



CITY OF MILTON, GEORGIA

Joe Lockwood, Mayor

CITY COUNCIL

Karen Thurman
Julie Zahner Bailey
Bill Lusk
Neal O'Brien
Tina D'Aversa
Rick Mohrig

Thursday, August 9, 2007

Work Session Agenda

5:30 PM

- 1) NPDES Permit.
(Tami Hanlin, Community Services Director)
- 2) Discussion on Stormwater Policy.
(Tami Hanlin, Community Services Director)
- 3) Review of Chapter 6, Code of Ethics and Standards of Conduct.
(Mark Scott, City Attorney)
- 4) Presentation of Budget for General Fund and Capital Improvement Fund
Fiscal Year 2008.
(Aaron Bovos, City Manager)

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Milton City Hall
City Council Chambers
13000 Deerfield Parkway, Building 100
Milton, GA 30004

Persons needing special accommodations in order to participate in any City meeting, should call 678-242-2500.

NO DOCUMENTS SUBMITTED.

NO DOCUMENTS SUBMITTED.



To: Honorable Mayor and City Council Members

From: Mark E. Scott, City Attorney

Date: August 2, 2007 for submission onto August 9, 2007 work session and August 16, 2007 meeting agenda

Agenda Item: Approval of a amendments to Ethics Ordinance

City Attorney Recommendation:

Adopt the attached ordinance amending the Ethics Ordinance. Second reading will occur at the at the September 6, 2007 council meeting.

Background:

As you are aware, we have previously discussed revisions to the Ethics Ordinance. These are in part due to: 1) GMA comments provided pursuant to City of Ethics designation; 2) issues identified in the course of ethics complaint investigations; 3) Ethics Board comments and input. A draft of amendments was presented to the Council several months ago with recommended changes. Further, the Ethics Board held a work session on July 16 and worked through the entire ordinance with the City Attorney. The revisions have gone through three versions now, and this is the draft version 1.3.

Discussion:

Draft version 1.3 incorporates all revisions proposed in prior versions 1.1 and 1.2 with some further revisions. As before, it reconciles references to confidentiality with the Open Meetings and Open Records Acts. It removes references to subpoena power which the board does not have. It conforms the appointment of members to the City Ordinance on appointments to boards and commissions. It tightens standards for complaints and requires a verification that the complaint is well-founded. It takes into account the potential for city attorney conflict of interest when a council member is the subject of a complaint by calling for the retainer of outside counsel. It clarifies that all Ethics Board investigations must be undertaken pursuant to a written, verified complaint. It adds sections titled "Wrongful Use of Ethics Board" and "Wrongful Use of Code of Ethics."

Based on the experiences of the Ethics Board in dealing with the initial Ethics Complaint, the Board has recommended, and I have drafted, where appropriate, intent standards to be added to the various types of prohibited conduct in Section 11. Also, we have amended Section 11(c) pursuant to the recommendations of Mr. Carothers in his report on the Moheb Complaint. Finally, we have added several definitions to the appendix to further clarify the meaning of several terms.



City of Milton

13000 Deerfield Parkway Suite 107G Milton, GA 30004

Alternatives:

We cannot really keep the ordinance as it is. We could adopt some of these amendments and not others. We could also repeal the Ethics Ordinance all together.

Concurrent Review:

City Manager

**INCLUDING ETHICS BOARD REVIEW
FOR SUBMISSION TO CITY COUNCIL**

8/7/07

Chapter 6: Code of Ethics and Standards of Conduct

- Section 1. Declaration of Policy
- Section 2. Purposes of Ordinance
- Section 3. Exemptions
- Section 4. Who is Covered
- Section 5. Duties
- Section 6. Conflict of Interests and Personal Benefits Prohibited
- Section 7. Duty to Leave Meeting
- Section 8. Public Contracts
- Section 9. Disclosure of Conflict of Interest or Potential Conflict of Interest
- Section 10. Unauthorized Outside Employment
- Section 11. Prohibited Conduct, and Other Abuses or Misuses of Position
- Section 12. Board of Ethics
- Section 13. Duties and Powers of the Board
- Section 14. Custodian of Records
- Section 15. Who May Request Board Action
- Section 16. Limitations on Board's Power
- Section 17. Procedures for Hearing Complaints
- Section 18. Those Subject to Removal Only by the Governing Body
- Section 19. *Ex Parte* Communications
- Section 20. Confidentiality of Board Information
- Section 21. Wrongful Use of Ethics Board
- Section 22. Wrongful Use of the Code of Ethics
- Section 23. Statute of Limitations
- Section 24. Penalties
- Section 25. Penalties Cumulative
- Section 26. Liberal Construction of Ordinance
- Section 27. Severability
- Section 28. Effective Date

APPENDIX OF DEFINITIONS

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Section 1. Declaration of Policy

(a) The City of Milton government is a representative democracy. Those who are elected, appointed, hired, volunteer or campaign to serve the public as representatives accept a public trust, which they share with those whom they elect, appoint, hire or otherwise enlist to help them serve the public. Public trust requires that acts which are contrary to the public interest be defined and prohibited; that there be an orderly procedure for raising and addressing ethical questions; that ethical behavior be encouraged and suitably rewarded; and that unethical behavior be discouraged and suitably disciplined through a process which is fundamentally fair.

(b) It is the responsibility of each public servant to act in a manner which contributes to cultivating public trust in the integrity of government and avoiding even lawful activity when the appearance of impropriety would lessen the public's confidence.

(c) In adopting this Ordinance, the City recognizes that:

(1) public servants are also members of society and, therefore, share the same general personal and economic interests in the decisions and policies of government as all members of the community; and

(2) public servants retain their rights to publicly express their views on matters of general public interest, and to express their opinions on the effect of public actions on their personal or economic interests or rights; and

(3) it is sound public policy for standards of ethical conduct for public servants to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are personal, material and avoidable; and

(4) public servants are entitled to engage in employment, professional or business activities, other than official duties, in order to support themselves and their families and to maintain a continuity of professional or business activity, and are entitled to maintain investments; and

(5) in the City it is possible and reasonable to require public servants to engage in employment, professional or business activities and to maintain investments which do not impede or undermine the integrity of their service to the City.

(d) This Ordinance provides the minimum standards below which a public servant's conduct cannot fall without the risk of penalty. The principal policy which forms the foundation of this Ordinance is to encourage internal commitment by establishing and maintaining a work environment which supports integrity with pride and enthusiasm.

A work environment which supports integrity includes public servants who:

- (1) recognize with gratitude that the primary reason they hold a public position is to serve the public; and
- (2) are motivated and committed to pursue ethical ideals which always exceed minimum standards and often achieve the highest standards; and
- (3) encourage ethical practices which protect, advance and promote the public interest; and
- (4) recognize that the most effective way to eradicate unethical practices is to consistently act ethically themselves, and to consistently react appropriately with respect to the ethical decisions of others; and
- (5) when they observe serious unethical practices, there is a responsibility to promptly disclose them to appropriate authorities, and encourage others to do the same; and
- (6) insure that those for whom they are responsible are aware of minimum standards of ethics below which their conduct cannot fall without the risk of disciplinary consequences; and
- (7) when circumstances warrant, appropriately discipline those who are proven to have engaged in unethical behavior.

Section 2. Purposes of Ordinance

This Ordinance, along with the attached Appendix of Definitions incorporated herein by reference, is adopted to:

- (a) identify the minimum standards of ethical conduct which public servants must meet; and
- (b) adequately educate public servants, and any subordinates, in the principles of ethics,
- (c) encourage public servants to pursue the highest ethical ideals which they can achieve; and
- (d) provide a process by which public servants may identify and resolve ethical issues; and
- (e) provide a process to ensure the prompt disclosure by public servants of serious unethical practices, and encourage others to do the same; and

(f) provide a fair and impartial process by which alleged violations of this Ordinance may be heard; and

(g) provide for a just and reasonable balance among the rights of all individuals who are directly affected by the operation of this Ordinance; and

(h) establish penalties, as appropriate, for public servants who violate the public trust.

Section 3. Exemptions

(a) This Ordinance does not prevent any public servant from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her public duties, provided that the public servant complies with all applicable City requirements, including any requirements imposed by this Ordinance.

(b) No public servant shall be deemed to have a conflict of interest by virtue of carrying out any contract pursuant to which the public servant directly or indirectly received income or benefits in the form of compensation for the performance of official duties.

(c) A former public servant is not prohibited from entering into a contract to represent the City in any matter.

(d) No public servant shall be deemed to have a conflict of interest by virtue of sharing, directly or indirectly, in the benefit of a lawful City action when the benefit to the public servant is substantially the same as the benefit to the public at large or to a segment of the public to whom the benefit is provided in a nondiscriminatory manner.

(e) This Ordinance does not prohibit any public servant from taking any action to approve the lawful payment of salaries, employee benefits, reimbursements of actual and necessary expenses, or other lawful payments which are authorized in accordance with City policies.

(f) This Ordinance does not prohibit public servants from taking any official action properly within the scope of their duties with respect to any proposal to enact or modify law or public policy.

(g) This Ordinance does not prohibit an elected official or other public servants from raising campaign contributions in any manner which is otherwise permitted by law.

(h) This Ordinance does not prohibit communication between an individual or organization and a candidate regarding the candidate's views, record or plans for future action regarding an issue or measure in an attempt to determine a candidate's viewpoints

or how the candidate plans to act in the future, if such communication results in an endorsement of the candidate, a decision not to endorse the candidate, or a contribution or expenditure required to be recorded or reported under a state statute.

(i) Actions which might otherwise be alleged to constitute a conflict of interest shall be deemed to comply with this Ordinance and not to be a conflict of interest if:

(1) before acting, the public servant requested and received a *written* opinion from the City Attorney or a formal ethics opinion or ~~advisory opinion~~ from the Board in accordance with the procedures established in this Ordinance; and

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(2) the material facts, as stated in the request for an opinion, are true and complete; and

(3) the actions taken were consistent with the opinion.

Section 4. Who is Covered

This Ordinance applies to all public servants, as the term is defined in this Ordinance, except that it shall not apply to a municipal judge when the judge is acting in a judicial capacity.

Section 5. Duties

(a) No public servant or former public servant shall divulge any confidential information to any person who is not authorized to have it nor divulge to any unauthorized person confidential information acquired in the course of holding his or her position in advance of the time prescribed by the governing body, administrators, or other applicable law for its release to the public.

(b) All public servants shall respond fully and truthfully to any inquiries by the City Attorney or the Board in connection with the investigation of an alleged or potential violation of this Ordinance. All public servants shall cooperate fully in any investigation by the City Attorney, outside counsel or the Board, and shall locate, compile and produce for them such information as they may request, unless the information requested is exempt from disclosure under this Ordinance or other applicable law.

(c) All public servants must report a violation of this Ordinance of which they have knowledge to the City Clerk, or the City Attorney who shall forward such report to the Board.

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(d) In addition to being a violation of other laws, it is also a violation of this Ordinance for any public servant to:

(1) be convicted of any felony or misdemeanor involving moral turpitude; or

(2) be found liable of violating any federal, state or city law prohibiting discrimination or sexual harassment; or

(3) be found liable of violating any federal, state or city laws prohibiting retaliation against public servants who assert a lawful claim of any nature or otherwise engage in lawfully protected activity; or

(4) be found liable of violating any state laws governing lobbying activities or regulating political activity.

Section 6. Conflict of Interests and Personal Benefits Prohibited

(a) Except as otherwise permitted under applicable federal, state and city laws and policies, including the City's procurement policies, no public servant shall have a personal interest in any official action.

(b) No public servant shall accept or receive, directly or indirectly, from any person, including one whose identity is unknown to the public servant, any personal benefit under circumstances in which it can reasonably be inferred that the benefit is intended to influence the public servant or as a reward for any official action of the public servant.

(c) No person, including any vendor, contractor, business, or board of the City, shall offer or give any personal benefit to any public servant or any partner-in-interest of the public servant.

(d) No public servant nor partner in interest of that public servant shall solicit from any person, directly or indirectly, any personal benefit, regardless of value, or the promise of receiving a personal benefit in the future, for the public servant.

(e) No current or former public servant shall intentionally use or disclose information gained in the course of, or by reason of, his or her official position or activities in any way that could result in the receipt of any personal benefit for the public servant, for a partner in interest of that public servant, or for any other person. This provision shall not:

(1) prohibit the disclosure of public information; or

(2) prohibit the disclosure of information the public servant has been authorized to disclose; or

(3) prohibit the disclosure of any such information to incumbent public servants to whom the information may be pertinent; or

(4) prevent the disclosure of violations of this Ordinance or other illegal acts to the proper authorities; or

(5) prohibit the disclosure of any such information the disclosure of which is required by law.

Section 7. Duty to Leave Meeting

To avoid the appearance of impropriety, after any public servant or a partner in interest is determined to have a conflict of interest or a potential conflict of interest in any matter, and once all questions relating to the conflict of interest have been answered to the satisfaction of the decision maker, the public servant shall immediately leave the meeting room, except that if the matter is being considered at a public meeting, the public servant may remain in the area of the room occupied by the general public.

Nothing herein shall require members of voting bodies to leave their seats while action is taken regarding any item contained on a “consent agenda” on which there is no deliberation, the public servant’s conflict has been disclosed, and the public servant abstains from voting on the item.

Section 8. Public Contracts

(a) The City is prohibited from entering into any contract with a business in which a public servant or a public servant’s partner in interest has a controlling interest involving services or property of a value in excess of \$2,500.

(b) Any public servant who has or may have a personal interest in any contract shall disclose such interest prior to the first of any of the following events: the solicitation of a contract; the bidding of a contract; the negotiation of a contract; or the approval of a contract by the governing body.

(c) Any contract entered into in violation of this Section may be voided by the City in an action commenced within three (3) years of the date on which the Board, or the department or officer acting for the City in regard to the allocation of funds from which such payment is derived, knew or should have known that a violation of this section occurred. This section does not affect the application of any state statute.

(d) Mandatory Provision in Volunteer Agreements.

Volunteers share in receiving the public’s trust and in the responsibility to contribute to creating and maintaining an ethical work environment. Volunteers serve

without the expectation of receiving any compensation from the City, and it is improper for any Volunteer to seek any compensation. Volunteers, unless expressly authorized by a public servant empowered to grant such authorization, are prohibited from acting as Volunteers in any matter in which they have a conflict of interest or a potential or alleged conflict of interest; or in any matter in which they hope to receive any personal benefit.

Section 9. Disclosure of Conflict of Interest or Potential Conflict of Interest

(a) A governing body member who has or may have, a conflict of interest in a matter which requires an official action by any decision maker, shall, before the matter is decided, disclose the conflict of interest or the potential or alleged conflict of interest; if the member of the governing body believes that no conflict of interest exists, or that despite any alleged or potential special interest, such governing body member is nevertheless able to vote and otherwise participate fairly, objectively and in a manner consistent with the public interest, then the member shall so state in the written disclosure.

(b) If any member of the Board has or may have a conflict of interest in any matter before the Board, such member shall not appear before the Board, discuss, debate, deliberate about, act upon, vote upon or otherwise participate in or influence the decision-making process pertaining to the matter in which the member has a conflict of interest.

(c) If the City Attorney or any Assistant City Attorney has or may have a conflict of interest in any matter before the Board, or if any attorney who is responsible for performing any functions on behalf of the Board is precluded from doing so because of a legal conflict of interest which cannot be resolved by the City Attorney's Office internally by screening or some other method, the City Attorney shall disclose the personal interest, or the nature of the conflict, to the Board. If the Board determines that the City Attorney has a personal interest in the matter, or if the City Attorney determines that the City Attorney's Office cannot resolve the conflict in a manner which will allow the City Attorney's Office to perform its duties properly, then the Board may engage outside counsel upon terms and conditions approved by the governing body.

(d) Any public servant who has or may have a conflict of interest shall disclose it. After receiving a disclosure, the City Clerk shall:

(1) maintain a record of such disclosure; and

(2) promptly forward copies of the disclosure to any person named in the disclosure, the Board and the City Attorney.

(e) Any public servant who believes that any other public servant has a conflict of interest in any agenda item before a governmental body shall disclose such interest to the City Clerk, and the City Clerk shall forward copies of such disclosure to

the person alleged to have a conflict of interest, the Board and the City Attorney.

(f) A public servant, in addition to disqualifying himself or herself from participation in any decision regarding the pecuniary or employment interest of a partner in interest, shall make known the existence of the relationship and the interest by filing, with the City Attorney a written disclosure of the relationship and the nature and extent of the conflict of interest involved.

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Section 10. Unauthorized Outside Employment

(a) The purposes of the policies governing unauthorized outside employment are to prevent conflicts of interest and conflicts of loyalty; to prevent abuses regarding dual compensation, payment for work not done, or unlawful gifts of public funds; and to prevent excessive loss of efficiency in the performance of public service.

(b) A public servant shall not accept any employment, nor enter into any contract, nor perform any service for compensation that results in a financial conflict of interest or a conflict of loyalties which would affect the performance of the public servant's official duties.

(c) Employees.

(1) An employee of the City may be self-employed or may take occasional or part-time jobs if, in the opinion of his or her department head, there is no conflict with working hours, the employee's efficiency in his or her City work, or other interests of the City.

(2) Before engaging in outside employment, employees shall have the written approval of their department heads or designee in emergency situations.

(3) Public servants who hold management level positions shall notify the City Manager prior to creating, contracting with, or being employed by any business other than the City. The City Manager shall provide written approval or disapproval of the notification within a reasonable time. Any action undertaken by the City Manager shall require prior approval by the City Council.

(4) All requests for approval of outside employment shall state the type and place of employment, the hours of work and the employer's name and address.

(5) City employment shall remain the employee's first priority, and if at any time the outside employment interferes with an employee's job requirements or performance for the City, the employee shall be required to modify the conditions of the outside employment or terminate either the outside employment or the City employment.

- (d) City Attorney and Assistants.

Neither the City Attorney nor any Assistant City Attorney shall engage in any unauthorized private practice of law for compensation during the period in which they hold office. To the extent they may be authorized to engage in the private practice of law, they shall comply with the state laws governing the professional conduct of lawyers, and any violation of those laws while they are acting as attorneys for the City shall also be deemed to be a violation of this Ordinance.

Section 11. Prohibited Conduct, and Other Abuses or Misuses of Position

(a) Public servants of the City shall treat all citizens with courtesy, impartiality, fairness, and equality under the law, and shall avoid both actual and potential conflicts between their private self-interest and the public interest. Prohibited conduct of each such public servant shall include, but not be limited to, the following:

(1) intentionally granting or making available to any person any special consideration, treatment, advantage, or favor beyond that which it is the general practice to grant or make available to the public at large;

(2) intentionally requesting, using or permitting the use of any publicly-owned or publicly-supported property, vehicle, equipment, labor, or service for the personal convenience or the private advantage of oneself or any other person, except as otherwise allowed by law or as authorized by the City Manager;

(3) knowingly participating in the deliberation of or voting on any matter involving personal financial or personal interest, or where the public servant has an interest which is materially adverse to the applicant or persons affected by the outcome of the matter;

(4) engaging in private employment with, or rendering services for, any private person who has business transactions with the City, unless employee has made full public disclosure of such employment or services and received approval of their supervisor or the City Manager;

(5) appearing on behalf of any private person, other than oneself, before any public body in the City;

(6) accepting any gift, whether in the form of money, thing, favor, loan, or promise, that would not be offered or given to the public servant if the individual were not a public servant, that would thereby cause the public servant to place themselves in a position in which the giver of the gift could expect special consideration or in which the public could reasonably assume that special

consideration is being given. Thus, the public servant should be firm in refusing gifts, favors, or gratuities, large or small, which can, in the public mind, be interpreted as capable of influencing his or her judgment in the discharge of his or her duties.

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(7) intentionally disclosing any confidential information concerning any official or employee, or any other person, or any property or governmental affairs of the City, without prior formal authorization of the governing body;

(8) intentionally using or permitting the use of confidential information to advance the financial or personal interest of the individual or any other person;

(9) ordering any goods and services for the City without official authorization for such an expenditure.

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(10) intentionally using his or her superior position to request or require an employee to:

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(i) do clerical work on behalf of the member's family, business, social, church or fraternal interest when such work is not furthering a City interest; or

(ii) perform any work outside the employee's normal course of municipal employment; or

(iii) purchase goods and services for personal, business, or political purposes; or

(iv) work for him or her personally without offering just compensation.

(11) A public servant shall not draw per diem or expense monies from the City to attend a seminar, convention, or conference and then fail to attend the seminar, convention, or conference without refunding the pro-rata unused per diem or expense monies to the City.

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(12) intentionally violating any provision of the City Charter which prescribes the conduct of a public servant.

(b) No public servant shall hold any other office, elected or appointed, in any other governmental entity, when the duties of such office are incompatible with the proper discharge of the public servant's duties with the City. For purposes of this Ordinance, the holding of any office, elective or appointive, with any other governmental entity by any member of the governing body or of a board is hereby prohibited in any one

of the following circumstances: where one office is subordinate to the other; where one office carries the power of removal of the other; or where the occupancy of both offices is prohibited by the City Charter or other law.

(c) No public servant shall falsely represent his or her personal opinion to be the official position of the City, and no public servant shall falsely represent his or her personal opinion to be the official position of any board or City staff. This subsection shall not apply to:

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(i) statements of elected officials made in the course of running for election to office.

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(ii) professional opinions of City officers or employees rendered in the course of performing their duties, provided that such opinions are clearly identified as professional opinions.

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(d) All public servants have a fiduciary duty to use City fiscal and human resources in a manner which advances the public interest, and to refrain from using City resources for their personal benefit; therefore, public servants are prohibited from intentionally using City resources in any manner which violates any applicable law or policy, and are expressly prohibited from using any City resource to obtain any personal benefit.

(e) No public servant shall intentionally use his or her official authority or position to influence or interfere with or affect the results of any election, nor to solicit or receive contributions from City employees in connection with any City election.

(f) No public servant shall intentionally suppress any public document, record, report or any other public information available to the general public because it might tend to unfavorably affect their private financial, personal, or political interest.

(g) When a public servant, in the course of carrying out his or her duties, has been offered or is discussing future employment with a business that is presently dealing with the City concerning matters within the public servant's current official duties, that person shall disclose such possible future employment to the City Manager. The City Manager shall disclose such possible future employment to the City Council.

(h) No member of the governing body having a personal interest in a matter shall represent himself or herself or any other person before the governing body in connection with that matter, nor in connection with any matter in which a partner in interest has a personal interest, except in cases where a legal right to self-representation exists.

(i) No member of a board having a conflict of interest shall represent himself or herself or any other person before that board in connection with that matter, nor in connection with any matter in which a member of his or her immediate family or a business with which he or she, or a member of his or her immediate family, is associated

has a prohibited interest, except in cases where a legal right to self-representation exists.

(j) No member of a board who is prohibited by this provision from representing himself or herself before that board shall represent himself or herself in the appeal of any decision of that board to any decision maker.

~~(k) No public servant shall, while in the course and scope of their duties, engage in any kind of behavior towards another public servant or member of the public that is threatening or abusive in nature.~~ *Section 12. Board of Ethics*

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(a) There is created a Board of Ethics consisting of seven members. Each member of the Board of Ethics shall have been a resident of the City for at least one (1) year immediately preceding the date of taking office and shall remain a resident of the City while serving as a member of the Board of Ethics.

(b) Members of the Board shall not be elected officials, persons appointed to elective office, full-time appointed officials (whether exempt or nonexempt), or City employees, and shall hold no elected public office nor any other City office or employment.

~~(c) Members of the Board shall be nominated by the Council Member in whose district they reside and the Mayor, at large subject to approval by the Mayor and City Council. An appointment to fill a vacancy on the Board shall be made in the same manner.~~

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(d) The Board shall elect a chairperson and vice chairperson.

(e) Board members shall serve terms consistent with the term of the elected official who nominated them to the board. A member shall hold office until a successor is appointed by the Mayor and City Council.

(f) No person may serve more than two (2) consecutive terms as a Board member.

(g) The Board's deliberations and actions upon requests shall be open to the public.

(h) Members of the Board are Volunteers and shall serve without compensation. The governing body shall provide meeting space for the Board of Ethics. Subject to budgetary procedures and requirements of the City, the City shall provide the Board of Ethics with such supplies and equipment as may be reasonably necessary to perform its duties and responsibilities.

(i) The governing body shall provide such staff support for the Board as the governing body determines to be necessary for the Board to fulfill its duties and responsibilities. The City Attorney is designated to be the legal advisor for the Board, except that the City Attorney is not authorized to represent the Board in any legal action if doing so would create a conflict which would prevent the City Attorney from also

representing the Mayor, the City Manager, or City Council. The City Clerk shall serve as Recording Secretary to the Board.

Section 13. Duties and Powers of the Board

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(a) The Board shall, in addition to its other duties:

(1) develop and adopt written by-laws and rules of procedure, which shall be filed with the City Clerk; and

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(2) be authorized to administer oaths; and

(3) conduct hearings as needed to hear and decide specific cases in which a violation of this Ordinance is alleged. All cases to be investigated by the City Attorney or outside counsel and heard by the Ethics Board regarding alleged violations of this Ordinance as a result of the conduct of individuals must be initiated by the filing of a written complaint in accordance with the procedure as set forth in Section 17 below. Other actions relating to issues of policy such as questions as to whether this Ordinance is being violated by City action may be brought by the request of anyone or on the Board's own motion; and

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(4) no later than December 1st of each year, submit an annual report to the Mayor and City Council concerning its action, if any, in the preceding year, which shall contain a summary of its decisions and opinions; the Board shall make any alterations in the summaries necessary to prevent disclosure of any confidential information pertaining to any individual or organization; and

(5) establish a process for evaluating all significant aspects of the administration and implementation of this Ordinance; and

(6) prescribe and make available necessary forms for use under this Ordinance; and

(7) when necessary, request assistance from the City Attorney in compelling the production of documents and witnesses to assist in any investigation; and

(8) when necessary, retain outside legal counsel and other experts as needed after solicitation of recommendations from the City Attorney, and upon approval by the governing body of a contract for services approved as to form by the City Attorney.

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(b) The Board may:

(1) conduct meetings and hearings as the Board determines necessary or appropriate:

(i) to ascertain public opinions and to gather information from

the general public, employees, or others regarding any aspect of the City’s ethics policies or practices; and

(ii) for any other purpose for which the Board is authorized to conduct hearings; and

(2) respond, as it deems appropriate, to requests for advisory opinions; the Board may decline to render an opinion in response to any request for an advisory opinion; and

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(3) render and publish written formal opinions on any matter within the scope of the Board’s authority; the Board may initiate opinions on its own motion or upon request; and

(4) at the request of a person, the City Attorney may render an informal opinion with respect to the prospective conduct of such person. Nothing in this Ordinance shall be construed to prohibit a request for an informal opinion by any public servant from the City Attorney regarding a potential conflict of interest. If the City Attorney elects to render an informal opinion, the City Attorney shall, within a reasonable time, submit a written summary of the opinion to the Board for the Board’s information; if the City Attorney declines to render an informal opinion, nothing shall preclude the person requesting the opinion from requesting the Board for an opinion; and

(5) prepare and publish special reports, technical studies, and recommendations to further the purposes of this Ordinance; and

(6) make recommendations to the Mayor and City Council of legislative or administrative actions regarding the City’s policies and practices which the Board believes could enhance the ethical environment in which public servants work; and

(7) make recommendations to the City Manager and City Attorney with respect to the development of an educational program for public servants subject to this Ordinance, new Board members, and the public about their rights, duties and responsibilities hereunder.

Section 14. Custodian of Records

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The City Clerk shall serve as legal custodian of the Board’s records, and accept, file, maintain and administer, in accordance with all applicable laws, any information related to the purposes of this Ordinance.

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Section 15. Who May Request Board Action

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(a) Any person may file a request for Board action with the City Clerk, either personally or on behalf of a governmental body, and may request of the Board an ethics opinion, whether a formal opinion or an advisory opinion, regarding the propriety of any matter or matters to which the person is or may become a party; and any decision maker,

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with the consent of a prospective appointee, may request of the Board an ethics opinion regarding the propriety of any matter to which the public servant, prospective public servant or former public servant is or may become a party.

(b) Any request for Board action shall be in writing, shall be signed by the person making the request, and shall comply with Section 17 below.

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Section 16. Limitations on Board's Power

The Board does not have the authority to reverse or otherwise modify a prior action of the Mayor, governing body, or an official or employee of the City. If the Board finds a prior action of the Mayor, the governing body, officer or employee to have been ethically improper, the Board may advise the appropriate party or parties that the action should be reconsidered. Upon such advice by the Board, the action should be reconsidered by the appropriate person or public body. If the Board determines an existing City contract to be ethically improper, after such determination and advice from the Board, the City may void or seek termination of the contract if legally permissible. The Board may refer a matter to the City Attorney or outside counsel for review and consideration for appropriate action. Upon completion of review and consideration, the City Attorney's Office or outside counsel shall report its findings to the Board.

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Section 17. Procedures for Hearing Complaints

(a) Any person may file a written complaint, signed and sworn in the presence of a notary, with the City Clerk alleging a violation of this Ordinance.

(b) A complaint shall specify the provisions of this Ordinance alleged to have been violated and facts alleged to constitute the violation.

(c) Every ethics complaint filed shall contain the following statement: "I have read the complaint and aver that the facts contained therein are true to the best of my knowledge and belief and I am aware that the Ethics Ordinance that created the Ethics Board authorizes the Board to impose penalties for filing a frivolous complaint including without limitation, dismissal of the complaint, payment of costs associated with the handling and processing of the complaint, and/or all other penalties applicable under the law."

(d) Upon receipt of such a complaint, and until an investigation of the complaint is concluded, all matters regarding the investigation, facts of the matter giving rise to the complaint and status of the investigation shall not be disclosed and shall be kept in confidence. Neither the Ethics Board, City Council or any other Board or Commission shall entertain public comment, place the matter on its agenda, or entertain discussion of the issue until the report of investigation is delivered to the Ethics Board for

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its consideration and the Ethics Board makes a final determination or forwards its report to the City Council for a final determination.

(e) Upon receipt of such a complaint, but in any event not later than five (5) working days after receipt, the City Clerk shall acknowledge receipt to the complainant(s), and forward the complaint simultaneously to the Board, the person who is complained against and the City Attorney. In the event that the subject of the Complaint is a City Council member or the Mayor, the City Attorney shall be recused and outside counsel will be retained for investigation of the Complaint. Outside counsel shall be retained based on recommendation of the City Attorney subject to approval by the Chairman of the Ethics Board and the City Manager

(f) The City Attorney or outside counsel shall provide the Board with a preliminary written analysis of the complaint no later than thirty (30) days from the date the complaint is filed with the City Clerk.

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(g) During any investigation and during any hearing which is conducted to determine whether a violation of this Ordinance has occurred:

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(1) the person under investigation or the accused may be represented by counsel of his or her own choosing; and

(2) the accused or his or her representative, if any, shall have an opportunity to

(i) challenge the sufficiency of any complaint which has been filed against him or her; and

(ii) examine all documents and records obtained or prepared by the Board in connection with the matter heard; and

(iii) bring witnesses; and

(iv) establish all pertinent facts and circumstances; and

(v) question or refute testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses; and

(vi) exercise, to the extent the Board, in its discretion, determines to be just and reasonable, any pretrial discovery procedure usually available in civil actions.

(h) The following principles shall apply regarding evidence in connection with hearings conducted by the Board:

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(1) The Board shall not be bound to adhere to statutory Rules of Evidence, but shall be fundamentally fair and reasonable in its administration of evidence; and

(2) All evidence including certified copies of records which the Board considers shall be fully offered and made a part of the record in the proceedings; and

(3) The accused or any other person under investigation shall be afforded adequate opportunity to rebut or offer countervailing evidence; and

(4) The Board shall inform the accused or his or her counsel of exculpatory evidence in its possession; and

(5) The standard of evidence sufficient to prove a violation in hearings conducted under this Ordinance shall be by a preponderance of the evidence admitted at the hearing.

(i) The Board, in addition to its other duties and powers, may:

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(1) appoint a hearing officer to conduct hearings under this Ordinance; and

(2) with the approval of the governing body, retain outside legal counsel and other experts as needed with respect to hearings in accordance with its policies. The selection of a hearing officer and outside counsel and other experts and any contract for such persons shall be made after solicitation of recommendations from the City Attorney and upon approval by the governing body of a contract for services approved as to form by the City Attorney; and

(3) ~~request~~ testimony to be taken by deposition before any individual who is designated by the Board and, in such instances, to compel testimony and the production of evidence to the extent it is otherwise lawfully authorized to do so; and

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(4) ~~request~~ any person to submit in writing such reports and answers to questions relevant to the proceedings as the Board may prescribe, such submission to be made within such period and under oath or otherwise as the Board may determine; and

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(5) request and obtain copies of state income tax returns and access to other appropriate information as permitted under state law regarding all persons who are the subject of such investigation.

(i) The person complained against shall have thirty (30) days from the date of receipt of the complaint from the City Clerk to submit a written response prior to the Board deciding whether to hold a hearing.

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(k) Any person whose name is mentioned or who is otherwise identified during a hearing and who, in the opinion of the Board, may be adversely affected thereby, may, upon request of the person or a representative of the person, or upon the request of any member of the Board, appear at the hearing to testify on his or her own behalf or have a representative appear to so testify, and the Board may permit any other person to appear and to testify at a hearing.

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(l) Upon request of the accused, on its own motion, or upon request of the City Attorney, the Board shall be authorized to issue subpoenas to compel the attendance of necessary witnesses.

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(m) Within thirty (30) days, following receipt of the City Attorney's analysis, the Board shall review and consider the complaint and the City Attorney's analysis, and, if a hearing is to be held, shall set a date certain for the hearing to take place within thirty (30) days of said review by the Board, unless the accused petitions for and the Board consents to a later date.

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(n) As soon as practicable after giving due consideration to a complaint, or, if a hearing was held, after the hearing, the Board shall take any action or combination of actions which it deems appropriate and which it is lawfully empowered to take, including, but not limited to the following:

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(1) dismiss the complaint based on any of the following grounds:

(i) the complaint does not allege facts sufficient to constitute a violation of this Ordinance; or

(ii) the Board has no jurisdiction over the matter; or

(iii) failure of the complainant to cooperate in the Board's review and consideration of the complaint; or

(iv) the complaint is defective in a manner which results in the Board being unable to make any sound determination; and

(2) determine that no violation of this Ordinance has occurred; or

(3) determine that the complaint alleges facts sufficient to constitute a violation of this Ordinance and that the Board will conduct a hearing, in which case the Board shall promptly send written notice of such determination to the accused and to the complainant; or

(4) determine that further information is required to determine whether the complaint alleges facts sufficient to constitute a violation of the Ordinance; and

(i) conduct its own investigation of any alleged violation; or

(ii) request the City Attorney or outside counsel to investigate the complaint and report all findings back to the Board; or

(iii) schedule the complaint for further review and consideration at a future time certain, in which case the Board shall promptly send written notice of such determination to the accused and to the party who made the complaint; or

(iv) refer the complaint for criminal investigation or prosecution; or

(v) refer the complaint, along with the Board's findings and conclusions, to any appropriate administrative authority for disciplinary action or other suitable remedial action; the Board, although it has no independent administrative authority, may make any recommendation to any City administrator at any level of supervision, if the Board finds that the recommendation will advance the objectives of this Ordinance.

(5) After it has made its final determination, the Board shall issue its written findings of fact and conclusions, and may issue any additional reports, opinions and recommendations as it deems necessary. All such reports shall be in compliance with all state and city laws governing confidentiality, open government, and torts. All such reports shall be reviewed by the City Attorney prior to issuance.

Section 18. Those Subject to Removal Only by the Governing Body

(a) If findings relative to an elected or appointed official are filed by the Board with the governing body, the matter shall be referred to the appropriate standing committee of the governing body for a report, or the governing body may appoint a special committee and proceed in accordance with any other applicable state or local laws.

(b) The committee, in reporting the matter to the governing body, may recommend a dismissal of the charges, a reprimand, or a hearing before the governing body to determine whether removal from office is warranted under the applicable provisions of the state and local laws. Failure of an official to file the required financial disclosure statement may constitute grounds for removal from office.

(c) Any hearing by the governing body or by a special or standing committee as designated by the governing body, shall be conducted in accordance with the following provisions:

(1) The accused official must be given reasonable notice of the hearing date. Deleted: at least thirty (30) days

(2) The Board is not bound by the rules of evidence of the Official Deleted: T

Code of Georgia, All evidence, including certified copies of records and documents which the governing body considers shall be fully offered and made part of the record in the case.

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(3) Each party shall be afforded adequate opportunity to rebut or offer countervailing evidence, and to examine and cross-examine witnesses.

(4) During the entire hearing conducted under the provisions of this Ordinance, the official or any person whose activities are under investigation shall be entitled to be represented by counsel of his or her choosing. The governing body shall immediately disclose and forward to the official or his or her counsel any and all exculpatory evidence.

(5) The accused official or his or her representative shall have an adequate opportunity to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, and to question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

(6) The governing body shall have the power to compel the attendance of witnesses and to issue subpoenas for books, records, documents or papers therein to be designated under the authority granted to it by state law.

(7) The governing body may request income tax returns of the official whose conduct or activities are under consideration by the governing body. The examination of the official's income tax returns shall be in accordance with state law.

(d) Governing body action. The governing body shall make a determination in regard to the recommendation of the committee. Dismissal of the findings of the Board as referred to the governing body, or reprimand by the governing body shall be by a majority vote. Removal from office shall be in accordance with all applicable state and local laws.

Section 19. Ex Parte Communications

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(a) After a complaint has been filed and during the pendency of a complaint before the Board, no member of the Board may communicate directly or indirectly with any party or other person about any issue of fact or law regarding the complaint, except that

1 the members of the Board may obtain legal advice from the City Attorney and may discuss the complaint with any staff provided to the Board by the governing authority; and

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2 the members of the Board may discuss the complaint at a lawfully conducted meeting only; and

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3. if any person attempts to communicate with a Board member regarding the pending complaint, the Board member shall report the substance of the communication to the Board on the public record at the next meeting or hearing of the Board.

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(b) No Board member shall undertake an independent investigation of any complaint or matter before the Board.

Section 20. Confidentiality of Board Information

No member of the Board nor any public servant who has access to any confidential information related to the functions or activities of the Board shall divulge that information to any person not authorized to have it.

Deleted: The identity of a person who requests a confidential advisory ethics opinion is confidential, as is information describing or pertaining to any organization mentioned if the disclosure of the information could lead to the disclosure of the identity of the person requesting the confidential advisory opinion.¶

Section 21. Wrongful Use of Ethics Board

The purpose of the Board of Ethics is to endeavor to maintain a high standard of ethical behavior by City officials, employees and other public servants. This will be most effective when city officials, employees and other public servants and citizens work together to set and maintain high ethical standards. Complaints directed to the Board must be based on fact and have the intent to improve the ethical climate of the City. Individuals directing unfounded, frivolous, false or politically motivated Complaints to the Board of Ethics may be subject to penalties including but not limited to dismissal of the Complaint, public reprimand, criminal prosecution for perjury, and/or payment of costs associated with the handling and processing of the Complaint. Other penalties may be imposed by the Ethics Board for the wrongful use of the Code of Ethics.

Section 22. Wrongful Use of the Code of Ethics

(a) A wrongful use of the Code of Ethics shall occur if and when a frivolous or false complaint is filed in a negligent, reckless or purposeful manner without a basis in law or fact and for a purpose other than reporting a violation of this Code. A person has not filed a frivolous complaint if he/she reasonably believes that facts exist to support the claim and either reasonably believes that under those facts the complaint is valid under this Code or acts upon the advice of counsel sought in good faith and given after full disclosure of all relevant facts within his/her knowledge and information.

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(b) In deciding if a complaint is a "Wrongful use of the Code of Ethics", the Ethics Board may also consider:

(1) the timing of the complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;

(2) the nature and type of any publicity surrounding the filing of the complaint, and the degree of participation by the complainant in publicizing the fact that a complaint was filed with the Ethics Board;

(3) the existence and nature of any relationship between the respondent and the complainant before the complaint was filed;

(4) if respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;

(5) any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and

(6) any evidence of the complainant’s motives in filing the complaint.

Section 23.

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Statute of Limitations

No action may be taken on any complaint which is filed later than one (1) year after a violation of this Ordinance is alleged to have occurred, and a complaint alleging a violation must be filed within six (6) months from the date the complainant(s) knew or should have known of the action alleged to be a violation. The discovery rule shall apply. Section 24. Penalties

Deleted: A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of that person is deemed to have waived the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the Board in connection with the request.

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Any violations of this Ordinance shall be punishable to the maximum extent permitted by law. Any disciplinary action shall be carried out in accordance with the provisions of this Ordinance, as well as any other applicable laws, policies and procedures applicable to the position of the offender and the gravity of the offense. The Board is permitted to take any action which it is otherwise lawfully permitted to take, including, but not limited to, any one or combination of the following which the Board deems appropriate under the circumstances: public admonition by the Board; public reprimand by the Board; and recommendation to the City Council for suspension, demotion, forfeiture of office or removal from office, and/or termination from employment, as allowed by applicable law.

Section 25. Penalties Cumulative

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The penalties prescribed in this Ordinance shall be cumulative and not exclusive of each other or of any other penalties which may be imposed pursuant to any other laws or policies. Section 26. Liberal Construction of Ordinance

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The provisions of this Ordinance are to be construed liberally, to the end that the public interest be fully protected, and shall be construed in a manner consistent with all

applicable federal and state laws and applicable provisions of the City Charter.

Section 27. Severability

If any provision of this Ordinance is deemed invalid by any court or by any federal or state agency of competent jurisdiction, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such provision, the conflicting provision of this Ordinance shall be considered a separate, distinct and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of this Ordinance, or any part other than the part declared to be invalid.

Section 28. Effective Date

This Ordinance shall be effective upon the approval and adoption by the governing body of the City.

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APPENDIX OF DEFINITIONS

For purposes of this Ordinance, the following terms, phrases, words and their derivatives shall have the meanings given herein.

(1) *Appointing authority* means the Mayor, City Council, City Manager or any other person who appoints a person to a public position.

(2) *Associated*, when used with reference to a business or an organization, includes any business or organization in which a public servant or a public servant's partner in interest is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 5% of the outstanding equity, or any business or organization in which a public servant or a partner in interest has a personal interest.

(3) *Benefit* means

(a) anything having a monetary value in excess of \$100; or

(b) anything, regardless of its monetary value, perceived or intended by either the one who offers it or the one to whom it is offered to be sufficient in value to influence a public servant in the performance or non-performance of an official action; or

(c) anything, regardless of its monetary value, which, under the circumstances, a reasonably prudent person in the position of the public servant to whom the thing is or may be offered, would recognize as being likely to be intended to influence the public servant in the performance or non-performance of an official action; and

(d) the term "benefit" includes, but is not limited to, a valuable act, advance, award, contract, compensation, contribution, deposit, emolument, employment, favor, fee, forbearance, fringe benefit, gift, gratuity, honorarium, loan, offer, payment, perquisite, privilege, promise, reward, remuneration, service, subscription, or the promise that any of these things will be conferred in the future.

(4) *Board* means the Board of Ethics established by the City to operate under the provisions of this Ordinance, unless the context clearly indicates otherwise; used generically, "board" may mean any voting body

(a) which is established to participate as a body in some manner in the conduct of the City government, including participation which is merely advisory, whether established by state law, city charter, ordinance, contract, executive action or any other lawful means; and

(b) any part of whose membership is appointed by the Mayor, City Council or governing body acting on behalf of the City; but the term "board" does not include a board, commission or committee which is the governing body of a separate

political subdivision of the State, or whose membership, after appointment, is not subject to any regulation by the governing body; nor does it include any City administrative agency, bureau, department, division or office which is administered by individuals rather than by a body.

(5) *Business* means an activity, association, commercial entity, corporation, enterprise, firm, franchise, holding company, joint stock company, organization, partnership, receivership, self-employed individual, sole proprietorship, trust or other legal entity established to earn or otherwise obtain money, whether for profit or non-profit, excluding a municipal corporation or governmental entity.

(6) *Business with which a public servant is associated* means a business in which any of the following applies:

(a) The public servant is an owner, partner, director, officer, employee or independent contractor in relation to the business; or

(b) A public servant's partner in interest is an owner, partner, director or officer; or

(c) The public servant or a partner in interest is a stockholder of close corporation stock which is worth at least \$1,000 dollars at fair market value or which represents more than a 5% percent equity interest; or

(d) The public servant or a partner in interest is a stockholder of publicly traded stock which is worth at least \$5,000 at fair market value or which represents more than 5% percent equity interest, other than publicly traded stock under a trading account if the public servant reports the name and address of the stockholder; or

(e) Any business, regardless of ownership or value, by whom or for whose benefit a decision maker is influenced to act in the hope or expectation of obtaining a personal benefit for the public servant or for a partner in interest of the public servant.

(7) *Candidate* means an individual who is a candidate for an elective office in the City, as defined in the City Charter, or an applicant for City employment or for an appointive City position.

(8) *Child* means a son or daughter, whether or not the son or daughter is the biological offspring of the legal parent or parents and whether or not the son or daughter is financially dependent on the parent or parents.

(9) *Confidential information* means information which has been obtained in the course of holding public office, employment, an independent contract or otherwise acting as a public servant, and which information is not available to members of the public under The Georgia Open Records Act or other law or regulation and which the

public servant is not authorized to disclose, including:

(a) any written information that could lawfully be excepted from disclosure pursuant to state law, unless the public servant disclosing it is authorized to do so by state law, or pursuant to some other pertinent law, policy or procedure; and

(b) any non-written information which, if it were written, could be excepted from disclosure under state law, unless the public servant disclosing it is authorized to do so by the state law, or pursuant to some other pertinent law, policy or procedure; and

(c) information which was obtained in the course of or by means of a record or oral report of a lawful executive or closed session, whether or not the disclosure of the information would violate state law, unless the public servant disclosing it is authorized by state law to do so, or unless the public servant disclosing it has been properly authorized to disclose it pursuant to an applicable law, policy or procedure; however, when such information is also available through channels which are open to the public, this provision does not prohibit public servants from disclosing the availability of those channels.

(10) *Compensation* means any benefit conferred upon or received by any person in return for services rendered or to be rendered.

(11) *Conflict of interest* means not only a personal interest, as defined in this Ordinance, but also a professional or non-pecuniary interest, such as arises when the City Attorney is precluded from representing one public servant because of the City Attorney's preexisting attorney-client relationship with another public servant.

(12) *Controlled or illegal substance* means any drug or other substance, the use of which is regulated by federal or state law, except that within the meaning of this Ordinance the term does not include any drug or substance which has been lawfully prescribed by an authorized person for the use of a public servant, and which is used by the public servant in accordance with the prescription.

(13) *Decision maker* means any public servant or group of public servants empowered to act in a discretionary manner on behalf of the City in any capacity whatsoever, including the making of recommendations. Decision maker includes, but is not limited to, any City agency, bureau, department, division, office, administrator or person who is charged with implementing and administering particular legislation or executive or administrative decisions, and, to the extent this Ordinance is applicable to them, any volunteer or independent contractor who is empowered to exercise any discretionary power which could influence a public servant in the performance or nonperformance of an official action. In this Ordinance, the term "decision maker" is used to represent any and every public servant who could take any discretionary action regarding a matter in which a public servant or a partner in interest has or may have a conflict of interest, or as a result of which a public servant might receive a personal

benefit.

(14) *Decision making* means the exercise of any discretionary public power in any capacity whatsoever, including the making of recommendations, by any public servant whose action pertains to a matter in which a public servant or a public servant’s partner in interest has or may have a conflict of interest, or as a result of which a public servant might receive a personal benefit.

(15) *Disclose* means, unless the context of this Ordinance indicates otherwise, to provide the City Clerk with written notice of a conflict of interest or a potential conflict of interest, and any other pertinent information, including the nature and extent of the public servant’s conflict of interest, the decision maker(s) who may act on the matter, and the name and address of any person alleged to have a conflict of interest or a potential conflict of interest. Unless this Ordinance or a law which supersedes it requires or permits another procedure, information shall be deemed disclosed if any public servant within a reasonable time before any official action is to be taken by the decision maker, provides the City Clerk with written notice disclosing the conflict or potential conflict. For purposes of this provision, “within a reasonable time” means within adequate time to allow the City Clerk, acting within the City’s normal schedule and procedures for transmitting written documents, to forward the disclosure to the decision maker(s) before whom the matter is pending or may be brought, and within adequate time to allow the decision maker(s) to review the disclosure before taking any official action.

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(16) *Discovery rule* means, the statute of limitations does not start to run until the date of the discovery of the violation or wrongful act, or the date which, by the exercise of reasonable care and diligence, the complaining party should have discovered the violation or wrongful act

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17 *Employee* means a person, other than an elected public officer, employed and paid a salary to work for the City, whether under civil service or not, whether full-time, part-time, or on a contract basis, and including those officially selected but not yet serving; and, for purposes of establishing ethical obligations under this Ordinance and for no other purpose, the term “employee” includes volunteers, notwithstanding the fact that they are unpaid.

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(18) *Frivolous* means a claim or complaint which is clearly insufficient on its face, does not controvert the material points of the opposing party and is presumably interposed for mere purposes of delay or to embarrass the opponent. A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim.

(19) *Gift* means any benefit or thing or act of monetary value which is conveyed to or performed for the benefit of a public servant or a partner in interest,

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including any advance, award, contract, contribution, deposit, employment, favor, forbearance, gift, gratuity, honorarium, loan, payment, service, subscription, or the promise that any of these things or acts of value will be conferred in the future, if such thing or act of value is conferred or performed without the lawful exchange of consideration which is at least equal in value to the thing or act conferred or performed.

~~(20)~~ Governing body means the elected officials who comprise the legislative body of the City, as defined by the City Charter.

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~~(21)~~ Immediate family means:

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(a) a public servant's spouse, children, grandchildren, parents, parents-in-law, grandparent, grandparents-in-law, sisters, sisters-in-law, brothers, brothers-in-law, sons-in-law, daughters-in-law, nieces, nephews, aunts, uncles (whether by marriage, lineal descent or adoption); and

(b) a public servant's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the public servant or from whom the public servant receives, directly or indirectly, more than one-half of his or her support; and

(c) an individual claimed by the public servant or the public servant's spouse as a dependent under the United States Internal Revenue Code.

~~(22)~~ Interest means any personal benefit accruing to a public servant or the public servant's partner in interest, whether in the public servant's own name or the name of any person or business from which the public servant is entitled to receive any personal benefit, as a result of a matter which is or which is expected to become the subject of an official action by or with the City.

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~~(23)~~ Loan means a transfer of money, property or anything else of ascertainable monetary value in exchange for an obligation, conditional or not, to repay in whole or in part.

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~~(24)~~ Materially adverse means an opposing or contrary position of substantial or important a matter as to influence the party in question.

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~~(25)~~ Matter means, unless the context of this Ordinance indicates otherwise, any act, action, agenda item, allegation, application, amendment, auction, bill, business, case, charge, claim, consideration, contract, controversy, decree, deed, deliberation, discussion, hearing, issue, lease, license, measure, offer, order, ordinance, permit, personnel action, petition, policy, presentation, procedure, privilege, proceeding, project, proposal, proposition, purchase, recommendation, regulation, rental, request, resolution, sale, subject, transaction, use, variance or other discretionary choice pending before a City decision maker when a public servant or a partner in interest has a personal interest in the outcome of the decision, or the decision may result in a personal benefit to a public

servant or a partner in interest.

(26) *Ministerial action* means a simple and definite action or function imposed by law where no exercise of discretion or judgment is required.

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(27) *Negotiating concerning prospective employment* means one or more discussions between a public servant and a potential employer other than the City concerning the possibility of the public servant or a partner in interest considering or accepting employment with the employer, in which discussion(s) the public servant responds in a positive way.

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(28) *Office* means any of the following:

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(a) An elective position within the government of the City; or

(b) A City Attorney; or

(c) An appointive City position in which a public servant serves for a specified term, except a position limited to the exercise of ministerial functions or a position filled by an independent contractor; or

(d) An appointive City position which is filled by the governing body or the executive or administrative head of the City, and in which the incumbent serves at the pleasure of the appointing authority, except a clerical position, a position limited to the exercise of ministerial functions or a position filled by an independent contractor.

(29) *Officer* means any person elected or appointed to hold an office, as defined in the charter of the City.

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(30) *Official action* means any act, action, approval, decision, denial, directive, disapproval, inaction, order, performance, nonperformance, recommendation, vote, or other direct result of a public servant's exercise of discretionary authority in connection with the public servant's public position.

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(31) *Official duty* means any official action or ministerial action which a public servant is obligated or authorized to perform by virtue of being a public servant.

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(32) *Official records* means any minutes, papers, documents, completed forms, or other records maintained by a public agent for the purpose of fulfilling the disclosure requirements of this Ordinance.

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(32) *Organization* means, unless the context indicates otherwise, any non-profit business other than an individual or governmental agency.

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(33) *Partner in interest* means, when used in this Ordinance in connection with a public servant, as in the phrase "a public servant or a partner in interest" any and all of the following:

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(a) a member of the public servant's immediate family; or

(b) a business with which the public servant or a member of the public servant's immediate family is associated; or

(c) any other person with whom the public servant or a member of his immediate family is in business, or is negotiating or has an agreement concerning future employment or the future conferring of any personal benefit, whether in the public servant's own name or the name of any business or person from whom the public servant is entitled, or expects to become entitled, to receive any personal benefit, as a result of a contract or trans-action which is, or which is expected to become, the subject of an official action by or with the City. The term partner in interest does not imply or require any form of legal partnership or formal agreement.

(d) When used in the phrase "a public servant *or a partner in interest*," the term "partner in interest" refers only to a partner in interest of the public servant to whom reference is being made, and not to any other person's partner in interest.

~~(34) Reasonable means fair, proper, equitable and just under the circumstances.~~

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~~(35) Personal benefit means any benefit which is offered or received, or perceived to be offered or received, primarily for the purpose of influencing the manner in which a public servant performs or refrains from performing an official action, so that an attempt is made to induce the public servant, or the public servant is induced, to act in favor of some interest other than the public interest on the basis of an expectation or hope that the public servant or a partner in interest of the public servant will obtain some private gain by acting against the public interest; provided, however, that the term "personal benefit" within the meaning of this Ordinance does not include any of the following, which, although they may benefit individual public servants, are deemed to be primarily public benefits rather than personal benefits:~~

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(a) payment by the City of salaries, compensation or employee benefits; or payment by an employer or business other than the City of salaries, compensation, employee benefits or pursuant to a contract, when the payment is unrelated to a public servant's status as a public servant and is not made for the purpose of influencing, directly or indirectly, the vote, official action or decision of a public servant; or

(b) fees, expenses, or income, including those resulting from outside employment, which are permitted and reported in accordance with the policies of the City; or

(c) authorized reimbursement of actual and necessary expenses; or

(d) admission, regardless of value, to events to which public servants are invited in their official, representative capacity as public servants; or

(e) campaign or political contributions which are made and reported in accordance with state law; or

(f) reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public event; or in connection with speaking engagements, teaching or rendering other public assistance to an organization or another governmental entity; this provision applies only if the City does not also pay the person for the same activity; or

(g) awards publicly presented in recognition of public service, acts of heroism or for solving crimes; or

(h) anything of value, regardless of the value, when the thing of value is offered to the City, is accepted on behalf of the City, and is to remain the property of the City; or

(i) commercially reasonable loans made in the ordinary course of the lender's business in accordance with prevailing rates and terms, and which do not discriminate against or in favor of an individual who is a public servant because of such individual's status as a public servant; or

(j) complimentary copies of trade publications; or

(k) any unsolicited benefit conferred by any one person or business if the economic value totals less than \$250.00 per calendar year, and if there is no express or implied understanding or agreement that a vote, official action or decision of a public servant will be influenced; or

(l) reasonable compensation for a published work which *did not* involve the use of the City's time, equipment, facilities, supplies, staff or other resources, if the payment is arranged or paid by the publisher of the work; or

(m) reasonable compensation for a published work which *did* involve the use of the City's time, equipment, facilities, supplies, staff or other resources, if the payment of the compensation to the public servant is lawfully authorized by a representative of the City who is empowered to authorize such compensation; or

(n) anything of value, if the payment, gift, or other transfer of value is unrelated to and does not arise from the recipient's holding or having held a public position, and if the activity or occasion for which it is given does not involve the use of the City's time, equipment, facilities, supplies, staff or other resources which is not available to the general public; or

(o) anything of value received as a devise, bequest or inheritance; or

(p) a gift received from a relative within the third degree of consanguinity, under the civil law computation method, to the public servant, or the spouse of such a relative; or

(q) a gift received from a spouse of a public servant, or a spouse's relative within the third degree of consanguinity to the spouse, under the civil law computation method.

(36) *Personal interest* means a direct or indirect interest having value peculiar to a particular individual or group, whether the value is pecuniary or non-pecuniary, which value may accrue to such individual or group or result in such individual or group deriving or potentially deriving a personal benefit as a result of the approval or denial of any ordinance, resolution, order or other official action, or the performance or nonperformance thereof, by a public servant, and which interest is not shared by the general public..

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(37) *Public servant* means any member of the governing body or of any City agency, board, commission, committee, or other voting body, and any agent, department head, employee, official, supervisor, volunteer, or other person, whether elected or appointed, or legally authorized by contract or in any other manner to act in any capacity under the authority of the City.

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(38) *Relative* means a person who is related to an official or employee (whether by marriage, lineal descent or adoption) as spouse, parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, parents-in-law, son-in-law, daughter-in-law, , brother-in-law or sister-in-law.

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(39) *Volunteer* means an individual who is permitted by the City, or by a person authorized to act on behalf of the City, to assist public servants in performing any kind of official duty or action without any expectation of receiving compensation.

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(40) *Voting body* means the governing body and any other City authority, board, commission, committee, council or group, regardless of whether its function is legislative, administrative, quasi-administrative or quasi-judicial or any combination thereof, which must act as a body on the basis of a vote of some or all of its members.

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NO DOCUMENTS SUBMITTED.