

AN ORDINANCE ESTABLISHING STANDARDS OF CONDUCT
OF OFFICERS AND EMPLOYEES ON THE SUBJECT OF
CONFLICT OF INTEREST.

Citation Conflict of Interest Ordinance

The purpose of this Ordinance is to establish standards of
conduct of elected officials, officers and employees of this Municipality:

SECTION 1. Definitions.

As used in this Ordinance:

- (A) "Governmental Agency" shall include any member of Council, office, department, authority, post, commission, committee, institution or board created by law to exercise some sovereign power or to perform some duty of local government, other than purely advisory powers or duties.
- (B) "Advisory Agency" shall include any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.
- (C) "Contract" shall include:
 - (1) Any agreement to which a government agency is a party;
 - (2) Any agreement on behalf of a governmental agency, which

involves the payment of moneys appropriated to such governmental agency, even though such agreement be procured or executed in the name of this Municipality, or some political subdivision thereof, of which the governmental agency affected is a component part.

- (D) "Officer" shall include any person appointed or elected to any governmental or advisory agency, and who shall be deemed an officer of such agency, whether or not such person receives compensation or other emolument of office.
- (E) "Employee" shall include all persons employed by any governmental or advisory agency.
- (F) "Material Financial Interest" shall include a personal and pecuniary interest accruing to an officer or employee or to his spouse or to any other relative who resides in the same household. Notwithstanding the foregoing:
 - (1) Ownership of an interest of five percent or more in a firm, partnership or other business, aggregate annual income, exclusive of dividend income and interest income, of five thousand dollars or more from a firm, partnership or other business shall be deemed to be a material financial interest in such firm, partnership or other business;
 - (2) Ownership of an interest of less than five percent in a firm, partnership or other business, or aggregate annual income, exclusive of dividend income and interest income, of less than five thousand dollars, from a firm, partnership or other business shall be deemed not to be a material interest in such firm, partnership or other business;
 - (3) For the purposes of Section 2 only, employment by, ownership of, an interest in, or service on the board of directors of public service corporations, financial institutions or companies furnishing public utilities to governmental agencies

shall not be deemed to be a material financial interest within the meaning of this chapter;

(4) The employment by the same governmental agency of an officer or employee and spouse or any other relative residing in the same household shall not be deemed to create a material financial interest except when one of such persons is employed in a direct supervisory and/or administrative position with respect to such spouse or other relative residing in his household and the annual salary of such subordinate is ten thousand dollars or more.

SECTION 2. Certain Contracts, Sales, Purchases, etc., Forbidden.

(a) No officer or employee of any governmental agency shall:

- (1) Be a contractor or subcontractor with the governmental agency of which he is an officer or employee, other than in his contract of employment, or have a material financial interest in any contract or subcontract with the governmental agency of which he is an officer or employee, and the fact that any such contract or subcontract is let after competitive bidding or by negotiation shall be irrelevant; or
- (2) Be a contractor or subcontractor with any governmental agency other than the governmental agency of which he is an officer or employee, or have a material financial interest in any contract or subcontract other than a contract of salaried employment with any governmental agency other than the governmental agency of which he is an officer or employee, unless written disclosure of the existence of the interest of such officer or employee be made in advance, both to the governmental agency of which he is an officer or employee and to the governmental agency with which such contract or subcontract is proposed to be made, and either (i) such contract be let after competitive bidding, or (ii) such contract be for property or services which, in the judgment of the governing body or administrative head of the governmental agency, made in writing and as a matter of

public record, in the public interest should not be acquired through competitive bidding; or

- (3) Be a purchaser at any sale made by him in his official capacity or by the governmental agency of which he is an officer or employee, except in respect to the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule; or
 - (4) Solicit or accept money or other thing of value in addition to compensation, expenses or other remuneration paid directly to him or approved for him by the governmental agency of which he is an officer or employee for services performed within the scope of his official duties.
- (b) The provisions of paragraphs (1) and (2) of subsection (a) of this section shall not be applicable:
- (1) To the sale, lease or exchange of real property between an officer or employee and a governmental agency provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of such governmental agency or by the administrative head thereof; or
 - (2) To the publication of official notices; or
 - (3) To officers or employees whose sole interest in a contract or subcontract with the governmental agency is by reason of employment by the contracting firm, partnership or other business, unless such officer or employee participates, or has authority to participate, in the procurement or the letting of such contract, in which event the provisions of such paragraphs shall be applicable; or
 - (4) To officers or employees of local governments when (i) the contract is with a governmental agency not connected directly with or a part of the local governmental unit which the officer or employee serves and (ii) no part of the contract is to be performed and no delivery of goods is to be made within the jurisdiction of the local government which the officer or employee serves; or

- (5) To an employee of a governmental agency whose duties are nonsupervisory and who does not on behalf of such agency participate in or have authority to participate in the procurement or letting of the contract or subcontract or in any manner effect the approval or disapproval of its performance, and provided, further, that the employee's interest in the contract or subcontract is disclosed in writing to such agency in advance; or
- (6) To contracts between the government and an officer or employee of that government when the total of such contracts between the government and the officer or employee of that government or a business controlled by him does not exceed ten thousand dollars per year or such amount exceeds ten thousand dollars and is less than twenty-five thousand dollars but results from contracts arising from awards made on a sealed bid basis and such officer or employee has made disclosure as provided for in subsection (a) (2) hereof.

SECTION 3. Invalidation of Contracts; Rescission of Sales.

- (a) Any contract made in violation of Section (1) or (2) may be declared void by the governing body of the contracting or selling governmental agency within five years of the date of such contract, and the contractor or subcontractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided.
- (b) Any sale made in violation of Section 3 may be rescinded by the governing body of the selling governmental agency within five years of the date of such sale.

SECTION 4. Offering or Accepting Anything of Value for Obtaining Appointment, etc.; Disclosure of Information; Acceptance of Gift or Favor.

No officer or employee of any governmental agency or advisory agency shall:

- (a) Offer or accept money or anything of value for or in consideration

of obtaining an appointment, promotion or privilege with any governmental agency or with any advisory agency; or

- (b) Disclose to any person not entitled thereto, information gained by virtue of his office or employment, nor otherwise use such information for his personal gain or benefit; or
- (c) Accept any gift, favor or service that might reasonably tend to influence him in the discharge of his duties.

SECTION 5. Disclosure of Material Financial Interest in Official Transaction Required; Rescission of Action Taken in Violation of Section; Right of Members of Local Governing Body to Participate in Certain Cases.

Any officer or employee of any governmental agency or advisory agency who knows, or may reasonably be expected to know, that he has a material financial interest in any transaction, not of general application, in which the agency of which he is an officer or employee is or may be in any way concerned, shall disclose such interest to the governing board thereof, and disqualify himself from voting thereon or participating in any consideration thereof in behalf of such agency. If disqualifications in accordance with this section leave less than the number required by law to act, the remaining member or members shall have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members. Notwithstanding any other provisions of this chapter to the contrary, members of a local governing body whose sole interest in any proposed contract of sale, sale, exchange, lease, or conveyance is by virtue of their employment by a firm, partnership, or other business involved in a proposed contract of sale, sale, exchange, lease or conveyance, and where such member's or members' vote is essential to a constitutional majority required pursuant to Article VII Section 9 of the Constitution of Virginia and Section 15.1-307 of the Code of Virginia, such member or members of the local governing body may vote and participate in the deliberations of said governing body concerning whether to approve, enter into or execute such contract of sale, sale, exchange,

lease or conveyance, unless such member or members of the governing body own an interest of five per centum or more in such firm, partnership, or other business. Official action taken under circumstances which violate this section may be rescinded by the agency on such terms as the interests of the agency and innocent third parties require.

SECTION 6. Disclosure of Material Financial Interest in Action of Governmental or Advisory Agency Required.

Any officer or employee who has a material financial interest which he believes or has reason to believe may be substantially affected by actions of the governmental or advisory agency of which he is an officer or employee shall make written disclosure of the existence of such interest. The disclosures shall be made in writing to the Attorney for the Municipality if he be an officer or employee of an agency of local government; such disclosures shall be made thereafter during the month of January of each succeeding year. All such disclosures shall be a matter of public record. The disclosures required by this section shall also be made in writing to the agency of which the individual is an officer or employee.

SECTION 7. Disclosure of Real Estate Holdings.

In all counties, cities and towns with populations in excess of thirty-five hundred persons, members of boards of supervisors, city and town councils, planning commissions, boards of zoning appeal, and real estate assessors, county managers or executives and city or town managers and their immediate families (or spouse or any other relative who resides in the same household) shall make annual disclosures of all their real estate interests or holdings in the county, city or town from which they are elected or by which they are employed, as well as their holdings in any corporation, partnership or any other business association or entity whose primary purpose is to own or develop real estate and which has real estate interests in such county, city or town. Such annual disclosures shall be filed on forms designed and provided by the Secretary of the Commonwealth with the clerk of the circuit court for such county, city or town in the month of December of each year and shall

become a matter of public record. Forms for the filing of such reports shall be made available by the Secretary of the Commonwealth to the Clerk of each circuit court. Such forms shall be filed, and a copy thereof filed with the State Board of Elections, by primary candidates not later than ten days after the filing deadline for the primary; by all other candidates for city and town councils not later than ten days after the first Tuesday in March; by all other candidates for county governing bodies not later than ten days after the second Tuesday in June; and by candidates in special elections by the time of qualifying as a candidate; unless such forms have been filed in accordance with these provisions for an incumbent officeholder. Any such incumbent officeholder who is a candidate shall, however, file with the State Board of Elections by the date specified in this paragraph for other candidates for his office a copy of the form he filed with the clerk of the circuit court in the immediately preceding December. Any candidate failing to file such report and a copy thereof in accordance with the provisions of this section shall not be entitled to have his name printed on the ballot.

SECTION 8. Violation of Chapter as Malfesance in Office or Employment and Misdemeanor.

Any officer or employee who willfully violates any of the foregoing provisions of this chapter shall be guilty of malfesance in office or employment. Any officer, employee or public official who willfully violates any such provisions shall be guilty of a misdemeanor, and upon conviction thereof, shall, in addition to any other fine or penalty provided by law, forfeit his office or employment. Where the violation of this chapter relates to failure by the person to make the disclosures required by Section 6 or Section 7, no official act performed by him prior to a conviction under this section shall be deemed invalid. (1970, c. 463; 1976, c. 593; 1978, c. 847.)