanctions

If a violation has been determined, the Arkansas Ethics Commission, Board of Directors or Director of Human Resources shall recommend an appropriate penalty or corrective action in accordance with applicable laws and/or City personnel policies.