

FIRST READING: April 17, 2023

APPROVAL: May 15, 2023

**HABERSHAM COUNTY
STATE OF GEORGIA**

**AN AMENDMENT TO CHAPTER 2 (“ADMINISTRATION”), ARTICLE
III (“OFFICERS AND EMPLOYEES”), DIVISION 2 (“CODE OF ETHICS”)
OF THE HABERSHAM COUNTY CODE OF ORDINANCES FOR THE
PURPOSE OF UPDATING THE CODE OF ETHICS AND FOR OTHER
PURPOSES**

WHEREAS, the duly elected governing authority of Habersham County, Georgia, is authorized under Article IX, Section II, Paragraph III of the Constitution of the State of Georgia to adopt reasonable ordinances to protect the public health, safety and welfare of the citizens of Habersham County, Georgia; and

WHEREAS, the duly elected governing authority of Habersham County, Georgia is the Board of Commissioners therefor; and

WHEREAS, the governing authority desires to amend and revise the County Code of Ethics to update the Code of Ethics to address government service, to provide for procedures related thereto and to clarify the role of County officials and employees;

**NOW, THEREFORE, THE HABERSHAM COUNTY BOARD OF COMMISSIONERS
HEREBY ORDAINS AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE
SAME** as follows:

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Chapter 2 (“Administration”), Article III (“Officers and Employees”), Division 2 (“Code of Ethics”) of the Code of Ordinances of Habersham County, Georgia is hereby amended by deleting Section 2-71 (“Purpose”) in its entirety and substituting in lieu thereof the following:

CHAPTER 2 – ADMINISTRATION

ARTICLE III. – OFFICIALS AND EMPLOYEES

DIVISION 2 – CODE OF ETHICS

Sec. 2-71. – Purpose/Declaration of policy.

- (a) The proper operation of democratic government requires that the public officials and employees be independent, impartial and responsible to the people; the government decisions and policy be made through proper channels of the governmental structure; public office not be used for personal gain; 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.
- (b) The board of commissioners of the county believes that public service is a public trust. Maintaining that public trust requires the County to protect against improper influence or the appearance of improper influence. The purpose should be to ensure that public officials will be impartial and use independent judgment in carrying out their duties. To help ensure this quality, the board of commissioners finds and declares the need to establish appropriate ethical standards for conduct.
- (c) The board of commissioners of the county does not intend that this article impede the desire for those who want to seek and serve in public office. To this end, public officials should not, except as otherwise provided by law, be denied the opportunity available to all other citizens. Public service should not restrict the ability to acquire and maintain private, economic and other interests. Only in those cases in which a conflict of the public's trust and interest would result should a restriction be applied.
- (d) This ethics code follows the precedent of earlier federal, state and local codes. It makes clear those standards of ethical conduct that will apply to public officials in the discharge of their official duties; implements the objective of protecting the integrity of the government; and prescribes only such essential restrictions against conflicts of interest so as not to impose unnecessary barriers against public service.

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Chapter 2 (“Administration”), Article III (“Officers and Employees”), Division 2 (“Code of Ethics”) of the Code of Ordinances of Habersham County, Georgia is hereby amended by addition a definition for “Covered official” to Section 2-72 (“Definitions”) as follows:

Sec. 2-72. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Covered official means any member of the Habersham County board of commissioners and any person who has been appointed to a position by the board of commissioners including, but not limited to, the county manager, the county clerk, the department heads and any county employee who has been appointed to the position by either the county manager or the board of commissioners acting independently or jointly and any member of any other county board, commission or authority including, but not limited to, the planning commission, the airport commission or the development authority. The county attorney is subject to the ethical considerations and disciplinary rules enacted by the Georgia Supreme Court and is also considered a covered official insofar as the application of this article.

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Chapter 2 ("Administration"), Article III ("Officers and Employees"), Division 2 ("Code of Ethics") of the Code of Ordinances of Habersham County, Georgia is hereby amended by deleting the remaining sections of Division 2 in their entirety and substituting in lieu thereof the following:

Sec. 2-73. Impartiality.

- (a) Officers must not take part in any personal, business, or professional activity or receive or retain any direct or indirect financial interest that places them in a position of conflict between their private interest and public interest that relate to their responsibilities and duties as officers.
- (b) Officers must not use their positions to induce, coerce, or influence a person or employee (including subordinates) in a way that would provide any benefits, financial or otherwise, to themselves or others or any organization of which they are a member thereof.
- (c) No officer shall:
 - (1) Use public office for private gain.
 - (2) Give preferential treatment to any person.
 - (3) Impede government efficiency and economy.

Sec. 2-74. Use of prestige of office; harassment; improper influence.

- (a) An official shall not intentionally use the prestige of his/her office or official title or position for his/her own personal gain or that of another. The performance of usual and

customary constituent services, without additional compensation, does not constitute the use of prestige of office prohibited by this section.

- (b) No official shall intimidate, threaten, coerce, discriminate against, or give the appearance of, or attempt to intimidate, threaten, coerce or discriminate against any employee for the purpose of interfering with that person's freedom of choice in the regular discharge of his or her official duties.
- (c) No official shall improperly influence any public official to violate the standards of ethical conduct set forth in this ethics code.

Sec. 2-75. Standards and ethical considerations.

- (a) Notwithstanding any provisions of law to the contrary, each covered official and employee of the County shall:
 - (1) Uphold the Constitution, laws and regulations of the United States, the State of Georgia and all governments therein and never be a party to their evasion;
 - (2) Never discriminate by the dispensing of special favors or privileges to anyone, whether or not for remuneration;
 - (3) Not engage in any business with the government, or allow any member of his/her immediate family to engage in any business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his/her governmental duties;
 - (4) Never use any information coming to him/her confidentially in the performance of governmental duties as a means for making private profit;
 - (5) Expose corruption wherever discovered;
 - (6) Never solicit, accept, or agree to accept gifts, loans, gratuities, discounts, favors, hospitality, or services from any person, association, or corporation for himself/herself, or any member of his/her immediate family, under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the performance of the official's/employee's official duties. For gifts, loans, gratuities, discounts, favors, hospitality, or services solicited, accepted, or agreed to accept under circumstances from which it cannot be reasonably inferred that a major purpose of the donor was to influence the performance of the official/employee's official duties the following rules shall apply: A covered official shall publicly disclose, prior to discussing or taking any official action on any matter involving the donor, any gift or campaign contribution (cash or in kind) received by him/her, or any member of his/her immediate family, greater than \$100.00. Receipt of gifts and campaign contributions valued at \$500.00 or

more by a covered official, or member of his/her immediate family, will prohibit the covered official from participating or taking official action on any matter involving the donor;

- (7) Never accept any economic opportunity for himself/herself, or any member of his/her immediate family, under circumstances where he/she knows or should know that there is a substantial possibility that the opportunity is being afforded with intent to influence his/her conduct in the performance of his/her official duties. All business relationships, regardless of the dollar amount involved, between a covered official, or a member of his/her immediate family, and anyone having business with the county shall be publicly disclosed prior to any discussion or official action being taken on the matter. Should the business relationship provide a covered official, or a member of his/her immediate family, with at least \$6,000.00 on an annual basis, such covered official shall be prohibited from participating or taking official action on any matter involving the person with whom such business relationship exists; and
 - (8) Never engage in other conduct which is unbecoming to an official/employee or which constitutes a breach of public trust. Officials/employees need to keep all confidential matters that are identified as strictly confidential and not be discussed. This would relate to matters that are discussed in closed session.
- (b) Interest in contract of 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;
 - (2) Have an interest in any business entity representing, advising or appearing on behalf of, whether paid or unpaid, any person involved in such contract or transactions;
 - (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, accepted or granted a present or future gift, favor, service or thing of value from or to a person involved in such contract or transaction, except as provided herein.
- (c) Preacquisition of interest. No county official or employee shall acquire an interest in or be affected by 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 public 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.
- (d) Disclosure of information. No county official or employee shall without proper legal authorization, disclose confidential information concerning the property, governing operations, policies or affairs of the county, or use such information to advance the financial

or other private interest of himself or others. Specifically, matters considered in executive session of any board or commission shall not be disclosed by any participant in said session without written consent of that body.

- (e) Incapable service. No county official or employee shall engage in or accept private employment or render service for any private entity, unless approved in writing by such employee's or official's department head or superior. The standards used for approval or disapproval of employment shall be based on whether the outside employment will or can cause a conflict of interest with the employee's or official's employment with the county and whether it will cause interferences with the efficient performance of an employee's or official's duty with the county.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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.
- (j) Political recrimination. No county official or employee, whether elected or appointed, shall promise an appointment to threaten the dismissal from any county position as a reward or punishment for any political activity.
- (k) Withholding of information. No county official or employee shall knowingly withhold any information that would impair the proper decision making of any of the county board, authorities, agency or commissions.
- (l) 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.

- (m) Organizational integrity. County commissioners, as policy makers, shall refrain from unduly interfering in the daily administrative affairs of department supervisors. Commissioners shall not, acting alone, make suggestions to the department supervisors or other employees, except the county manager, regarding the hiring, firing or disciplining of county employees, unless requested to do so by the department director.

Sec. 2-76. 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 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;
 - (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.
- (d) It shall not be deemed a violation of the standards of this policy if a county official or employee recuses himself and abstains from participating in the decision making process in a matter in which he personally or a close family member has an interest or in which he represents a client with an interest in a matter before any board, commission or authority of the County in the presentation phase only so long as the county official or employee excuses himself from the chambers where the matter is under consideration and deliberation. The county official or employee may return to the chambers solely to answer a question from the board, commission or authority or to provide additional information at the sole request of the board, commission or authority acting through its chairman. The county official or employee shall return to the chamber for any further business unrelated to the matter concerning the county official or employee. The principle whom the county official or employee represents in the presentation to the board, commission or authority must be present. Otherwise, the county official or employee shall only be authorized to ask for the matter to be tabled until the time the principle may be present.

Sec. 2-77. Disclosure of interest in legislative action.

- (a) Any member of the board of commissioners 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. 2-78. 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 including, but limited to, discussion of the matter in advance with any member of the board or commission considering the matter other than to advise of his reasonably anticipated abstention or recusal. Upon abstention or recusal, the county official or employee shall leave the chambers during the consideration of the matter from which the county official or employee is abstaining.

Sec. 2-79. - Ethics panel.

I. Complaint procedure

- (a) *Procedure.* Any person having a complaint against an officer, official or employee of the county of this division shall file in writing a verified complaint setting forth the

particular facts and circumstances which constitute the alleged violation. The complaint shall be filed with the county clerk no later than 45 days after the alleged act occurred unless the complainant, by exercising due diligence, failed to discover the alleged violation of the Code of Ethics within such 45-day period. In such case, a complainant must file the complaint no later than 45 days after the complainant discovered the alleged violation.

- (b) In no event shall an ethics complaint be filed more than six months from the date of the alleged violation hereof.
- (c) The complainant may withdraw the Ethics complaint at any time in writing.
- (d) In the event the complaint regards the county manager, the county clerk and the county attorney, it shall be filed with the commission chairman.
- (e) Upon receipt of a complaint, the commission chairman shall appoint two members of the commission (one of which may be the chairman), who, along with the county attorney (unless the complaint is against the county attorney, in which case the commission chair may request the assistant of another county attorney in adjacent circuits), shall constitute an investigating committee to determine whether the complaint sets forth significant facts and circumstances so as to warrant a public hearing. This initial determination is whether the complaint is on its face unjustified, frivolous, patently unfounded or failed to state facts sufficient to invoke disciplinary jurisdiction. A majority of the review panel must agree that a sufficient basis has been given to warrant a public hearing.
- (f) Certain violations alleged against county officials who are employees may be referred through the proper channels consistent with the Employee Handbook's disciplinary procedures.
- (g) In the event the complaint does not set forth sufficient facts to constitute an alleged violation and is found unjustified, frivolous or patently unfounded, it shall be dismissed and the complainant notified immediately. In the event the complaint is found to state sufficient facts to warrant a hearing before the review panel, the board shall be appointed as provided herein.
- (h) If a complaint is received by the County Clerk which alleges a violation of the Code of Ethics by a member of the Board of Commissioners:
 - (1) A determination of sufficiency of the complaint will not be forwarded to the Board of Commissioners.
 - (2) The County Attorney of any county within the Mountain Judicial Circuit or any circuit abutting the Mountain Judicial Circuit other than the County Attorney for

Habersham County, shall make the determination of whether or not a review board should be impaneled.

- (3) The complaint shall be served on the member of the governing authority charged as soon as practicable after the determination in subsection (h)(2) above. Service may be by personal service or by certified mail, return receipt requested.
- (4) If a review board is needed, three county attorneys, other than the County Attorney for Habersham County, shall be selected by the County Attorney (subject to approval by the Board of Commissioners) within reasonably close geographic proximity of the County will be requested to conduct a public hearing based upon the complaint within 60 days of the impaneling of the review board. If the complaint is against the County Attorney, then the chairman may appoint a replacement.
- (5) The review board shall conduct the hearing in accordance with the procedures and regulations it establishes but, in all circumstances, the hearing shall include the taking of testimony and the cross examination of witnesses. The member of the governing authority who is the subject of inquiry shall have the right to be represented by counsel, to hear and examine the evidence and witnesses and to present evidence and witnesses in opposition or in extenuation.
- (6) A majority vote based upon clear and convincing evidence will determine the existence of the violation or lack thereof.
- (7) Should the review board find a violation has occurred, the review board will assess the commensurate penalty for the violation. A written decision shall be issued to the Habersham County Board of Commissioners within 15 days of the conclusion of the public hearing for enforcement of disciplinary action pursuant to Sec. 2-80.
- (8) The Board of Commissioners, at a public hearing within 30 days of the rendering of the review board's findings and determination, may by majority vote, decide that no action is to be taken or may decide to take any action consistent with state law and the provisions set forth hereinafter regarding disciplinary action. In the event that a member of the board of commissioners is a party under investigation, such commissioner shall not participate in any such decision.

(i) *Appeals.*

- (1) Any member of the governing authority or the complainant adversely affected by these findings of the review board may obtain judicial review of such decision as provided in this section.
- (2) An action for judicial review may be commenced by filing an application for a writ of certiorari in the Superior Court of Habersham County within 30 days after the decision

of the review board is forwarded to the Board of Commissioners. The filing of such application shall act as supersedes.

Sec. 2-80. – Disciplinary action.

- (a) Employees are subject to the following penalties and actions for a breach of this division:
 - (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) Any member of the governing authority who knowingly violated any provision of the Code shall be subject to the following penalties and action for breach:
 - (1) Written warning, censure or reprimand;
 - (2) Removal from office as provided by state law;
 - (3) Cancellation of the contract or rejection of the bid or offer;
 - (4) Recovery of the value transferred or received; and
 - (5) Debarment or suspension from award of county contract for a period of up to three years.
- (c) Upon direction of the board of commissioners, a petition may be filed for injunctive relief, or any other appropriate relief, in the superior court of the county, or in any other court having proper venue and jurisdiction, for the purpose of requiring compliance with the provisions of this article. In addition, the court may issue an order to cease and desist from the violation of this article. The court also may void an official action taken by an official which action was prohibited by this article, provided that the legal action to void the matter was brought within 30 days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public. The court, after hearing and considering all the circumstances in the case, may grant all or part of the relief sought. However, the court may not void any official action appropriating public funds, levying taxes or providing for the issuance of bonds, notes or other evidence of public obligation.

Sec. 2-81. - Civil recovery.

The value of anything received by any person for violations of this article, as determined by the board of commissioners, shall be recoverable from such person by the county by appropriate legal action or proceedings or by a taxpayer of the county acting on behalf of the county after a written demand to the county to bring such action, and failure of the county to initiate the action within 60 days after receipt of the demand.

Sec. 2-82. - Appeal.

Any person aggrieved by a decision of the board of commissioners with regard to this article may appeal to the superior court of the county, except, however, that said appeal must be filed within 30 days of the decision being appealed. Said appeal shall be based upon the record. No party shall be entitled to a de novo appeal. Upon failure to file said appeal within 30 days of the decision being appealed, the decision shall be binding and final upon all parties.

Sec. 2-83. - Official liability.

No member of the board of commissioners or any person acting on behalf of the board of commissioners, shall be liable to any person for any damages arising out of the enforcement or operation of the ethics code of the county, except in the case of willful or malicious negligence. This limitation of liability shall apply to the county, the members of the board, the employees of the board and any person acting under direction of the board.

Sec. 2-84. Distribution.

Each official and employee elected, appointed or engaged thereafter shall be furnished a copy of this division within his Habersham County Personnel Policies and Procedures before entering upon the duties of this office or employment.

Sec. 2-85. Compliance with applicable laws.

No officer, official or employee shall engage in any activity or transaction that is prohibited by law, now existing or hereafter enacted, which is applicable to him by virtue of his office.

Sec. 2-86. State code adopted by reference.

The code of ethics for government service established by O.C.G.A. §§ 45-10-1 and 45-10-3 is hereby adopted and incorporated by reference.

Secs. 2-87—2-105. Reserved.

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This ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

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- A. It is hereby declared to be the intention of the Habersham Board of Commissioners that all sections, paragraphs, sentences, clauses and phrases of this ordinance are 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 Habersham 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 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 ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this ordinance.
- C. In the event that any section, paragraph, sentence, clause or phrase of this ordinance 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 sections, paragraphs, sentences, clauses, or phrases of the ordinance and that, to the greatest extent allowed by law, all remaining sections, paragraphs, sentences, clauses, or phrases of the ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

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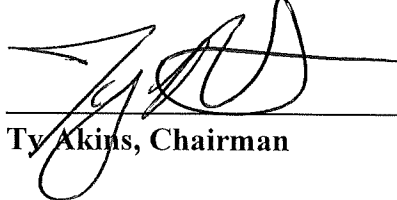
Except as otherwise provided herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

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This ordinance shall become effective upon its adoption.

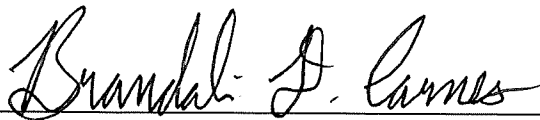
DULY ORDAINED AND ADOPTED this 15th day of May, 2023.

**HABERSHAM COUNTY BOARD
OF COMMISSIONERS**



Ty Akins, Chairman

Attest:



Brandalin Carnes, County Clerk