

ARTICLE X. CODE OF ETHICS

Sec. 2-375. Declaration of policy.

- (a) It is the policy of the City that the proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all city officials and employees is adopted.
- (b) This code of ethics has the following purposes:
 - (1) To encourage high ethical standards in official conduct by city officials and employees;
 - (2) To establish guidelines for ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interest of the city;
 - (3) To require disclosure by such officials and employees of private financial or other interest in manners affecting the city; and
 - (4) To serve as a basis for disciplining those who refuse to abide by its terms.

(Ord. No. 2017-10-05, § 2-375, 10-2-2017)

Sec. 2-376. Scope of persons covered.

The provisions of this code of ethics shall be applicable to the mayor, all members of the city council, all appointed members of boards, commissions, authorities and other similar bodies, and all employees.

(Ord. No. 2017-10-05, § 2-376, 10-2-2017)

Sec. 2-377. Definitions.

As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

Censure means the act of condemning as wrong. A censure shall be effectuated by entry in the minutes of a city council meeting.

City official and/or official, unless otherwise expressly defined, means the mayor, the members of the city council, candidates for the offices of the mayor and city council after legal notice of candidacy and qualification as such candidate, the municipal court judges (including substitute judges), the city manager, any assistant city managers, the city clerk, any deputy city clerks, whether such person is salaried, hired or elected, and all other persons holding positions designated by the city charter, as it may be amended from time to time. City officials, unless otherwise expressly defined, includes individuals appointed by the mayor, city council, or both, to all city boards, commissions, authorities and other similar bodies, unless such individuals or individual members of city boards, commissions, authorities and other similar bodies are specifically exempted from this article by law, this ordinance and/or the city council.

Complainant means a person or entity who submits to the city clerk an ethics complaint alleging a violation of this article.

Decision means any article, resolution, contract, franchise, formal action or other matter voted on by the city council or other city board or commission, as well as the discussions or deliberations, of the council, board or commission which can or may lead to a vote or formal action by such body.

Discretionary authority means the power to exercise any judgment in a decision or action.

Employee means full-time or part-time employees of the City.

Entity means a sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, receivership, trust or any other entity recognized by law through which business may be conducted.

Ethics complaint means a written document alleging a violation of this article by a city official or employee. All ethics complaints filed with the city shall contain the following:

- (1) A brief statement specifically identifying the name and title of the city official or employee against whom the complaint is filed. An ethics complaint may not allege violations and/or seek action against more than one city official or employee;
- (2) A numbered list separately identifying each improper act which the city official or employee is alleged to have committed, including:
 - 1) The date of any such alleged offenses;
 - 2) The specific sections of this article that each act is alleged to be in violation of; and
 - 3) The factual basis for each alleged violation;
- (3) A sworn and notarized statement by the complainant attesting that all information in the complaint is true to the complainant's information and knowledge;
- (4) Email address, phone number and mailing address where the complainant may be contacted; and
- (5) The complainant's residential address within the city limits.

Exempt city boards, commissions, authorities and similar bodies shall mean all boards, commissions, authorities and similar bodies of the city other than the Board of Zoning Appeals, Design Review Board, Historic Preservation Board, Planning Commission, Construction Appeals Board, Alcohol Licensing and Appeals Board, Stonecrest Convention and Visitors Bureau and any authority created by either the Georgia General Assembly or by the City by resolution or ordinance pursuant to chapter 61 or chapter 62 of Title 36 of the Official Code of Georgia Annotated. The members of exempt city boards, commissions, authorities and similar bodies are exempt city officials or officials unless such member is either an elected official of the City or is also a member of another city board, commission, authority or similar body not specifically exempted by this ordinance or by law.

Immediate family means the legal and/or biological parent, sibling, child, spouse, or any corresponding in-law of any city official or employee.

Interest:

- (1) Incidental interest means an interest in a person, entity or property which is not a substantial interest.
- (2) Remote interest means an interest of a person or entity, including a city official or employee, who would be affected in the same way as the general public. The interest of a councilmember in the property tax rate, general city fees, city utility charges, or a comprehensive zoning article or similar decisions is incidental to the extent that the councilmember would be affected in common with the general public.
- (3) Substantial interest means a known interest, either directly or through a member of the Immediate Family, in another person or entity:

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- a. The interest is ownership of five percent or more of the voting stock, shares or equity of an entity or ownership of \$5,000.00 or more of the equity or market value of the entity;
 - b. Funds received by the person from the other person or entity either during the previous 12 months equaled or exceeded \$5,000.00 in salary, bonuses, commissions or professional fees, or ten percent of the recipient's gross income during that period, whichever is less;
 - c. The person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity other than a corporate entity owned or created by the city council; or
 - d. The person is a creditor, debtor or guarantor of the other person or entity in an amount of \$5,000.00 or more.
- (4) Substantial interest in real property means an equitable or legal ownership interest in real property with a fair market value of \$5,000.00 or more.

Reprimand means an official reproof, reprehension, or rebuke of a wrong. A reprimand shall be effectuated by resolution of the mayor and council.

Respondent means a city official or employee charged with a violation of this article.

(Ord. No. 2017-10-05, § 2-377, 10-2-2017)

Sec. 2-378. Standards of conduct.

- (a) No city official or employee shall use such position to secure special privileges or exemptions for such person or others, or to secure confidential information for any purpose other than official responsibilities.
- (b) No city official or employee, in any matter before the body in which he has a substantial interest, shall fail to disclose for the common good for the record such interest prior to any discussion or vote.
- (c) No city official or employee shall act as an agent or attorney for another in any matter before the city council or any city body.
- (d) No city official or employee shall directly or indirectly receive or agree to receive any compensation, gift, reward or gratuity in any matter or proceeding connected with, or related to, the duties of his office except as may be provided by law.
- (e) No city official or employee shall enter into any contract with the city except as specifically authorized by state statutes. Any city official or employee who has a proprietary interest in an agency doing business with the city shall make known that interest in writing to the city council and the city clerk.
- (f) All public funds shall be used for the general welfare of the people and not for personal economic gain.
- (g) Public property shall be disposed of in accordance with Georgia law.
- (h) No city official or employee shall solicit or accept other employment to be performed or compensation to be received while still a city official or employee if the employment or compensation could reasonably be expected to impair in judgment or performance of that official's or employee's city duties.
- (i) If a city official or employee accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official or employee might reasonably be expected to act, investigate, advise, or make a recommendation, the official or employee shall disclose the fact to the body on which he serves, or to his supervisor, and shall take no further action or matters regarding the potential future employer.

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- (j) No city official or employee shall use city facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.
 - (k) No city official or employee shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at-large.
 - (l) No city official or employee shall directly or indirectly solicit from a person or entity a gift, loan, favor, promise, or thing of value for himself or another person or entity if the city official or employee is, at the time of such solicitation, involved in any official act or action which would result in a benefit to the person or entity from whom the gift, loan, favor, promise or thing of value is solicited. However, the above prohibition shall not apply in the case of:
 - (1) Occasional unsolicited non-monetary gifts and/or trinkets with a value of less than \$100.00, such as a calendar, memento, pen, and/or admission to or consumption of food and/or beverages at a function, social setting or event;
 - (2) An award publicly presented in recognition of public service;
 - (3) Any transaction authorized by and performed in accordance with O.C.G.A. § 16-10-6 as now or hereafter amended;
 - (4) A commercially reasonable loan or other financial transaction made in the ordinary course of business by an institution or individual authorized by the laws of Georgia to engage in the making of such loan or financial transaction;
 - (5) Campaign contributions made and reported in accordance with Georgia laws;
 - (6) Items listed under O.C.G.A. § 16-10-2 that are specifically itemized as "a thing of value shall not include" as now or hereafter amended; or
 - (7) Food, beverage or expenses afforded city officials or employees, members of their families, or others that are associated with normal and customary business or social functions or activities.

(Ord. No. 2017-10-05, § 2-378, 10-2-2017)

Sec. 2-379. Prohibition of conflict of interest.

A city official or employee may not participate in a vote or decision on a matter affecting a person in whom the official or employee has a Substantial Interest or a matter affecting any property in which the official has a Substantial Interest in real property; in addition, a city official or employee who serves as a corporate officer or member of a board of directors of a nonprofit entity may not participate in a vote or decision regarding funding of the entity by or through the city. Where the interest of a city official or employee in the subject matter or a vote or decision is remote or incidental, the city official or employee may participate in the vote or decision and need not disclose the interest.

(Ord. No. 2017-10-05, § 2-379, 10-2-2017)

Sec. 2-380. Conflict of interest exemptions.

The provisions of this article shall not be construed to require the filing of any information relating to any person's connection with, or interest in, any professional society or any charitable, religious, social, fraternal, educational, recreational, public service, civil or political organization not conducted as a business enterprise or governmental agency, and which is not engaged in the ownership or conduct of a business enterprise or governmental agency.

(Ord. No. 2017-10-05, § 2-380, 10-2-2017)

Sec. 2-381. Reserved.

Sec. 2-382. Penalty.

(a) Any respondent found to have violated the provisions of this article shall be subject to:

- (1) Public reprimand and/or censure by the mayor and council;
- (2) A fine greater than \$100.00 but less than \$500.00; and
- (3) Request for resignation by the mayor and council.

(Ord. No. 2017-10-05, § 2-382, 10-2-2017)

Sec. 2-383. Filing of complaints.

- (a) Only residents of the city may file a complaint under this article. A complaint filed by a nonresident shall not be acted upon.
- (b) All ethics complaints shall be filed with the city clerk. The city clerk, or his designee, shall email a copy of any such complaint to the city council, the city manager and the respondents named in the complaint within five calendar days of such filing.
- (c) To discourage the filing of complaints under this article solely for political purposes, complaints brought under this article against a municipal election candidate filed 60 calendar days prior to the opening date of qualifying for municipal office through the date of certification of the election results will not be acted upon until the election results for that office have been certified. Deadlines under this article shall be tolled during such period. Action shall thereafter only be taken upon the ethics complaint if the candidate against whom the complaint is filed is elected to that term of office.

(Ord. No. 2017-10-05, § 2-383, 10-2-2017)

Sec. 2-384. Service of documents by respondent and complainant.

- (a) Within three calendar days of the filing of an ethics complaint with the city clerk, the complainant shall serve by mail the individual members of the city council, the city manager and the respondent named in the complaint with a copy of the complaint at their official city addresses.
- (b) The respondent may file a response to the ethics complaint with the city clerk, but is not required to do so.
- (c) The complainant and the respondent shall serve each other, the city manager and the individual members of the city council with copies of all documents filed by them with the city clerk relating to the ethics complaint, by certified mail, return receipt requested or statutory overnight delivery, within three calendar days of the date that any such document is filed.
- (d) The complainant and the respondent shall file with the city clerk proof of mailing of all mailings required under this article within three business days of such document being mailed. Such proof of service shall contain a copied and/or printed form provided by the postal facility which evidences the recipient, tracking number and date of such mailing. The city clerk shall verify that the correct address was indicated on the envelope.

(Ord. No. 2017-10-05, § 2-384, 10-2-2017)

Sec. 2-385. Action upon complaints.

The mayor and council shall hear and render decisions on all ethics complaints filed with the city. A quorum for the purposes of taking action upon an ethics complaint is the mayor and two councilmembers. If the mayor is a respondent to the ethics complaint, three councilmembers shall constitute a quorum. If less than three councilmembers are available to constitute a quorum, due to the provisions in section 2-388 and/or 2-389 of this article, a mediator, certified by the Georgia Commission on Dispute Resolution, at the mayor and council's discretion, shall be substituted for the mayor and/or any councilmembers for the purposes of acquiring a three person quorum. Ethics complaints shall be reviewed as follows:

- (a) Preliminary review of ethics complaints.
 - (1) The city clerk shall schedule a meeting to occur within 60 calendar days of an ethics complaint's filing for the mayor and council to vote upon whether the complaint will be dismissed or proceed to an evidentiary hearing, and shall mail notice of such meeting to the complainant and the respondent at least 30 days prior to such meeting.
 - (2) The mayor and council may dismiss any ethics complaints that they determine is unjustified, frivolous or patently unfounded; substantially noncompliant with the requirements of this article; or fails to state facts sufficient to invoke the disciplinary jurisdiction of the city council. The city clerk shall mail to the complainant and respondent the outcome of the preliminary review within five calendar days of such meeting.
 - (3) If the mayor and council determine that the ethics complaint should proceed to an evidentiary hearing, the city clerk shall schedule such hearing to occur within 30 calendar days of the mayor and council's vote at the preliminary review.
- (b) Evidentiary hearing on ethics complaints.
 - (1) Should an ethics complaint proceed to an evidentiary hearing, the complainant and the respondent shall have the right to be represented by counsel; to hear, present and examine the evidence and witnesses; and to oppose or try to mitigate the allegations. The mayor and council may establish time limits, and other protocol, for the presentation of evidence and argument.
 - (2) The mayor and council shall render a final decision on the ethics complaint at an open meeting within 30 calendar days of the conclusion of the hearing.
 - (3) The city clerk shall mail to the complainant and the respondent the mayor and council's final decision on the ethics complaint within five calendar days of such decision.
- (c) The mayor and council may vote to continue and/or postpone a scheduled meeting and/or hearing on an ethics complaint to a later selected date, as necessary. The grounds and date for the reset shall be stated in the official minutes for such meeting. The city clerk shall email to the complainant and the respondent notice of the reset meeting date within five calendar days of such vote.

(Ord. No. 2017-10-05, § 2-385, 10-2-2017)

Sec. 2-386. Charge of noncompliance.

- (a) After the filing of an ethics complaint, but at least five days prior to the preliminary hearing, or evidentiary hearing if one is set, the respondent and/or complainant may file a charge of noncompliance with the city clerk, alleging that the complainant, respondent and/or any city employee/official has failed to meet a required deadline under this article. This section is strictly limited to grievances with respect to procedural deadlines set forth under this article, and may not be used to seek review of alleged ethics violations.

Additionally, a separate charge must be filed against each city employee and/or official who is alleged to have violated a procedural deadline set forth under this article. The charge must identify the filer of the charge, the person against whom the charge is made, and the alleged missed deadline.

- (b) The city clerk, or his designee, shall email a copy of such charge to the mayor and council, city manager, respondent, complainant and the employee and/or official against whom the charge is made, within five calendar days of such filing. The city clerk shall not be required to email a copy of the charge to the respondent and/or complainant who filed the charge. The city manager shall cause for corrective action to be taken for any missed deadline under this article by a city employee.
- (c) The filer of the charge may also raise the charge of noncompliance as a threshold issue at the next scheduled public meeting on the ethics complaint. The mayor and council shall thereafter vote to determine whether the alleged deadline was missed. The mayor and council's finding of a material failure by the complainant to comply with this article at any time may result in the ethics complaint's dismissal. The council's finding of a missed deadline by a city employee and/or official, without a finding of contributing negligence by the filer of the charge, shall give the filer of the charge the option to have the proceeding continued to the next available council meeting in lieu of being heard further that day.

(Ord. No. 2017-10-05, § 2-386, 10-2-2017)

Sec. 2-387. Bar against subsequent complaints.

- (a) The dismissal of an ethics complaint by the mayor and council on procedural grounds shall bar the complainant from filing any subsequent complaint against the same respondent for a period of three months from the date of such dismissal.
- (b) Should the mayor and council deny an ethics complaint on jurisdictional grounds, and/or determine that the evidence does not establish that the respondent has committed a violation of any provision of this article, the complainant shall be barred from filing any subsequent ethics complaint against the respondent arising from the same facts and circumstances as the adjudicated complaint.

(Ord. No. 2017-10-05, § 2-387, 10-2-2017)

Sec. 2-388. Participation by accused members.

- (a) If the mayor or city councilmember is charged with a violation of this article, he shall not:
 - (1) Participate in, preside over, remain in his place on the dais, or have any other direct or indirect involvement with the consideration or deliberation by the mayor and council of the ethics complaint; or
 - (2) Substantively discuss the pending ethics complaint, including any of the facts, circumstances, or allegations supporting it with the mayor, any other councilmember, or any official or employee of the city, except at the meetings and/or hearings on the complaint. This provision shall not prevent the mayor or any city councilmember from communicating with city employees and officials with respect to facilitating and receiving required filings and notices under this article.

(Ord. No. 2017-10-05, § 2-388, 10-2-2017)

Sec. 2-389. Participation by complaining official.

If the mayor or any city councilmember files, initiates, and/or encourages the filing of an ethics complaint against a respondent, he shall not actively preside over the consideration of the complaint before the city council.

(Ord. No. 2017-10-05, § 2-389, 10-2-2017)

Sec. 2-390. Statute of limitations.

- (a) No ethics complaint shall be permitted under this article unless such complaint is filed within six months of the commission of the act complained of; provided, however, the limitation shall be tolled during the period that the alleged offense is unknown to the complainant. Under no circumstances, however, shall any period be tolled where the complainant knew and/or should have known about the alleged violation and/or where the facts surrounding the offense were published by a news outlet, discussed at a public meeting and/or otherwise known to the general public.
- (b) No proceeding under this article shall be instituted and/or prosecuted after the expiration of the respondent's term of office during which the offense is alleged, if not re-elected immediately following such term, and/or after the resignation, death, vacancy, disqualification and/or withdrawal of the respondent from office.

(Ord. No. 2017-10-05, § 2-390, 10-2-2017)

Sec. 2-391. Right to appeal.

An appeal of any adverse decision of the mayor and council rendered under this article shall be commenced by filing a petition for a writ of certiorari in the Superior Court of DeKalb County as provided by law.

(Ord. No. 2017-10-05, § 2-391, 10-2-2017)

Secs. 2-392—2-410. Reserved.