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**Reply to: Lakewood**

**M E M O R A N D U M**

**DATE:** June 28, 2016  
**TO:** Town Commission  
**THRU:** Dave Bullock, Town Manager  
**FROM:** Maggie D. Mooney-Portale, Town Attorney  
Kelly M. Fernandez, Assistant Town Attorney  
**SUBJECT:** Ordinance 2016-21

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In 1990, the Town adopted a Code of Ethics (Town Code Chapter 39) which was last amended in 1999. The Florida Code of Ethics for Public Officers and Employees is found in Chapter 112, Part III, Florida Statutes. Many provisions of the Florida and Town Codes of Ethics are identical or nearly identical, but others are in conflict.

At the September 28, 2015 Special Meeting the Town Attorney discussed her concerns regarding the variations and conflicts between the Florida Code of Ethics and Town Code of Ethics. At the May 16, 2016 Regular Workshop, the Town Commission directed the Town Attorney to prepare Ordinance 2016-21 to amend Chapter 39 to adopt the Florida Code of Ethics as the Town Code of Ethics. Article I, Section 8 of the Town Charter calls for a Special Masters process to enforce the Town Code of Ethics. Due to the adoption of the Florida Code of Ethics, proposed Ordinance 2016-21 relies on the Florida Commission on Ethics for enforcement, but provides that the Town will adopt a Special Master process should the Florida Legislature ever abolish the Florida Commission on Ethics.

Ordinance 2016-21 was presented for first reading at the June 6, 2016 Special Meeting and forwarded to the July 5, 2016 Regular Meeting for second reading and public hearing.

## ORDINANCE 2016-21

**AN ORDINANCE AMENDING CHAPTER 39, CODE OF ETHICS, OF THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA; AMENDING SECTION 39.01, DECLARATION OF PURPOSE AND POLICY; REPEALING SECTION 39.02, DEFINITIONS; AMENDING AND RENUMBERING SECTION 39.03, ESTABLISHMENT; RENUMBERING SECTION 39.04, RESPONSIBILITIES OF PUBLIC OFFICE; REPEALING SECTION 39.05, FAIR AND EQUAL TREATMENT; REPEALING SECTION 39.06, STANDARDS OF CONDUCT; CONFLICTS OF INTEREST; REPEALING SECTION 39.07, VOTING CONFLICTS; REPEALING SECTION 39.08, INFLUENCE OF BOARD MEMBERS BY TOWN COMMISSIONERS; APPEARANCE BEFORE BOARDS; REPEALING SECTION 39.09, APPLICABILITY OF THE CODE; REPEALING SECTION 39.10, RELATIONSHIP TO STATE STATUTE; REPEALING SECTION 39.11, COPIES FURNISHED; AMENDING AND RENUMBERING SECTION 39.12, SPECIAL MASTERS; REPEALING SECTION 39.13, SUBPOENA POWER; REPEALING SECTION 39.14, APPEALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Longboat Key's Code of Ethics has not been amended in over 15 years; and

**WHEREAS**, the Florida Code of Ethics for Public Officers and Employees, Chapter 112, Part III, Florida Statutes ("Florida Code of Ethics"), applies to all Town officers and certain Town employees; and

**WHEREAS**, pursuant to Section 112.3142, Florida Statutes, the Town Commissioners are required to annually complete four hours of trainings on the Florida Code of Ethics; and

**WHEREAS**, the Town Code of Ethics is nearly identical to the Florida Code of Ethics, but some conflicts exist and some provisions of the Florida Code of Ethics have not been incorporated into the Town Code of Ethics; and

**WHEREAS**, the Town recognizes the possibility for confusion or conflict between state and Town ethics requirements; and

**WHEREAS**, the Town desires to adopt, in whole, the Florida Code of Ethics as the Town Code of Ethics and rely on the expertise of the Florida Commission on Ethics and that agency's administration to handle any enforcement issues arising out of violations of the Florida Code of Ethics; and

**WHEREAS**, the Town Commission of the Town of Longboat Key finds that the amendments to the Town Code of Ethics are in the best interest of the health, safety, and welfare of the citizens of Longboat Key.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:**

**SECTION 1.** The Whereas clauses above are ratified and confirmed as true and correct.

**SECTION 2.** The amendments to Chapter 39, Code of Ethics, attached hereto as Exhibit "A" are hereby adopted.

**SECTION 3.** If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

**SECTION 4.** All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

**SECTION 5.** This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Longboat Key upon adoption.

**SECTION 6.** This Ordinance shall take effect upon second reading and adoption in accordance with Law and the Charter of the Town of Longboat Key.

Passed on the first reading this \_\_\_\_ day of \_\_\_\_\_, 2016.

Adopted on the second reading and public hearing this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Jack G. Duncan, Mayor

ATTEST:

\_\_\_\_\_  
Trish Granger, Town Clerk

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EXHIBIT "A"**

**Chapter 39 - CODE OF ETHICS**

~~39.01 - Declaration of purpose and policy.~~

~~39.02 - Definitions.~~

~~39.03 39.02 - Establishment Adoption of Florida Code of Ethics.~~

~~39.04 39.03 - Responsibilities of public office.~~

~~39.05 - Fair and equal treatment.~~

~~39.06 - Standards of conduct; conflicts of interest.~~

~~39.07 - Voting conflicts.~~

~~39.08 - Influence of board members by town commissioners; appearance before boards.~~

~~39.09 - Applicability of the Code.~~

~~39.10 - Relationship to state statute.~~

~~39.11 - Copies furnished.~~

~~39.12 39.04 - Special masters Enforcement of Code of Ethics.~~

~~39.13 - Subpoena power.~~

~~39.14 - Appeals.~~

**39.01 - Declaration of purpose and policy.**

The purpose of this chapter is to promote the welfare of the citizens of the town through the adoption of a code of ethics to govern all town officers and town employees, employed either on a part-time or full-time basis by the town. Within this framework, the general objectives of this chapter are as follows:

- ~~(A) To facilitate the proper operation of municipal government by providing officers and employees who are independent, impartial and responsible to the people, and able to make governmental decisions and formulate policy within the established channels of governmental structure.~~
  - ~~(B) To ensure that public office or public employment not be used for private gain other than as provided for by law.~~
  - ~~(C) To ensure that the financial interests of employees and public office holders present neither a conflict nor the appearance of a conflict with the public trust.~~
  - ~~(D) To foster continued recognition of the concept that public employees and public office holders are agents of the public and hold office or employment for the benefit of the public.~~
  - ~~(E) To enhance public confidence in the integrity of its municipal government.~~
  - ~~(F) To promote a recommitment to the concept that public employees and public office holders are required to uphold the Constitution of the United States, the Constitution of the State of Florida and the Charter of the town, and are required to impartially carry out and enforce the laws of the nation, the state and the town.~~
  - ~~(G) To continue high moral standards in government.~~
- ~~To this end, there is established a code of ethics for the town.~~

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**39.02 - Definitions.**

When used in this chapter:

~~"Business entity." Any person or individual, proprietorship, partnership, corporation, association or any organization which is engaged in business.~~

~~"Conflict" or "conflict of interest." A situation in which regard for a private interest tends to lead to disregard of a public duty or interest.~~

~~"Governmental body." The town or any of its departments, agencies, commissions, authorities or boards.~~

~~"Represent" or "representation." Actual physical attendance on behalf of a client in a town proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of the town on behalf of a client.~~

~~"Town employee." Any person employed by the town or any of its departments, agencies, commissions, authorities or boards, whether on a full-time or part-time basis.~~

~~"Town officer." Any person elected or appointed to any public office or public body of the town, whether paid or unpaid, and whether part-time or full-time, including the town commission, planning and zoning board, code enforcement board, zoning board of adjustment, pension board, and the investment advisory board, but excluding any person serving on an advisory body not stated above or required by Florida law; except that any person serving on an advisory body shall be subject to the requirements of the ethics code, except for § 39.06(H) (1).~~

**39.03 39.02 - Establishment Adoption of Florida Code of Ethics.**

~~The requirements set forth in this chapter shall constitute a code of ethics establishing reasonable standards and guidelines for the ethical conduct of town officers and employees. The Town adopts the Code of Ethics for Public Officers and Employees found in Chapter 112, Part III, Florida Statutes, as it may be amended from time to time, as the Town's Code of Ethics.~~

**39.04 39.03 - Responsibilities of public office.**

~~Town officers and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States, and the Constitution of this state, and the Charter of the town, and to carry out impartially the laws of the nation, state, and municipality and thus to foster respect for all government. As such, they are bound to observe the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern.~~

**39.05 - Fair and equal treatment.**

~~(A) Influencing appointments. Canvassing the members of the town commission, directly or through a third party, in order to obtain preferential consideration in connection with any appointment to and any application for employment in the town service shall disqualify the candidate for appointment except with reference to positions filled by appointment by the town commission. Town officers and employees shall not canvass any town commissioner on behalf of a candidate for appointment to the town service. Town commissioners shall not respond to canvassing by granting any special consideration, treatment, or advantage to the candidate which is not available to every~~

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~~other candidate. Members of the town commission shall adhere to article II, § 13, of the Town Charter, entitled "Relationship of Town Commission With Administration".~~

- ~~(B) Use of property. No town officer or employee shall use, request or permit the use of town-owned vehicles, equipment, materials or property for personal convenience or profit; except when such services are available to the public generally or are provided as town policy pursuant to town resolution passed by the town commission for the use of such officer, employee or others. Notwithstanding anything herein to the contrary, the town manager may authorize the personal use of the following town-owned property by town officers or employees upon receipt of a written request for such use and an authorization for the town to collect payment for any damages to the town property by payroll deduction:~~
- ~~(1) Hand tools not requiring a power source to operate;~~
  - ~~(2) Folding chairs and tables;~~
  - ~~(3) Books;~~
  - ~~(4) On-premises, after-hours use of typewriters, drafting boards, calculators and similar nonexpendable office equipment.~~
- ~~(C) Obligations to citizens. No town officer or employee shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.~~

**~~39.06 – Standards of conduct; conflicts of interest.~~**

- ~~(A) Solicitation or acceptance of gifts.~~
- ~~(1) No town officer or employee, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the town officer or employee, or candidate would be influenced thereby.~~
  - ~~(2) No town officer or employee shall accept any gift in excess of \$100.00 in value, whether in the form of entertainment, service, loan, thing, or promise, from any person, firm or corporation which to his knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the town.~~
- ~~(B) Doing business with town. No employee of the town acting in his official capacity as a purchasing agent, or town officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for the town from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his spouse or child, or any combination of them, has a material interest. Nor shall a town officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods or services of the town if he is serving as an officer or employee of the town. This subsection shall not affect or be construed to prohibit contracts entered into prior to:~~
- ~~(1) October 1, 1975;~~
  - ~~(2) Qualification for elective office;~~
  - ~~(3) Appointment to public office;~~
  - ~~(4) Beginning public employment.~~
- ~~(C) Unauthorized compensation. No town officer or employee or his spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such officer or employee knows or, with the exercise of reasonable care, should know that it~~

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- ~~was given to influence a vote or other action in which the officer or employee was expected to participate in his official capacity.~~
- ~~(D) Salary and expenses. No town officer or employee shall be prohibited from voting on a matter affecting his salary, expenses, or other compensation as a town officer, as provided by law.~~
- ~~(E) Misuse of public position. No town officer or employee of the town shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with F.S. § 104.31.~~
- ~~(F) Conflicting employment or contractual relationship.~~
- ~~(1) No town officer or employee shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, the town, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the town; nor shall an officer or employee of the town have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.~~
- ~~(2) This subsection shall not prohibit a town officer or employee from practicing in a particular profession or occupation when such practice by persons holding such town office or employment is required or permitted by law or ordinance.~~
- ~~(3) town commissioner may represent another person or entity for compensation before the town commission or any town board for a period of two years following vacation of office.~~
- ~~(G) Disclosure or use of certain information. No town officer or employee shall disclose or use information not available to members of the general public and gained by reason of his official position for his personal gain or benefit or for the personal gain or benefit of any other person or business entity.~~
- ~~(H) Disclosure of specified interests.~~
- ~~(1) If a town officer or employee is an officer, director, partner, proprietor, associate, or general agent (other than a resident agent solely for service of process) of, or owns a material interest in, any business entity which is granted a privilege to operate in this state, he shall file with the town clerk a statement disclosing such facts. Such statement shall be filed no later than 45 days after becoming an officer or employee or after the acquisition of such position or material interest. The statement shall give the name, address, and principal business activity of the business entity and shall state the position held with such business entity or the fact that a material interest is owned and the nature of that interest. New appointees to town office or new town employees shall file the statement required herein, if applicable, no later than 45 days after their appointment or after the date their employment begins.~~
- ~~(2) A person seeking to qualify as a candidate for nomination or election to any office shall file a like statement along with, and as a part of, the required qualification papers. Persons seeking to qualify as a candidate for nomination or election to town office, and officers and employees of the town, shall file their statements with~~

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~~the town clerk and the supervisor of elections of the county in which they are principally employed or are residents in accordance with Florida law.~~

- ~~(I) Employees holding office. No employee of the town shall hold office as a member of the town commission while, at the same time, continuing as an employee of the town.~~
- ~~(J) Exemption. The requirements of subsections (B) and (F) as they pertain to persons serving on advisory boards may be waived in a particular instance by the town commission upon a full disclosure of the transaction or relationship to the town commission prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of the town commission. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person. In addition, no person shall be held in violation of subsection (B) or subsection (F) if:
  - ~~(1) Within the town the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the town.~~
  - ~~(2) The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:
    - ~~(a) The official or his spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;~~
    - ~~(b) The official or his spouse or child has in no way used or attempted to use his influence to persuade the town or any personnel thereof to enter such a contract other than by the mere submission of the bid; and~~
    - ~~(c) The official, prior to or at the time of the submission of the bid, has filed a statement with the Supervisor of Elections of Sarasota or Manatee County disclosing his interest, or the interest of his spouse or child, and the nature of the intended business.~~~~
  - ~~(3) The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.~~
  - ~~(4) An emergency purchase or contract which would otherwise violate a provision of subsection (B) or subsection (F) must be made in order to protect the health, safety, or welfare of the citizens of the town.~~
  - ~~(5) The business entity involved is the only source of supply within the town and there is full disclosure by the officer or employee of his interest in the business entity to the town commission prior to the purchase, rental, sale, leasing, or other business being transacted.~~
  - ~~(6) The total amount of the subject transaction does not exceed \$500.00.~~
  - ~~(7) The fact that a town officer or member of a town board or body, is a stockholder, officer, or director of a bank will not bar such bank from qualifying as a depository of funds coming under the jurisdiction of any such town board or body, provided it appears in the records of the town that the town commission has determined that such officer or member of a town board or body has not favored such bank over other qualified banks.~~~~
- ~~(K) Additional exemption. No elected town commissioner shall be held in violation of subsection (F) (1) or (F) (2) if the commissioner maintains an employment relationship with an entity which is currently a tax-exempt organization under § 501(c) of the~~

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~~Internal Revenue Code and which contracts with or otherwise enters into a business relationship with the town and:~~

- ~~(1) The town commissioner's employment is not directly or indirectly compensated as a result of such contract or business relationship;~~
- ~~(2) The town commissioner has in no way participated in the town's decision to contract or to enter into the business relationship with his employer, whether by participating in discussion at the meeting, by communicating with officers or employees of the town or otherwise; and~~
- ~~(3) The town commissioner abstains from voting on any matter which may come before the town involving the town commissioner's employer, publicly states to the assembly the nature of his interest in the matter from which he is abstaining, and files a written memorandum as provided in F.S. § 112.3143, (3).~~

**~~39.07 - Voting conflicts.~~**

- ~~(A) No town officer is prohibited from voting in his official capacity on any matter, except that no town officer shall vote in his official capacity upon any measure which inures to his special private gain or loss or shall knowingly vote in his official capacity upon any measure which inures to the special gain or loss of any principal, other than an agency, as defined in F.S. § 112.312(2), by whom he is retained.~~
- ~~(B) Any town officer abstaining pursuant to subsection (A) of this section shall, prior to the vote being taken, publicly state to the assembly the nature of his interest in the matter from which he is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.~~
- ~~(C) Any town commissioner voting in his official capacity on a matter or measure which inures to the special gain or loss of any person or business entity from whom he has received a campaign contribution as defined in F.S. § 106.011(3), in excess of \$100.00 within two years prior to the time the vote is taken shall disclose such fact on the record of the commission prior to the vote. He shall also disclose any such contribution if received from an officer, director, major stockholder, general or limited partner (if known), or any other principal of any such contributing business entity.~~
- ~~(D) No appointed town officer shall participate in any matter which inures to his special private gain or loss or the special gain or loss of any principal by whom he is retained, without first disclosing the nature of his interest in the matter and the nature of the factual situation in which the regard for his private interest tends to lead to a disregard of his public duty or the public interest. Such disclosure shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting and shall be incorporated in the minutes; if the disclosure is initially made orally at a meeting attended by the officer, the written memorandum disclosing the nature of the conflict shall be filed within 15 days with the person responsible for recording the minutes of the meeting and shall be incorporated in the minutes. A copy of such memorandum, which shall become a public record upon filing, shall immediately be provided to the other members of the agency and shall be read publicly at the meeting prior to the consideration of the matter. For purposes of this paragraph, the term "participate" means any attempt to influence the decision by oral or written communication whether made by the officer or at his direction.~~

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~~(E) Whenever a town officer or former town officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by the officer.~~

**~~39.08 - Influence of board members by town commissioners; appearance before boards.~~**

~~(A) Town commissioners are hereby prohibited from:~~

- ~~(1) Attempting directly or indirectly to influence the decision or official act of any member of any board or committee of the town;~~
- ~~(2) Appearing before any such board except upon invitation of a majority of the members of such board; provided, however, that if a town commissioner shall appear before such board without invitation, he shall be presumed to have a financial or personal interest in any matter which he shall have advocated or espoused before the board.~~

~~(B) Excepted from the provisions hereof is participation by the mayor or members of the town commission in the acts and deliberations of any board of which they are appointed regular, or ex officio, or liaison members of the board.~~

~~(C) Violations of this section shall be deemed a misuse of public position as set forth in § 39.06(E) above.~~

**~~39.09 - Applicability of the Code.~~**

~~When a town commissioner or other officer or employee has doubt as to the applicability of a provision of this Code to a particular situation, he shall apply to the town attorney for an advisory opinion and be guided by that opinion when given. The town attorney may refer the request to a special master chosen pursuant to section 39.12. The commissioner or other officer or employee shall have the opportunity to present his interpretation of the facts at issue and of the applicable provisions of the Code before such advisory decision is made. This Code shall be operative in all instances covered by its provisions except when superseded by an applicable statutory or Charter provision.~~

**~~39.10 - Relationship to state statute.~~**

~~To the extent of any conflict between F.S. ch. 112, (1987), as it may be amended from time to time, and this Code, chapter 112 shall apply, except that any provision of this Code, which is more stringent than or in addition to the requirements of chapter 112 shall apply if not in conflict with chapter 112.~~

**~~39.11 - Copies furnished.~~**

~~A copy of this ethics code shall be furnished to all new town officers and town employees prior to assumption of any official duties.~~

**~~39.12 39.04 - Special masters Enforcement of Code of Ethics.~~**

~~The Florida Commission on Ethics enforces the Florida Code of Ethics for Public Officers and Employees. Should the Florida Legislature abolish the Florida Commission on Ethics, the Town shall appoint Special Masters and create duties and powers of the Special Masters for enforcement of the Town Code of Ethics consistent with the requirements of Article I, Section 8, of the Longboat Key Charter.~~

~~(A) Special masters. The town commission shall appoint a minimum of three independent special masters selected on the basis of their qualifications. When an ethics complaint~~

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~~is filed which is within the jurisdiction of the special master as set forth below, the special master shall be chosen by lot. Special masters may conduct investigations upon complaints or information received, and may subpoena evidence and swear witnesses. Special masters shall cause to be kept accurate and complete minutes of any and all public hearings.~~

~~(b) Ethics complaints concerning elected officials, candidates for town commission, and advisory board or committee members.~~

~~(1) Upon the filing with the town clerk of a written, sworn complaint of any person concerning an alleged ethical breach by a town officer, candidate for town commission, or advisory board or committee member, the town clerk shall present the complaint to the town attorney, who, within five days of receipt of the complaint, shall cause a copy to be delivered to the alleged violator. If the facts contained within the complaint, if true, set forth a violation of the town's ethics code, the town attorney shall refer the matter to a special master who shall be chosen by lot by the town clerk. The special master, once selected, shall investigate the alleged violation of this chapter in accordance with the procedures set forth herein. All proceedings, the complaint, and other records relating to the preliminary investigation as provided herein, including a dismissal of the complaint, shall be open to the public. In no event shall a complaint under this section against a candidate in any town election be filed or the filing of or intention of filing such a complaint be disclosed on the day of any such election or within the five days immediately preceding the date of the election.~~

~~(2) (a) A preliminary investigation shall first be undertaken by the special master to determine if the facts alleged in the complaint constitute probable cause to believe that an ethical violation has occurred. If upon completion of the preliminary investigation the special master finds no probable cause to believe that this chapter has been violated, the special master shall dismiss the complaint stating with particularity the reasons for dismissal of the complaint. The complaint, together with a written statement of the findings of the preliminary investigation and a summary of the facts, shall be transmitted to the complainant and the alleged violator.~~

~~(b) If the special master finds from the preliminary investigation probable cause to believe that this chapter has been violated, he shall so notify the complainant and the alleged violator in writing. Such notification and all documents made or received in the disposition of the complaint shall be public records.~~

~~(c) Upon request submitted to the special master in writing, any person who the special master finds probable cause to believe has violated any provision of this chapter shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if request therefor is not received by the special master within 14 days following the mailing of the probable cause notification required by this section; however, the special master may on his own motion require a public hearing and may conduct such further investigation as he deems appropriate and necessary. The complainant and alleged violator shall be given notice in writing of the date and time set for such public hearing at least ten days before the public hearing is held.~~

~~(d) The hearing shall be conducted in accordance with all requirements of due process of law and in accordance with any written rules and regulations that have been promulgated by the special master and approved by the town~~

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~~commission. Any person filing such a sworn complaint and any alleged violator may appear before the special master in person or by counsel and shall be entitled to question witnesses and present evidence in accordance with any rules that have been adopted. Within ten days after the public hearing, the special master shall make and promulgate written findings of fact and conclusions based thereon, including a determination as to the propriety of the conduct of the alleged violator, all of which shall be transmitted to the complainant, the alleged violator, the town commission, and the town manager.~~

~~(e) In any case in which the special master finds probable cause to believe a violation of criminal law has been committed by an alleged violator, or where the special master finds probable cause to believe that a complainant has committed perjury in regard to any document filed with or any testimony given before the special master, he shall refer such evidence to the appropriate law enforcement agency for prosecution.~~

~~(3) Sanctions to be determined by special master.~~

~~(a) If the special master, pursuant to the provisions of this subsection makes a determination that the conduct of any town commissioner, candidate for town commission, or member of any advisory board or committee is or was improper, the town commission may institute appropriate action for correction or rectification of that conduct, and may institute appropriate action to avoid any transaction with a public body or any determination made by a public body.~~

~~(b) Violation of any provision of the town ethics code, in addition to any criminal penalty involved, shall constitute grounds for, and the special master may impose, one or more of the following sanctions:~~

- ~~1. Public censure and reprimand.~~
- ~~2. Forfeiture of no more than one-third of any salary per month for no more than 12 months.~~
- ~~3. Restitution of any pecuniary benefits received because of any violation committed.~~
- ~~4. Removal of the town officer from office.~~
- ~~5. Recommendation to the governor of the State of Florida for the removal from public office of the town officer.~~

~~(c) The special master shall base any decision to impose sanctions upon written findings of fact, conclusions and determinations. The imposition of sanctions should occur after the promulgation of the findings of fact, conclusions and determinations by the special master.~~

~~(C) Ethics complaints concerning town employees.~~

~~(1) If the complaint involves ethical conduct of any town employee other than the town manager, the complainant shall file the sworn complaint with the town manager who shall review the complaint pursuant to federal and state law, the Charter, this Code, and the personnel rules and regulations then in existence. The town manager shall have the power to investigate, and when appropriate to reprimand, punish, demote, dismiss or take any and all other disciplinary action concerning employees who breach ethical standards. For purposes of the Whistleblower Act, the town commission designates the town manager as the chief executive officer~~

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~~and appropriate local official for all complaints filed pursuant to F.S. § 112.3187 et seq., as amended.~~

~~(D) Ethics complaints concerning the town manager and town attorney.~~

~~(1) Upon the filing with the town clerk of a written, sworn complaint of any person concerning an alleged ethical breach by the town manager or town attorney, the town clerk shall present the complaint to a special master chosen by lot who, within five days of receipt of the complaint, shall cause a copy to be delivered to the alleged violator. If the facts contained within the complaint, if true, set forth a violation of the town's ethics code, the special master shall instruct the town clerk to select another special master by lot to investigate the alleged violation of this chapter in accordance with the procedures as set forth in subsection (B) above, except that after all due proceedings the special master shall only make findings of fact as to whether an ethical breach occurred. These findings of fact shall be forwarded to the town commission for its consideration and further action.~~

~~(E) The right to notice of public hearing from the special master.~~

~~(1) Timing of the notice to the person charged. The notice shall be given to the person charged whenever all the following conditions are present:~~

~~(a) The stated reason(s) for the allegations and the finding of the probable cause have a significant bearing on the individual's reputation; and~~

~~(b) There is a factual dispute as to the truth or falsity of the stated reason(s); and~~

~~(c) The stated reason(s) is/are made or become a public record pursuant to Florida's Public Records Law, or is made public in any other way.~~

~~(2) Content of the notice. At the time of the relevant finding of probable cause action, under the necessary conditions, the special master shall inform the person charged that he/she has a right to seek a hearing. The notice:~~

~~(a) Shall be in writing; and~~

~~(b) Shall inform the person charged of the nature of the stated charge(s) that were made public in connection with any of the special master actions, in sufficient detail to enable the person to show the error in the statements and allegations, including but not limited to the laws, statutes, ordinance, rules or regulations which the employee or public official has allegedly violated along with an explanation of the factual circumstances that constitute the alleged violation; and~~

~~(c) Shall state that the person charged may request a hearing; and~~

~~(d) Shall inform the person charged that he/she may submit documents or testimony at the hearing that contradicts the stated charge(s) that were made in connection with the special master's finding of probable cause. The notice shall inform the person charged that the purpose of the hearing is to factually dispute the statement or charge, and its purpose is not to inquire into or dispute the propriety of the special master's decision to investigate any initial finding of probable cause, even though the employee or public official may be totally exonerated or found innocent of all charges by the special master after due process.~~

~~(3) Hearing.~~

~~(a) The hearing shall be set if the employee/town officer requests a hearing within 14 days after the mailing and receipt of the probable cause or right to hearing notification or if the special master requests a hearing upon its own initiative.~~

**ORDINANCE 2016-21**  
**EXHIBIT "A"**

- ~~(i) The public hearing will be deemed waived as to the person charged if timely request is not made by the person charged.~~
- ~~(ii) If the person charged waives his right to a public hearing, the special master may on his own require a public hearing.~~
- ~~(b) Notice of the date and time of the hearing shall be sent in writing to the complainant and person charged at least ten days before the public hearing is held.~~
- ~~(c) The hearing shall be conducted by the special master, who shall be the hearing officer.~~
- ~~(d) The town officer may submit documents and/or sworn testimony of himself/herself and/or third party witnesses and the initial complainant to contradict the statement(s) that were publicly made in connection with the charges.~~
- ~~(e) The hearing shall be recorded by a court reporter, whose minutes or transcript shall become public record. One original transcript may be ordered and paid for by the town. Any party or interested person may order additional transcriptions or copies thereof at their own expense.~~
- ~~(f) Both the complainant and the person charged who requested the hearing shall have the opportunity to submit written memoranda and/or briefs to the special master within such reasonable time as shall be set by the special master. The public hearing shall be continued and not closed pending receipt or official transcripts, memoranda, briefs, or proposed findings of fact and conclusions of law to be considered by the special master.~~

**39.13 - Subpoena power.**

- ~~(A) The special master is empowered to issue subpoenas to persons, ordering them to appear for testimony before the special master, and to issue subpoenas ordering the person to whom it is directed to produce books, papers, documents or tangible things designated therein. The special master may issue subpoenas for investigatory functions or probable cause determinations, and public hearings.~~
- ~~(B) Every subpoena shall be sealed by the town clerk upon request of the special master for issuance of a subpoena. The special master shall sign the subpoena upon the town clerk's verifying that the town seal has been affixed to the subpoena.~~
- ~~(C) The special master may have the subpoena served by any person authorized by law to serve process or any other person who is not a party and who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be as provided by law. Proof of such services shall be made by affidavit of the person making service if not otherwise served by a public officer authorized by law to do so.~~
- ~~(D) In the event the person to whom the subpoena is directed fails to obey it, the special master may apply to the circuit court for its enforcement.~~

**39.14 - Appeals.**

~~Anyone aggrieved by a determination of the special master shall apply to the circuit court for judicial relief within 30 days after rendition of the decision.~~



**End of Agenda Item**