



**City of Gainesville
Clerk of the Commission
Office of the City Commission**

PO Box 490, Station 19
Gainesville, FL 32627-0490
200 E. University Avenue
P: (352) 334-5015
F: (352) 334-2036

City of Gainesville Policy Program Preliminary Research & Analysis

190503

TOPIC: Commission Ethics Guidelines
PREPARED BY: Sophia Corugedo, Research & Prototyping Intern
DATE: September 5, 2019
REQUESTED BY: Commissioner Ward

EXECUTIVE SUMMARY

Gainesville's City Commissioners are currently provided some material on ethics and guidelines for their roles and time in office. The following research details further potential guidelines and information for an ethics ordinance to be applied to elected and sitting commissioners so they have **standards by which to be held accountable**. Such guidelines may include:

- Attendance requirements
- General conduct requirements
- An enforceability mechanism in the event of violations

Upon reviewing other cities both within Florida and across the United States which have a general Code of Ethics, or one specific to public officials, the following similarities can be observed:

- **Most establish a Board of Ethics** or an Ethics Officer to oversee this area.¹
- The members of the Boards of Ethics are typically uncompensated, and the City/County allocates fiscal resources for basics such as equipment and other business needs. In some cases, members may be reimbursed for all necessary and reasonable expenses incurred in the performance of their duties.
- In most cases the Board of Ethics is independent to the City, although there are some Joint Boards between Cities and their respective Counties.
- There are penalties and/or sanctions for violations of the Ethics Codes. Violations are often addressed by the Board of Ethics.
- There are common guidelines and standards of conduct including, but not limited to, the use of city resources, conflicts of interest, and public official best practices.

¹ Some are also called Commissions on Ethics

- **Education** is a key component of these ordinances. Public officials must attend an Ethics training or retreat, or otherwise formally acknowledge awareness, understanding, and support of the local Code of Ethics.

HISTORY/BACKGROUND INFORMATION

While other counties in the State of Florida have passed stricter ethics guidelines and procedures for sitting and elected officials, Gainesville and Alachua County have not. At the state level, Florida not only has a Commission on Ethics,² but also a complete code of ethics for public officers and employees.

State of Florida

State law establishes a “Code of Ethics for Public Officers and Employees,”³ for current local government officials, including any person elected or appointed to hold office in any agency, or serving on an advisory board. When specified, a section may also apply to candidates for elected office.⁴

Standards of Conduct

Public officers or candidates for nomination or election **shall not**:

- Solicit or accept gifts;
- Accept unauthorized compensation;
- Do business with his or her own agency. For instance, while acting in an official capacity, a City Commissioner is not allowed to directly or indirectly purchase, rent, or lease any realty, goods, or services from any business entity of which they or their spouse or child is connected to, or even just has a material interest;
- Misuse their position for corrupt purposes;
- Have an employment or contractual relationship with an agency or business entity with which they are doing business and thus cause a conflict of interest, provided it does not fall within given exceptions;⁵
- Disclose or use information that was both gained as a reason of their position, except for that information which relates to governmental practices, and that is not available to the public for their personal benefit or that of any person or business entity.

Post-employment conduct is addressed for state legislators, which could be modified for a city or county level and thus apply to local public officials who are no longer in office. That section states that no member of the Legislature, appointed state officer, or statewide elected officer shall:

² <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=201971>

³ http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0112/0112PARTIIIContentsIndex.html

⁴ Defined as persons who have filed a statement of financial interest and qualifications papers, have subscribed to the candidate’s oath as required by state statute 99.021, and seek by election to become a public officer.

⁵ http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0112/Sections/0112.313.html

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- Personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office.
- Personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.
- For a period of 2 years following vacation of office, act as a lobbyist for compensation before an executive branch agency, agency official, or employee.

Ethics Training

All “constitutional officers,” which includes county commissioners and elected municipal officers, are **required to complete 4 hours of ethics training each year**.⁶ The state ethics commission sets the curriculum for these trainings, which must be completed as close as possible to the date an official assumes office. These classes are available both online and in person.

Commission on Ethics

The state Commission on Ethics serves as a guardian of the standards of conduct for the employees and officers of a city or county. Their Guide Booklet⁷ details the ethical standards and guidelines outlined in the Florida State Statutes with some additional rules. These include legislators lobbying state agencies, employees holding office, professional and occupational licensing board members, and voting conflicts of interest.

- Function:
 - An independent commission responsible for **investigating and issuing public reports on complaints** of breach of the public trust by public officers and employees. The Commission also renders legally binding **advisory opinions** interpreting the ethics laws and implements the State's financial disclosure laws.
 - The Commission, by majority vote, interprets and applies Florida's ethics laws by acting on complaints, recommending penalties, and issuing legal opinions.
- Members:
 - Nine members serving two-year terms.
 - Five are appointed by the governor.
 - Two members are appointed by the President of the Senate and two members by the Speaker of the House of Representatives.
- Complaints
 - The Commission on Ethics cannot conduct investigations of alleged violations of the Sunshine Amendment or the Code of Ethics unless a person **files a sworn complaint** with the Commission alleging such a violation has occurred, or a referral is otherwise received.
- Complaint Process

⁶ http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0112/Sections/0112.3142.html

⁷ <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=201971>

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- Complaints which allege a matter within the Commission’s jurisdiction are assigned a tracking number and a Commission staff forwards a copy of the original sworn complaint to the accused within five days of its receipt.
- Once a complaint is filed, it goes through **three procedural stages** under the Commission’s rules.
 1. First is a determination of whether the allegations of the complaint are legally sufficient and **whether they indicate a possible violation** of any law over which the Commission has jurisdiction.
 - a. If the complaint is found not to be legally sufficient, the Commission will order that the complaint be dismissed without investigation, and all records relating to the complaint will be made public at that time.
 - b. In cases of very minor financial disclosure violations, the official will be allowed an opportunity to correct or amend his or her disclosure form. Otherwise, if the complaint is found to be legally sufficient, a preliminary investigation will take place by the staff of the Commission.
 2. The second stage involves the **preliminary investigation and a decision** by the Commission as to whether there is probable cause to believe that there has been a violation of any ethics laws.
 - a. If the Commission finds no probable cause to believe there has been a violation of the ethics laws, the complaint will be dismissed and will become a matter of public record.
 - b. If the Commission finds probable cause to believe there has been a violation of the ethics laws, the complaint becomes public and usually enters the third stage of proceedings.
 3. The third stage requires the Commission to decide whether the law was actually violated and, if so, whether a **penalty** should be recommended.
 - a. At this stage, the accused has the right to request a public hearing (trial) at which evidence is presented, or the Commission may order that such a hearing be held.
- When the Commission concludes that a violation has been committed, it issues a public report of its findings and may recommend one or more penalties to the appropriate disciplinary body or official.

Alachua County

As of 2012, Alachua County was one of the few counties in the state to not update their ethics policies beyond the existing state law. County Attorney at the time, David Wagner, indicated that the lack of corruption in the county was the reason for an absence of discussions about amplifying state ethics laws.⁸ He attributed the transparency in part to the integrity of the people who would run for the commission, his open-door policy wherein commissioners and employees could ask about gifts and voting conflicts, and how the commissioners’ emails were available for public view.

⁸ <https://www.gainesville.com/article/LK/20121208/News/604158958/GS/>

At the time, the area where Alachua County enacted restrictions stricter than the state was in campaign finance by restricting each candidate to only \$250 per donation in contribution limits for the primary and general elections. This was done in an effort to reduce the influence of money in campaigns and aid in the overall effort of **keeping the local government free from corruption concerns.**

City of Gainesville

The City of Gainesville currently lacks any official Code of Ethics or Ethics Commission. For any allegations of financial waste or harassment, there are current Officers outlined in the City Charter which handle such cases.

City Internal Auditor

The City Auditor is tasked with assisting the commission in all of its accountability functions.⁹ Additionally, they perform financial and compliance audits, specifically on the implementation of the city's human relations and equal opportunity ordinances.

Equal Opportunity Director

The Equal Opportunity Director is tasked with investigating complaints of discrimination, harassment, retaliation and other related matters. They then propose remedial action as prescribed by the respective equal opportunity ordinance. They are in charge of reviewing all proposed changes to current or proposed city employment policies, purchasing policies and other guidelines for compliance with equal opportunity laws and related matters.

Should the City of Gainesville adopt a Code of Ethics that includes the creation of a Board of Ethics, the Board should not encroach on the responsibilities of these Charter Officers. The Board should assume jurisdiction **only** over matters that fall **in the Code of Ethics**, including but not limited to public officers:

- Promising appointment or favors
- Using their position or office to obtain any advantage or privilege
- Disclosing information gained by course of their position

A Board of Ethics could directly govern and review any direct violations of the City's Code of Ethics, investigate them and make recommendations to the local governing body (the City Commission and Mayor, or County Commission and Mayor depending on the Board). Any applicable penalties would be imposed by the local governing body under which the Board of Ethics exists. In the event that an ethical violation is not included in the local Code of Ethics, nor in the jurisdiction of review by the Auditor or Equal Opportunity Director, the matter would be referred to the State of Florida Commission on Ethics.

⁹https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=PTICHLA_ARTIIIAD_3.05CII_NAU

PRELIMINARY RESEARCH AND FINDINGS

There are **some commonalities among cities with their own Ethics Codes**. The cities described below all include some combination of the following for City public officials and employees:

- i. Disclosure of interests
 - i. Commissioners must file a statement of interest upon election
 - ii. Commissioners must disclose personal interests before a vote to avoid a conflict of interests on political actions.
- ii. Political activity
 - i. No elected official shall use city resources to engage in political activity
 - ii. No elected officials or employees on duty shall actively try to influence the campaign of someone seeking elective office.
 - iii. No elected officials shall **promise** any appointment or favor as a reward for any political activity
- iii. Standards of conduct
 - i. No public officer may use their position or office to obtain any advantage or privilege.
 - ii. No public officer may give an incumbent anything of value that could **influence** any official action or judgement, provided given exceptions.
 - iii. No public officer may **disclose information** gained by their position if it may result in receipt of anything of value or cause a conflict of interest.
- iv. Penalties and violations
 - i. The Code is typically **enforced by the City or County Commission on Ethics**, and thus any violations are heard by them and they deem the actions necessary
 - ii. The State Commission on Ethics heard cases when no local Ethics Commission existed where the violation took place.
 - iii. The City Commission or Council may also make a decision regarding penalties and violations by voting on the matter
 - iv. The local Code outlines penalties for public officers who have violated the Code of Ethics, otherwise the Code cites State Statutes for penalties.
- v. Ethics education
 - i. The State requires at least four hours of Ethics Training upon appointment. Cities enforce this and in some cases require regular retreats or outside trainings for public officers.

County Commissions on Ethics

Some counties have established Commissions on Ethics which maintain jurisdiction over county government and all of their local municipalities.

Palm Beach County, Florida

Palm Beach County has a Code of Ethics¹⁰ enforced by a Commission on Ethics¹¹ with jurisdiction over all 38 municipalities within its borders. Any person or entity subject to a complaint to the county's Commission on Ethics may also be subject to a separate complaint to the state commission on ethics or in accordance with a municipality's ethics ordinance. A finding by the county's commission on ethics is **not binding on the state** and may not be binding on the municipality, depending on the nature of the complaint and whether the municipality's ethics ordinance is more restrictive than the countywide ethics code. The Code covers:

- i. Membership, qualifications, terms, vacancies
 - i. The Commission on Ethics is composed of five members appointed by various presidents of local associations and universities, each serving staggered terms of four years
- ii. Powers and duties
 - i. Review, interpret, render advisory opinions and enforce the Countywide Code of Ethics, County Post-employment Ordinance; and the County Lobbyist Registration Ordinance.
 - ii. The Commission on Ethics shall serve with one (1) delegate each from the state attorney's office and public defender's office for the Fifteenth Judicial Circuit as the inspector general committee and carry out designated duties.
 - iii. Report **and make recommendations to the board of county commissioners and municipal elected officials** as it deems appropriate.
 - iv. Develop and deliver **ethics training and outreach programs** for the benefit of county and municipal employees and officials, county and municipal vendors, nonprofit corporations, and other entities that do business with or are regulated by the county or the municipalities located within the county.
 - v. Recommend as needed that the board enter into **agreements** with other entities to provide such training and outreach programs to be administered by the commission on ethics
- iii. Financial support for the commission
 - i. The commission on ethics shall establish a fiscal year which coincides with that of the county. Pursuant to its annual budget process, the county shall provide sufficient financial support for the commission on ethics to fulfill its duties as set forth in this division.
- iv. Procedure on complaints filed
 - i. Filed complaints are found legally sufficient when they include and provide stated requirements such as being in writing and either be signed under oath or be sworn to by the person filing the complaining before a notary public. A preliminary investigation will begin upon a legal sufficiency finding.
 - ii. Investigations shall be conducted by commission on ethics staff, and the commission on ethics shall select **counsel** to advise the commission on ethics.

¹⁰ http://www.palmbeachcountyethics.com/pdf/Code_of_Ethics_Ordinance-effective_9-22-2015.pdf

¹¹ http://www.palmbeachcountyethics.com/pdf/Commission_on_Ethics_Ordinance-effective_9-22-15.pdf

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- iii. The code goes into detail about regulations on **subpoenas** and **motions** such as that the commission on ethics shall be empowered to subpoena and investigate, and all motions shall be in writing and fully state the actions requested and the grounds relied upon.
- v. Public hearing procedures
 - i. After finding a probable cause, a respondent is entitled to a public hearing on the complaint.
 - ii. There are options for the respondent to elect a hearing officer from varying state and county associations, provided they fall under stated requirements and abide by established rules and conditions
 - iii. The code covers governance for transcripts of the proceedings, proposed public reports, motions to dismiss filed by the advocate, and public order imposing penalties.

Municipalities within Palm Beach County may have their own Code of Ethics. For example:

Boca Raton, FL

Boca Raton’s Code of Ethics¹² applies to all municipal officials, employees, and members of appointed boards, salaried or not. The code covers the following main points:

- i. No official or employee shall pursue personal use of city property for personal convenience or profit, with given exceptions such as official business purposes
- ii. No official or employee shall grant any special treatment, consideration or advantage to any citizen beyond that available to every other citizen.
- iii. No elected official, employee, or member of an appointive board of the City shall;
 - i. Be prohibited from participation in any non-municipal election
 - ii. Promise an appointment to any municipal position as a reward for any political activity
 - iii. Take an active part in a municipal political campaign
- iv. **Violations** of this article shall raise concerns for voluntary resignation, or constitute a cause for suspension, removal from office, or employment or other disciplinary action by the Florida Commission on Ethics or The Palm Beach County Commission on Ethics.
- v. The procedures for requests for advisory opinions include making requests by the City Attorney that contain identification of the official or employee on whose behalf the request is being made, and submitting them to either the Florida Commission on Ethics or the Palm Beach County Commission on Ethics.
- vi. Conditions/requirements for outside attorneys for ethics matters

Broward County, FL

Broward County has a Code of Ethics which¹³ is applicable to all elected officials and government employees at the city and county level.¹⁴ Main points of the code include governance over standards

¹²https://library.municode.com/fl/boca_raton/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTV_COET

¹³https://library.municode.com/fl/broward_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH1AD_ARTIIBOCOCO_S1-19COETELOF

¹⁴<https://www.sun-sentinel.com/local/broward/fl-ethics-code-rewrite-20151208-story.html>

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of conduct, acceptance of gifts, outside/concurrent employment, solicitation and receipt of contributions, campaign contribution fundraising, financial disclosure, advisory opinions, and training and education. Broward County had an Ethics Commission with eleven members, each appointed by one County Commissioner from their respective districts and two members appointed by The Broward League of Cities. Upon the adoption of the Code of Ethics on August 10, 2010¹⁵ by the Broward County Commission, however, the Ethics Commission ceased to exist. Now violations at the city and county level are referred to the State Commission on Ethics.

Municipalities within Broward County may have their own Code of Ethics. For example:

Coral Springs, FL

Coral Springs has a Code of Ethics¹⁶ for Public Officers which intends to strengthen the quality of representative government through ethical principles that govern the conduct of the City's elected and appointed officials. The code supplements Florida State Statutes governing ethics, and upon appointment all elected officials should submit a signed statement acknowledging that they have read, understand, and agree to be bound to the Coral Springs Code of Ethics for Public Officers. The majority of the Code covers **standards of conduct**, with major points being:

- i. Core values and leadership by example
- ii. **Empowerment** attitude through having the right mindset/orientation
- iii. Customer focus and involvement by **encouraging volunteerism** and action,
- iv. Continuous improvement through education and personal growth
- v. Concepts, functions, ideals and more to which all public officials shall pledge themselves. Some of these include the concepts of effective and democratic local government, keeping the community informed on the affairs of city government, and to not misuse the office or position.
- vi. Newly elected officials must attend and successfully complete the Institute for Elected Municipal officials, or similar, and receive a structural orientation on city government within ten days of the oath of office.
- vii. On an annual basis, members of the city commission shall attend at least one **strategic planning retreat** and at least two commission retreats
- viii. Violations of the Code of Ethics shall be grounds for suspension or removal from office pursuant to applicable statute and local ordinance procedures, and subject to censure by a four-fifths vote of the city commission.

Joint City - County Commission on Ethics

Some cities and counties have collaborated to create joint Commissions on Ethics that share responsibility and oversight.

¹⁵ <http://www.broward.org/Intergovernmental/Pages/EthicsCommission.aspx>

¹⁶ https://library.municode.com/fl/coral_springs/codes/code_of_ordinances?nodeId=PTIICO_CH2AD_ARTIIC_OET

Cities of Nelson County & Nelson County, Kentucky

The Cities of Bardstown, Fairfield, and Nelson, Kentucky, have a Joint Ethics Board with Nelson County. The Board is made up of five members appointed by the Cities and the County in which the county has one appointee, the City of Bardstown has one appointee, the County and the City of Bardstown have two appointees jointly, and the City of Fairfield has one appointee. Throughout their three year terms, members of the board meet on an as-needed basis to advise the councils on issues regarding professional ethics of city employees, officers, candidates, and elected officials.¹⁷ The Joint Ethics Board (1) receives and investigates complaints, (2) holds hearings, and (3) makes determinations with regard to alleged violations of the Code of Ethics.

Nelson County passed an ordinance in 1995 establishing a single **Joint Code of Ethical Conduct** applicable to all elected and appointed officials in the Cities of Nelson County.¹⁸ Main points of the Code are:

- i. Standards of Conduct in that no officer or employee of the city or county shall use their position to secure privileges, advantages, or financial gains and benefits.
- ii. Rules stating that no officer or employee shall accept gifts under circumstances where it could be inferred that the gift was intended to influence the officer or employee.
- iii. No officer or employee shall use any city/county funds, personnel, equipment and so forth for their private use with given exceptions.
- iv. No officer or employee shall intentionally use or disclose information acquired in the course of his or her official duties if the purpose is to further his or her personal financial interest.
- v. No officer or employee shall accept any compensation or gift with a value greater than \$100 unless it is unrelated to the officer or employee's service. There are given exceptions.
- vi. Classes of officers and employees must file an annual statement of financial interests with the Board of Ethics
- vii. Enforcement of the Code is carried out by the Board of Ethics which has five members who shall be appointed by the executive authority of each city and the county. Members serve three year terms except for varying terms for the initial members of the board. Meetings of the Board of Ethics are held, as necessary, upon the call of the chairperson or at the written request of a majority of the members.
- viii. Funding
 - i. Members of the Board of Ethics serve **without compensation**. However, members shall be reimbursed for all necessary and reasonable expenses incurred in the performance of their duties.
 - ii. Any expenses incurred in conducting the business of the Board is to be divided among the three governments with a given formula (Nelson County – 75.38%; Bardstown – 23.58%; and Fairfield – 1.04%)
 - iii. Within the limits of the funds appropriated by the annual budget, the city/county shall provide the Board of Ethics with the facilities, materials, supplies and staff needed for the conduct of its business.
- ix. **Powers and Duties of the Board of Ethics**

¹⁷ http://www.cityofbardstown.org/government/boards_and_committees/index.php

¹⁸ <http://nelsoncountky.com/wp-content/Ordinances/Ethics%20ordinance%20150.102-2%20Bk%2035%20Pg%20213.pdf>

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- i. To initiate on its own motion, receive and investigate complaints, hold hearings, and make findings of fact and determinations with regard to alleged violations of the provisions of this ordinance.
 - ii. To refer any information concerning violations of this ordinance to the executive authority of the city/county or appropriate persons as necessary.
 - iii. To control and maintain all statements of financial interests that are required to be filed and to insure that the statements are available for public inspection.
 - iv. To develop and submit any reports regarding the conduct of its business that may be required by the executive authority or the legislative body of the city/county.
 - v. To adopt rules and regulations and to take other actions, as necessary, to implement the provisions of this ordinance.
- x. Filing and Investigation of Complaints
- i. All complaints alleging any violation of the ordinance shall be submitted to the Board of Ethics and meet given requirements.
 - ii. Within thirty days of the receipt of the proper complaint, the Board of Ethics shall conduct a preliminary inquiry, and afford a person who is the subject of the complaint an opportunity to respond to the complaint.
 - iii. The Board shall make a determination based on its preliminary inquiry whether the complaint is within its jurisdiction and, if so, whether it alleges a minimal factual basis to constitute a violation of this ordinance. If the Board concludes that the complaint is outside of its jurisdiction, frivolous or without factual basis, the Board shall immediately terminate the inquiry and follow the required steps detailed in the Code.
 - iv. If the Board concludes that the complaint is **within its jurisdiction** and contains allegations sufficient to establish a minimal factual basis to constitute a violation, the Board shall notify the officer or employee who is the subject of the complaint and may:
 - i. **Issue in writing a reprimand** to the officer and provide a copy to the executive authority and governing body of the city/county if agreed by the officer or
 - ii. **Initiate a hearing** to determine whether there has been a violation
- xi. Hearing Procedure
- i. The Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence shall apply to hearings conducted by the Board of Ethics; however hearings shall be conducted in accordance with this section and any additional rules adopted by the Board of Ethics.
 - ii. Prior to the commencement of the hearing, the alleged violator, or his or her representative shall have a reasonable opportunity to examine all documents and records obtained by the Board in connection with the matter to be heard.
 - iii. All testimony in the hearing shall be taken under oath and administered by the presiding officer.
 - iv. All hearings of the Board shall be public unless members vote otherwise.
 - v. After the conclusion of the hearing the Board of Ethics shall begin deliberations to make a determination **whether a violation of this ordinance has been proven**. Within thirty days after completion of the hearing the Board shall issue a written report of its findings and conclusions.

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- vi. If the Board concludes in its report that no violation of this ordinance has occurred, it shall immediately send written notice of this determination to the officer or employee who was the subject of the complaint and to the party who filed the complaint.
- vii. If the Board concludes in its report that in consideration of the evidence produced at the hearing there is clear and **convincing proof of a violation**, the Board may:
 - i. Issue an order requiring the violator to cease and desist the violation
 - ii. In writing, **publicly reprimand the violator** for the violations and provide a copy of the reprimand to the executive authority and governing body of the city/county (i.e. City or County Commission and Mayor).
 - iii. In writing, recommend to the executive authority and governing body that the violator be **sanctioned** as recommended by the Board, which may include a recommendation for discipline or dismissal or removal from office.
 - iv. Issue an order requiring the violator to pay a civil penalty of not more than \$1,000.
 - v. Refer evidence of **criminal violations** of the ordinance or state **laws to the county attorney** or Commonwealth's Attorney of the jurisdiction for prosecution.
- xii. The Board of Ethics may render advisory opinions concerning manners under its jurisdiction
- xiii. Penalties
 - i. Any officer or employee of the city/county who is found by the Board of Ethics to have violated a provision of this ordinance shall be deemed **guilty of a civil offense** and may be subject to civil fine imposed by the Board of Ethics not to exceed \$1,000, and shall forfeit to the city/county an amount equal to the economic benefit or gain which the officer or employee is determined to have realized as a result of the violation.
 - ii. Being found guilty of a violation of this ordinance shall be sufficient cause for removal, suspension, demotion or other **disciplinary action** by the executive authority of the city/county.

City and County of Honolulu, Hawaii

Honolulu has a joint city/county Ethics Commission that:¹⁹

- i. Advises and makes recommendations to city employees and officials as well as the public regarding conflicts of interest, acceptance of gifts, misuse of city resources, and misuse of official position, representation of clients before city agencies, political activities, and post-employment restrictions.
- ii. Enforces the ethics laws by imposing civil fines or recommending discipline for violations.
- iii. Educates city officers and employees to perform their duties in an ethical manner.
- iv. Administers and enforces the financial disclosure requirements for city officials, employees, board and commission members, council members, and candidates for city elective office.
- v. Administers and enforces the city's lobbying laws.

With a budget of \$411,954, the Ethics Commission staff is comprised of an Executive Director, Legal Counsel, and Associate Legal Counsel. Funding includes dollars for retention of external professional

¹⁹ <https://www.honolulu.gov/ethics/default.html>

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services for complex cases or those with conflicts of interest, plus technology, training and development.

City & County of San Francisco, California

The City & County of San Francisco Ethics Commission which is composed of five members; one each appointed by the Mayor, Board of Supervisors, the Assessor-Recorder, the City Attorney and the District Attorney.²⁰ The Ethics Commission serves the public, City employees and officials, and local candidates through:

- i. Education and enforcement of governmental ethics laws, including public information, reports and advice
- ii. Campaign disclosure and economic interests filings
- iii. Lobbyist and campaign consultant registration and reporting
- iv. **Public financing for City campaigns**
- v. Audits, investigations and enforcement.²¹

Whereas other Cities have established a Code of Ethics that includes the creation of a Commission on Ethics, the joint commission on ethics in San Francisco established a Code of Ethics in its By-Laws. Here is where the Commission establishes standards of conduct, an appearance of propriety in the operation of government, and an assurance in public confidence in governing by:

- i. Encouraging and promoting **integrity** in government by education and example;
- ii. Fairly and objectively enforcing the City's ethics laws and regulations;
- iii. Being **accountable** for its rules of procedure and decisions, and stimulating accountability of all elected and appointed officials and government employees
- iv. Creating reform within the political process to ensure fair and **equitable consideration** to public policy issues
- v. Treating all staff, members of the public, and colleagues with courtesy, respect, objectivity and fairness
- vi. Assuring honesty in all matters that come before the Commission, both individually and collectively
- vii. Conducting all business in a timely manner and in public meetings, with full disclosure of policies, procedures, and decision-making processes, except in those matters as specified by the Brown Act and the San Francisco Sunshine Ordinance that may be handled in closed session
- viii. Reviewing its actions, recommendations, and procedures periodically to determine if the Commission has adhered to its Code of Ethics and Mission in all respects.

The Commission budget was approximately \$4.52 million in FY18, designated for engagement, compliance, electronic disclosures, data analysis, and audits.²²

²⁰ <https://sfethics.org/commission/ethics-commission-by-laws>

²¹ <https://sfethics.org/commission>

²² <https://sfethics.org/wp-content/uploads/2016/09/Ethics-Commission-Presentation-to-BOS-Budget-Committee-FY18.pdf>

City Commissions on Ethics

The following Cities have their own Ethics Commissions:

Jacksonville, Florida

Jacksonville has an ethics code²³ that is meant to supplement state ethics laws and provides for an independent ethics commission. The Ethics Commission may refer matters brought to its attention to the State Attorneys' Office or the Florida Commission on Ethics if it determines jurisdiction is vested in, and action is more appropriate if taken by said agencies.

- i. The Jacksonville Ethics Commission:
 - i. Manages a **citywide ethics hotline** for intakes of allegations of violations of the ethics code;
 - ii. Manages and coordinates the training and education of local officers and employees in state and local ethics;
 - iii. Has the authority to refer ethics matters to appropriate enforcement agencies;
 - iv. Recommends **changes in legislation** to City Council in the areas of ethics laws and administration, conflicts of interests, hotline policies, ethics education, ethics in procurement, campaign ethics, and lobbying;
 - v. Has jurisdiction to **levy those civil fines or penalties** authorized by the City Council for violations of the City's ethics code; and
 - vi. Acts as the hiring committee for the administrative staff of the ethics oversight and compliance office.
- ii. Ethics Oversight, Compliance Office, Office of Inspector General
 - i. The Ethics Code includes the establishment of an independent citywide Ethics Oversight and Compliance Office and an Office of Inspector General.
 - ii. The Ethics Office coordinates ethics training, ethics compliance, and ethics oversight issues, and the staffing of the ethics commission.
 - iii. The Office of the Inspector General provides oversight of publicly funded activities and transactions, and other local government operations as described in the code.
- iii. Ethics Education and Application of Ethics Laws
 - i. All elected officials in the City are required to complete ethics training as may be required by the ethics code.

Madison, Wisconsin

The City of Madison's Code of Ethics:²⁴

- i. Establishes guidelines for ethical standards of conduct for all such officials and employees;
- ii. Sets forth those acts or actions that conflict with the best interests of the City and conflict with or are incompatible with the proper discharge of duties and required independence of judgment;
- iii. Directs disclosure by such officials and employees of private financial or personal interests in matters affecting the City; and

²³https://library.municode.com/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA_PTACHLACHJA_FL_ART1GOET_CH2ET

²⁴https://library.municode.com/wi/madison/codes/code_of_ordinances?nodeId=COORMAWIVOICH1--10_CH3OFBOEMPURE_SUBCHAPTER_3BQUOFEM_3.35COET

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- iv. Establishes an Ethics Board.

This Code applies to all elected officials of the City, as well as all employees of the City and all members of City boards, committees, commissions, subcommittees and so forth. Main points of ordinance state that:

- i. Employees shall not receive and retain honoraria, such as money or anything of value, other than commemorative or other items of nominal value in recognition of activities related to their City roles or positions.
- ii. No elected officials or employees on duty shall actively try to influence the campaign of someone seeking elective office.
- iii. All persons who file nomination papers for an elected office of the City of Madison shall, at the time of filing of such nomination papers, also file a **Statement of Interests** with the City Clerk.
- iv. An Ethics Board is established
 - i. The Board consists of 4 members appointed by the Mayor and approved by the Common Council, with their terms varying based on alderman and initial appointment dates or considerations. **The City Attorney serves as the Board's Secretary** and provides necessary staff assistance, but does not vote.
- v. Sanctions
 - i. If the Ethics Board determines that any person has violated any provision of the Code of Ethics then The Board can make the following recommendations:
 - i. In the case of an elected official, that the Common Council consider sanctioning, censuring, reprimanding or expelling the elected official.
 - ii. As an alternative or in addition to the sanctions, that any person or entity violating Sec. (5)](a)2 of this ordinance not be awarded any City contract, grant, loan or any other thing of value for a period of 12 months from the date of finding of the violation or that any such contract, grant, loan or things of value be terminated, repaid, forfeited or called in.
 - iii. As an alternative or an addition to the sanctions imposed herein, that any person violating the provisions of this section shall be subject to a **non-reimbursable forfeiture of not more than \$2,500 per violation** in an action brought by the City in Municipal Court. Each day of a violation may be considered a separate offense.

Naples, FL

Ordinance Number 98-8304 in the Naples Code of Ordinances is titled Code of Ethics²⁵ and was adopted in 1998. The Code's purpose is to help people maintain the highest trust in their officials and employees. It covers:

- i. Conflicts of interest and prohibited relationships
- ii. Standards of conduct
- iii. Voting conflicts

²⁵https://library.municode.com/fl/naples/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIXCOE

- iv. Contracts for professional and construction services
- v. Penalties and enforcement.

The Code is enforced by the city council and county court. However, as of 2017 a political action committee known as Ethics Naples has been trying to amend the City’s Charter through an ethics referendum. They have proposed the establishment of an ethics commission, but the Naples City Council **rejected the proposal** at a Council meeting in December of 2018. Most recently, Ethics Naples was able to achieve ballot certification for the “Referendum amending charter, establishing an ethics commission, ethics office, and minimum requirements for ethics code.” However, the City Council voted 4 to 3 to not place the ethics petition on the ballot and proceeded to take Ethics Naples to court. Now, the matter is scheduled for hearing on August 21, 2019, and the referendum will not be on the August 28th ballot.

Savannah, Georgia

Savannah, Georgia, has a Code of Ethics Ordinance²⁶ for City of Savannah elected officials in its Code of Ordinances that establishes the responsibilities and duties as:

- i. Elected officials will be independent, impartial, and responsible to the people
- ii. Governmental decisions and policy be made in proper channels of the governmental structure;
- iii. Public office not be used for personal gain;
- iv. The public have confidence in the integrity of its government.

The Ordinance is applicable to the Mayor and City elected officials, each responsible for reporting any ethical violations of the Ordinance. Major sections of the Ordinance and their main points can be noted as follows:

- i. Conflicts of Interest and Prohibitions regulating elected officials on personal interests in official actions, acceptance of benefits, use of disclosed information, unreasonable requests, and requiring a City employee to do work outside of their normal course of employment
- ii. Board of Ethics
 - i. Established to hear and conduct review of complaints filed against elected officials of the City of Savannah if:
 - i. Such complaints involve impropriety of elected officials and violation of the provisions of this Ethics Ordinance; and
 - ii. Such violations affect the elected official's ability to carry out his/her official duties.
 - ii. Duties of the Board are to follow its written rules, administer oaths, conducts hearings to decide specific cases which a violation is alleged, and when needed request assistance from the City Attorney
 - iii. Three members of the Board should be appointed by the Mayor and Aldermen (one member by the Mayor, one by the Aldermen, and one by both who is an attorney in good standing with the State Bar). Members should be City residents, not hold public

²⁶https://library.municode.com/ga/savannah/codes/code_of_ordinances?nodeId=DIVITHCHRELA_ART2MAL_CH1GEPR_S2-106COETORSAELOF

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office or City employment, serve four year terms, and be prohibited from engaging in city election or political activities.

- iii. Penalties and Rights
 - i. Any elected official of the City who knowingly violates any provision of the Code of Ethics provided in this Ordinance shall be subject to **public reprimand or censure by majority vote** of the Mayor and Aldermen.
 - ii. At any hearing held by the Board of Ethics, the elected official of the City who is the subject of inquiry has the right to written notice of the allegations at least 10 business days before a hearing, to be represented by an attorney, to hear and examine the evidence and witnesses, and to present evidence and witnesses in opposition or in extenuation.
 - iii. Any final decision of the Mayor and Aldermen pursuant to the Code of Ethics shall be reviewable by the appropriate court in Chatham County.

Tallahassee, FL

Division 3²⁷ of Tallahassee’s Code of Ordinances is titled Ethics Code, and it covers administration and standards for ethical employees and appointees, an ethics officer, misuse of public position, ethics and fraud hotline, financial disclosures for elected officials, disclosure requirements for lobbyists representing the city, expanded abstention requirements for elected officials, ethics training for elected officials, solicitation or acceptance of gifts, and penalties. Division 4 is titled Ethics Board²⁸ and includes details for the terms of ethics board members, and rules for board complaint processing.

Tallahassee’s Independent Ethics Board was created in accordance with **voters' approval of a City Charter amendment** during the November, 2014, general election. Five of the seven members are appointed by local entities including the City Commission, Public Defender, State Attorney for the Second Judicial Circuit, President of Florida State University, and President of Florida A & M University.²⁹ The remaining two seats are appointed by the ethics board itself.

As specified in the Charter amendment, the Ethics Board has the following duties and responsibilities:

- i. Assist the City Commission in the development of the ethics code
- ii. Adopt bylaws and due process procedures for the administration of the Ethics Board
- iii. Manage a **citywide ethics hotline** for receipt of allegations of local corruption, fraud, waste, mismanagement, campaign finance and ethics violations;
- iv. Manage and **coordinate the mandatory training** of local officials, officers, employees, and board members in state and local ethics
- v. Have the authority to refer ethics and corruption matters to appropriate enforcement agencies;

²⁷https://library.municode.com/fl/tallahassee/codes/code_of_ordinances?nodeId=PTIICOGEOEOR_CH2AD_ARTIINGE_DIV3ETCO

²⁸https://library.municode.com/fl/tallahassee/codes/code_of_ordinances?nodeId=PTIICOGEOEOR_CH2AD_ARTIINGE_DIV4ETBO

²⁹<https://www.talgov.com/Main/ethics.aspx>

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- vi. Recommend proposed ordinances, resolutions, or charter amendments to the City Commission in all areas of ethics and corruption, including but not limited to: conflicts of interests, financial disclosure, voting conflicts, hotline policies, ethics education, ethics in procurement, campaign ethics and financing, and lobbying; such legislative proposals shall be filed with and considered by the City Commission;
- vii. Have the authority to **investigate complaints and to levy those civil penalties** as may be authorized by the City Commission for violations of the City's ethics code; and
- viii. Employ staff serving in the ethics office.
- ix. A structure shall be established for the Ethics Board that ensures **independence and impartiality**, and provides for the maximum practicable **input from citizens and community organizations**. The Ethics Board shall be funded by the City Commission within its discretionary budgetary authority at a level sufficient to discharge the Board's responsibilities.

The 2019 Budget for the Ethics Board includes an amount of \$376,667 for total expenses. The Board's budget includes funding for salaries, legal services, traveling and training, and unclassified professional fees amongst other accounts. In most recent news, the Ethics Officer is considering stepping down after recent news has come afloat regarding issues with an attorney she hired earlier this year (2019), and a personal relationship she had with an appointed city official.³⁰

Other best practices

National League of Cities

The National League of Cities says that “for the politician’s security, safety and benefit, it is crucial that they employ strategies, mental sensitivities and tactics that will **prevent acts of collusion** in illegal and unethical conduct”.³¹ This can be done through thorough training that provides strategies to both inform and combat unethical conduct wherein lectures, small group discussions, and personal work activities are leveraged for the learning and application process. Trainings along these lines can be found across the US in think tanks, universities and local Congress of Cities offices. Focusing on the method of training is important as the Florida Statutes establish the basis for what is required to be taught, but how officials receive the training is varied and it is important to ensure that the material is given in a way that will **provide the officials with a thorough understanding of how to successfully employ leadership and governance in their roles**.

Florida League of Cities

The Florida League of Cities offers an in-person continuing education training in ethics for all elected municipal officers. Since January 2015, when a law took effect in Florida requiring all elected municipal officers to receive four hours of ethics-specific training, the FLC³² has decided to offer this course at no additional cost to its members, or for \$150 to non-members that are local officials in

³⁰ <https://www.tallahassee.com/story/news/local/2019/06/18/city-tallahassee-independent-ethics-officer-considering-another-role/1479997001/>

³¹ <https://www.nlc.org/article/best-practices-in-political-decision-making-ethical-decisions-in-tough-times>

³² <https://www.floridaleagueofcities.com/university/continuing-education-in-ethics>

Florida. The law passed in Florida specified that the four hours be taught with two hours specific to the Florida Ethics Law in Chapter 112 of the Florida Statutes, one hour to focus on Open Meetings from Chapter 286, and one hour on Open Records from Chapter 119. However, officials can meet the state required training by utilizing the **free resources** on the Florida Commission on Ethics Website, and the online video on the FLC website. The FLC aims to ensure that all officials have some option to receive the training required by the state at no cost so that they can instill the best leadership and ethical practices in their position.

PRELIMINARY COST/BENEFIT ANALYSIS

Costs

- Fiscal impact to City for starting an Ethics Advisory Board
- Administrative work and resources to produce a Code of Ethics Ordinance

Benefits

- Improved understanding and consistency across elected officials in the area of ethics. This includes clear rules on standards of conduct, attendance, conflicts of interest, and so forth.
- Additional resources for elected officials and city residents

PRELIMINARY AND ILLUSTRATIVE LIST OF POTENTIAL STAKEHOLDERS

- City of Gainesville Attorney
- Alachua County Attorney
- Office of the Clerk of the Commission
- Alachua County Board of County Commissioners
- Local practicing and retired judges
- Local practicing attorneys
- State of Florida Commission on Ethics

RECOMMENDED POINTS FOR FURTHER RESEARCH/DISCUSSION

If the City Commission decides to pursue a local Ethics code or ordinance, the decisions to be made include:

- 1) What behavior to cover,
- 2) What officials/employees/others to cover,
- 3) Whether to establish a local Board of Ethics and/or whether to partner with the County in this effort and/or whether to encourage the County to establish a Board to oversee City ethics,
- 4) Whether to establish any other type of overseeing office, like an Ombudsman or Inspector General,
- 5) How to appoint or hire those serving in these capacities
- 6) How to handle any fiscal impacts.

RECOMMENDED NEXT STEPS

If any Commissioner wishes to pursue this topic, it should be referred for discussion by the General Policy Committee. If consensus is reached on moving forward at GPC, the matter should be referred to the appropriate Charter Officer for additional work on language, structure, and operational/fiscal impacts.