

ORDINANCE 97-5

AN ORDINANCE AMENDING TITLE 1, CHAPTER 7, OF THE BELLE MEADE MUNICIPAL CODE, BY ADDING THERETO SECTION 1-708, A CODE OF ETHICS RELATING TO ALL OFFICERS, EMPLOYEES AND APPOINTEES OF THE CITY OF BELLE MEADE.

BE IT RESOLVED, by the City of Belle Meade, Tennessee, as follow:

Section 1. Title 1, Chapter 7, of the Belle Meade Municipal Code is hereby amended by adding thereto Section 1-708, to read as follows:

"1-708. Code of ethics for municipal officers, employees, and appointees.

Section I. Declaration of Policy.

It is essential to the ethical operation and administration of the City of Belle Meade government for City Board of Commissioners (or, individually, "Commissioner"), its appointees ("Appointees") and employees ("Employees") under the supervision and control Commissioners and of Appointees:

- o To be, and give the appearance of being, independent and impartial,
- o To place, and give the appearance of placing, the public interest above any private interest in their positions of public trust, and
- o To strive to instill confidence in the integrity of Commissioners, Appointees and Employees.

Tennessee law provides various requirements and prohibitions relating to the ethical standards of conduct of public servants; however, those provisions are located in a variety of separate statutes. The complexity and breadth of these statutes, and the fact that there is no readily available codification of them, create a need for a summary explanation of these statutes aimed at ensuring that public servants have a clear understanding of their obligations. The public interest, therefore, is served by the Board of Commissioners providing this Code of Ethics ("Code"), which represents a summary explanation of statutory requirements relating to the ethical standards of conduct of public servants, for the assistance of Commissioners, Appointees, and Employees.

Comment: A conflict of interest exists whenever a Commissioner, Appointee or Employee is in a position in which any official act or action taken by him or her is influenced by considerations of personal gain rather than the general public interest. The fundamental principle on which conflict of interest rules is based is that a public servant occupies a position of public trust and confidence and that he or she should, therefore, conscientiously avoid conflicts of interest.

The principal responsibility for adherence to the Code and to all requirements of the law related to public service rests with the person to whom the Code and state law apply. Thus, the Code gives no consideration to any claim of lack of knowledge or understanding of the Code or the statutes underlying the Code. Whenever clarification is needed as to the applicability of the Code or the statutes underlying the Code, [sic] to a particular course of conduct, the person concerned should consult with his or her own counsel or supervisor. The comments, throughout the Code, do not have the force and effect of provisions of the Code, but should be used as a guide in interpreting the Code.

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Section II. Definitions.

As used in this Code:

- A. "Appointee" means a person appointed by the Mayor or the Board of Commissioners sitting as the governing body of the City of Belle Meade to serve as chairman or member of a Board or Committee under the supervision and control of the Commissioners.
- B. "Benefit" means anything reasonably regarded as pecuniary or economic gain or pecuniary or economic advantage, including benefit to any other person in whose welfare the beneficiary has a direct and Substantial interest.
- C. "Business entity" means a sole proprietorship, corporation, partnership, firm holding company, joint-stock company, receivership, trust, or any other entity recognized by law.
- D. "Confidential information" means any information to which the Commissioner, Appointee or Employee has access in his or her official capacity and which has not been made public or may not be made public.
- E. "Contract" means any lease, claim, account or demand against or agreement with any person, whether express or implied, executed or executory, verbal or in writing.
- F. "City" means the City of Belle Meade.
- G. "Decision" means the exercise of discretion of a Commissioner, Appointee or Employee.
- H. "Employee" means an individual who is under the supervision and control of the Board of Commissioners or of a Commissioner.
- I. "Employment" means any rendering of services for pay.
- J. "First degree" relation means an individual's spouse, parents and children, as well as the spouse of each of these relatives.
- K. "Participate" means to take part in official acts or actions or proceedings as a Commissioner, Appointee or Employee through approval, disapproval, decision, recommendation, investigation, the rendering of advice or the failure to act or perform a duty.
- L. "Person" means an individual, business, labor organization, representative, fiduciary, trust or association.
- M. "Second degree by affinity" relation means those related to an individual in the first degree, as defined above, as well as an individual's grandparents, grandchildren and siblings, as well as the spouse of each of those relatives.
- N. "Substantial interest: means any economic interest of a Commissioner, Appointee or Employee if:
 - 1. the Commissioner, Appointee or Employee owns 2 percent or more of the voting stock or shares of a public business entity, or owns \$5,000 or more of the fair market value of a non-public business entity; has any participating interest, either direct or indirect, by shares, stock, or otherwise, whether or not voting rights are included, in the profits, proceeds, or capital gains of the business entity in excess of 10 percent of them;
 - 2. the Commissioner, Appointee or Employee has an equitable or legal ownership interest in real property with a fair market value of \$2,500 or more.
 - 3. the Commissioner, Appointee or Employee is entitled to a commission or fee arising out of a contractual relationship relating to real property or to a contract which would benefit from the City action;
 - 4. a person related in the first degree to the Commissioner, Appointee or Employee has a Substantial interest in a business entity contract or real property as defined in numbers 1-3 above.

- P. "Third degree by consanguinity relation means an individual's parents, grandparents, great grandparents, children, grandchildren, great grandchildren, siblings uncles, aunts, nieces and nephews, but does not include the spouse of each of these.
- Q. "Transaction" means the conduct of any activity that results in or may result in an official act or action of the City.

Section III. Standards of Conduct.

A. Prohibitions.

1. A Commissioner, Appointee or Employee shall not participate in a vote or decision on a matter involving a business, contract or real property in which the Commissioner, Appointee, or Employee has a Substantial interest if it is reasonably foreseeable that an action on the matter would confer a special economic effect, distinguishable from its effect on the public, on the business, contract or property involved. ⁱ
2. A commissioner, Appointee or Employee shall not solicit, accept or agree to accept any benefit as consideration for any decision, opinion, recommendation, vote or other exercise of discretion as a Commissioner, Appointee or Employee. ⁱⁱ
3. A Commissioner, Appointee or Employee shall not solicit, accept or agree to accept any benefit as consideration for any decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding. ⁱⁱⁱ
4. A Commissioner, Appointee or Employee shall not solicit, accept or agree to accept any benefit as consideration for a violation of a duty imposed by law on the Commissioner, Appointee or Employee. ^{iv}
5. A Commissioner, Appointee or Employee shall not accept any benefit that is a political contribution, if the benefit is offered, conferred, solicited, accepted or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit. ^v
6. A Commissioner, Appointee or Employee who exercises discretion in connection with contracts, purchases, payments, claims or other pecuniary transactions of government, shall not solicit, accept or agree to accept any benefit from a person the Commissioner, Appointee or Employee knows is interested in or likely to become interested in any City contract, purchase, payment, claim or transaction involving the exercise of the discretion of the Commissioner, Appointee or Employee. For purposes of this subsection only, "benefit" does not include the following:
 - a. a fee prescribed by law to be received by the Commissioner, Appointee or Employee or any other benefit to which the Commissioner, Appointee or Employee is lawfully entitled or for which he or she gives legitimate consideration in a capacity other than as a Commissioner, Appointee or Employee;
 - b. a gift or other benefit conferred on account of kinship or on account of a personal, professional or business relationship independent of the Commissioner's, Appointee's or Employee's relationship with the City;
 - c. a benefit consisting of food, lodging, transportation or entertainment accepted as a guest.
 - d. a political contribution as defined by TCA 12-4-101 and TCA 39-16-102 (references in v and vi.) ^{vi}

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7. A Commissioner, Appointee or Employee shall not misapply anything of value belonging to the City. ^{vii}
 8. A Commissioner, Appointee or Employee shall not act as surety for a business that has work, business, or a contract with the City or act as surety on any official bond required of an officer of the City. ^{viii}
 9. A Commissioner, Appointee or Employee shall not disclose confidential information or use confidential information for the purpose of acquiring or helping another to acquire a pecuniary interest in any property, transaction, or enterprise that might be affected by confidential information, or speculate or aid another in speculating on the basis of confidential information. ^{ix}
 10. A Commissioner, Appointee or Employee shall not suspend, terminate the employment or discriminate against a City employee who in good faith reports a violation of the law to an appropriate law enforcement authority, or who reports a violation of this Code, opposes any discriminatory practice, files a complaint, or testifies, assists or participates in any manner in an investigation, proceeding or hearing. ^x
 11. A Commissioner, Appointee or Employee shall not exercise the authority to appoint, elect or hire, whether such authority is granted by statute or delegated, in favor of persons who are related within the second degree by affinity or within the third degree by consanguinity to the Commissioner (See Definitions M and P), Appointee or Employee exercising such authority. Further, Commissioners may not exercise the authority to appoint, elect or hire personnel in favor of a person related to another Commissioner within the second degree by affinity or within the third degree by consanguinity. This provision shall not prevent the retention or advancement of any person who has been continuously employed in his or her position for at least 30 days prior to the election or appointment of the Commissioner, Appointee or Employee related to such person; provided, however, that the Commissioner, Appointee, or Employee related to that person shall not participate in any deliberation, voting or appointment process relating to that person. ^{xi}
 12. A Commissioner, Appointee or Employee shall not knowingly (i) make a false entry in, or false alteration of, a City or other government record; (ii) make, present, or use any record, document or thing with knowledge of its falsity with the intent that it be taken as a genuine City or other government record; (iii) intentionally destroy, conceal, remove or otherwise impair the verity, legibility or availability of a City or other government record; or (iv) possess, sell or offer to sell a City or other government record or form with the intent that it be used unlawfully. ^{xii}
 13. A Commissioner, Appointee or Employee shall not engage in any activity or transaction that at that time is prohibited by any law, now existing or hereafter enacted, which is applicable to the Commissioner, Appointee or Employee by virtue of his or her association with the City.

Comment: This subsection is intended to make clear that it is the responsibility of individual Commissioners, Appointees and Employees to acquaint themselves and comply with all laws made applicable to them because of their official positions.

B. Disclosure Requirements.

1. If a Commissioner has a Substantial interest, as defined in Section II.N., in a business, contract or property on which a special economic effect, distinguishable from its effect on the public, would be conferred by a vote or decision by such Commissioner, the Commissioner may not participate in the consideration of the matter subject to the vote or decision. In addition, such Commissioner shall, before the vote or decision occurs, file with the Clerk or Secretary of the Board of Commissioners an affidavit stating the nature and extent of his or her interest.
2. If an Appointee or Employee has a Substantial interest, as defined in Section II.N., in a business, contract or property on which a special economic effect, distinguishable from its effect on the public, would be conferred by a decision by such Appointee or Employee, such Appointee or Employee shall not participate in the consideration of the matter subject to the decision, and shall disclose such interest to the next succeeding level of authority.
3. An Appointee who is a member of a governing board or commission shall file with the chairman of such board or commission an affidavit stating the nature and extent of his or her interest. Commissioners, Appointees and Employees who have a legal or equitable interest in property that is to be acquired with City funds shall file an affidavit with the City Recorder within 10 days before the date on which the property is to be acquired by purchase or condemnation. The affidavit must be signed and must:
 - a. State the name of the Commissioner, Appointee or Employee;
 - b. State the office, public title, or job designation of the Commissioner, Appointee, or Employee.
 - c. Fully describe the property;
 - d. Fully describe the nature, type and amount of interest in the property;
 - e. Include a verification, as follows: "I swear that the information in this affidavit is personally known by me to be correct" and a jurat.^{xiii}
4. Commissioners shall annually file a verified disclosure statement with the City Attorney on a form prescribed by the City Attorney, disclosing the information specified below relating to the Commissioner's financial activity and the financial activity of the Commissioner's spouse and dependent children if the Commissioner had actual control over that activity for the preceding year. For purposes of this disclosure statement, the following information provides determinations as to a Commissioner's Substantial interest in a business entity.
5. When a dollar amount is required to be reported by category, the Commissioner shall report whether the amount is (i) less than \$1,000, (ii) at least \$1,000 but less than \$5,000, or (iii) \$5,000 or more. The account of financial activity shall consist of:
 - a. a list of all sources of occupational income, identified by employer, or if self-employed, by the nature of the occupation.
 - b. identification of any person, business entity, or other organization from which the Commissioner or a business in which the Commissioner has a Substantial interest as defined below received a fee as a retainer for a claim on future services in case of need, as opposed to a fee for services on a matter specified at the time of contracting for or receiving the fee, whenever professional or occupational services were not actually performed during the reporting period equal to or in excess of the amount of the retainer, the category of the amount of the fee;

- c. identification by name and category of the number of shares of stock of any business entity held or acquired which represents a holding of 2% or more, and, if sold, the category of the amount of net gain or loss realized from the sale;
- d. identification of each person or financial institution to whom a personal note or notes for a total financial liability in excess of \$1,000 existed at any time during the year, and the category of the amount of the liability;
- e. identification by description of all beneficial interest in real property and business entities held or acquired, with such description including the number of lots or acres, as applicable, in the City of Belle Meade, and, if any beneficial interest in real property is sold or transferred, the date sold or transferred, to whom sold or transferred, the category of the amount of the net gain or loss realized from the sale, the purpose of the transfer and the value at the time of transfer;
- f. identification of any person, business entity, or other organization from which the Commissioner or the Commissioner's spouse or dependent children received a gift of money or property in excess of \$250 in value or a series of gifts of money or property, the total of which exceeds \$250 in value received from the same source, except campaign contributions that were reported as required by law;
- i. Identification of the source and the category of the amount of all income received as beneficiary of a trust and identification of each asset, if known to the beneficiary, from which income was received by the beneficiary in excess of \$500;
- g. identification by description and category of the amount of all assets and liabilities of any corporation in which 51 percent or more of the outstanding stock was held, acquired, or sold; if the value is in excess of \$25,000; and
- h. a list of all boards of directors both profit and non-profit of which the Commissioner is a member, and executive positions that the person holds in corporations, firms, partnerships, and proprietorships, stating the name of each corporation, firm, partnership, or proprietorship and the position held, and
- i. a list of all entities of which the Commissioner serves as an elected officer.^{xiv}

Section IV. Penalties for Violation of Standards of Conduct.

Appointees and Employees found to have violated this Code are subject to official reprimand, suspension or dismissal from appointment or employment. Commissioners, Appointees and Employees are subject to penalties provided for by statute for any violations of those statutes.

Friday, June 13, 1997

ⁱ Source: TCA 12-4-101

Comment: An offense under this section is a Class A misdemeanor. References to statutory sources in the Code are not intended to imply incorporation into the Code of the referenced statute. Specifically, civil and criminal penalties provided by such statutes are independent of the Code. Further, procedural processes required by such statutes, including evidentiary standards, are not incorporated in the Code. The statutory source and comments on certain statutory penalties are provided only to advise persons to whom the Code: is applicable of substantially similar statutes, which provide other penalties and remedies in the event of a violation.

ⁱⁱ Source: TCA 39-16-104

Comment: An offense under this section is a second degree felony. It is no defense to prosecution that the benefit is not offered or conferred, solicited or accepted until after the exercise of discretion has occurred or the Commissioner, Appointee or Employee has ceased to hold the position of authority. See the definition of "benefit: at Section II.B.

ⁱⁱⁱ Source: TCA 39-16-102

Comment: An offense is a second degree felony. It is no defense to prosecution that the benefit is not offered or conferred, solicited or accepted until after the exercise of discretion has occurred or the Commissioner, Appointee or Employee has ceased to hold the position of authority. See the definition of "benefit" at Section II.B.

^{iv} Source: TCA 39-16-402

Comment: An offense is a second degree felony. It is no defense to prosecution that the benefit is not offered or conferred, solicited or accepted until after the exercise of discretion has occurred or the Commissioner, Appointee or Employee has ceased to hold the position of authority. See the Definition of "Benefit: at Section II.B.

^v Source: TCA 12-4-101; 39-16-102

Comment: An offense is a second degree felony. It is no defense to prosecution that the benefit is not offered or conferred, solicited or accepted until after the exercise of discretion has occurred or the Commissioner, Appointee or Employee has ceased to hold the position of authority.

^{vi} Source: TCA 12-4-101

Comment: An offense is a Class A misdemeanor. See the definition of "Benefit" at Section II.B.

^{vii} Source: TCA 39-14-103

Comment: An offense under this section is a misdemeanor or a felony as determined by the value of the thing misapplied.

^{viii} Source: TCA 9-19-108

^{ix} Source: TCA 39-16-404

Comment: An offense is a third degree felony. See the definition of "confidential information:" at Section II.D.

^x Source: TCA 50-1-304.

^{xi} Source: TCA 8-31-101; 8-31-107 (State nepotism policy.)

^{xii} Source: TCA 39-16-402

Comment: A violation of this section is a Class A misdemeanor unless the intent to defraud or harm is proved, in which the case the offense is a second or third degree felony.

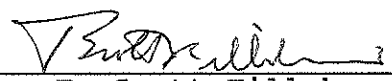
^{xiii} See "Affidavit of Substantial Interest" form.


^{xiv} Source: TCA 8-50-502

Comment: Knowingly failing to file the required statement is a misdemeanor. If the City Attorney determines a report is late, the Commissioner responsible for filing the report is civilly liable to the City for \$100.

Passed on first reading
06/19/97

Passed on second reading
07/16/97



Mayor T. Scott Fillebrown


City Recorder Dorothy L. McEwen