

**THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN**

ORDINANCE NO: G-21-22

AN ORDINANCE concerning

Public ethics and harassment

FOR the purpose of providing for holding over and reappointment of Ethics Commission members; adding certain prohibitions regarding harassment and false claims by elected officials; allowing certain persons to obtain advisory opinions; establishing procedures for resolution of a harassment complaint; providing for certain penalties; clarifying language; and otherwise pertaining to public ethics in the City of Frederick.

BY repealing and reenacting, with amendments,
Section 21-1
The Code of the City of Frederick, 1966 (as amended)

BY repealing and reenacting, with amendments,
Section 21-2
The Code of the City of Frederick, 1966 (as amended)

BY repealing and reenacting, with amendments,
Section 21-3
The Code of the City of Frederick, 1966 (as amended)

BY repealing and reenacting, with amendments,
Section 21-4
The Code of the City of Frederick, 1966 (as amended)

BY repealing and reenacting, with amendments,
Section 21-8
The Code of the City of Frederick, 1966 (as amended)

BY adding
Section 21-10
The Code of the City of Frederick, 1966 (as amended)

SECTION I. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That Section 21-1 of The Code of the City of Frederick, 1966 (as amended) is hereby repealed and reenacted, with amendments, as follows:

Sec. 21-1. General provisions.

- (a) Short Title. *****
- (b) Authority. *****

(c) **Applicability.** ***

(d) **Definitions.** For purposes of this chapter:

(1) "Anti-Harassment Policy" is the policy adopted by the Board of Aldermen by Resolution No. 21-13, as it may be amended from time to time, which is made a part of this chapter and incorporated herein by this reference. The Anti-Harassment Policy describes prohibited conduct and provides a process for complaints, investigations, and reports of alleged harassment by elected officials.

[(1)] **(2)** "Appointed official" means an individual appointed by the Mayor to serve as a member of a City board or commission.

[(2)] **(3)** "Candidate" means a candidate for Mayor or Board of Aldermen as defined in Chapter 7 of this Code.

[(3)] **(4)** "Commission" means the Ethics Commission of the City.

[(4)] **(5)** "Elected official" means the Mayor or a member of the Board of Aldermen.

[(5)] **(6)** "Gift" means the transfer of anything of economic value, regardless of form, without adequate and lawful consideration. "Gift" does not include the solicitation, acceptance, receipt, or regulation of a lawful political contribution.

[(6)] **(7)** "Official" means an elected official or an appointed official.

SECTION II. AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That Section 21-2 of The Code of the City of Frederick, 1966 (as amended) is hereby repealed and reenacted, with amendments, as follows:

Sec. 21-2. Ethics Commission.

(a) **Established.**

(1) The Commission is hereby established and is composed of five members appointed by the Mayor with the consent of the Board of Aldermen.

(2) Each member must be a [resident of the City, own property in the City, or be primarily employed by an entity having its principal place of business in the City.] **city resident.**

(3) Each member shall be appointed for a term of three years. **In the case of the expiration of a term, a member may continue to serve until that member's successor is appointed. Members may be reappointed to successive terms.**

(4) The Commission shall elect a chair and vice-chair on an annual basis.

(5) The Commission shall be advised by the City Attorney, or other legal counsel if deemed appropriate by the Commission or the Mayor.

- (b) Duties. ***
- (c) Certification. ***
- (d) Required changes. ***
- (e) Rules of Procedure. ***
- (f) Removal. ***

SECTION III. AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That Section 21-3 of The Code of the City of Frederick, 1966 (as amended) is hereby repealed and reenacted, with amendments, as follows:

Sec. 21-3. Opinions and complaints.

(a) **Advisory opinions.**

(1) **[Any] An advisory opinion may be requested:**

(A) **with respect to the application of this chapter, by an** official, employee, or candidate subject to the provisions of this [chapter may request from the Commission an advisory opinion concerning the application of this chapter.] **chapter; or**

(B) **with respect to the application of Section 21-4(i) of this chapter, by a person interested in submitting a bid or proposal for procurement.**

(2) The Commission shall respond promptly to a request for an advisory opinion and shall provide interpretations of this chapter based on the facts provided or reasonably available to it.

(3) Copies of advisory opinions, with the identity of the subject deleted, must be published and made available to the public in accordance with any applicable state law regarding public records.

(b) **Complaints.** Any person may file with the Commission a complaint alleging a specific violation of any of the provisions of this chapter.

(1) A complaint must be written and under [oath, and, by a majority vote of the Commission, may be referred] **oath. The Commission may refer a complaint** to the City Attorney or other legal counsel, if appropriate, for investigation and review. The City Attorney or other legal counsel shall submit an investigative report to the Commission within a reasonable time.

(2) All complaints must be filed within one year of the time the person filing the complaint either knew, or in the exercise of reasonable care should have known, of the alleged violation.

- (3) If after receiving an investigative report, the Commission determines that there are insufficient facts upon which to base a determination of a violation, it may dismiss the complaint.
 - (4) If there is a reasonable basis for believing a violation has occurred then the subject of the complaint or investigation shall be afforded an opportunity for a hearing conducted in accordance with any applicable rules of procedure. Any final determination resulting from the hearing shall include findings of fact and conclusions of law.
 - (5) Upon a finding of a violation, the Commission may take any enforcement action provided for in accordance with Section 21-9 of this chapter.
 - (6) After a complaint is filed and until a final determination by the Commission, all actions regarding a complaint are confidential.
- (c) **Initiation of investigation by Commission.** [By a majority vote, the] The Commission may initiate an investigation into an alleged violation of any of the provisions of this chapter. An investigation initiated under this subsection will be conducted in the same manner as complaints, in accordance with subsection (b) of this section.
- (d) **Subpoenas, etc. *****

SECTION IV. AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That Section 21-4 of The Code of the City of Frederick, 1966 (as amended) is hereby repealed and reenacted, with amendments, as follows:

Sec. 21-4. Conflicts of interest.

- (a) ***
- (b) ***
- (c) ***
- (d) ***
- (e) ***
- (f) ***
- (g) ***
- (h) ***
- (i) ***

(j) Harassment.

- (1) It is the policy of the City to maintain an environment in which all individuals are treated with respect. Harassment is unacceptable and will not be tolerated.**
- (2) An elected official may not engage in harassment as defined in the Anti-Harassment Policy.**
- (3) The Anti-Harassment Policy will be enforced in accordance with Sections 21-9 and 21-10 of this chapter.**
- (4) An elected official may not knowingly and intentionally make a materially false statement or representation in relation to a harassment claim or investigation.**

SECTION V. AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That Section 21-8 of The Code of the City of Frederick, 1966 (as amended) is hereby repealed and reenacted, with amendments, as follows:

Sec. 21-8. Exemptions and modifications.

- (a) Criteria for granting. [The] Except as otherwise provided in subsection (b) of this section, the Commission may grant exemptions and modifications to the provisions of Sections 21-4 and 21-6 of this chapter to employees and to appointed officials [if] if:**
- (1)** it determines that an exemption or modification would not be contrary to the purposes of this [chapter,] chapter; and
 - (2)** the application of this chapter would:
 - [(a)] (A)** constitute an unreasonable invasion of privacy; and
 - [(b)] (B)** significantly reduce the availability of qualified persons for public service.
- (b) Harassment. The Commission may not grant an exemption or modification to the provisions of Section 21-4 (j).**

SECTION VI. AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That Section 21-10 of The Code of the City of Frederick, 1966 (as amended) is hereby added to read as follows:

Sec. 21-10. Harassment.

- (a) Scope.** The Anti-Harassment Policy will be enforced in accordance with this section. This section supersedes any conflicting provision in any other section of this chapter to the extent of the inconsistency.

(b) Meeting upon referral of harassment matter.

- (1) Upon receipt of a final investigative report from the Director of Human Resources, the chair of the Commission will schedule a meeting to be held as soon as practicable.
- (2) The Commission will convene and discuss the investigative report. If the Commission decides that further proceedings are not necessary, the Commission may counsel the elected official who is the subject of a complaint or dismiss the complaint. If the Commission dismisses the complaint, it will advise the complainant, the accused elected official, and the Director.
- (3) The Commission may decide to conduct further proceedings, including a hearing.

(c) Hearing.

- (1) If the Commission decides to conduct a hearing, it will be held as soon as practicable.
- (2) The Commission and the accused elected official may call witnesses to provide testimony. At the hearing, the accused elected official may be represented by any person, may testify and present other evidence, and may cross-examine witnesses.
- (3) The Commission may consider relevant documents and other evidence at the hearing.

(d) Final resolution. As soon as practicable following the conclusion of the hearing, the Commission will issue a final written decision. The Commission shall:

- (1) find that a violation did not occur and take no action; or
- (2) based upon a preponderance of the evidence, find that a violation occurred and impose any one or more of the penalties enumerated in Section 21-9 of this Chapter or this paragraph.
 - (A) The Commission may refer the elected official to mandatory counseling or training.
 - (B) The Commission may issue an official reprimand, expressing its strong disapproval of the conduct of the elected official.


SECTION VII. AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That this ordinance shall take effect on October 11, 2021 all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

SECTION VIII. AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That this ordinance does not affect the term of office or incumbency of any duly appointed member of the Ethics Commission, **EXCEPT THAT** any such member who as of the effective date of this ordinance does not meet the residency

requirement of Sec. 21-2(a) of this ordinance shall, six months thereafter, be deemed to have resigned and the vacancy shall be filled in accordance with the applicable regulations.

PASSED:

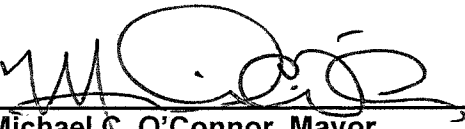
DATE:


**Michael C. O'Connor, President,
Board of Aldermen**

October 7, 2021

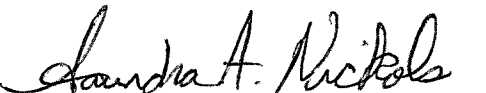
APPROVED:

DATE:


Michael C. O'Connor, Mayor

October 7, 2021

Approved for Legal Sufficiency:


City Attorney