

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. O-2003-5

AN ORDINANCE AMENDING THE "CODE OF CITY OF CORAL GABLES" BY ADDING A CHAPTER ENTITLED "CODE OF ETHICS" FOR THE PURPOSE OF PROVIDING A DECLARATION OF POLICY, PURPOSE, STANDARDS, PROCEDURES ON COMPLAINT OF VIOLATION AND PENALTIES RELATING TO ELECTION CAMPAIGN FINANCING; SETTING FORTH REQUIREMENTS ON RECEIPT OF GIFTS; PROVIDING DEFINITIONS AND FINES PROVIDING FOR REPEAL, PROVIDING SEVERABILITY, PROVIDING FOR CODIFICATION THEREFORE, AND AN EFFECTIVE DATE OF MAY 30, 2003; AND REPEALING ALL ORDINANCES INCONSISTENT HERewith.

WHEREAS, the City Commission wishes to establish and to exercise authority for enforcing standards of ethical conduct and behavior for City officials and personnel; and;

WHEREAS, the City Commission desires to establish the City's own procedures and evidentiary standards for determining complaints of ethical violations; and,

WHEREAS, the City Commission intends that the City's determinations on complaints of ethical violations shall be entitled to a presumption of correctness by a reviewing court or by the Miami-Dade County Commission on Ethics and Public Trust and the Florida Commission on Ethics, and,

WHEREAS, the City Commission recognizes that political speech and political association are fundamental rights protected by the First Amendment of the United States Constitution; and

WHEREAS, the City Commission further recognizes that persons have an absolute right to support political ideas and that the right to support political candidates is subject to the qualified power of the City to adopt and enforce requirements that are narrowly tailored to accomplish a legitimate, compelling government interest; and

WHEREAS, the adoption of a Conflict of Interest and Code of Ethics ordinance is in the best interests of the City of Coral Gables.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the "Code of the City of Coral Gables" shall be and it is hereby amended by adding thereto a provision for a "City of Coral Gables Ethics Ordinance", "Declaration of Policy", "Purposes" sections, "Definitions" and "Prohibitions", "Enforcement" and "Penalty" sections as follows:

Sec---**Conflict of Interest and Code of Ethics Ordinance.**

(a) **Designation.** This section shall be designated and known as the "City of Coral Gables Conflict of Interest and Code of Ethics Ordinance." This section shall be applicable to all City personnel as defined below, and shall also constitute a standard of ethical conduct and behavior for all autonomous personnel, quasi-judicial personnel, advisory personnel and departmental personnel. The provisions of the City of Coral Gables Conflict and Code of Ethics Ordinance shall be applied in a cumulative manner.

(b) **Declaration of Policy.**

Our government is a representative democracy. Those who are elected, appointed, hired, volunteer or campaign to serve the public as representatives accept a public trust. The public entrusts its powers and resources to its servants to use only in the public interest. Public trust requires public servants to fulfill their public duties faithfully and honestly, and to subordinate any personal interest which conflicts with the public interest. The city adopts the following ordinance to provide for specific guidelines for minimum ethical standards for public servants, officials and employees.

(c) **Purposes of Ordinance**

This ordinance is adopted:

- (i) to state principles of ethics which are to be applied to municipal public servants, beyond those required by the State and County Ethics Laws and Ordinances;
- (ii) to inform public servants and the public of the minimum standards to which public servants and vendors must adhere; and
- (iii) to promote public confidence in the integrity of public servants;
- (iv) to encourage members of the public to seek public office or employment, to serve on public boards, to assist public servants as volunteers and to take pride in participating in the governmental process; and
- (v) to establish certain fair campaign practices; and
- (vi) to establish penalties, as appropriate, for public servants who violate the public trust;

(d) **Definitions.**

For the purposes of this Ordinance, the following terms, phrases and words shall have the meanings given herein. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given the meaning provided under either the County Ethics ordinances or State Ethics Statutes and if no meaning is provided, then their common and ordinary meaning unless the context suggests otherwise.

- (1) The term "advisory personnel" shall refer to the members of those City advisory boards and agencies whose sole or primary responsibility is to recommend legislation or give advice to the City Commission such as the Street and Alley Vacation committee, Beautification

Committee, Traffic Advisory Committee, Board of Adjustment, Planning and Zoning Board and Parks and Recreation Advisory Board.

(2) The term "autonomous personnel" shall refer to the members of autonomous authorities, boards and agencies, such as the Code Enforcement Board, the Retirement Board and the Construction Regulation Board.

(3) The term "benefit" means

- (i) anything having a monetary value in excess of \$25.00, Twenty-Five Dollars; or
- (ii) anything, regardless of its monetary value, perceived or intended by either the one who offers it or the one to whom it is offered to be sufficient in value to influence a public servant in the performance or non-performance of an official action; or
- (iii) anything, regardless of its monetary value, which, under the circumstances, a reasonably prudent person in the position of the public servant to whom the thing is or may be offered would recognize as being likely to be intended to influence the public servant in the performance or non-performance of an official actions;
- (iv) includes, but is not limited to, a valuable act, advance, award, contract, compensation, contribution, deposit, emolument, employment, favor, fee, forbearance, fringe benefit, privilege, promise, reward, remuneration, service, subscription, or the promise that any of these things will be conferred in the future.

(4) The term "Candidate" means an individual who is a candidate for elective municipal office, as defined in Article II of the City Charter, or an applicant for an appointive municipal position.

(5) The term "Commission members" shall refer to the Mayor and the members of the City Commission.

(6) The term "compensation" shall refer to any money, gift, favor, thing of value or financial benefit conferred, or to be conferred, in return for services rendered or to be rendered.

(7) A "contribution" is:

- (i) A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value.
- (ii) A transfer of funds between Political Committees, between Committees of Continuous Existence, or between a Political Committee and a Committee of Continuous existence.
- (iii) The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.
- (iv) The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.

(8) The term "controlling financial interest" shall refer to ownership, directly or indirectly, of 10% or more of the outstanding capital stock in any corporation or a direct or indirect interest of 10% or more in a firm, partnership, or other business entity at the time of transacting business with the City.

(9) The term "departmental personnel" shall refer to the City Clerk, the City Manager, Department Heads, the City Attorney, and all assistants to the City Clerk, City Manager and City Attorney, however titled.

(10) The term "employees" shall refer to all persons, other than an elected public officer, employed and paid a salary to work for the City, whether full-time, part-time, or on a contract basis, and all volunteers notwithstanding the fact that they are unpaid. This ordinance shall apply to independent contractors who perform services for the city such as contract inspectors.

(11) The term "immediate family" shall refer to the spouse, parents, children, brothers and sisters of the person involved.

(12) The term "quasi-judicial personnel" shall refer to the members of the Encroachment Committee Planning Board, the Board of Adjustment, the Code Enforcement Board and such other individuals, boards and agencies of the City as perform quasi-judicial functions.

(13) The term "transact any business" shall refer to the purchase or sale by the City of specific goods or services for consideration and to submitting a bid, a proposal in response to a RFP, a statement of qualifications in response to a request by the City, or entering into contract negotiations for the provision on any goods or services, whichever first occurs.

(14) The term "Vendor" shall refer to-a person whether individually or through a corporation, who transacts business with the City, or has been approved by the City Commission to transact business with the City, or is listed on the City Manager, Purchasing Department or other City department's approved vendor list.

(e) **Gifts.**

(1) Definition. The term "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.

(2) Exceptions. The provisions of paragraph (e) (1) shall not apply to:

- (i) Political contributions specifically authorized by State law;
- (ii) Gifts from relatives or members of one's household, unless the person is a conduit on behalf of a third party to the delivery of a gift that is prohibited under paragraph (3);
- (iii) Awards for professional or civic achievement;
- (iv) Material such as books, reports, periodicals or pamphlets which are solely informational or of an advertising nature.

(3) Prohibitions. A person described in paragraphs (d), (1), (2), (4), (5) and (9) - (12) above shall neither solicit nor demand any gift. It is also unlawful for any person or entity to offer, give or agree to give to any person included in the terms defined in paragraphs, or for any person included in the terms defined in paragraphs (d) above to accept or agree to accept from another person or entity, any gift for or because of:

- (i) An official public action taken, or to be taken, or which could be taken, or an omission or failure to take a public action;

(ii) A legal duty performed or to be performed, or which could be performed, or an omission or failure to perform a legal duty;

(iii) A legal duty violated or to be violated, or which could be violated by any person included in the term defined in paragraph (d) (5); or,

(iv) Attendance or absence from a public meeting at which official action is to be taken.

(4) Disclosure. Any person included in the term defined in paragraphs (d)(1), (2), (4), (5) and (9)-(12) above shall disclose any gift, or series of gifts from any person or entity, having a value in excess of \$25.00. The disclosure shall be made by filing a copy of the disclosure form required by Chapter 112, Florida Statutes, for "local officers" with the City Clerk simultaneously with the filing of the form with the City Clerk of the City of Coral Gables, Clerk of Miami-Dade County and with the Florida Secretary of State.

(f) **Exploitation of official position prohibited.** No person included in the terms defined in paragraphs (d)(1), (2), (4), (5) and (9) - (12) above shall corruptly use or attempt to use an official position to secure special privileges or exemptions for that person or others.

(g) **Prohibition on use of confidential information.** No person included in the terms defined in paragraphs (d)(1), (2), (4), (5), and (9) - (12) above shall accept employment or engage in any business or professional activity which one might reasonably expect would require or induce one to disclose confidential information acquired by reason of an official position, nor shall that person in fact ever disclose confidential information garnered or gained through an official position with the City, nor shall that person ever use such information, directly or indirectly, for personal gain or benefit.

(h) **Conflicting employment prohibited.** No person included in the terms defined in paragraphs (d)(1), (2), (4), (5) and (9) - (12) above shall accept other employment which would impair independence of judgment in the performance of any public duties.

(i) **Prohibition on outside employment.**

(1) No person included in the terms defined in paragraphs (d)(1), (2), (4), (5) and (9) - (12) above shall receive any compensation for services as an officer or employee of the City from any source other than the City, except as may be permitted as follows:

(i) Generally prohibited. No full-time City employee shall accept outside employment, either incidental, occasional or otherwise, where City time, equipment or material is to be used or where such employment or any part thereof is to be performed on City time.

(ii) When permitted. A full-time City employee may accept incidental or occasional outside employment so long as such employment is not contrary, detrimental or adverse to the interest of the City or any of its departments and the approval required in subparagraph (iii) is obtained.

(iii) Approval of department head required. Any outside employment by any full-time City employee must first be approved in writing by the employee's department head or the City Manager where the employee is a department head who shall maintain a complete record of such employment.

(2) All full-time City employees engaged in any outside employment for any person, firm, corporation or entity other than the City of Coral Gables, or any of its agencies or instrumentalities, shall file, under oath, an annual report indicating the source of the outside

employment, the nature of the work being done and any amount of money or other consideration received by the employee from the outside employment. City employee reports shall be filed with the City Clerk. The reports shall be available at a reasonable time and place for inspection by the public. The City Manager may require monthly reports from individual employees or groups of employees for good cause.

(j) **Prohibited investments.** No person included in the terms defined in paragraphs (d)(1), (2), (4), (5) and (9) - (12) above or a member of the immediate family shall have personal investments in any enterprise which will create a substantial conflict between private interests and the public interest.

(k) **Certain appearances and payment prohibited.**

(1) No person included in the terms defined in paragraphs (d), (4), (5), (9) and (10) shall appear before any City board or agency and make a presentation on behalf of a third person with respect to any matter, license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Nor shall the person receive any compensation or gift, directly or indirectly, for services rendered to a third person, who has applied for or is seeking some benefit from the City or a City agency, in connection with the particular benefit sought by the third person. Nor shall the person appear in any court or before any administrative tribunal as counselor legal advisor to a party who seeks legal relief from the City or a City agency through the suit in question.

(2) No person included in the terms defined in paragraphs (d)(1), (2) and (12) shall appear before the agency on which the person serves, either directly or through an associate, and make a presentation on behalf of a third person with respect to any matter, license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by

the third person. Nor shall such person receive any compensation or gift, directly or indirectly, for services rendered to a third party who has applied for or is seeking some benefit from the agency on which the person serves in connection with the particular benefit sought by the third party. Nor shall the person appear in any court or before any administrative tribunal as counselor legal advisor to a third party who seeks legal relief from the agency on which such person serves through the suit in question.

(l) **Actions prohibited when financial interests involved.** No person included in the terms defined in paragraph (d)(1), (2), (4), (5) and (9)-(12) above shall participate in any official action directly or indirectly affecting a business in which that person or any member of the immediate family has a financial interest. A financial interest is defined in this subsection to include, but not be limited to, any direct or indirect interest in any investment, equity, or debt.

(m) **Acquiring financial interests.** No person included in the terms defined in paragraph (d)(1), (2), (4), (5) and (9)-(12) above shall acquire a financial interest in a project, business entity or property at a time when the person believes or has reason to believe that the financial interest may be directly affected by official actions or by official actions by the City or City agency of which the person is an official, officer or employee.

(n) **Recommending professional services.** No person included in the terms defined in paragraphs (d) (1),(2),(4),(5) and (9)-(12), above, may recommend the services of any lawyer or law firm, architect or architectural firm, public relations firm, or any other person or firm, professional or otherwise, to assist in any transaction involving the City or any of its agencies, provided that a recommendation may properly be made when required to be made by the duties of office and in advance at a public meeting attended by other City officials, officers or employees.

(o) **Continuing application after City service.** (1) No person included in the terms defined in paragraph (d)(1),(2),(4),(5) and (9) - (12) above shall, for a period of two years after his or her City service or employment has ceased, lobby any city official [as defined in paragraphs (d) above] in connection with any judicial or other proceeding, application, RFP , RFQ, bid, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which the City of Coral Gables or one of its agencies is a party or has any interest whatever, whether direct or indirect. Nothing contained in this subsection shall prohibit any individual from submitting a routine administrative request or application to a City department or agency during the two-year period after his or her service has ceased.

(2) The provisions of the subsection shall not apply to persons who become employed by governmental entities, 501(c)(3) non-profit entities or educational institutions or entities, and who lobby on behalf of those entities in their official capacities.

(3) The provisions of this subsection shall apply to all persons described in paragraph (s)(1) whose City service or employment ceased after the effective date of this ordinance.

(4) No person described in paragraph (s), whose City service or employment ceased within two years prior to the effective date of this ordinance shall for a period of two years after his or her service or employment enter into a lobbying contract to lobby any city official in connection with any subject described in paragraph (s)(1) in which the City or one of its agencies is a party or has any direct and substantial interest; and in which he or she participated directly or indirectly through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, during his or her City service or employment. A

person participated "directly" where he or she was substantially involved in the particular subject matter through decision, approval, disapproval, recommendation, the tendering of advice, investigation, or otherwise, during his or her City service or employment. A person participated "indirectly" where he or she knowingly participated in any way in the particular subject matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, during his or her City service or employment. All persons covered by this paragraph shall execute an affidavit on a form approved by the City Attorney prior to lobbying any City official attesting that the requirements of this subsection do not preclude the person from lobbying, City officials.

(p) **City Attorney to render opinions on request.** Whenever any person included in the terms defined in paragraph (d)(1), (2), (4), (5) and (9)-(12) is in doubt as to the proper interpretation or application of this Conflict of Interest and Code of Ethics Ordinance, or whenever any person who renders services to the City is in doubt as to the applicability of the ordinance, that person may submit to the City Attorney a full written statement of the facts and questions. The City Attorney shall then render an advisory non-binding opinion to such person and shall publish these opinions without use of the name of the person advised unless the person permits the use of a name. Binding opinions may be sought from the Miami-Dade County Ethics Commission.

(q) **Proceedings by the Miami-Dade Commission on Ethics and the Florida Commission on Ethics.** Upon the request by the City, the Miami-Dade Commission on Ethics and the Florida Commission on Ethics may abate proceedings on any complaint, which is filed by the same complainant against the same respondent, and involving substantially identical facts, until the City completes its proceedings on the complaint. The Ethics Commission may also

refer complaints to the City for review of any violation filed with the Ethics Commission. The City shall promptly notify the Miami-Dade Commission on Ethics and the Florida Commission on Ethics when it learns that a substantially identical complaint has been filed with either of those agencies and request that their proceedings be abated until the conclusion of the City's proceedings

(r) **Penalties and personnel action.** The City Manager may take personnel action and may enter into stipulations and settlements as are just and in the best interest of the citizens of Coral Gables. Contracts awarded in violation of this ordinance may be voided by the City Commission. Any administrative or commission approval obtained may also be voided by the City Commission.

(s) **Fair campaign practices**

(1) Any person, who is the principal of a vendor to the City who contributes to the campaign of a candidate or the campaign committee of a candidate for the office of Mayor or City Commissioner shall file a disclosure form with the office of the City Clerk within twenty (20) days of making said contribution. The term "principal" shall encompass all individuals who meet the provisions of the term "controlling financial interest", as defined in §(d)(8), herein. The date of the contribution shall be the earlier of either the date of the contribution check or the date of deposit of said check in the campaign fund. The disclosure form shall require, at a minimum, the name and address of the individual making the contribution, the name of the company which has a contract with the City, and the amount of the contribution, as well as the name of the candidate or campaign committee to whom the contribution was made.

(2) A fine of \$500.00 shall be imposed on every person who violates this prohibition, and fails to correct such violation within 20 calendar days of notification by the City Clerk. Each act of soliciting, giving or receiving a contribution in violation of this paragraph shall constitute a separate violation. All contributions received *by* a candidate in violation of this paragraph shall be forfeited to the City's general revenue fund.

Section----- Procedure on Complaint of Violation.

(a) Legally sufficient complaint. An investigation of an alleged violation of any ethics provisions of the City Code, by any person included in the terms defined in paragraph (d) above, except the City Commission, City Manager, Assistant City Manager, City Clerk, City Attorney and their immediate family, shall be initiated upon receipt by the City Manager of a written complaint which alleges the elements of a violation, is based substantially upon the personal knowledge of the complainant and signed under oath or affirmation by the complaining person, and is legally sufficient to state a possible violation of this chapter. Within 5 days after receipt, the City Manager shall send a copy of a complaint to the alleged violator. The City Attorney shall make the determination of legal sufficiency within 20 days. If the complaint is determined to be legally insufficient, the City Attorney shall state the reasons for the finding in writing and report the determination to the complainant, the alleged violator, or respondent, and the City Commission.

(b) Complaints against Mayor, Commissioner or city officials. A complaint against a Commission member, City Manager, Assistant City Manager, City Clerk, City Attorney and their immediate family shall be referred to the Commission on Ethics and Public Trust.

(c) Prospective jurisdiction. Any alleged violation committed before the effective date of this ordinance shall be governed by the applicable City of Coral Gables, Miami-Dade County

and State of Florida Code of Ethics Ordinances, Conflict of Interest Ordinances or Lobbyist Registration and Reporting Ordinances in effect at the time of the alleged violations.

(d) Personnel proceeding. Where an employee of the City of Coral Gables is alleged to have violated a law within the purview of this ordinance, and based upon the same set of facts, is subject to an ongoing disciplinary action initiated by the City, the City Attorney and City Manager shall stay consideration of a complaint until the conclusion of the personnel proceeding.

(e) Statute of limitations. No action may be taken on a complaint filed more than one year after the violation is alleged to have accrued.

(f) Termination of proceeding. A proceeding on a complaint shall terminate in the event the respondent dies in office, leaves office for any reason or is permanently separated from employment with the City, or enters into a settlement agreement with the City Manager.

(g) Appeal and judicial review. An aggrieved respondent may appeal an adverse finding of a violation to the City Commission. Review by the City Commission shall be on the record and limited to determining whether the 1) respondent was afforded procedural due process; 2) findings of fact are supported by substantial competent evidence and 3) conclusions are correct as a matter of law. An aggrieved respondent must first exhaust its right to an appeal to the City Commission before seeking review by the circuit court for Miami-Dade County. Review by the circuit court shall be pursuant to the Florida Rules of Appellate Procedure.

SECTION 2. That all ordinances or parts of ordinances that are inconsistent or in conflict with the provisions of this Ordinance are repealed.

SECTION 3. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 4. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the Code of the City of Coral Gables, Florida, as amended, which provisions may be renumbered or relettered and the word ordinance be changed to “section”, “article”, or other appropriate word to accomplish such intention.

SECTION 5. This ordinance shall become effective on May 30, 2003.

PASSED AND ADOPTED THIS TWENTY FIRST DAY OF JANUARY, A.D., 2003.

Motion: Slesnick/Second: Kerdyk)

(3/2 vote)(Anderson/Cabrera: No)

DONALD D. SLESNICK II

MAYOR

ATTEST:

YOLANDA AGUILAR
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

ELIAZABEH M. HERNANDEZ
CITY ATTORNEY