COUNTY AGENDA REQUEST

Department:	Legal	Presenter(s):	Interim Attorney Dennis Davenport
Meeting Date:	Thursday, May 23, 2013	Type of Request:	Old Business

Wording for the Agenda:

Discussion of a draft Ethics Ordinance prepared by Interim County Attorney Dennis Davenport.

Background/History/Details:

During the April 25, 2013 Board of Commissioners meeting, Interim County Attorney Dennis Davenport briefed the Board of Commissioners on the possibility of addressing and amending the current Fayette County Ethics Ordinance. Each Commissioner spoke about the Ethics Ordinance and made suggestions on how to amend it.

The Board directed Mr. Davenport to return at a later meeting to provide and discuss a draft Ethics Ordinance. Mr. Davenport has provided a draft ordinance for discussion and further direction from the Board.

What action are you seeking from the Board of Commissioners?

Direction is sought on how to proceed with amending the Fayette County Ethics Ordinance.

If this item requires funding, please describe:

Not Applicable.

Has this request been considered within the past two years?	Yes	If so, when?	Thursday, April 25, 2013
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Not Applicable	Reviewed by Legal	
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval			

Staff Notes:

COUNTY OF FAYETTE

STATE OF GEORGIA

ORDINANCE NO.

2013 -- ____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF FAYETTE COUNTY; TO REVISE THE EXISTING CODE OF ETHICS FOR FAYETTE COUNTY; …; TO PROMOTE THE PUBLIC HEALTH, SAFETY AND WELFARE, AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF FAYETTE COUNTY AND IT IS HEREBY ENACTED PURSUANT TO THE AUTHORITY OF THE SAME, THAT CHAPTER 2 OF THE FAYETTE COUNTY CODE BE AMENDED AS FOLLOWS:

[When looking at the enactment of an ethics ordinance, be aware that the Ethics Ordinance is in addition to all local, state and federal laws which govern the behavior of people, in general. In addition, there are ethics laws enacted by the state which are applicable to all elected officials in the county, and other individuals that fall within the statutory definition of "Covered Officials". Generally, we're talking about elected officials. The Employee Handbook is in place to address the behavior of employees of Fayette County, though not necessarily for appointed and elected officials.

The purpose of an Ethics Ordinance is to articulate acceptable standards of behavior

which are over and above those behaviors that are regulated by law. Some behaviors may rise to the level of such concern that legislation is warranted to address the behavior which is not otherwise illegal, e.g., the recent enactments by the General Assembly with specific dollar limitations on gifts to elected officials.

This Working Draft Ethics Ordinance is structured to compare the Current Ethics Ordinance with the Ethics Ordinance replaced by the Current Ethics Ordinance (the 1999 Ethics Ordinance). Following some of the provisions of each of the two ordinances, comments are provided to promote discussion and finalization of what areas should and should not be covered by an ethics ordinance. Ed. (term designating information provided by the Editor of the Working Draft)]

[From 1999 Ethics Ordinance]

Sec. 2-207. Purpose and intent.

The purpose of this Code of Ethics is to establish ethical standards of conduct for all officials and employees of Fayette County by identifying acts or actions that are incompatible with the best interests of the community and the organization and by requiring disclosure by such officials and employees of private financial, or other interests, in matters affecting the County.

Those covered officials and employees are bound to observe in their official acts the highest standards of behavior and to faithfully discharge the duties and responsibilities of their office, regardless of personal considerations, recognizing that the public interest must be their primary concern.

Covered officials and employees shall not exceed their authority or breach the law, or ask

others to do so, and they shall work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of their work.

[From Current Ethics Ordinance]

The proper operation of local government requires that the public officials be independent, impartial and responsible to the people; that the government decisions and policy be made through proper channels of the governmental structure; that the public office not be used for personal gain; that the public officials be free from the appearance of impropriety; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all county officials is adopted. The purpose of this policy is to establish ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the best interests of the county and by directing disclosure by such officials of private financial or other interests in matters affecting the county.

[Definitions from 1999 Ethics Ordinance]

Sec. 2-208. Definitions.

The following words, terms and phrases, when used in the Code of Ethics of Fayette County, shall have the meanings ascribed to them in this section:

(1) "Code of Ethics" means the Code of Ethics of Fayette County.

(2) "County" means Fayette County, Georgia.

(3) "Covered Official" means any member of the Board of Commissioners of Fayette County and any person who has been appointed to a position by the Board of Commissioners of

Fayette County including, but not limited to, the County Administrator, the County Clerk, Department Heads, and any member of the Planning Commission, the Zoning Board of Appeals, or any other appointed board. The County Attorney is subject to the Ethical Considerations and Disciplinary Rules enacted by the State Bar of Georgia, and is also considered a covered official insofar as the application of this ordinance. However, enforcement shall be through the procedures as established by the State Bar of Georgia.

(4) "Gift" means the transfer of anything of economic value, regardless of form, without adequate and lawful consideration. "Gift" also means a subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value, conveyed or transferred.

(5) "Immediate family" means parents, spouse and children.

[The above-based definitions are limited in number and broad-based enough to cover those behaviors which could reasonably be expected to influence a Covered Official in making a decision on behalf of the County. The definition of Covered Official was intentionally broad to ensure every person employed by Fayette County, whether elected, appointed, or hired, will be covered by the Ethics Ordinance.

The position of County Attorney was specifically removed from the definition of Covered Official due to the unique position of attorneys in the state of Georgia in relation to a regulatory body issuing decisions on the practice of law. The Supreme Court of Georgia is the exclusive body to regulate the practice of law. Laws which purport to allow entities other than the Supreme Court to regulate the practice of law are generally problematicl. Any behavior by the County Attorney that would raise ethical concerns in a

local ordinance would most likely be covered through the State Bar of Georgia as regulated by the Supreme Court. Ed.]

[Definitions from Current Ethics Ordinance]

Business entity means any business, proprietorship, firm, partnership, person in either a representative or a fiduciary capacity, association, venture, trust, or corporation.

Confidential information means any information which, by law or practice, is not available to the public.

[Is this kind of definition beneficial? Ed.]

County official or *official* shall mean the county board of commissioners, county administrator, county attorney and his assistants, and any county employee who has been appointed to the position by the board of commissioners.

[See above comments on the County Attorney. Is this intended to cover all employees of Fayette County? Taken, literally, employees are not appointed by the Board of Commissioners. Persons who serve on boards (Planning Commission, Zoning Board of Appeals, etc.), are appointed by the Board of Commissioners. All employees are hired through Human Resources to work for Fayette County. I presume that employees of Fayette County are to be covered by the Ethics Ordinance. Making this more clear allows for ease of enforcement. Ed.]

Immediate family means an official and the spouse of an official, their parents, children, brothers and sisters related by blood or marriage.

[This definition is broader than in the 1999 Ethics Ordinance. Are we covering the brothers and sisters of just the official, or also the brothers and sisters of the spouse of the elected official? Same for the "related by blood or marriage" language. Are we seeking to cover the brother- and sister-in-law of the spouse in addition to the brother- and sister-in-law of the official. This is not an attempt to pass judgment on the appropriate definition, the Ethics Ordinance is put together by the elected officials. Make the definitions as broad or as narrow as you desire. However terms are defined, the definitions should have one reasonable interpretation. Ed.]

Interest means direct or indirect pecuniary or material benefit accruing to a public officer or 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 county except for such contracts or transactions which, by their terms and by the substance of their provisions, confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated.

[This exclusion of certain types of contracts in the abstract under the definition of Interest, does not provide clarity as to how Interest is to be defined. The term Interest requires a good understanding of what you're trying to define. Providing an exclusion to the general term without a good working knowledge of the general term can be

problematic. Ed.]

For purposes of this policy, a county official shall be deemed to have an interest in the affairs of:

(1) His or her immediate family;

(2) Any business entity in which the county official is an officer, director, or member having a financial interest in, or employed by it; or

(3) Any business entity as to which the stock, legal ownership, or beneficial ownership of a county official is in excess of five percent of the total stock or total legal and beneficial ownership, or which is controlled or owned directly or indirectly by the county official.

Official act or *action* means any legislative, administrative, appointive or discretionary act of any official of the county or any agency, board, committee, authority or commission thereof.

[Official of the County is a different term than County Official. Need to use consistent terms. Ed.]

Reprimand means an expression of disapproval.

[Is this definition beneficial? Ed.]

[From 1999 Ethics Ordinance]

Sec. 2-209. Text of ethical considerations.

Notwithstanding any provisions of law to the contrary, each covered official and employee

of Fayette County shall:

(1) Uphold the Constitution, laws and regulations of the United States, the State of Georgia, and all governments therein and never be a party to their evasion;

(2) Never discriminate by the dispensing of special favors or privileges to anyone, whether or not for remuneration;

(3) Not engage in any business with the government, or allow any member of his/her immediate family to engage in any business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his/her governmental duties;

(4) Never use any information coming to him/her confidentially in the performance of governmental duties as a means for making private profit;

(5) Expose corruption wherever discovered;

(6) Never solicit, accept, or agree to accept gifts, loans, gratuities, discounts, favors, hospitality, or services from any person, association, or corporation for himself/herself, or any member of his/her immediate family, under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the performance of the official's/employee's official duties. For gifts, loans, gratuities, discounts, favors, hospitality, or services solicited, accepted, or agreed to accept under circumstances from which it cannot be reasonably inferred that a major purpose of the donor was to influence the performance of the official's/employee's official duties, the following rules shall apply: A covered official shall publicly disclose, prior to discussing or taking any official action on any matter involving the donor, any gift or campaign contribution (cash or in kind)

received by him/her, or any member of his/her immediate family, greater than $100.00. Receipt of gifts and campaign contributions valued at $500.00 or more by a covered official, or member of his/her immediate family, will prohibit the covered official from participating or taking official action on any matter involving the donor;

(7) Never accept any economic opportunity for himself/herself, or any member of his/her immediate family, under circumstances where he/she knows or should know that there is a substantial possibility that the opportunity is being afforded with intent to influence his/her conduct in the performance of his/her official duties. All business relationships, regardless of the dollar amount involved, between a covered official, or a member of his/her immediate family, and anyone having business with the County shall be publicly disclosed prior to any discussion or official action being taken on the matter. Should the business relationship provide a covered official, or a member of his/her immediate family, with at least $6,000.00 on an annual basis, such covered official shall be prohibited from participating or taking official action on any matter involving the person with whom such business relationship exists; and

(8) Never engage in other conduct which is unbecoming to an official/employee or which constitutes a breach of public trust.

[The 1999 Ethics Ordinance, very generally, covered a wide range of issues which could trigger a potential ethics violation. Ethics Ordinances are written subjectively, e.g., whether the Covered Official felt influenced, or objectively, e.g., whether the Covered Official felt influenced or a reasonable Covered Official should have felt influenced. Some governmental entities don't want to leave it up to the subjective discretion of the

Covered Official. The way to make the standard more objective is to insert thresholds which trigger disclosure requirements, or forbidding the Covered Official to participate in the issue triggering the ethical concern.

The 1999 Ethics Ordinance set the threshold for gifts, etc., to the Covered Official or his/her immediate family as greater than $100. It doesn't matter what the item is, if its value is greater than $100, the Covered Official must disclose the gift, etc., in advance of any discussion involving the person or entity who provided the gift. If the value received is greater than $500, the Covered Official is presumed to be influenced by the gift, etc., and would therefore by prohibited from participating in the discussion or voting on the action from the person or entity who provided the item.

Additionally, business relationships were recognized as being problematic between the Covered Official and an entity seeking to do business with the County. The presence of the business relationship demands disclosure, but the threshold of the Covered Official having to refrain from participating or voting on a matter involving the business entity is $6,000 annually. The reasoning is that any relationship below that would be de minimis and should carry no influence over the Covered Official. Ed.]

[From Current Ethics Ordinance]

(a) Interest in contract or transaction. No county official having the power or duty to perform an official act or action related to a contract or transaction which is or may be the subject of an official act or action of the county shall;

(1) Have or thereafter acquire an interest in such contract or transaction; or

(2) Have an interest in any business entity involved in such contract or

transactions; or

(3) Have solicited or accepted present or future employment with a person or business entity involved in such contract or transaction; or

(4) Have solicited or accepted a present or future gift, favor, service, or thing of value from a person involved in such contract or transaction, except as provided in Sectoin 2-210 below.

[On its face, there appears to be a prohibition aimed at preventing a County Official from having any type of business relationship with an entity seeking to do business with the County; however, recognize that an exception is provided in Section 2-210. Ed.]

(b) Pre-acquisition of interest. No county official shall acquire an interest in a contract or transaction which is or may be the subject of an official act or action of the county at a time when the county official believes or has reason to believe that such contract or transaction will be directly or indirectly affected by an official act or action of the county.

(c) Disclosure of information. No county official shall without proper legal authorization disclose confidential information concerning the property, government, or affairs of the county, or use such information to advance the financial or other private interest of himself or others.

[An example of the type of regulation that probably should not be part of your Ethics Ordinance. If the information is truly confidential, disclosure of the information

would breach some duty. The 1999 Ethics Ordinance prohibited the Covered Official from profiting from confidential information. While this, too, may be illegal, it is not as clear cut as the disclosure of confidential information. Ed.]

(d) No county official shall waive the attorney-client privilege or disclose any documents protected by the attorney-client privilege without the consent of the majority of the board of commissioners.

[Another example of behavior which could not occur even without this language. Ed.]

(e) No county official shall disclose to others matters discussed in executive session of any board of commission without the consent of the majority of the board of commissioners or until after the minutes of the meeting is required to be released as a matter of law.

[Generally, executive session minutes will never be released. Therefore, a duty of confidentiality exists among and between the elected officials. If the elected officials want to put this additional burden on themselves, they are free to do so. Ed.]

(f) Incompatible service. No county official shall engage in or accept private employment or render service for any private entity, 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 made as provided in this policy.

(g) Appearance. No county official shall appear on behalf of any private person other than himself, his spouse or minor children, before any county agency, authority or board. However, a member of the board of commissioners may appear before such groups on behalf of his constituents in the course of his duties as a representative of the electorate or in the performance of public or civic obligations.

[I understand the prohibition. I do not understand the exception. Ed.]

(h) Public property. No county official shall request or permit the unauthorized use of county-owned vehicles, equipment, materials or property for personal convenience or profit.

(i) Special treatment. No county official shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen in the same or similar circumstances.

(j) Later case interest. No county official shall, after termination of service or employment with the county, accept remuneration of any kind for any appearance before any board, commission, committee, agency or authority of the county on behalf of any adverse party in relation to any case, proceeding, or application in which he personally participated during the period of his service or employment, which was under his active consideration during the period of his service or employment, or as to which he could have acquired knowledge or information during the period of his service or employment.

[The way to make this enforceable is to penalize the party who seeks to come before some board or commission of the County. The prohibition should be not allowing any petitioner to come before the County being represented by or having a relationship with a former County Official. A good practice would be to place some sort of time limit on this prohibition. If the purpose of this provision is to keep a former County Official from influencing current County Officials, the passage of time will impair the former County Official's ability to influence. Ed.]

(k) Political recrimination. No county official, whether elected or appointed, shall promise an appointment or threaten the dismissal from any county position as a reward or punishment for any political activity.

[Problematic in its structure. Politics aside, you could hire or dismiss without promising or threatening. The prohibited act is the promising or threatening. This type of activity will generally be governed by the Employee Handbook and the Progressive Discipline Policy. Ed.]

(l) Withholding of information. No county official shall knowingly withhold any information which would impair the proper decision making of any of the county board, authorities, agency or commissions.

[Identifying the information and who sets the standard of whether or not the applicable board's decision-making as been impaired is a challenge. Ed.]

(m) Payment of debts. All county officials shall settle all accounts between them and the county, including the payment of taxes, in a timely fashion.

Sec. 2-210. Exceptions.

(a) It shall not be deemed a violation of the standards of this policy if the interest of a county official in a person or business entity is a contractual obligation of less than $500.00 which has not been preceded by any other obligation, discharged or existing, between the parties, and which is not the first in a series of two or more loans or debts which either of the parties is under any obligation to make or incur.

(b) The following shall not be deemed a violation of the standards of this policy:

(1) Legitimate salary, benefits, fees, commissions, or expenses associated with an official's non-public business;

[What if the business is seeking to do business with the County? Ed.]

(2) An award, plaque, certificate, memento, or similar item given in recognition of the official's civic, charitable, political, professional, or public service;

(3) Food, beverages, and registration at group events to which all similarly situated officials are invited;

(4) Actual and reasonable expenses for food, beverages, travel, lodging, and registration for a meeting which are provided to an official so that he or she may participate or speak at the meeting;

(5) A commercially reasonable loan made in the ordinary course of business;

(6) Any gift with a total value less than $100.00 in any calendar year;

(7) Promotional items generally distributed to public officials generally;

(8) A gift from a member of the public official's immediate family; or

(9) Food, beverage, or expenses afforded public officials, and members of their immediate families, or others that are associated with normal and customary business or social functions or activities.

(c) It shall not be deemed a violation of the standards of this policy if a county official, in his capacity as such official, participates in the making of a contract even if such official has a private pecuniary interest or performs in regard to that contract some function requiring the exercise of discretion on his part, if:

(1) The contract is awarded through a process of public notice and competitive bidding; or

(2) The board of commissioners at regular meeting, after determining that it is in the best interest of the county to do so, authorizes the participation.

Sec. 2-211. Disclosure of interest in legislative action.

(a) Any member of the Board of Commissioners of Fayette County, Georgia who has financial or personal interest in any proposed legislation before the commission shall immediately disclose on the record the nature and extent of such interest.

(b) Any other official who has a financial or personal interest in any proposed legislative action of the board of commissioners, and who participates in discussion with or gives an official opinion or recommendation to the commission, shall disclose on the record the nature and extent of such interest.

[It is not clear who this "other official" would be. The Ethics Ordinance is applicable only to County Officials. Ed.]

Sec. 2-212. Abstentions.

A county official who has an interest that he has reason to believe may be affected by an official act or action shall abstain from any participation in the same.

[The current Ethics Ordinance has not shifted to a subjective standard. Having an interest is not the determinative factor. The determinative factor is whether the County Official believes the interest may be affected by an official act. Otherwise, the County Official is free to participate. Ed.]

[From 1999 Ethics Ordinance]

Sec. 2-210. Procedure for alleged violations.

A. Alleged violations of this Code of Ethics must be submitted via written, sworn complaint to the Clerk of the Board of Commissioners of Fayette County. Consistent with the Open Meetings Laws, the Board of Commissioners shall review all complaints against covered officials and employees except those complaints filed against a member of the Board of Commissioners. A majority of the full Board of Commissioners must agree that a sufficient basis has been given to warrant a public hearing. Certain violations alleged against employees may be referred through the proper channels within the Employee Handbook's disciplinary procedures.

[Although the procedures listed in the 1999 Ethics Ordinance are minimal, the

Ethics Ordinance, however constructed, should provide adequate due process safeguards. Anyone who has a complaint filed against them should receive adequate notice of the charge made against him/her. The Covered Official who is alleged to have violated the Ethics Ordinance should be provided an opportunity to be heard. Ed.]

B. The Board of Commissioners shall conduct the public hearing to determine whether, based upon clear and convincing evidence, the covered official or employee violated the Code of Ethics. Covered officials and employees are subject to the following penalties and action for violations of this Code of Ethics:

(1) Written reprimand or public censure;

(2) Recovery of value transferred or received by the County;

(3) Cancellation of the contract or rejection of the bid or offer;

(4) A monetary fine not to exceed $1,000.00; and

(5) Demotion or termination.

[The new Ethics Ordinance should probably not carry a monetary fine for violation. There may not be a sufficient authority basis to apply a monetary fine. One of the areas in the law that is not clear; having a fine could subject the ordinance to challenge. Ed.]

C. If a complaint is received by the Clerk of the Board of Commissioners which alleges a violation of the Code of Ethics by a member of the Board of Commissioners, an independent review board will be formed if the complaint alleges sufficient facts which, if proven

to be true, would be a violation of the Code of Ethics. The County Attorney of any County within the Griffin Judicial Circuit, except the County Attorney for Fayette County, shall make the determination of whether or not a review board should be impaneled. If a review board is needed, three (3) County Attorneys within reasonably close geographical proximity to the County will be requested to conduct a public hearing based upon the complaint. A majority vote, based on clear and convincing evidence, will determine the existence of a violation.

[The 1999 Ethics Ordinance utilized the Board of Commissioners as its Ethics Board for all Covered Officials except for members of the Board of Commissioners. Where a complaint is filed against a Board member, a panel of County Attorneys is impaneled to conduct the hearing. The initial determination for any complaint filed is whether the complaint states facts sufficient to go forward. Only when that determination is made does the complaint go forward to a hearing. Procedures should be in place so that this threshold determination can be made whether the Covered Official involved is a Board member or a Covered Official other than a Board member.

Having the Board of Commissioners conduct the hearing on Covered Officials other than Board members was a good fit because members of the Board of Commissioners have experience in the conduct of public hearings. Additionally, the complaint or the defense of the complaint is not County-driven. Neither of the positions would be advocated by the County which frees up the County Attorney to advise the Board on hearing procedures, generally, should it be needed.

Very minimal procedures were provided in the 1999 Ethics Ordinance for two reasons: 1. The Board of Commissioners had sufficient experience in conducting public

hearings; and 2. If a member of the Board of Commissioners was the focus of an ethics complaint, a panel of County Attorneys would be able to conduct an adequate public hearing with minimal procedures provided.

Another option is for another body to hear complaints against Covered Officials. If that body is made up of residents with no background in conducting public hearings, there should be some level of training provided to ensure the hearing is adequately conducted. The office of County Attorney would probably be able to assist this body if need be, unless the complaint was made against a member of the Board of Commissioners, which would probably be the time when the body would need assistance the most.

These bodies are made up any number of ways and have varying numbers of members. Some jurisdictions will populate a pool of potential Ethics Board members and when a complaint is filed, draw from the pool to form the Ethics Board on an as-needed basis. Other jurisdictions will select members to serve on an Ethics Board for defined terms of service. Some jurisdictions will allow the Complainant to select a member, the Covered Official to select a member and the two selected members to select a third member.

There is no magic in the way a board is set up, what is critical is that adequate education and training be provided so that however the Ethics Board is comprise the Board will adequately provide a hearing adequately recognizing the rights of the parties involved.

Some jurisdictions use attorneys to sit as the Ethics Board and hear complaints. This is an option and would reduce the need for additional training. If this route is chosen, you need to decide whether this Board will be a standing body, or be constituted

only in the event an ethics charge has been filed. Ed.]

[From Current Ethics Ordinance]

Sec. 2-213. Enforcement and administration.

(a) Constituting the board; chairman.

(1) The board of ethics of the county is hereby created and authorized by the Board of commissioners.

(2) The board of ethics of the county shall be composed of three (3) residents of the county to be appointed as provided herein. Each member of the board of ethics shall have been a resident of the county for at least one year immediately preceding the date of taking office and shall remain a resident of the county while serving as a member of the board of ethics. No person shall serve as a member of the board of ethics if the person has, or has had within the preceding one year period, any interest in any contract, transaction, or official action of the county.

(3) The members of the board of commissioners may nominate persons to serve on the board of ethics, who shall be appointed by a majority vote of the board of commissioners. These individuals must agree to undergo a criminal background check conducted by the County Marshal prior to designation, and/or redesignation, the results of which will be forwarded to the board of commissioners. These individuals should be available to be called upon for their term of office. At the end of each term, the board of commissioner shall appoint eligible residents to fill the board. Current members can be reappointed and there shall be no term limits for the members. If a member of the board of ethics does not finish their term, the remainder of the term shall be filled through an

appointment by the board of commissioners.

(4) Alternates. In addition to the members of the board, the board of commissioners shall appoint two alternate members. These alternates shall be appointed in the same manner as members of the board of ethics.

(5) If any member of the board of ethics has a conflict of interest in any matter before the board, the remaining two members of the board of ethics shall select an alternate to serve for that matter from the two alternative members appointed by the board of commissioners.

(6) The board shall select a chairman at the beginning of each matter to be heard.

(7) Term of Office. The term of office for each member of the board of ethics and alternates shall be for three (3) years; however, in the appointment of the first board, one (1) member and one (1) alternate shall be appointed for three (3) years; one (1) member and one (1) alternate for two (2) years and one (1) member for one (1) year. It is the intent of this section that their terms be staggered. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.

(b) Duties of board. The board of ethics shall have the following duties and powers:

(1) To administer the ethics ordinance;

(2) To receive, review, process, make determinations on, and hear complaints of violations of standards required by this chapter. The board is not designed to be an oversight board or to perform investigations;

[This inability to perform investigations conflicts with later provisions within the Current Ethics Ordinance. Ed.]

(3) To make such response to a complaint as it deems necessary to determine whether any person has violated any provisions of this chapter;

(4) To hold such hearings and make such inquiries as deemed necessary to investigate and rule upon complaints; and

(5) To report its findings and actions to the board of commissioners.

(c) Administration.

(1) Complaints.

a. All complaints of ethical violations must be filed with the county clerk, in writing, signed by the complainant, no later than 90 days after the alleged act occurred unless the complainant, by exercising reasonable diligence, failed to discover the alleged ethical violation within such 90 day period. In such a case, the complainant must file a written complaint with the county clerk no later than 90 days after the complainant discovered the alleged violation. In all such cases brought after 90 days from the date of the alleged ethical violation, the complainant bears the burden of convincing the board of the true date complainant learned of the alleged violation.

b. In no event shall an ethical charge be filed with the county clerk more than two years from the date of the alleged ethical violation.

[A 2-year window may be longer than is needed. Ed.]

c. The complainant may withdraw the complaint at any time in writing.

(2) Pay and staff support.

a. The members of the board of ethics shall serve without compensation. The governing authority of the county shall provide meeting space for the board of ethics. Subject to budgetary procedures and requirements of the county, the county shall provide the board of ethics with such supplies and equipment as may be reasonably necessary for it to perform its duties and responsibilities.

b. The county clerk shall serve as the recording secretary to the board and shall provide such administrative services to the board as may be necessary.

c. Subject to budgetary procedures and requirements of the county, the county shall provide the board of ethics with such legal staffing as may be reasonably necessary for it to perform its duties and responsibilities by an attorney who does not serve as the County Attorney.

(3) Action by the board. Within 30 days of receipt of a complaint from the county clerk, the board may perform one or more of the following:

a. Upon receipt of a complaint in proper form, review the complaint to determine whether the complaint is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke disciplinary jurisdiction. The board of ethics shall be empowered to collect evidence and information concerning any complaint and to add the findings and results of its investigation to the file containing such complaint;

b. Upon completion of its review and/or investigation of a complaint, the board at a public meeting may dismiss those complaints which are unjustified, frivolous, patently unfounded or which fail to state facts sufficient to invoke disciplinary jurisdiction. Provided, however, that a rejection of such complaint by the board of ethics shall not deprive the complaining party of any action he/she might otherwise have at law or in equity against the respondent. A rejection shall prevent refilling of a complaint regarding the same subject(s) and alleged perpetrator(s) for the same offense;

c. Admonish, formally reprimand, publicly censure, any complaining party that files an unjustified, frivolous, patently unfounded or factually insufficient complaint;

d. Forward an order to the board of commissioners; or

e. Hold a public hearing within 60 days after the complaint was received.

(4) Parties rights. At any hearing held by the board of ethics, the official who is the subject of a complaint shall have the right to written notice of the allegations at least ten business days before a hearing, to be represented by counsel, to hear and examine the evidence and witnesses and to present evidence and witnesses in opposition or in extenuation according to the procedures contained in subparagraph (6).

(5) Advisory opinions. When any official has a doubt regarding the applicability of any provision of this chapter to a particular situation, or regarding the definition of its terms, he may apply in writing or verbally during a public meeting to the county attorney for an advisory opinion. The advisory opinion shall be written unless it is

given verbally during a public meeting, and may be provided directly to the requestor of such opinion. Nothing in this chapter shall be construed to prohibit a request for an informal opinion by any public official from the county attorney regarding a potential conflict of interest. Neither a request for an informal opinion, nor the making of a statement concerning a potential conflict of interest made by a member of the governing body in the course of abstaining from voting shall create a presumption or inference that a public servant actually has a personal interest in the matter about which the opinion was requested.

[Omitting the County Attorney from the process based upon language in a previous section, it appears this section seeks to involve the County Attorney by way of the issuance of an "informal opinion". The County Attorney should be part of this, or not. If deemed to be part of the process, there should be some recognition that the County Attorney would not be advising the Ethics Board where a member of the Board of Commissioners is accused of an ethics violation. Ed.]

[Balance of this section sets out procedures for hearings and appeals.]

Sec. 2-214. Penalties.

County officials are subject to the following penalties and action for breach of ethics:

(1) Written warning or reprimand;

(2) Cancellation of the contract or rejection of the bid or offer;

(3) Recovery of the value transferred or received; and/or

(4) Debarment or suspension from award of county contract for a period of up

to three years.

Sec. 2-215. Compliance with applicable laws.

No officer or official shall engage in any activity or transaction that is prohibited by any law, now existing or hereafter enacted, which is applicable to him or her by virtue of his or her office.

II. REPEAL OF CONFLICTING ORDINANCES. This ordinance is intended as the Code of Ethics of Fayette County, and all other ordinances in existence which conflict with the provisions of this ordinance, including but not limited to the Code of Ethics of 2011, are hereby repealed.

III. EFFECTIVE DATE. This ordinance shall become effective on the date of its adoption by the Board of Commissioners of Fayette County.

SO ENACTED this ____ day of _____, 2013.