

City of Winston-Salem Ethics Policy

Purpose

The purpose of this code of ethics/ethics policy is to establish guidelines for ethical standards of conduct for City representatives and to provide guidance in determining what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a City representative's best judgment. The City of Winston-Salem upholds, promotes, and demands the highest standards of ethics from all City representatives, including employees, appointed members of boards and commissions, and elected officials. City representatives should maintain high standards of personal integrity, truthfulness, honesty, and fairness in carrying out public duties; avoid any improprieties in their roles as public servants including the appearance of impropriety; and never use their position or power for improper personal gain. In establishing an ethics policy, the City of Winston-Salem desires to protect the public against decisions that are affected by undue influence, conflicts of interest, or any other violation of these policies as well as promote and strengthen the confidence of the public in their governing body. The policies on ethics are inclusive of the City of Winston-Salem's Personnel Resolution and the General Statutes of North Carolina.

Definitions

The following words and phrases as used in this policy are defined as follows:

1. Business means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, consultant, holding company, joint stock company, receivership, trust, or any legal entity organized for profit.
2. City representative means every person elected, appointed, hired, or selected to an office, position, committee, board, task force, or similar multi-member body by the City of Winston-Salem, whether the person is paid or unpaid. From this point forward, the aforementioned positions will be referred to as City representative.
3. Compensation means any money, thing of value, or economic benefit conferred on or received by a City representative in return for services rendered or to be rendered by that person or another.
4. Gift means anything of monetary value, which can be converted to cash given or received. Gift shall not include anything for which fair market value, or face value if shown, is paid by the City representative.
5. Immediate family and person are as defined in the City of Winston-Salem Employee Handbook.

6. Consultant means an independent contractor or professional person or entity engaged by the City.

Prohibited Conduct

No city representative is expected to behave in a manner that will bring discredit to the city; therefore, they shall observe and follow high ethical and moral standards in the performance of their public service. The following will be considered violations of this policy, the Code of Ethics:

1. Conflicts of Interests: No city representative shall obtain personal gain as a result of obtaining knowledge as to any city actions (or potential actions) that are not public knowledge. [City of Winston-Salem Personnel Resolution, Section 23]. A conflict of interest – real, potential, or perceived – exists when performing work or making decisions for the organization.

2. Acceptance of Compensation, Gifts, Favors, Rewards, or Gratuity:

A. No city representative will directly or indirectly give or receive or agree to give or receive any gift (including but not limited to money, gift cards, food, beverage, loans, promises, services, or entertainment), favor, reward, or gratuity for matters connected with the city's official business except in these circumstances:

- 1) Attendance of a city representative at a banquet or professional association event provided by someone doing business with the city when it is provided in conjunction with a meeting directly related to city business or when the city representative is representing the City of Winston-Salem;
- 2) A plaque publicly presented in recognition of public service;
- 3) Receipt of honorariums for participation in meetings;
- 4) Advertising items or souvenirs of nominal value, where \$25 is presumed to be nominal;
- 5) Meals or non-solicited discounted meals not to exceed \$25 per meal and the representative has no current or anticipated future business relationship to the giver; For example, if the City of Winston-Salem has a contract or anticipates having a contract with a developer, the city representative cannot accept the meal regardless of its value.
- 6) Publicly acknowledged and approved discounts for all employees.

B. However, if the circumstances of the gift, of any value, would lead a reasonable person to conclude that the gift was given with the intent to influence an official action or

decision, to affect the performance of a city representative, or to expect a reward, then the gift cannot be accepted. [NC General Statute 133-32]

C. Compensation for a representative performing his/her duties is limited to salaries, fringe benefits and any personal satisfaction that the employee may derive from doing a good job.

3. **Improper Use of Position:** No city representative will knowingly use his/her office or position to secure personal benefit, gain, employment, or profit, or use his/her position to secure special privileges or exceptions for him/her or immediate family or to improperly benefit other entities. [City of Winston-Salem Personnel Resolution, Section 21]
4. **Improper Use of City Personnel:** No city representative will employ or use any person under his/her direction/supervision for the personal gain, benefit, or profit of the city employee (supervisor).
5. **Improper Use of City Property:** No city representative will use city-owned vehicles, equipment, materials, money, or property for personal or private convenience or profit. Use is restricted to services that are available to the general public. [City of Winston-Salem Personnel Resolution, Section 20]
6. **Certain Private Employment:** No city representative will accept private employment or render services where it would tend to impair independence of judgment or action in the performance of official city duties. Specifics pertaining to private employment may be further found in Section 19 of the City's Personnel Resolution. [City of Winston-Salem Personnel Resolution, Section 19]
7. **Disclosure of Confidential Information:** No city representative will disclose or use any confidential, privileged, or proprietary information gained by reason of his/her position for a purpose that is for other than a city purpose. Prohibition of disclosure of confidential information continues even after employment with the city ends.
8. **Beneficial Interests in Contracts:** No city representative will use his/her employment with the city or information gained as a result of his/her employment with the city for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself/herself or other persons, particularly with persons whom he/she has family, business, or financial ties. Additionally, to the restrictions set forth immediately above a city representative may not participate in any manner in any contracts or subcontracts, for materials, goods, personal services or construction in which contract or subcontract he/she or his/her spouse, business partner or any organization in which they serve as an officer, director, trustee or employee, has a financial interest or a relationship outside of work. [NC General Statute 14-234 and City of Winston-Salem Personnel Resolution, Section 23]
9. **Beneficial Influence in Contract Selection:** No city representative will influence the city's selection of or the conduct of business with, a corporation, person, or firm having or

proposing to do business with the city if the representative has a personal relationship and/or any financial interest in the company. [NC General Statute 14-234]

10. No public officer or employee may solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves. [NC General Statute 14-234]
11. Representation of Private Person at City Proceeding: No city representative will accept a retainer or compensation to appear on behalf of another person, before any regulatory governmental agency or court of law in an action which the city is a party, or that is contingent upon a specific action by the city. [City of Winston Salem Personnel Resolution, Section 19]
12. Impermissible Conduct Pertaining to Political Activity: No city representative will subject others to political or partisan coercion or solicitation while performing his/her city responsibilities and will not use public funds, supplies, or equipment to endorse candidates. City representatives may not be required as a duty or condition of employment, promotion, or tenure of office to contribute funds for political purposes. The intent of this section is not to prevent city representatives from exercising their freedom of speech and to engaging in civic activities. [NC State Statute 160A-169].
13. Additional provisions applicable to members of the City Council: ¹
 - A. Additional guidance is provided below for members of the City Council, upon which the stability and proper operation of a democratic representative government has been entrusted. The members of the City Council should endeavor to:
 - 1) Make sure governmental decisions and policy are made and implemented through proper channels and processes of the governmental structure;
 - 2) Uphold the integrity and independence of their office by acting in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent;
 - 3) Always remain aware that at various times they play different roles; As advocates, council members must advance the legitimate needs of their citizens.

As legislators, council members must balance the public interest and private rights in considering and enacting ordinances, orders, and resolutions.

¹ In order to assist the City Council in its interpretation of the provisions of this ethics policy applicable to the City Council, the City Council incorporates by reference the text, A Model Code of Ethics for North Carolina Local Elected Officials, A. Fleming Bell, II, UNC School of Government, 2010.

As decision-makers, council members must remain fair and impartial. When making quasi-judicial determinations in particular, council members must refrain from seeking or receiving information about quasi-judicial matters outside of the quasi-judicial proceedings. In the event such becomes unavoidable, council members must disclose, at the proceeding, contacts and information without discussing the contents of such, received outside of the public meetings; City Council members must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.

- 4) Obey all applicable laws regarding official actions taken;
- 5) Conduct the affairs of the City Council in an open and public manner including complying with all applicable laws governing open meetings and public records;
- 6) Faithfully perform their duties as council members; and
- 7) Avoid impropriety in the exercise of the Council member's official duties.

B. Official Duties.

Members of the City Council should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach. Although opinions may vary about what behavior is inappropriate, this City Council should consider impropriety in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the City Council member's action would conclude that the action was inappropriate. If a City Council member believes that his or her actions, while legal and ethical, may be misunderstood, he or she should seek the advice of the City Attorney and should consider disclosing, publically, the facts of the situation and the steps taken to resolve it, such as consulting with the attorney.

C. Transparency.

Members of the City Council should conduct the affairs of the council in an open and public manner. They should comply with all applicable laws governing open meetings and public records, recognizing that doing so is an important way to be worthy of the public's trust. They should remember when they meet that they are conducting the public's business. They should also remember that the records of their local government belong to the public and not to them or their employees. They should make clear that a climate of openness is to be maintained at all times in their governmental units. They should prohibit unjustified delay in fulfilling public records requests. They should take deliberate steps to insure that any closed sessions held by the City Council are lawfully conducted, and that such sessions do not stray from the purposes for which they are called.

D. Elections:

No elected city official shall use or caused to be used any city resources, including but not limited to:

- (1) city funds, which includes state and federal funds in possession of or designated for city use;
- (2) supplies;
- (3) media resources;
- (4) equipment, which includes, but is not limited to, computers and telephones;
- (5) real property, unless rented through the normal process; and
- (6) city personnel for partisan or political purposes, which includes, but is not limited to, endorsing or opposing a referendum, election or a particular candidate for elective office unless otherwise permitted by law. [G.S. 160A-169 and 160A-499.3]

Such prohibition extends to the use, whether direct or indirect, of TV 13, and other city-authored media resources, including mass (unsolicited) mailings (newsletters, meeting notices, questionnaires, surveys, news releases, facsimiles, posters, flyers, handouts, leaflets and the like) of substantially identical content whether in single or bulk, media buys, advertisements and automatic telephone “robo” calls.

This prohibition does not apply to: (1) mailings or communications which are in direct response to a solicited response, inquires or request from the person(s) to whom the response is directed; (2) updates to the council member’s website provided said updates are consistent with established city guidelines and protocols; (3) self generated electronic communications distributed to subscribers/constituents within the council member’s ward consistent with such electronic communications that occurred prior to the blackout period as defined below; and (4) meetings, events, activities, mailings or communications of any kind that are held, generated or disseminated using non-city resources or that are scheduled and paid for, where payment is required, in accordance with all city policies and procedures applicable to any applicant for use of a city facility or amenity.

In effort to minimize, if not avoid, allegations regarding the use or misuse of city resources for campaign/election purposes, the City hereby institutes a “blackout period” commencing on January 1 of the year in which the election for city council is to occur ending on general election day upon closure of the polls. During such blackout period, the use of any the aforementioned city resources by a candidate for city council is prohibited unless such city resources are used, as established by clear and convincing evidence, in the performance of the official duties of a duly elected city council member. This applies to Town Hall Meetings as well. Such permitted use shall be in a manner consistent with established city guidelines and protocols, which shall not be amended during the blackout period unless such amendment is absolutely necessary to add clarity to the city established guidelines and protocols.

Even if connected with the performance of official duties, images of a duly elected city council

member on city media or other city resources should be kept to a minimum during the blackout period so that such use during the blackout period is not disproportionate to the use of the same city resources during the entire calendar year preceding the blackout period. If it appears that said use is disproportionate, the elected official will be informed of such and staff, absent extenuating circumstances, will deny the request. The City Attorney's Office shall be charged with making any and all determinations required by this policy and compliance with the same. Non compliance with this policy shall be handled pursuant to the complaint procedure under this policy.

"Talk of the Town" sessions will not be conducted during the blackout period.

E. City Council member investigation and censure procedure

Any person who believes that a member of the City Council has violated this policy may file a complaint in writing with the city attorney. The city attorney shall conduct an initial investigation of the matter. If the city attorney determines that there is reason to believe that a member(s) of the City Council has violated a provision of this Code of Ethics, the city attorney shall report such to the City Council. If a majority of the City Council concurs with the opinion of the city attorney, it shall open an investigation into the matter by directing the city attorney to retain the services of an outside investigator to conduct a more extensive investigation into the alleged violation and to report the findings of the investigation to the City Council. All information compiled, including the grounds for the finding of reasonable cause, shall be shared with the Council member upon completion of the investigation. The City Council, after receipt of the investigation by the city attorney and outside investigator and any additional procedures directed or allowed by the City Council, may adopt, in accordance with the procedures set forth below, a resolution of censure which shall be placed as a matter of record in the minutes of an official City Council meeting. All information pertaining to the case shall be open to public inspection and copying pursuant to the North Carolina public records statutes. If upon investigation, the City Council concludes that a violation of a criminal law may have occurred, it shall refer the matter to the local district attorney.

Should the City Council decide, by three-fourths vote of those present and voting, a quorum being present, that it wishes to proceed further with censure proceedings, it shall call for a hearing, to be held at a regular meeting or at a special meeting convened for that purpose. Notice of the hearing stating its time, place, and purpose shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the jurisdiction. The notice shall be published not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. The hearing shall be advertised on the jurisdiction's website for the same period of time, up to and including the date of the hearing. The notice shall state that a detailed list of the allegations against the Council member is available for public inspection and copying in the office of the City Secretary.

The hearing shall be convened at the time and place specified. The hearing and any deliberations shall be conducted in open session in accordance with the requirements of the North Carolina

open meetings statutes. The accused City Council member shall have the right to have counsel present, to present and cross-examine expert and other witnesses, and to offer evidence, including evidence of bias of any other City Council member or the presiding officer. An audio and/or video tape of the proceedings shall be prepared. Any and all votes during the hearing shall be taken by the ayes and noes and recorded in the Council's minutes.

Once the hearing is concluded, it shall be closed by vote of the board. The presiding officer shall next entertain a motion to adopt a resolution censuring the member based on specified violations of the City's Code of Ethics. Any motion made must be an affirmative one in favor of adopting a non-binding resolution of censure. If the motion or resolution does not state the particular grounds for censure under the Code of Ethics, the presiding officer shall rule it out of order. If a motion to adopt a resolution of censure stating particular grounds under the Code of Ethics has been made, the City Council shall debate the motion. The accused member shall be allowed to participate in the debate, but shall not be allowed to vote on the motion to adopt the resolution of censure. At the conclusion of the debate, the City Council shall vote on the resolution. If the motion to adopt the resolution of censure is approved by a three-fourths vote of those present and voting, a quorum being present, the motion passes and the non-binding resolution of censure is adopted.

The text of the resolution of censure shall be made a part of the minutes of the board. Any recording of the Council's proceedings shall be approved by the City Council as a permanent part of the Council's minutes. The proceedings shall then be considered concluded, the City Council having done all that it legally can with respect to the matter in question.

F. Whistleblower provisions.

(1) It is the policy of the city that city employees shall be encouraged to report verbally or in writing to their supervisor, department head, the city's ethics officer, human resources director, or other appropriate authorities, evidence of activity by a city employee, officer or agent constituting:

- (a) A violation of local, state or federal law, rule or regulation;
- (b) Fraud;
- (c) Misappropriation of city resources;
- (d) Substantial and specific danger to the public health and safety; or
- (e) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

(2) Further, it is the policy of this city that city employees be free of intimidation or harassment when reporting such matters of public concern to the appropriate oversight or enforcement personnel or agency, including offering testimony to or testifying before the same.

(3) No head of any city department, or member of a city board or commission or other city employee, officer or agent exercising supervisory authority shall discharge, or recommend the discharge of, threaten or otherwise discriminate against a city employee, officer or agent regarding the city employee's or officer's compensation, terms, conditions, location, or privileges of employment or otherwise retaliate against the employee, officer or agent because the city

employee, officer, or agent or a person acting on behalf of the employee, officer or agent reports or is about to report, verbally or in writing, any activity described herein, unless the city employee, officer or agent knows or has reason to believe that the report is inaccurate.

(4) No city employee, officer or agent shall retaliate against another city employee, officer or agent because the employee, officer or agent has refused to carry out a directive which may constitute a violation of a local, state or federal law, rule or regulation, or poses a substantial and specific danger to public health and safety.

(5) Notice of the above Whistleblower provisions shall be posted on the Employee Center and on the various city bulletin boards accessed by city employees for work related information.

-END-

Ethics Complaint Procedures

1. Except as otherwise provided herein, a complaint that this policy has been violated may be reported to the Ethics Officer or the Human Resources Director. The Ethics Officer will investigate the complaint, and report the findings to the City Manager for review and additional action if warranted.

In the event a complaint pertains to the City Manager, the investigation will be forwarded to the City Attorney and the City Council. Likewise, if a complaint pertains to the City Attorney, the investigation will be forwarded to the City Manager and City Council.

In the event a complaint pertains to an elected official or an appointed member of a board or commission, the investigation will be conducted by the Ethics Officer and only forwarded to City Council if further action is necessary.

2. No person should knowingly file a false complaint or report of a violation of this policy. All reports of complaints are confidential and there will be no retaliation upon the person reporting the complaint.

Duty to Notify Potential Ethics Policy Conflicts

Any city employee who is aware that he/she may have a potential conflict with this policy in the course of his/her city duties will notify his/her supervisor of the conflict. Once notified, the supervisor will resolve the potential conflict, including but not limited to designating an alternative employee to perform the duty that is involved in the potential conflict. The supervisor should maintain a written copy of actions reported and taken.

Elected officials and members of boards and commissions may seek guidance about potential conflicts with this policy through the City Attorney's office.

Disclosure of Interests by Consultants

It is the responsibility of all consultants providing services to the city to abide by the ethics policy and to disclose any office or directorship held by any city representative, any financial interest held or received by any city representative or his/her immediate family, and any other information known to the consultant about any interest or relationship whatsoever with any city representative. No payment shall be made to the consultants until a signed acknowledgement, and if appropriate, any of the aforementioned disclosures have been received.

Section 2: This Resolution shall become effective upon adoption.

City of Winston-Salem Ethics Policy
Acknowledgment Receipt

I hereby acknowledge that I have received and reviewed a copy of the City of Winston-Salem's Ethics Policy. I further acknowledge my responsibility for adhering to the contents of this policy and understand that I should contact the Ethics Officer in the event I have a question or need clarification.

Printed Name: _____

Title/Position: _____

Department/Board/Commission: _____

Signature: _____

Date: _____