

POLICY STATEMENT NO. 2023-02

SUBJECT: Ethics Handbook

DATE: June 20, 2023

POLICY STATEMENT

<p>SUBJECT: Ethics Handbook for Elected Officials and Members of Boards, Commissions, Committees, and Task Forces</p>
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WHEREAS, the Gilbert Town Council values trust, honesty, personal responsibility, professionalism, service, and accountability; and

WHEREAS, the members of the Town Council and its Boards, Commissions, Committees, and Task Forces have an obligation to the Town of Gilbert and its residents, businesses, and employees to uphold the highest standard of ethics; and

WHEREAS, the purpose of this Ethics Handbook is to establish standards of ethics for the members of the Town Council and members of the Town's Boards, Commissions, Committees, and Task Forces in order to maintain public confidence in the integrity of Gilbert's Public Officials and to instill public trust through the actions, words, and deeds of Gilbert's Public Officials; and

WHEREAS, the requirements of this Ethics Handbook are in addition to and are intended to complement the requirements of the Town Code, the Code of Conduct, and Arizona state law.

NOW, THEREFORE, the Town of Gilbert Ethics Handbook for Elected Officials and Members of Boards, Commissions, Committees, and Task Forces is hereby approved in the form attached hereto, effective as of August 21, 2023.

Brigette Peterson, Mayor

ATTEST:

Chaveli Herrera, Town Clerk

TOWN OF GILBERT
ETHICS HANDBOOK FOR ELECTED OFFICIALS AND
MEMBERS OF BOARDS, COMMISSIONS, COMMITTEES, AND TASK FORCES

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It is the policy of the Town of Gilbert to uphold, promote, and demand the highest standards of ethics from all of its Public Officials—whether elected to the Town Council or appointed to a Board, Commission, Committee, or Task Force. Accordingly, Public Officials shall maintain the utmost standards of honesty, integrity, fairness, impartiality, respect, and loyalty in carrying out their public duties, avoid any improprieties in their roles as Public Officials, comply with all applicable laws, and never use their position improperly or for personal gain.

For purposes of this Ethics Handbook, “Public Officials” shall mean the Mayor, members of the Gilbert Town Council, and members of Boards, Commissions, Committees, and Task Forces.

This Ethics Handbook has been created by the Town Council to ensure that all Public Officials have clear guidance for carrying out their responsibilities and to instill public trust. The requirements of this Ethics Handbook are in addition to and are intended to complement the requirements of the Code of Conduct and state law governing conduct of Public Officials.

Section I: Ethics Standards

A. General

Elected and Appointed Public Officials are often called upon to make decisions that adversely affect constituents, whether the public in general, individual residents, or businesses. Balancing diverse constituent interests versus the needs of the general public is a difficult task, often resulting in disappointment or anger. While Public Officials cannot always appease everyone in carrying out their official duties, Public Officials must adhere to high ethical standards in serving the Town. Maintaining public trust is critical in order for the Town and the Town Council to operate efficiently.

A certain amount of detail is required in any ethics handbook so that it serves as a clear guide. However, at the core of ethical behavior are basic standards that Public Officials must use to reach a level of conduct that strives to be beyond reproach. Treating others as you would have them treat you is always a good ethical test. Another standard is to reflect on how your actions or decisions might be viewed by persons you serve.

B. Honesty and Integrity

Honesty and integrity shall be the primary values in all issues. The public trust in the Town Council and its Boards, Commissions, Committees, and Task Forces can be a reality only when Public Officials are honest and truthful.

C. Fairness, Impartiality, and Respect

All matters and citizens shall be treated with fairness, impartiality, and respect. Elected and Appointed Public Officials have an obligation to treat all citizens fairly, such as having an open mind on issues presented and being willing to listen to different points of view. In reviewing, discussing, and deciding matters, Public Officials have an obligation to be accessible, open, and clear, not only with other members of the Town Council and its Boards, Commissions, Committees, and Task Forces but also to the citizens and business representatives who appear before them. The public is entitled to communicate with their Public Officials and understand the

position of the Town Council and its Boards, Commissions, Committees, and Task Forces on public issues.

D. Loyalty

Elected and Appointed Public Officials have the obligation to put the interests of the community as a whole over all personal considerations and make the community's best interest their primary concern. The goal should be what is in the best interest for the broadest public good of the Town of Gilbert, consistent with constitutional and other legal protections for individual rights and property interests.

E. Gifts

Elected and Appointed Public Officials must consider ethical principles, including the conflicts of interest laws, before accepting anything of value that is being provided due to their status as Public Officials—whether a gift, favor, benefit, meal, travel, ticket, etc. Public Officials may not accept or offer a favor or anything of value that could be viewed as an effort to improperly influence the outcome of any matter that may come before a public body.

On at least a bi-annual basis, Public Officials shall disclose to the Town Clerk in writing anything received with a value in excess of \$50.00 (the disclosure must include the date received, the identity of the providing party, and the description and value of the benefit received). A gift that is donated by a Public Official to the Town or a bona fide charity within six months of receipt does not have to be disclosed to the Town Clerk.

Public Officials may accept tickets to attend fundraising events; however, Public Officials may not use Town funds to participate in any fundraising activities (such as raffles or auctions).

Section II: Ethics Complaint Process

Subject to the limitations provided herein, a person who believes an Elected or Appointed Public Official in her or his official capacity has violated the guidelines and standards contained in Section I of this Ethics Handbook may file a complaint with the Town Clerk identifying the following:

1. The Complainant's name, address, email address, and phone number;
2. The name of the Public Official who is the subject of the complaint;
3. The nature of the alleged violation, including the specific provision of Section I of the Ethics Handbook allegedly violated;
4. A statement of facts constituting the alleged violation and the date on which or period of time in which the alleged violation occurred;
5. Documents or other materials in the Complainant's possession that are relevant to the allegation; and

6. A list of any witnesses (if any), what they may know, and their contact information, if known.

Any complaint that does not contain the above requirements will not be considered.

The filing of complaints shall be subject to the following limitations:

1. Complaints may only be filed by Councilmembers, members of Boards, Commissions, Committees, and Task Forces, Town employees, Town residents, owners of real property located in the Town, businesses located in the Town, and any person who is directly aggrieved by alleged misconduct by a Public Official.
2. Anonymous complaints will not be considered.
3. Complaints must be filed with the Town Clerk within 30 calendar days of the alleged misconduct.
4. Complaints alleging violations of state law or any other conduct not contained in the ethical guidelines and standards contained in Section I of this Ethics Handbook will not be considered.
5. If an accused Public Official believes a complaint was filed for an improper purpose, that Public Official may bring an ethics complaint against the filer if the person who filed the complaint is another Public Official.

Any complaint that does not satisfy these limitations will not be considered.

Upon receipt of a complaint, the Town Clerk shall promptly provide a copy to the Public Official whom the Complaint is made against, the Town Council, and the Town Attorney. The Town Attorney shall then promptly contact Arizona State University College of Law to select an independent mediator (the "Independent Mediator"). Complaints alleging violations of this Ethics Handbook shall be treated fairly and expeditiously.

A. Complaint Process

1. Mediation

Within seven calendar days of selection, the Independent Mediator shall schedule an in-person mediation, and the mediation shall be completed within 30 calendar days of selection, unless extended for good cause by the Independent Mediator. The Independent Mediator shall serve as the mediator, and the participants shall be limited to the Complainant (and complaint's attorney if applicable), the Public Official who the complaint was filed against (and the Public Official's attorney if applicable), the Town Attorney (whose role shall be limited to representing the Town and not any Public Official), and the Independent Mediator.

If the Complainant refuses to meet or make himself or herself available for the mediation, the Independent Mediator shall dismiss the complaint with prejudice, and

the complaint (and the subject matter thereof) may not be refiled or reconsidered. In such event, the Town Clerk shall notify the Town Council of the administrative dismissal of the complaint. It shall be an ethical violation for a Public Official to refuse to meet, cooperate, or make himself or herself available for the mediation. In such event, the Independent Mediator shall report the Public Official's refusal to participate to the Town Clerk, which report shall be included as an administrative item on the agenda of the next regularly scheduled Town Council meeting. The Town Council may then impose penalties and sanctions on the Public Official, as authorized by this Handbook or the Town Code.

2. Ethics Investigation

If the Complainant is not satisfied with results of the mediation, the Complainant may—within seven calendar days after the day of mediation—request in writing that the Town Clerk submit the complaint to the Town Attorney. The Town Attorney shall then promptly contact Arizona State University College of Law to assign an independent ethics reviewer (the “Independent Ethics Reviewer”) to handle the complaint as provided below.

If the Complainant does not make a written request to the Town Clerk within seven calendar days after the day of the mediation, the complaint shall be deemed dismissed with prejudice, and the complaint may not be refiled or reconsidered. In such event, the Town Clerk shall notify the Town Council of the administrative dismissal of the complaint.

1. Initial Evaluation by the Independent Ethics Reviewer

A complaint shall be initially evaluated by the Independent Ethics Reviewer. If the Independent Ethics Reviewer determines that the allegations in the complaint:

- (i) Are outside the jurisdiction of the Ethics Handbook;
- (ii) Are not facially sufficient to warrant investigation;
- (iii) Are not well grounded in law or fact;
- (iv) Are made for an improper purpose; or
- (v) Do not otherwise warrant additional investigation,

the Independent Ethics Reviewer shall make a recommendation to the Town Council through the Town Clerk to dismiss the complaint, which recommendation shall be included as a public hearing item on the agenda of the next regularly scheduled Town Council meeting.

2. Investigation

The Independent Ethics Reviewer shall investigate the complaint, including determining whether to appoint an independent investigator to assist in carrying out an investigation. Any appointment of an independent investigator shall be made by and through the Town Attorney's Office and paid out of the budget of the Town Attorney's Office.

It shall be an ethical violation for a Public Official to refuse to meet, cooperate, or make himself or herself available to the Independent Ethics Reviewer or the investigator, if any. In such event, the Independent Ethics Reviewer shall report the Public Official's refusal to participate in the investigation to the Town Clerk, which report shall be included as an administrative item on the agenda of the next regularly scheduled Town Council meeting. The Town Council may impose penalties and sanctions on the Public Official as authorized by this Handbook or the Town Code.

3. Ethics Report

Once the investigation is complete, the Independent Ethics Reviewer shall promptly prepare (or cause to be prepared) a report containing findings and recommendations (if any). The Independent Ethics Reviewer shall send the ethics report and recommendations to the Town Clerk, who shall include the report as an administrative item on the agenda of the next regularly scheduled Town Council meeting for Town Council for consideration.

Section III: Town Council Review

The Town Council shall review the ethics report and recommendations at the next regular Town Council meeting. By the affirmative vote of five members, the Town Council may (i) accept the report and recommendations in whole or in part; (ii) send the complaint back to the Independent Ethics Reviewer for further investigation; (iii) make its own findings with regard to the complaint; (iv) dismiss the complaint; or (v) take any other action on the complaint. A Councilmember who is the subject of a complaint shall not vote on any matter but may explain his or her actions prior to any vote by the Council. If there are less than five affirmative votes to take an action on the complaint or determine that an ethics violation has occurred, the complaint shall be deemed dismissed with prejudice, and the complaint may not be refiled or reconsidered. If, by the affirmative vote of five members, the Town Council determines that an ethics violation has occurred, the Town Council may impose penalties in accordance with this Ethics Handbook.

Section IV: Penalties and Sanctions

It is the intent of the Town Council to first educate, and only where necessary, discipline Elected and Appointed Public Officials who violate this Handbook. Discipline shall be progressive, from the least to the most punitive measures, unless the Town Council (i) believes progressive discipline does not provide the appropriate sanction because of the gravity of the offense; or (ii) does not believe the sanction would deter future misconduct. In all instances, the totality of the circumstances shall be taken into consideration in resolving a matter, including the intent of the Public Official who is accused of wrongdoing. The Town Council, by the affirmative vote of five members, may impose any, or a combination of, the following sanctions on Public Officials whose conduct does not comply with the guidelines and standards contained in this Handbook:

1. Finding of ethical violation but no sanction imposed;
2. Mandatory ethical training;

3. Letter of Warning;
4. Formal censure (a strong statement of disapproval for a member's behavior);
5. Letter of Reprimand (official rebuke of the Public Official's behavior);
6. Imposition of a \$500.00 fine;
7. Loss of funding privileges;
8. Removal of any position or assignment to which the member has been appointed by the Mayor or Town Council; and
9. Removal of Office for Members of Boards, Commissions, Committees, and Task Forces¹.

Section V: State Laws

In addition to the ethical requirements contained in Section I in Ethics Handbook, Elected and Appointed Public Officials are subject to the requirements of state law. State law provides remedies for allegations of violations of state law. Consequently, complaints alleging violations of state law will not be accepted or considered as part of the ethics complaint process set forth in this Ethics Handbook.

A. Conflicts of Interest

Elected and Appointed Public Officials must be constantly on guard against conflicts of interest. As a result, Public Officials shall not be involved in any activity which conflicts with their responsibilities to Gilbert or its residents, businesses, or interests. The citizens of Gilbert have a right to expect independence and fairness toward all groups without favoring individuals or personal interests.

The purpose of the conflict-of-interest laws is to prevent self-dealing by Public Officials and to remove or limit any improper influence which might bear on a Public Official's decision. A conflict of interest occurs when (i) a Public Official or a relative of the Public Official has a pecuniary interest in a matter that may come before the Public Body during the Public Official's term of office on which the Public Official sits and that interest is not a remote interest as defined in A.R.S. §38-502(10), or (ii) or when the Public Official has an interest that results in the Public Official not being able to act impartially on a matter before the Public Body. For purposes of the conflict-of-interest laws, "Relative" means the spouse, child, child's child, parent, grandparent, brother, or sister of the whole or half-blood and their spouses and the parent, brother, sister, or child of a spouse.

If a Public Official believes that a conflict of interest (or even a possible conflict) exists, then that Public Official should disclose the fact as soon as possible by filing a statement with the Town

¹ Pursuant to state law, the Town Council does not have authority to remove one of its own members. Instead, Councilmembers may be removed by recall.

Clerk setting forth the nature of the conflict of interest. Where a conflict has been declared, a Public Official should not participate in any manner (by discussing, questioning, or voting) in that matter and should leave the dais for the duration of the discussion and vote. Public Officials should declare possible conflicts when necessary to avoid any appearance of impropriety.

Complaints alleging violations of the conflicts-of-interest laws may be filed with either the Office of the Arizona Attorney General at <https://www.azag.gov/complaints/public-monies> or a law enforcement agency or may be addressed through a private citizen lawsuit.

B. Open Meeting Laws

The Arizona Open Meeting Law (A.R.S. § 38-431 et. al) require that all meetings of public bodies be conducted openly, after proper public notice has been given. The intent of the Open Meeting Laws is to assure that the public's business is conducted in public. Elected and Appointed Public Officials shall comply with the Open Meeting Laws and shall not attempt to circumvent the requirements of the Open Meeting Laws. Practices such as polling other Public Officials to reach a decision outside of public meetings is prohibited. Use of Town staff or others to promote discussion among other members of the Public Body to circumvent the purposes of the Open Meeting Laws is also prohibited.

Public Officials should be careful to avoid situations which may result in a serial meeting. A discussion among less than a quorum may lead to a violation of the Open Meeting Laws if a quorum is eventually involved in that discussion. For example, if three members of the Town Council discuss a matter that is either pending before the Council or may come before the Council for discussion or action, and one of those members subsequently discusses that matter with another member of the Council, a serial meeting may have been held in violation of the Open Meeting Laws. Serial meetings may occur through conversations, written correspondence, e-mail, texts, or any other means of communications. In order to avoid serial meetings from occurring, it is a good practice for a Public Official who desires to talk to another Public Official about a matter that could come before the Public Body to first ask whether that Public Official has had any contact with any other Public Official about the matter. Open Meeting Laws are found in A.R.S. §§ 38-431 to 431.09 and in Town Code Sections 1-88 and 1-204.

Complaints alleging violations of the open meeting law may be filed directly with the Office of the Arizona Attorney General at <https://www.azag.gov/complaints/omlet>.

C. Public Records Law

Arizona law requires public bodies (including Elected and Appointed Public Officials) to maintain records reasonably necessary to provide an accurate accounting of their official activities and of any government funded activities. Under Arizona law, any record that has a substantial nexus to government activity is considered a public record and is presumed to be subject to disclosure. Public Officials shall maintain all records associated with their official duties, whether those records are created and stored on Town-issued devices and accounts or on personal devices and accounts. Public Officials should be careful when using personal devices and accounts while conducting business on behalf of the Town because doing so could open up those personal devices

and accounts to public records requests. Public records laws are found in A.R.S. §§ 39-121 to 121.03.

Complaints alleging violations of public records laws may be addressed through a private citizen lawsuit.

D. Disclosure of Confidential Information

The Town of Gilbert is committed to maintaining an open and accessible government intended to engender trust and confidence from the public, while at the same time protecting confidential information as required by law. Arizona law provides that, during a person's service with the Town and for two years thereafter, Public Officials, whether elected or appointed, may not disclose, or use confidential information without appropriate authorization. *See* A.R.S. § 38-504(B). Public Officials shall not disclose confidential, privileged, or protected information, unless authorized by the majority vote of a quorum of the Council or required by law. Public Officials shall not use confidential, privileged, or protected information to advance the financial or other private interest of themselves or others. Types of confidential information include, without limitation, information protected by the Executive Session privilege, attorney-client privilege, work-product privilege, and information not readily available to the public and only known to them due to their roles as Public Officials.

Complaints alleging violations of disclosure of confidential information may be filed with either the Office of the Arizona Attorney General at <https://www.azag.gov/complaints/public-monies> or a law enforcement agency or may be addressed through a private citizen lawsuit.

Section VI: Council-Initiated Investigations

Where permitted by law, the Town Council may meet in Executive Session to discuss potential violations of conflicts of interest, open meeting laws, public records laws, executive session laws, or improper disclosure of confidential information. In such event, the Town Council may initiate an investigation and/or report the potential violation to the Attorney General's Office or other appropriate authority.