COUNTY DEPARTMENT AGENDA REQUEST

Department:	Commissioners	Presenter(s):	Scott Bennett, County Attorney
Meeting Date:	Wednesday, October 6, 2010	Type of Request:	New Business

Wording for the Agenda:

Discussion of revisions to the Ethics Ordinance.

Background/History/Details:

What action are you seeking from the Board of Commissioners?

This item is only for discussion at this time.

If this item requires funding, please describe:

Has this issue come before the Commissioners in the past?		If so, when?	
Do you need audio-visual for the presentation?		Back-up Material Submitted?	Yes

STAFF USE ONLY

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

Staff Notes:

STATE OF GEORGIA
COUNTY OF FAYETTE

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, FAYETTE COUNTY, GEORGIA CHAPTER 2, ADMINISTRATION; TO PROVIDE FOR ETHICAL STANDARDS; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR PENALTIES; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN ADOPTION DATE; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES ALLOWED BY LAW.

WHEREAS, the duly elected governing authority of Fayette County is the Board of Commissioners thereof;

WHEREAS, the governing authority desires to amend the provision that provides for the ethical standards of county officials and employees as allowed by the State of Georgia;

WHEREAS, the health, safety, and welfare of the citizens of Fayette County, Georgia shall be improved and protected by adoption and implementation of this Ordinance.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF FAYETTE COUNTY, GEORGIA AND IT IS HEREBY ORDAINED BY AUTHORITY THEREOF:

Section 1. That Article VIII of Chapter 2 Administration of the Code of Ordinances, Fayette County, Georgia is hereby deleted in its entirety and replaced to read as follows:

Sec. 2-207. Purpose.

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

Sec. 2-208. Definitions.

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.

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 either the county administrator or the board of commissioners acting independently or jointly and any member of any other county board or authority.

Employee shall include all those persons employed on a regular or part time basis by the county.

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

Interest means direct or indirect pecuniary or material benefit accruing to a public officer, official, or employee 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.

For purposes of this policy, a county official or employee 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 or employee 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 or employee 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 or employee.

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

Reprimand means an expression of disapproval.

Sec. 2-209. Standards.

(a) Interest in contract or transaction. No county official or employee 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 section 2-210, below.

(b) Pre-acquisition of interest. No county official or employee 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 or employee 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 or employee 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.

(d) No county official or employee 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.

(e) No county official or employee shall disclose to others matters discussed in executive session of any board or 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.

(f) Incompatible service. No county official or employee 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 or employee 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.

(h) Public property. No county official or employee 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 or employee 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 or employee shall, after the 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.

(k) Political recrimination. No county official or employee, 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.

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

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

(n) Organizational integrity. County commissioners, as policy makers, shall refrain from interfering in the daily administrative affairs of department directors. Commissioners shall not, acting alone, make suggestions to the department directors or their employees regarding the performance of their duties, nor give instructions to department directors or other employees. Commissioners shall not make recommendations regarding the hiring, firing or disciplining of department directors and other county employees.

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 or employee 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 or employee's non-public business;

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

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

(4) Actual and reasonable expenses for food, beverages, travel, lodging, and registration for a meeting which are provided to an official or employee 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 or employees, 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 or employee, in his capacity as such official or employee, participates in the making of a contract even if such official or employee 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 or employee 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.

Sec. 2-212. Abstentions.

A county official or employee 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.

Sec. 2-213. Enforcement and administration.

(a) Constituting the board; chairman.

[TBD]

(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, investigate, 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 without first receiving a complaint;

(3) To make such investigation and 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; or

(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.

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.

(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 refiling 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, employee, or respondent who is the subject of inquiry 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, employee, or person appointed by the board of commissioners 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.

(6) Hearing procedures.

a. At the hearing the conduct of the parties shall be dignified both on and off the record.

b. Misconduct before the board may be grounds for summary exclusion from the hearing. The hearing is intended to receive evidence either to refute or to substantiate specific charges. It shall not be a forum for discussion of extraneous or irrelevant matters having no bearing on the charges, and the alleged misconduct of others who may have escaped discipline in the past shall serve as no defense. All parties at action and witnesses shall be given

ample time and opportunity to develop points, subject to the discretion of the board.

c. It should be recognized that the board will be composed of private citizens. Accordingly, the board may not follow established legal procedures as might be expected in a court of law. However, in taking testimony and in considering the evidence, the board shall follow accepted legal procedure insofar as is practicable but shall not be bound by the technical rules of evidence observed in courts of law. The board may decline to listen to numerous character witnesses or numbers of witnesses testifying to identical facts.

d. The chairman of the board of ethics shall conduct the hearing.

e. The hearing shall be recorded and the county clerk shall prepare a written summary of the hearing. The complainant and/or respondent may provide a court reporter at their expense for a verbatim transcript of the hearing, if so desired. The county clerk, or their designee shall take minutes of the hearing, specifically including the name of the board members who make any motions, the board members who second any such motions, and the names of the individuals on the board and how each voted. This written report shall be presented to the board of commissioners at the conclusion of the board's proceedings.

f. All three members of the constituted board shall be required to conduct the hearing. If a member is unable to attend the hearing, the board of commissioners shall designate one of the alternates to replace the member. The ethics board may, before the hearing and upon ten days notice to all parties, approve regulations governing conduct of ethics board hearings so long as such regulations do not conflict with this Article.

g. The person who filed the complaint ("complainant") shall present his case to the board first.

h. All documentary evidence which is anticipated to be submitted to the board at the hearing by either the respondent or the complainant, and the names, with telephone numbers, of all individuals expected to present testimony to the board on behalf of either the respondent or complainant, must be given to the county clerk and the opposing party at least ten days in advance of the hearing. This requirement shall not apply to evidence used solely for purposes of cross-examination or rebuttal. The failure of a party to adhere to this rule shall preclude such party from tendering such evidence or individual's testimony at the hearing through any

form. The respondent, complainant, and the public shall be entitled to see all such lists which are placed on file with the county clerk.

i. The board may compel the production of any document in the possession of the county and subject to the Open Records Act and the testimony of any county employee except where the employee is the respondent. Where the board compels any such document or testimony after a hearing has commenced a continuation shall be provided so that such order can be complied with.

j. Neither party shall have the right to require depositions of any individual, including the opposite party.

k. The complainant's evidence must prove that respondent is guilty of the offense charged by the evidentiary standard commonly referred to as "preponderance of the evidence."

l. Each witness presented by the complainant, and including the complainant, shall be subject to cross-examination by the individual accused of the ethical violation ("respondent") or such person's representative.

m. At the conclusion of the complainant's case, the respondent shall be entitled to move for dismissal based on insufficient evidence on the part of complainant's case. If respondent makes such a motion and the board, by majority vote, agrees to dismiss the complaint, the hearing shall be terminated at this point. If either the respondent fails to make such a motion, or, if the board decides by majority vote to overrule respondent's motion, the hearing shall continue. The board may also direct a decision in favor of the respondent upon the board's own initiative.

n. Respondent shall then be entitled to present his evidence to the board.

o. Respondent is not required to testify. The absence of respondent's testimony shall not be viewed by the board as an admission of any sort.

p. If respondent testifies, then respondent shall be subject to cross-examination by complainant. All other witnesses who testify in the respondent's case shall be subject to cross-examination by complainant.

q. All persons who testify before the board, shall be placed under oath, by either the chairman or a person designated by the chairman.

r. At the conclusion of respondent's case, the complainant may offer rebuttal evidence only to those items presented in respondent's case. At the conclusion of complainant's rebuttal, respondent shall be entitled to offer rebuttal evidence only to those matters presented in complainant's rebuttal case.

s. During the course of testimony and at the conclusion of all the testimony and closure of all of the evidence, the board members may ask questions of any of the individuals who testified before the board.

t. At the conclusion of all questions by parties and board members, the chairman shall end the hearing and permit the board to deliberate in public. If the board decides by majority vote that additional evidence is needed to make a decision, the board shall have the authority to require either the complainant or respondent to submit additional evidence at a continuation of the hearing which must be held no later than 45 days after the date of the initial hearing. The board has no authority to continue the hearing past this 45-day deadline.

u. Following the conclusion of any additional evidence received at the continued hearing, the board shall continue to deliberate. When deliberations are concluded, the chairman shall call for a vote. The board may vote immediately after deliberations are concluded or they may continue the meeting for up to two weeks when a public vote must be taken. The board's first vote must be whether the respondent violated the ethics code as charged by the complainant. If, by majority vote, the board rules that the respondent did not violate the ethics code as charged by the complainant, then the matter is concluded. If the board, by majority vote, concludes that the respondent did violate the ethics code as charged by the complainant, then the board must make a second decision by majority vote. The second decision involves the form of penalty. The board shall have six options of penalty which include:

i. No admonishment and no further action;

ii. A public reprimand and admonishment not to violate the ethics code in the future;

iii. Formal reprimand;

iv. Public censure;

v. Recommendation for termination, resignation, or recall; or

vi. Recommendation of prosecution in the State Court of Fayette County.

v. The complainant may withdraw his or her complaint at any time without the approval of the board.

w. An order will be generated by the board and submitted to the board of commissioners for inclusion in the minutes within fifteen (15) days of the completed hearing.

(d) Judicial review of decisions.

(1) Any public official adversely affected by any final decision of the board of ethics under subsection (f) of this section may obtain judicial review of such decision as provided in this subsection.

(2) An action for judicial review may be commenced in the Superior Court of Fayette County within 30 days after the decision of the board of ethics becomes final.

(3) The effective date of the final decision of the board of ethics shall be postponed pending judicial review as provided for in this subsection.

(4) The record on review, unless otherwise stipulated by the parties, shall include the original or certified copies of all pleadings, testimony, evidence, exhibits, and other papers presented to or considered by the board of ethics and the findings and decisions of the board of ethics. As to alleged procedural irregularities, evidence may be taken independently by the court.

(5) If the court finds no error, it shall affirm the decision of the board of ethics. The court shall hold unlawful and set aside the decision of the board of ethics if it finds that such action was:

i. Arbitrary or capricious;

ii. A denial of a statutory right;

iii. Contrary to constitutional right, power, privilege, or immunity;

iv. In excess of statutory jurisdiction, authority, purposes, or limitation;

v. Not in accord with the procedures or procedural limitations of this section or as otherwise required by law;

vi. An abuse of discretion, unsupported by substantial evidence when the record is considered as a whole; or

vii. Otherwise contrary to law.

(6) The decision of the trial court shall be subject to appellate review in the same manner and with the same effect as in appeals from a final judgment or decree in any other civil action.

Sec. 2-214. Penalties.

(a) Employees are subject to the following penalties and actions for a breach of this code of ethics:

(1) Written warning or reprimand;

(2) Suspension without pay;

(3) Termination of employment;

(4) Recovery of value transferred or received by the county, and;

(5) Cancellation of the contract or rejection of the bid or offer.

(b) 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

(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, official, or employee 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.

Secs. 2-216—2-220. - Reserved.

Section 2. That the preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 3. a. It is hereby declared to be the intention of the Board of Commissioners that all Sections, paragraphs, sentences, clauses and phrases of this Article are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, no Section, paragraph, sentence, clause or phrase of this Article is mutually dependent upon any other Section, paragraph, sentence, clause or phrase of this Article.

c. In the event that any phrase, clause, sentence, paragraph or section of this Article shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or Sections of the Article and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and Sections of the Article shall remain valid, constitutional, enforceable, and of full force and effect.

Section 4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed.

Section 5. The effective date of this Ordinance shall be the date of adoption unless otherwise specified herein.

IT IS SO ORDAINED THIS ____ DAY OF _____, 2010.

FAYETTE COUNTY BOARD OF COMMISSIONERS

_____
JACK R. SMITH, CHAIRMAN

ATTEST:

_____
CLERK/DEPUTY CLERK