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MEMORANDUM: TO MAYOR AND CITY COUNCIL MEMBERS

FROM: WILLIAM H. MORGAN, JR., CITY ATTORNEY

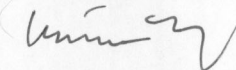
RE: ETHICS ORDINANCE INVESTIGATIONS

Dear Mayor and City Councilors:

A member of City Council recently asked me to investigate whether there had been a violation of our Ethics Ordinance (as codified in Section 2-110 of our Code of Ordinances) associated with the condemnation of the property at 1015 West Church Street, Elizabeth City, N.C. For your consideration, I am enclosing a photocopy of our Code of Ethics. I have asked Mr. Olson to include on next Monday night's Agenda an item regarding the Code of Ethics. I will ask the Councilor who brought this matter to my attention to discuss in open session the facts surrounding his inquiry. Once that discussion has been completed, Council as a body may direct me, under Section 2-115, to conduct a formal investigation in order to determine if there has been a violation of the Ethics Ordinance.

Due to the nature of this matter and the fact that this discussion may bring publicity to City Council, I recommend that you not discuss this matter among yourselves prior to Monday's meeting. Thank you for your consideration.

Yours Sincerely,



William H. Morgan, Jr.
City Attorney

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(c) The budget officer and finance officer of the county shall administer and control that portion of the county's budget ordinance relating to the operations of the commission.

(Code 1993, § 2-80; Ord. of 1-23-1994, art. V)

State law reference—Commission systems as part of municipal systems, G.S. 160A-505.1.

Sec. 2-82. Procedures for contract purchases and sales.

The commission shall comply with the provisions of G.S. 160A-514 when contracting for engineering, legal, surveying, professional or other similar services; when entering and carrying out any contract for construction, demolition, moving of structures or repair work or the purchase of apparatus, supplies, materials, or equipment; and when selling, exchanging or otherwise transferring the fee or any lesser interest in real property in a redevelopment area.

(Code 1993, § 2-81; Ord. of 1-23-1994, art. VI)

Sec. 2-83. Authority to operate.

The commission is authorized to operate within the city's territorial jurisdiction in which area the redevelopment commission of the city operates.

(Code 1993, § 2-81; Ord. of 1-23-1994, art. VII)

Secs. 2-84—2-109. Reserved.

ARTICLE IV. CODE OF ETHICS

Sec. 2-110. Declaration of policy.

The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for city officials is adopted. The purpose of this article is to establish guidelines for ethical standards of conduct for all

such officials by setting forth those acts or actions that are incompatible with the best interest of the city.

(Code 1993, § 1-26; Ord. of 10-21-1991, § I; Ord. of 1-6-1992, § 1)

Sec. 2-111. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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.

City official means the mayor, members of the city council, the city manager, assistant city manager and department heads, city clerk and city attorney.

Interest means direct or indirect pecuniary or material benefit accruing to a city official 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. For the purpose of this Code, a city official shall be deemed to have an interest in the affairs of:

- (1) Any person in his immediate household;
- (2) Any business entity in which the city official is an officer or director;
- (3) Any business entity in which the stock of, or legal or beneficial ownership of, in excess of five percent of the total stock or total legal or beneficial ownership, is controlled or owned directly or indirectly by the city official.

Official act or action means any legislative, administrative, discretionary act of any city official.

(Code 1993, § 1-27; Ord. of 10-21-1991, § I; Ord. of 1-6-1992, § 1; Ord. of 8-17-1998)

Sec. 2-112. Standards of conduct.

All city officials as herein defined shall be subject to and abide by the following standards of conduct:

- (1) *Interest in contract or agreement.* No official as herein defined shall have or thereafter acquire an interest in any contract or agreement with the city.
- (2) *Use of official position.* No city official shall use his official position or the city's facilities for his private gain, nor shall he appear before or represent any private person, group or interest before any department, agency, commission or board of the city except in matters of purely civic or public concern. The provisions of this subsection are not intended to prohibit a city official's use of parking permits and are not intended to prohibit his speaking before neighborhood groups and other non-profit organizations.
- (3) *Disclosure of information.* No city official shall use or disclose confidential information gained in the course of or by reason of his official position for purposes of advancing:
 - a. His financial or personal interest;
 - b. Business entity of which he is an owner, in part of or in whole, an officer or a director; or
 - c. The financial or personal interest of a member of his immediate household or that of any other person.
- (4) *Incompatible service.* No city official shall engage in, or accept private employment or render service, for private interest when such employment or service is incompatible with the proper discharge of his official duties or would tend to impair his independence of judgment or action in the performance of his official duties, unless otherwise permitted by law and unless disclosure is as provided in this article.
- (5) *Gifts.* No city official shall directly or indirectly solicit any gift; or accept or receive any gift having a value of \$20.00

or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties, or was intended as a reward for any official action on his part. Legitimate political contributions shall not be considered as gifts under the provisions of this subsection.

- (6) *Special treatment.* No city official shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

(Code 1993, § 1-28; Ord. of 10-21-1991, § I; Ord. of 1-6-1992, § 1)

Sec. 2-113. Disclosure of interest in legislative action.

The mayor or any member of the city council who has an interest in any official act or action before the council shall publicly disclose on the record of the council the nature and extent of such interest, and shall withdraw from any consideration of the matter if excused by the council pursuant to G.S. 160A-75.

(Code 1993, § 1-29; Ord. of 10-21-1991, § I; Ord. of 1-6-1992, § 1)

Sec. 2-114. General disclosure.

(a) All city officials as herein defined, shall file with the city clerk on or before February 1 of each year a verified statement containing the following information:

- (1) The identity, by name and address, of any business entity, as defined in section 2-111 of which he is an owner, an officer or a director. Additionally, the city official shall give the name of his employer or if self-employed, state the nature of his work.
- (2) The identity, by location and address, of all real property located in Pasquotank County and corporate limits of Camden County owned by the city official, includ-

ing an option to purchase, or a lease for ten years or more other than his personal residence.

(b) The statements required by this section shall be filed on a form prescribed by the city clerk and are public records available for inspection and copying by any personnel during normal business hours. The city clerk is authorized to establish and charge reasonable fees for the copying of statements.

(Code 1993, § 1-30; Ord. of 10-21-1991, § I; Ord. of 1-6-1992, § 1; Ord. of 9-21-1998)

Sec. 2-115. Investigations.

(a) The city council may direct the city attorney to investigate any apparent violation of this Code as it applies to the mayor, member of the city council, city manager or city clerk, and to report the findings of his investigation to the city council.

(b) The city manager may direct the city attorney to investigate any apparent violation of this Code as it applies to assistant city manager and department heads, and to report the findings of his investigation to the city council.

(c) The city council may direct the city manager to investigate any apparent violation of this Code by the city attorney, and to report the findings of his investigation to the city council.

(d) Any person who believes that a violation of this Code has occurred may file a verified complaint in writing with the city council when the mayor, member of city council, city manager, city clerk or city attorney is the subject of the complaint, or with the city manager when the assistant city manager or department head is the subject of the complaint, who may thereafter proceed as provided in subsection (a), (b) or (c) of this section.

(Code 1993, § 1-31; Ord. of 10-21-1991, § I; Ord. of 1-6-1992, § 1)

Sec. 2-116. Sanctions.

(a) If the city manager, after the receipt of an investigation by the city attorney, has cause to believe a violation has occurred, as to the assistant city manager and department heads, he shall

schedule a hearing on the matter. The city official who is charged with the violation shall have the right to present evidence, cross examine witnesses, including the complainant, and be represented by counsel at the hearing. If, after such hearing and a review of all the evidence, the city manager finds that a violation of this article has occurred, he shall take whatever lawful disciplinary action he deems appropriate, including but not limited to, reprimand, suspension, demotion or termination of service.

(b) If the city council, after receipt of an investigation by the city attorney, has cause to believe a violation has occurred, as to the mayor, city council members, city manager or city clerk, the city council shall schedule a hearing on this matter. The official who is charged with the violation shall have the right to present evidence, cross-examine witnesses, including the complainant, and be represented by counsel at the hearing. If, upon the conclusion of the hearing, at least three-fourths of the members of council vote to find a violation has occurred, the council may adopt a resolution of censure which shall be placed as a matter of record in the minutes of an official council meeting.

(c) If the city council, after receipt of an investigation by the city manager, has cause to believe a violation has occurred as to the city attorney, and such finding is by a three-fourths vote of the council, then the matter shall be forwarded to the North Carolina State Bar, Box 25908, Raleigh, NC 27611.

(Code 1993, § 1-32; Ord. of 10-21-1991, § I; Ord. of 1-6-1992, § 1)

Sec. 2-117. Advisory opinions.

When any city official has a doubt as to the applicability of any provision of this article to a particular situation, or as to the definition of terms used herein, he may apply in writing to the city attorney for an advisory opinion. The city official shall have the opportunity to present his interpretation of the facts at issue and of the applicability of provisions of the Code before such advisory opinion is made.

(Code 1993, § 1-33; Ord. of 10-21-1991, § I; Ord. of 1-6-1992, § 1)