RESOLUTION NO. 10-252

RESOLUTION ADOPTING CODE OF ETHICS FOR ASHEVILLE CITY COUNCIL

WHEREAS, the Asheville City Council is authorized and required, pursuant to N.C.G.S. 160A-86, to adopt a Code of Ethics; and

WHEREAS, the Asheville City Council desires to adopt a Code of Ethics with the content required by statute and with appropriate reference to other statutes governing Council conduct;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE AS FOLLOWS:

1. That the Code of Ethics attached hereto as Exhibit A be, and the same is hereby, adopted.

2. That the Code of Ethics shall be reviewed by Council, or a committee thereof, no less frequently than annually;

3. That the Code of Ethics shall be included in Council's Rules of Procedure as an Appendix.

Read, approved and adopted this the 23rd day of November, 2010.

Magdalen Burleson
City Clerk

Mayor

Approved as to form:

City Attorney

Exhibit A

CODE OF ETHICS FOR THE CITY OF ASHEVILLE

Asheville, North Carolina

PREAMBLE

WHEREAS, the Constitution of North Carolina, Article I, Section 35, provides that a "frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty," and

WHEREAS, as public officials, the Mayor and the members of the Asheville City council are charged with upholding the trust of the citizens of the City of Asheville, and with obeying the law; and

WHEREAS, the North Carolina General Statutes establish legal standards for City officials, including the Mayor and members of the City Council, but do not address ethical conduct; and

WHEREAS, Section 160A-86 of the North Carolina General Statutes now requires local governing boards to adopt a code of ethics; and

NOW, THEREFORE, pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, the City Council do hereby adopt the following General Principles and Code of Ethics to guide the Council in its lawful decision-making.

GENERAL PRINCIPLES UNDERLYING THE CODE OF ETHICS

- The City of Asheville operates pursuant to the Council-Manager form of government, as set out in N.C. Gen. Stat. 160A-147 and the Asheville City Charter. The stability and proper operation of democratic representative government depend upon public confidence in the integrity of the government

and upon responsible exercise of the trust conferred by the people upon their elected officials.

- Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.
- The Mayor and Council members must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent.
- The Mayor and Council members must remain aware of the multiple functions they serve as elected officials:
    - Advocates, who strive to advance the legitimate needs of the citizens they serve, and who appear before them.
    - Legislators, who balance the public interest and private rights in considering and enacting ordinances, and adopting resolutions.
    - Decision-makers, who arrive at fair and impartial quasi-judicial and administrative determinations.
- The Mayor and Council must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.
- The Mayor and Council must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. To this end, the Mayor and Council must determine what conduct is appropriate in the performance of these obligations, and in carrying out the business of the City of Asheville.

CODE OF ETHICS

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for the Mayor and the Council members, and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a Council member's best judgment.

Section 1. DEFINITIONS. As used in this policy, the following terms shall have the meanings indicated unless the context clearly requires otherwise:

Business entity means any business, proprietorship, firm, partnership, person in representative or fiduciary capacity, association, venture, trust or corporation which is organized for financial gain or for profit.

Council or Council member means the Mayor, Vice-Mayor and members of the City Council.

Immediate household means the elected Council member, his/her spouse and all dependent children of the Council member.

Interest means direct or indirect pecuniary or material benefit accruing to a Council member as a result of a contract or transaction which is or may be the subject of an official act or action by or with the City.

The fact that an interest, as defined herein, exists with respect to a particular matter does not necessarily mean that a conflict exists or that a Council member may not participate or vote in the consideration of that matter. The following descriptions are provided for purposes of heightening awareness of potential conflicts and encouraging

consultation and disclosure. For the purpose of this policy, Council member shall be deemed to have an interest in the affairs of:

(1) Any person in his or her immediate household, including family members;

(2) Any business entity in which the elected City official is an officer, partner, or director;

(3) Any business entity in which in excess of one (1) percent of the stock of, or legal or beneficial ownership of, is controlled or owned by the Council member, provided that such interest shall not disqualify that business entity from contracting with the City, except as provided in N.C.G.S. 14-234; or

(4) Interest of employer.

(a) A Council member who is an employee of an entity involved in a contract or undertaking with the City, or which seeks the benefit of an official action of the City, may have an interest if the Council member's participation in or vote on the matter would affect or have the potential to affect the Council member financially or result in the award or deprivation of a material benefit. The existence of an employer-employee relationship does not automatically create a conflict of interest in the matter under consideration.

(b) The definition of employer shall include contractual and professional relationships where the Council member is employed or engaged in connection with the matter before the Council, or is generally employed or engaged by the business entity that has the matter before the Council.

Official act or action means any legislative, administrative, appointive or discretionary act of any Council member.

Section 2. DUTY TO KNOW THE LAW: Council members should obey all laws applicable to their official actions as members of the Council. However, the law does not address every situation where ethics and ethical conduct are important. Council members should be guided by the spirit as well as the letter of the law in whatever they do.

- Council members should endeavor to keep up to date, through the City Attorney and other sources, about new or ongoing legal or ethical issues they may face in their official positions. This educational function is in addition to the day-to-day legal advice the Council may receive concerning specific situations that arise.
- Council members should endeavor to keep up to date, through the City Attorney and other sources, about the most pertinent constitutional, statutory, and other legal requirements with which they must be familiar in order to meet their legal responsibilities. To this end, a list of applicable laws and regulations has been attached to this policy as Appendix A, and will be reviewed and updated from time to time.
- Council members shall receive ethics training as required by N.C.G.S. 160A-86.
- Consistent with N.C.G.S. 160A-75, a Council member shall be mindful of when he or she has an interest in a matter that may affect his or her ability to vote or participate in the consideration of the matter before the Council.
- Consistent with N.C.G.S. 14-234, a Council member shall be mindful of when he or she may become involved in the making or administration of a contract.

- Consistent with N.C.G.S. 160A-388(e1), applicable to quasi-judicial land use matters, Council members shall refrain from engaging in conduct that will or may affect the member's ability to give fair consideration to the matter, and shall make their decision on the basis of information in the record before the Council.

Section 3. RESPECT FOR OFFICE, COUNCIL, PUBLIC: Council members should act with integrity and independence from improper influence as they exercise the duties of their offices. Characteristics and behaviors consistent with this standard include the following:

- Adhering to a code of sound values
- Behaving consistently and with respect toward everyone with whom they interact
- Exhibiting trustworthiness
- Living as if they were on duty as elected officials regardless of where they are or what they are doing
- Using their best independent judgment to pursue the common good, presenting their opinions to all in a reasonable, forthright, consistent manner
- Preserving their integrity and not being affected by improper influence
- Keeping an open mind and being able to consider the opinions and ideas of others
- As to quasi-judicial matters, disclosing contacts and information about issues that they receive outside of public meetings, and refraining from seeking or receiving information about matters outside of the Council proceedings themselves, or otherwise acting in a manner that would affect a party's right to a fair hearing.

- Treating other Council members and the public with respect and honoring the opinions of others, even when the Council members disagree with those opinions
- Not reaching conclusions on issues until all interested parties have had an opportunity to express their position.
- Showing respect for their offices and not acting in ways that reflect badly on those offices
- Recognizing that they are part of a larger group and acting accordingly
- Recognizing that individual board members are not generally allowed to act on behalf of the Council, but may only do so if the Council specifically authorizes it, and that the Council may only take official action as a body.
- At the same time, Council members should be able to assert policy positions and opinions without fear of reprisal from fellow Council members or citizens. Council members should not question the ethics of another Council member because they disagree with that Council member on a question of policy.

Section 4. AVOID APPEARANCE OF IMPROPRIETY.

- Council members should avoid impropriety in the exercise of their official duties. Actions as Council members should be above reproach. Although opinions may vary about what behavior is inappropriate, this Council will consider impropriety in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the Council member's action would conclude that the action was inappropriate.
- If a Council member believes that his or her actions, while legal and ethical, may be misunderstood, the member should seek the advice of the City Attorney, and

should consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney).

Section 5. RESPECT FOR PROCESS

- Council members should faithfully perform the duties of their offices.
- Council members should faithfully attend and prepare for meetings.
- Council members should carefully analyze all substantial information properly submitted to them.
- Council members should expect full and complete information and appropriate analysis from the City staff.
- Individual Council members should be willing to bear their fair share of the Council's workload.

Section 6. OPENNESS IN COUNCIL PROCESSES. Council members should conduct the affairs of the Council in an open and public manner. They should remember when they meet that they are conducting the public's business.

- Council members should comply with all applicable laws governing open meetings and public records, and observe due process, recognizing that doing so is an important way to be worthy of the public's trust.
- In order to ensure compliance with the spirit and letter of the laws concerning openness, Council members should stress that transparency and candor is to be maintained at all times in the governmental unit including but not limited to the following: (1) City policy should prohibit unwarranted delay in fulfilling public records requests. (2) Any closed sessions held by the Council should have

proper legal justification and should not stray from the purposes for which they are called.

Section 7. AWARENESS OF COUNCIL-MANAGER FORM OF GOVERNMENT.

- Except for purposes of requesting or receiving assistance of a clerical or administrative nature from those employees assigned to provide such assistance, or for purposes of inquiry, Council members should deal with City staff only through the City Manager, or the City Manager's designee.
- Council members should not direct the City Manager as to City personnel matters.
- Council may expect regular reports from the City Manager as to operational matters affecting the City.

Section 8. MANAGING CONFLICTS OF INTEREST.

- If a Council member believes that he or she may have an interest in a matter on the Council's meeting agenda that may affect his or her ability to participate or vote on the matter, he or she shall consult with the City Attorney prior to the meeting if possible.
- In all other cases when a Council member believes that he or she may have an interest in a matter of City business, he or she should consult with the City Attorney.
- If a Council member is excused from voting on a matter before the Council, he or she should leave the Council dais prior to Council beginning its consideration of said matter.

- If a Council member is excused from participating in a matter before the Council, he or she should leave Council Chambers prior to Council beginning its consideration of the matter.

In cases where a Council member has business before the Council or has some other reason to appear before Council as an advocate for or against some action by the Council, he or she should consult with the City Attorney prior to the Council meeting as to the procedure for being excused from Council and making such appearance before Council.

Section 9. GIFTS AND FAVORS. Consistent with N.C.G.S. 133-32, no Council member shall knowingly accept from any contractor, subcontractor, or supplier with the City (within the meaning of N.C.G.S. 133-32(a)), a gift whether in the form of money, things, favor, loan, or promise that would not be offered or given to said Council member if they were not an official or employee.

This section is not intended to prevent the offer and receipt of the following:

(1) Honoraria or expenses to include meals, travel and lodging for participating at meetings, seminars, conferences, grand openings, or anniversary celebrations of businesses, or other similar activities where the official or employee is either a speaker, participant or invited in his or her official capacity;

(2) Advertising items or souvenirs of nominal value, or meals furnished at banquets;

(3) Customary gifts or favors received by an official or employee from their friends, relatives or employer where it is clear that it is the relationship of the donor which is the motivating factor for the gift or favor;

(4) Discounts offered by retail merchants, places of entertainment or similar commercial enterprises where the discount is offered to all officials or employees or similar categories of officials or employees or other units of government;

All such gifts knowingly made or received as permitted herein and made by a contractor, subcontractor or supplier currently doing business directly or indirectly with the City of Asheville shall be reported to the City Manager within five business days of the receipt. As general guidance for appropriate conduct with respect to gifts and favors, reference is made to the State Government Ethics Act, codified at Article 4 of Chapter 138A.

Section 10. POLITICAL ACTIVITY. Council members shall familiarize themselves with laws and regulations governing political campaigns and campaign finance, and shall not engage in or cause others to engage in any political activity on City premises, at City functions, or with City employees that would be a violation of said law. By way of example and not limitation, Council members are prohibited, pursuant to N.C.G.S. 160A-169, from subjecting City employees to any political or partisan coercion while performing their job duties, or from using public funds for political and partisan activities.

Section 11. CONFIDENTIAL INFORMATION. Consistent with N.C.G.S. 14-234.1, no Council member may, without prior formal authorization of the Council, disclose any confidential information concerning any other official or employee, or any other person,

or any property or governmental affairs of the City. Whether or not it shall involve disclosure, no Council member may use or permit the use of any such confidential information to advance the financial or personal interest of himself or any other person.

Section 12. CENSURE PROCEDURES. If a majority of the Council has reason to believe that one of its members has violated a provision of this Code of Ethics, Council may cause an investigation into the matter to determine whether probable cause exists to initiate censure proceedings against the member. To the extent permitted by law, all information compiled, including the grounds for any finding of probable cause, shall be shared with the affected member when it is received. To the extent permitted by law, all information pertaining to the matter shall be open to public inspection and copying pursuant to the North Carolina public records statutes. If upon investigation the Council concludes that a violation of a criminal law may have occurred, Council shall direct the City Attorney to refer the matter to an appropriate law enforcement agency or official.

The consideration of any resolution of censure or other action by the Council regarding one of its members may only occur at a meeting of City Council where the action appears on the published agenda. In connection with any such action, the affected Council member shall have notice and an opportunity to be heard.