



City of Milton

13000 Deerfield Parkway, Milton, GA 30004

CITY OF MILTON
BOARD OF ETHICS MEETING

Monday, May 7, 2007
6:00 PM
Executive Conference Room, Suite 107-G

AGENDA

- I. Call to Order – Chairman Clint Johnson
- II. Approval of the April 9, 2007 meeting minutes.
- III. Discussion on Board of Ethics Bylaws and Rules of Procedure.
- IV. Review of Code of Ethics and Standards of Conduct.
- V. Research/study conflicts of interest between Board/Commission/Committee Members and External Entities, i.e. HOA's, BARA, BHA.
- VI. Research/study adoption of agenda items in conflict with State or Federal law, i.e. Resolution on Council behavior.
- VII. Adjourn

Milton City Hall
Executive Conference Room, Suite 107-G
13000 Deerfield Parkway, Building 100
Milton, GA 30004

MINUTES

**City of Milton Ethics Board
Regular Meeting
Monday, April 9, 2007
6:00 PM**

Commission Members Present: Clint Johnson, Jackson "Skip" Gray, Joe Whitley, John McMillan, Susan Campbell, Carol Lane

Commission Member Absent: Todd Ashley

Meeting Leader/City Staff: Jeanette Marchiafava, City Clerk

Other City Staff: Bill Doughty, Communications Manager/CPO

Other Attendees: Leon Cole, Jr., 16700 Birmingham Hwy., Alpharetta, GA 30004
Doug Nurse, Atlanta Journal Constitution
Bill Bailey

Agenda Items:

- I. Welcome and Introductions
- II. Administration of Oath of Office
- III. Update on City of Ethics Designation
- IV. Review of Code of Ethics and Standards of Conduct
- V. Election of Chairman
- VI. Research/study conflicts of interest between Board Commission/Committee Members and External Entities, i.e., HOA's, BARA, BHA
- VII. Research/study adoption of agenda items in conflict with State or Federal law, i.e. Resolution on Council behavior
- VII. Adjourn

MEETING CALLED TO ORDER

City Clerk, Jeanette Marchiafava called the City of Milton Board of Ethics meeting to order for Monday, April 9, 2007 at 6:00 PM. at City Hall in the Executive Conference Room.

WELCOME AND INTRODUCTIONS

City Clerk Marchiafava announced that Item No. I on the Agenda was the Welcome and Introduction and asked the Board to announce who they are before they speak, every time they speak until we get used to their voices for transcription of the minutes. She then asked Mr. Johnson if he would like to start.

Board Member Clint Johnson asked if they were going to give a bio like everybody suggested. He stated that he was Clint Johnson, and everyone may recognize his name from a lot of signs that were up for two or three months around here. He said he ran against Bill Lusk and Bill won. Bill Lusk appointed him to the Ethics Board. He said his background is primarily military and airlines. He is a retired navy captain and retired Delta captain. He was on the Fulton County

**Regular Meeting
Ethics Board
Monday, April 9, 2007**

Library Board for six years and was chairman for two years. That is his experience in government. He stated that right now he is pretty much retired, but is working about 50 hours a week because it is tax season and he does taxes.

Board Member Joe Whitley stated that it was a pleasure for him to be on the Ethics Board. He stated that he has had a career in government. He is currently an attorney at the firm of Alston & Bird here in Atlanta and he spends a good bit of time traveling to other cities. He lives in what used to be Alpharetta and is now the City of Milton in the northwestern most corner of Birmingham Road. He has had some government experience in and out of the Department of Justice and Department of Homeland Security. He said to Clint Johnson that he could not match his background, in that he has never flown an airplane, but he has flown on many airplanes and appreciates the skill of the pilot to fly them and Delta Airlines who was also represented here tonight. He looks forward to service on this Board, as he cannot think of anything more important than ethics. He stated he would save his speeches for later, as he knew there was limited time tonight and some very significant issues. We are all here for reasons that are hopefully good reasons and he believed that they can help out their city officials and others who deal with the City of Milton to do the right thing.

Board Member Carol Lane stated she is a retired nurse and has three children and her husband is a physician. She was truly honored to be on this Committee and believes they can make it better for all of the people involved in the City of Milton and looks forward to it.

Board Member Susan Campbell stated she has been a Delta Flight Attendant for 29 years. She co-chaired the Citizen's for Lusk Campaign in 2002. She has also worked with the Chamber on Citizen's Advisory Council for Milton and Alpharetta Cluster for Fulton County Schools. She has two children, one at Milton and one at Northwestern, and is happy to be here.

Board Member John McMillan stated he was appointed by Neal O'Brien and has been in the City area since 1990. He stated he has been involved in a lot of different ways in government type committees. He was on the original Highway 9 Overlay District formation committee and has been on the update committee as well, the NW Overlay District Committee and the Roswell Redevelopment Committee and the Alpharetta Redevelopment Committee at one time. He said he has had a lot to do with those kinds of things throughout the years. He is also a commercial real estate broker and has done a lot of concentrated work with the Georgia 400 Corridor, has a few properties around this area, and is vitally interested in this area. He stated that he is married with three children that will hopefully be able to afford to locate here when they graduate from school. He is honored to be able to serve on the Ethics Committee. He said he has just been involved in this area for a long time wants to see it made better and is hopeful that they can get over their growing pains and go in the right direction.

Board Member Skip Gray stated he is with Integrity Bank and he said for those of you who are not familiar with military rank, Clint would have been a Colonel had he been in the Marine Corp. He said he was raised by three aunts, two were old maids and one was black and they said Skip, as dumb as you are, you had better marry a smart woman, and that is what he did. He said he grew up under the law. He said he wants this to be a good community and there is a lot of work to be done.

City Clerk Jeanette Marchiafava stated for the record that Mr. Todd Ashley called her today at 1:50 PM to advise that he was right in the middle of picking a jury for Judge T. Jackson Bedford and asked that the Board please take that into consideration. He did not anticipate getting through until around 6:00 or 7:00 PM tonight and he apologized for not being able to be there.

City Clerk Jeanette Marchiafava announced that Item No. II on the Agenda was Administration of Oath of Office that will be done as soon as Mayor Lockwood arrives. She stated that Item No. III is an Update on City of Ethics Designation. She passed around the Resolution that Council recently passed on March 15th for their consideration and to let them know that the Mayor and City Council were moving forward with getting the City of Milton designated as a certified city of

ethics. She advised that the Resolution was required to do so. She stated that Resolution and the Ethics Ordinance, the City feels confident that their designation will be granted.

City Clerk Jeanette Marchiafava announced that Item No. IV on the Agenda is Review of Code of Ethics and Standards of Conduct. She stated that the City Manager, Aaron Bovos, put this item on the agenda basically for the Board to go over the Ordinance and maybe even point out certain sections of the Ordinance that may need to be discussed. She said that she sent this version through the mail which is from Attorney Jim Langlais, Chairman of the City of Sandy Springs Ethics Committee, and advised that that Committee drafted this Ordinance modeled from the IMLA Standards from GMA. She stated that she was on that committee and that they narrowed it down a lot from its original content.

Mayor Joe Lockwood made his appearance and City Clerk, Jeanette Marchiafava, announced that at this time they were going to go back to Item No. II on the Agenda, Administration of Oath of Office, and asked Mr. Whitley and Mr. McMillan to stand for their oaths.

[Mayor read Oath of Office to Mr. Whitley and Mr. McMillan]

City Clerk Jeanette Marchiafava announced to Board that one thing she did want to point out that was new and not currently in the Ethics Ordinance, and which is on the City Council Agenda for April 12th, for the first presentation with the second reading will be April 19th, is an amendment to the Ethics ordinance. She stated that a couple of the members had seen that. The original Ordinance approved by the Mayor and Council states that the Board consists of five members and two alternates. She advised that this is going to be hopefully be changed by Council if approved at the second on the 19th, wherein this Board will serve as all the other boards. She stated that their term will run with the term of your elected officials that put you on the Board, so other than that, everything else is open for discussion among the Board members.

Board Member John McMillan asked if there were any copies and City Clerk advised that copies were being made.

City Clerk Jeanette Marchiafava asked if the Board wanted to discuss election of the Chairman while the copies of the Ordinance were being made, even though Mr. Ashley is not present. She said she would leave that up to the Board and asked if they wanted to vote for a Chairperson today.

Board Member John McMillan asked if they could proceed with voting without Mr. Ashley being present.

City Clerk Jeanette Marchiafava said that she had looked at the Ordinance and for his vote to count, he would have to vote in person.

Motion and Second: Board Member Skip Gray moved to nominate Clint Johnson as Chairperson. The motion was seconded by Board Member John McMillan.

City Clerk Jeanette Marchiafava asked if there were any other nominations for Chairperson. There were none.

Vote: The motion was unanimous.

City Clerk Jeanette Marchiafava asked if anyone was opposed to Mr. Johnson serving as Chairperson. Hearing none, she stated to let the record reflect that Clint Johnson is the Chairperson of the Board of Ethics Commission and said, "Take it away Mr. Chairman."

Chairman Clint Johnson replied he knew that was coming.

City Clerk Marchiafava had copies of Ordinance passed around to Board.

Chairman Clint Johnson said he would wait until copies were passed out and stated the first thing they would cover would be the Update on City of Ethics Designation. He asked the City Clerk if she was going to cover this with the Board.

City Clerk Marchiafava said, yes sir, we just covered the Resolution that was passed out.

Chairman Clint Johnson said we will move to Item No. IV, Review of the Code of Ethics and Standards of Conduct. He asked if anyone was lacking a copy of Ordinance 06-11-12, the one with the City Seal on it on the lower left hand corner.

Chairman Clint Johnson stated that this ordinance is pretty long and involved and he stated they were not going to sit there all night and go through it, so homework is for the Board to go home and read it. He asked the Board to go to page 12, *Section 12, Board of Ethics*, and Paragraph (a). is going to be changed he understood to 7 members. He said he wondered about this the first time he read it. He said he had to ask to be on the safe side, if anyone there is an elected official or pointed to any elected office in the county, City of Milton, or State of Georgia. He said nobody was, good. He stated that they have all been appointed, confirmed by the Mayor and everyone has been sworn in now, and the Chairperson has been elected.

Chairman Clint Johnson said that under Section 12(e), the staggered terms they discussed earlier, but just to go over it again, they are now going to serve the term of the council person that nominated them. He stated no more than two consecutive terms as a board member, unlike the City of Roswell, where people have been on there 20 years and do not know they are on there -- it is amazing. So this means that if you were with somebody that was elected for three years, you could serve six years, and if you were appointed by somebody who was a one year council person, then you would only serve four years and that is it -- that would be your two consecutive years. He continued to state that apparently if you miss a term you can come back and do it again after that. It is just consecutive with election.

He stated he knew they were familiar with the Georgia Sunshine Law and he hoped everyone else was. He stated he would try to get copies for everybody and he requested they just scan through it and read it. He said there were a few tricky things in it. He said that any time they have a meeting, they have to post the agenda in a public place 24 hours prior to the meeting and that this is pretty much standard and they have to announce it. He said all the meetings will be open to the public unless (under the Sunshine Law) they discuss a specific individual, and then they can go into closed session. He said they have the right and this is to keep from embarrassing people who might not have done anything wrong, but their name came up. He said that since they are an ethics board, he sees the possibility that they will be doing quite a bit of closed sessions, because there will be a lot of names involved. He said anything that they vote on will be in open session, because you cannot vote on anything in closed session in Georgia. He stated they can discuss, they can work, or anything they want to in closed session, as long as they are discussing financial or personnel matters, or matters that are supposed to be kept confidential for the City, like maybe the purchase of property, where somebody is involved in that. For those things they can go into closed session, but once they determine what they are going to do and come out to vote, they must be in open session.

Chairman Clint Johnson told the Board that under Section 12(h), they are not going to get paid; however, he said he understood that there is machinery that pays expenses if they have to go into the field or something like that. It says that they will provide us will supplies and equipment, so if there are any other expenses, they would probably pay us for those, but there are no meeting expenses, like on some boards where you get fifty dollars if you show up, but not this time.

Chairman Clint Johnson said that under Section 12 (i), the governing body is supposed to provide staff support, and that essentially means the Council and the City Attorney is designated to be their legal advisor. He continued to read under *Section 13, Duties and Powers of the Board (a) 1-8*, stating that they are going to have to develop and adopt written procedural rules and the Mayor and Council will have to approve those and they will be filed with the City Clerk. He stated that should not be too hard and that they just pretty much follow the Rules of Order.

Chairman Clint Johnson said they are authorized to administer oaths as a Board of Ethics. He stated that individual board members acting on their own cannot administer oaths. He said that their power comes from being on the Board, so as a board procedure, they can administer oaths as a board, but not as individuals.

Chairman Clint Johnson read under Section 13(a)(3), conduct hearings as needed to hear and decide specific cases, that his feeling on this is that to investigate, he would like for someone to file a complaint -- he would like to see something in writing passed on to them. He said that, however, they also have the responsibility if they hear of a complaint to investigate it. He said they may not take action on it, like they would a written complaint, but they at least should investigate it to see if there is anything to it and then they can issue written complaints.

Chairman Clint Johnson said that under Section 13(a) (4), on December 1st of each year, they are going to have to do an annual report to the Mayor and City Council concerning any action they did in the preceding year. He continued to read from the ordinance under Section (a) 5-8.

Chairman Clint Johnson stated that they will probably have to design a complaint form of some kind -- something that is very specific, so this is more homework -- read and design. He said that for the next meeting, bring in some sample applications that people have thought of, they will compare them and bang one out at the next meeting.

Chairman Clint Johnson said that regarding assistance from the City Attorney in compelling production of documents and witnesses to assist in any investigation, that is a given.

Chairman Clint Johnson stated that regarding when necessary, retaining outside legal counsel; he certainly hoped that they would not get so deeply into something that they would have to do that. He said he hoped they could do this with the City Attorney and any counsel that works for the city.

Chairman Clint Johnson read under Section 13(b) (1) regarding conducting meetings and hearings, confidentiality of information and publishing written formal opinions. He stated that they are also an investigative committee to a certain extent. He continued to state under (1) (i); (ii), (2), (3), (4), (5), (6) and (7).

Chairman Clint Johnson stated that what it is saying is that they can, *if they deem it appropriate*, which are the key words, publish confidential information, but before they do that, they better run it by the City Council. He continued that the City Attorney has the right to submit his own opinions, which would be a good idea since he is a lawyer and a lot of these matters are legal. He said that if the City Attorney declines his right to publish an opinion on a case, they still have a right to publish an opinion, and that he cannot preclude them from publishing an opinion. Reading from (5) and (6), he stated that in their perusing the Code of Ethics and also the general Charter of the City, if they come across something that might be a hole in the way the city is run, they should discuss it, make an opinion and present it to Council and the Mayor for changes. He stated that this is sort of their job -- not only to be watchdogs, but also to make sure the City is not setting itself up for any ethical problems.

Chairman Clint Johnson read from *Section 14, Custodian of Records*, and stated the City Clerk is going to keep their records. Mr. Johnson asked the City Clerk if the meetings were going to be recorded and put on paper and she replied yes, they would be.

Chairman Clint Johnson read from *Section 15(a), Who May Request Board Action*. He stated that this Section means anybody -- that means any citizen of Milton or even someone who is not a citizen but has an interest. *Section 15(b) Request for board action*. He stated that this does not mean someone cannot call in and say that they have seen something going on that they think is really bad and the City Hall advises us that something is going on -- this does not preclude the Board from investigating. He said that this means if they request the Board take action against somebody or a business or anything that it has to be in writing. But a request for an investigation can be verbal -- they can email it if they want to.

Chairman Clint Johnson read *Section 16, Limitations on Board's Power*. He then stated that this is pretty important, and that they are an advisory board to the Council -- this is the way they operate. He said that if they see that say a Councilmember is doing something wrong and we really do think it is ethically incorrect, we will file a report with the Council, the Council then takes it into consideration and votes to take action or not to take action -- that is the way it works. He said that this includes employees or any officer of the city. He said that it can be referred to the City Attorney for review before it is presented to the City Council and the City Attorney will report back to the Board on what he thinks the possibilities are of the matter going forward. He stated that these are the checks and balances for the Board to make sure they do not go off the deep end and do something that we really do not have the authority to do or they do not have the proof of.

Chairman Clint Johnson read *Section 17, Procedures for Hearing Complaint (a-f)*. He said that goes back up to 15(b) for Board action - shall be in writing. He said this expands that a little bit. He stated that the Board has five working days after receipt to forward a complaint to the Board and the person who is complained against and the City Attorney. He said that is not there responsibility -- that is the City Clerk's responsibility to forward that to the 3 people -- the person involved, them as a Board and the City Attorney. He said that they will probably be working with the City Attorney. He stated that when the Board meets to consider this against an individual, it will be like a mini-court. The complainant will essentially have the same rights he has in court before the Board. He told the Board they have to adhere to the statutory Rules of Evidence.

Board Member Joe Whitley said that there were some inconsistencies in the Ordinance about whether or not they should follow the statutory Rules of Evidence. He stated in that particular paragraph, it says, *shall not be bound to adhere to the statutory Rules of Evidence*. But, there is another section that says we do.

Chairman Clint Johnson said he had seen that in his reading of the Ordinance.

Board Member Skip Gray as if they got into a sticky situation and an attorney has to come in, would they get any type of payment or should he be paid? He believed that he should.

Chairman Clint Johnson said that he would be paid. He said that before they were called to order they discussed that a little bit about will somebody be on a retainer. He stated he did not know the answer to that yet, but down the road there may be an attorney to handle this kind of thing, or they may use Mark Scott. He said that an attorney on the Board cannot get compensation while he is serving on the Board, but he can act in the position of an attorney advising the Board, and they could take his legal expertise for their own uses. He said that they can bring a lawyer in and the city will pay him, but it has to be run through the City Council first.

Board Member John McMillan asked if a Hearing Officer is appointed, would they be someone from the outside.

Chairman Clint Johnson stated he did not know, but would make a note to follow-up on this. He believed it would be outside, but would find out.

Chairman Clint Johnson continued reading to the Board what some of their powers are. He stated he thought it was interesting under (g) (5) that it states they are entitled to state income tax returns, but not federal. He said that it may be a misprint. Continued to read from Ordinance in Section 17.

Chairman Clint Johnson read from *Section 18*. He said this is where it can get bad, if their findings show someone needs to be removed. He stated he was not going to go too deeply into this right now, but said this is something the Board really needs to read and be aware of.

Board Member Joe Whitley said in Section 18(d), it says recommendation to the Committee. He asked if the committee was referring to the Board.

Chairman Clint Johnson said yes, that probably should say Board instead of Committee. He stated because they are really referring to Council action. He continued to read through Section 18.

Chairman Clint Johnson said that once they receive a complaint, they cannot discuss it outside of the meetings, and that under *Section 20*, the Board does operate under confidentiality. He continued to read through *Sections 21, 22, 23, 24, 25, 26, 27*. He said the Board has to act in an atmosphere of confidentiality so that things do not leak out before they are ripe and ready to be considered before the Council.

Chairman Clint Johnson said that their meetings are opened, but when they are discussing an individual, they are closed and will be in closed session. He stated that even a Council member will not have the right to be there. The only other person that can be in attendance at the closed session is the City Attorney or a recorder if it is requested. He said that he assumed they will be constantly being using the City Attorney to help them out.

Chairman Clint Johnson read under *Section 22* and stated that the Statute of Limitations is interesting, because it states no action can be taken on any complaint which is filed later than one year after a violation. He said that this is obviously not the legal statute of limitations that exists in the State of Georgia. He said that this does not mean if somebody does something that is unethical or illegal and nobody finds out about it for a year or two years -- but it does say that it is one year after the violation is alleged to have occurred. He said he was not clear if they are saying it is one year after somebody says the violation occurred, or when it actually occurred. He is not sure if the discovery comes in on this -- it does not appear to, so you can have something that occurred two years ago and somebody finds out about it and we are out of business because the year has gone by, or are they really saying in this *Section 22* that the time the clock starts running is when somebody comes to you and says, hey, *I just found out yesterday that this happened?* He said that some things could be covered up for quite a while. He said if it was a serious ethical breach or a crime was involved, well he said we could probably hand it over to the criminal division to investigate it -- he said, he needed to find out about how this works.

Board Member Joe Whitley stated that as they go through the provision, it may be useful that on a selective basis, they seek guidance from the City Attorney on these. He suggested they may consider this. He said it would be a travesty if there was something that turned out to be a matter that turned out to be a substantial criminal matter and not be discovered until two or three years later and it occurred after the statute of limitations and they could not deal with it.

Chairman Clint Johnson said he was going to ask him about this matter and the other two issues that were brought up. He said that right now the way it stand, you could have a criminal action that would be in the statute of limitations for the criminal part of it and the person could be prosecuted, but we could not take any action by removing him from his job or elected position technically.

Chairman Clint Johnson read *Section 23, Penalties*. He said that if they find and are satisfied with the legal background of it that someone has done something unethical, they can publish it and come out and say that this was bad that you do this. He stated that the difference between public admonition and reprimand is public admonition we can say something about it and we can publish it -- reprimand, they are actually putting something in the individual's record. He said this would carry in an employee's record for the future, but admonition would be a passing thing. It would be public and everyone in the public would probably know about it, but it would not be in his record. Reprimand is permanent and is going to follow him. The Board makes recommendation to City Council and they may vote against it, but that is up to them.

Chairman Clint Johnson said that *Section 24* spoke for itself.

Chairman Clint Johnson said in *Section 25, Liberal Construction of Ordinance* states that the Board should not be shy in taking action if they think the city is at risk from someone else's actions.

Chairman Clint Johnson said in *Section 26, Severability*. He stated this is an explanation of the legality of the Ordinance. He said that in *Section 27*, the Ordinance was effective on December 1st.

Chairman Clint Johnson said for the Board's homework, to read the Ordinance and the Appendix so they will know what all of the words mean. Some of the words mean things that are not in the standard dictionary and are legal meanings.

Chairman Clint Johnson asked the Board if there were any questions on what they had gone over so far.

Board Member Skip Gray said that he was gone during the Neal O'Brien scuttlebutt and knows that somebody is going to register a complaint about that. He asked if this Board was going to be involved in this.

Chairman Clint Johnson said that they would be involved in this if somebody registers a written complaint. He said he did not believe they should on their own take action on it.

Board Member Skip Gray said no, he did not either.

Chairman Clint Johnson said he thought it was frankly a stupid error, but he did not think it was something they should be jumping on right now.

City Clerk Jeanette Marchiafava stated at 7:14 PM, that she was going to recuse herself during this discussion. Additionally, Mr. Leon Cole did contact her today and she did verify before coming into this meeting that he did not at this time wish to file a formal complaint in accordance with the Ordinance, but he did, however, want her to distribute to the Board the email that he sent to her today and that this is of concern.

City Clerk Jeanette Marchiafava asked Mr. Leon Cole if he wanted to confirm this and he said he did.

City Clerk Jeanette Marchiafava asked Mr. Leon Cole to state his name and address for the record and then she left the board meeting.

Leon Cole stated his name and told the Board that he did not follow the correct procedure for filing the complaint, but he stated he appreciated the Board to looking at his email.

Chairman Clint Johnson asked the Board to take a look at the email. Copies were passed around to all the Board Members. The Chairman said that they were not going to discuss any names regarding this. He asked that everyone take a moment to read through the email from Mr. Cole.

Chairman Clint Johnson asked Mr. Leon Cole if he considered this to be a formal written complaint to the Board.

Leon Cole said it has to just be just a concern right now because he did not follow procedure.

Chairman Clint Johnson said that he had in a sense.

Leon Cole said that just as he was getting ready to leave his house, he got a call from the City Attorney who told him that regarding the email he did not follow procedure. He said so I have six months to do the right thing.

Chairman Clint Johnson said that is what he thought he should do. He stated that they have the information here, everybody has a copy of it, and he will make sure that Mr. Ashley gets a copy of it also. He said that if you still hold with this information, and then follow the procedures, and if you recall, it says that the complaint has to be sworn and signed in the presence of a notary.

Leon Cole said he understood. He was going to file a complaint and asked the Chairman if it would it be called a grievance or what?

Chairman Clint Johnson said it would be called a complaint. You say you are filing a complaint, identify yourself, have a notary notarize your signature, present it to the City Clerk, who then present it to the Board. He told Mr. Cole that if he did not mind, they would hold on to the email and it gives them a little lead time were they know what is coming.

Board Member Carol Lane asked the Chairman if she could ask a question about this, about what they can do. She asked if she could say what she would like to do.

Chairman Clint Johnson said not now -- not yet. He said that they might have to go into closed session on this matter right away if they want to discuss it. He said he did not want to go on record as having discussed this since it is not a formal complaint legally and if they go on record and discuss it, they may be giving it some legality and he did not want to do that. He said he did not want to do it out of order and wanted to do it in order from step 1, which is Mr. Cole presenting a written complaint to them, and so on.

Board Member Carol Lane said that the only way that they can pursue something like this that may come out in the paper; it has to be a formal complaint by somebody in order for them to maybe find out more information.

Chairman Clint Johnson said no, we can investigate -- there is no problem even before. He said that if Mr. Cole made the decision to never file a complaint because they have this information and that somebody was concerned, they could still investigate it.

Board Member Carol Lane said that was what she was proposing to do.

Chairman Clint Johnson said they can do that.

Board Member Carol Lane said how would I do that?

Chairman Clint Johnson said, what, investigate it?

Board Member Carol Lane said she has some questions in the email that came out just to get some more information from the city employee, the City Clerk and the City Manager. She said the only information she has it what has been written in the paper, and if we can get more specific like what specifically was sent out, who was it sent to -- to be very specific.

Chairman Clint Johnson said he agreed with her, but believed the Board should go into closed session because they really would have to discuss names at that point.

Board Member Carol Lane asked if they could do that tonight.

Chairman Clint Johnson said, sure, not a problem. He said that before they do that, are there any other questions on anything.

Doug Nurse from the Atlanta Journal Constitution said before... I would ask that you cite an exemption, a specific exemption in the open records for... but if your complaint should clash...

Chairman Clint Johnson said not to worry about, he was going to.

Board Member Skip Gray said that politicians solicit money all the time.

Chairman Clint Johnson said he did not want to discuss anything at this time until we are ready to do this.

Chairman Clint Johnson said okay, if the Board wants to go into closed session, he will entertain a motion to do that.

Board Member Joe Whitley said that before that motion, would it be in order to make another comment? He said in terms of looking at the agenda, are there other issues on the agenda that they could take up before they move to handle that issue?

Chairman Clint Johnson said Agenda Items VI, Research, this is more homework, VII, Research/study adoption of agenda items in conflict with State and Federal law -- that is homework again and they are going to have to do some research.

Board Member Carol Lane said that the Board received the Agenda two or three weeks ago. It was her understanding by looking at this, that they should have done some research before the meeting and then discuss it at this meeting.

Chairman Clint Johnson said yes, it indicates that, but he did not think anyone did that, did they? He said if you did do research and would like to discuss it, he said feel free and he would give her the floor for VI and VII.

Board Member Carol Lane asked the Board if anyone else had done research.

Board Member Joe Whitley asked Carol Lane if she was referring to the research on VII.

Board Member Carol Lane said VI and VII and she had done research on both of them, but she could certainly wait until everyone else had done the research and then they could discuss it.

Chairman Clint Johnson said or you can bring up what you have and then we can research further -- it is up to you. If you want to go ahead and present it, that is fine and then we can leave the closed session to the end.

Board Member Carol Lane wanted to discuss the Resolution that Councilman Bill Lusk had proposed to govern the conduct of City Council members as they relate to Boards, Commissions and Authorities and the Training Sessions for such Boards, Commission and Authorities. She stated that this was brought up at the meeting on February 15th. She spoke up at the meeting and said she believed this was an unnecessary Resolution because it is already in our Ethics Ordinance.

Board Member Joe Whitley asked the Chair if he could interrupt and if they could all get a copy of the Resolution that Carol Lane is referring to.

Copies were made of the Resolution for all of the Board members.

Board Member Carol Lane said that again, it is under the Milton Charter, Article I, Section 1.12(a) and talks about municipal powers [Carol Lane read this section from the Charter to the Board]. She said that the problem is that this is a conflict of state and federal law to talk about the behavior, and in Chapter 6 Ethics and Standards of Conduct Ordinance that was passed November 21, 2006, in Section I, (c) (1) there is a Declaration of Policies that says public servants are

**Regular Meeting
Ethics Board
Monday, April 9, 2007**

also members of society and therefore share the same general, personal and economic interests in the decision and policy of government regarding community. She continued to state that in Section I (c) (2) it states that public servants retain their right to publicly express their view on matters of public general interest and to express their opinions --- continued to read from Section I. She stated that this Resolution is in direct conflict with the Ethics Ordinance that was already adopted.

Board Member John McMillan said this would be after the original ordinance and asked was this passed subsequent to that change?

Board Member Carol Lane said that this is not an ordinance, it is a resolution that talks about whether counsel and board members are able to go to public hearings, go to any of the board sessions, commissions and authority meetings.

Board Member John McMillan said that maybe Carol Lane could summarize that in an email and send to the board members so that they could look at it and have time to study it. It seems that it really applies to elected officials from what he could see.

Chairman Clint Johnson said that was correct, and that he would not go into what the intent of it was totally, but he said that he knew about this.

Board Member Joe Whitley said that it does seem to be entirely inconsistent with the language of Declaration of Policy which has been read by Carol to the Board. In Declaration of Policy, C (2), he said he did not see it as being consistent with that language. He asked if this was intended to be an amendment or did it serve to be just a statement or point of view of the Council. He said he did not know the answer to this question, but is suggesting that it is inconsistent with the language of the ordinance.

Board Member Carol Lane stated that she was at the meeting where they passed this ordinance, and that initially you would not be allowed to attend the meetings, and again, City Council has right as people who are involved in the government other than just on City Council. It says that if a member of City Council expresses an opinion, then they must state that it is just their opinion and not reflecting the City Council or the city itself.

Chairman Clint Johnson stated that there is a little more to it than that. Any City Councilmember has the same rights as any citizen of the City of Milton, to come to a meeting, observe it and ask to speak, and that is it -- that is where their rights end. He said that from the background he has on it, is that the resolution came out of the fact that a City Councilmember attended a board meeting and tried to influence the board's actions during the meeting. He stated that he did not know all the details about it, but that is what he was told by another Councilmember.

Board Member Carol Lane stated that we have that in the ordinance already, so it did not need to come from City Council -- that is already in the document.

Chairman Clint Johnson said you are talking about the Charter document for the City? He stated that Council has the right to reinforce any rules to reiterate and reinforce and this resolution -- they did not pass a law or an ordinance when they did this -- they passed a resolution to reiterate this and he said he has problems with the wording himself, especially *no elected official shall participate in* -- well, they can participate to the extent that they are allowed by law, so that part is incorrect.

Board Member Carol Lane said that she sees this as it is against the law to dictate what is in the ordinance already.

Chairman Clint Johnson said he is not sure that this crosses the ethics line. He said that this is as the result of unethical behavior, this resolution.

Board Member Carol Lane stated that to have this resolution at all.

Chairman Clint Johnson said this is Council's business, not ours. If they made a worthless resolution, then that is their problem, not ours.

Board Member Carol Lane said it is on the agenda for them to discuss -- actually Item No. VII.

Board Member Joe Whitley stated that he was not sure it was in order for them to make known to City Council their concerns about the issue about the language in the resolution. He said obviously when you look at language after it has been drafted, it looks different than what the intent may have been, but he said it does seem to be in conflict with the other ordinance, so they may want to ask the guidance from City Council on this or the City Attorney.

Board Member Carol Lane said it was discussed in a work session. She stated to the Board that they had a man come in from Sandy Springs to discuss the Ethics Ordinance, his name is Jim Langlais from Alston & Bird, and he was asked to give an opinion. Also, the lawyer did not review the wording, it was brought up in a meeting -- she believed it did not go through the public notice -- the process that it was supposed to go through -- it was presented that day and she stated she was not sure it got the complete legal review.

Chairman Clint Johnson said it may not have. He stated that quite often Councils sitting in session will make resolutions that have not been run through lawyers. They will make them on the spot, and their language may be incorrect and they refer it for a change later on to clean it up, but they did not in this case.

Board Member Carol Lane said that it would have to be tabled at the work session which is what Councilman Lusk said.

Chairman Clint Johnson asked if the resolution had been approved by the Mayor, do we know.

Board Members said, yes, they believed that it had been.

Chairman Clint Johnson said he believed it should be referred to the City Attorney.

Board Member Carol Lane said it seemed to her that this is in violation of federal and state law and they are interfering in the rights of free speech.

[Open discussion with Board about issue]

Chairman Clint Johnson said that probably the better wording would have been that every elected official has the same rights as any other citizen and should not extend their participation in board meetings beyond that -- would be better wording, but he said he is not the guy that wrote it.

Chairman Joe Whitley said that all the comments of the Board and Chairman are all good comments. He said he believed that their goal should be total transparency of the actions of the City of Milton and as they go about doing this, how can they assist in ensuring the first amendment rights of people to speak their minds and express their views and if they are any suggestions so that if these rights are somehow inhibited as a city, try to find a way to encourage transparency which will encourage more ethical because if people feel free to speak, he believes they will be less likely to feel inhibited about this conduct when they see it.

Board Member Susan Campbell said she believed this would be easy to clean up.

Board Member Carol Lane said that they must also go through the correct process -- there is a process in bringing up resolutions -- there is a chart -- and then the public is made aware of this and in this situation, the public was not and those are just ethical issues.

Chairman Clint Johnson said he is the Chairman and he is not supposed to make any motions, but he would like to hear a motion or entertain a motion that we take this under study, make our recommendation in concert with the City Attorney back to the Council that we have a problem with the wording of this resolution, but somebody has to make this motion.

Board Member Skip Gray said we need to keep the attorneys out of this if we can, because they bill us. He said he was at that meeting too and he thought that there ought to be an amendment. He said he feels like everybody has their own agenda, and if they do not change, then we are going down the tubes.

Board Member Joe Whitley said he would like to make a motion for consideration by the Board after hearing Mr. Gray's remarks, he believes it is appropriate for them to consider the appropriate role of their board.

Board Member Joe Whitley moved to make a recommendation to the City Council that they review and re-visit this language at the next session of City Council with advice and consent of the City Attorney if they wish to retain the City Attorney to receive an analysis of this form and appropriate modification of it to be consistent with the existing ordinance and other laws of the City of Milton and the laws of the State of Georgia and the Constitution and federal laws. **Board Member Susan Campbell** seconded motion

Chairman Clint Johnson called for vote.

Vote: All members were in favor -- vote passed unanimously.

Chairman Clint Johnson said that they will make recommendation to City Council and it is then in their ballpark for them to handle it.

Five-Minute Break

Chairman Clint Johnson called for a 5 minute recess.

Chairman Clint Johnson called meeting back in session after a short adjournment and referenced that the Board is continuing from agenda with VI. He stated that Carol Lane has something that she had researched on this.

Board Member Carol Lane said that she researched board Commission/Committee members and External Entities and HOA's, BARA and BHA and she said she believes that the BARA and the BHA are there to advance the comforts of land plans. She stated the homeowner's association she did not believe is a conflict with members of the board. She said she believed when they talk about conflicts of interest, it is more about financial interests and the BARA and BHA and Homeowners she did not believe have any financial interest. She said they need to focus on is that Council and members too have a financial interest. She said she believes that all of the people on the boards should fill out a financial disclosure statement and that would include all the people on this board and the planning board and all the other boards. She said that it is important to have business disclosures, family real estate or LLC disclosures. She said she believes this is where the focus should be -- on the financial interests.

Board Member Joe Whitley said that speaking from his past experience as a past federal prosecutor in the Atlanta area, one of the things he focused on were zoning decisions by Council and particularly in DeKalb County years ago, and he said the ease of which the financial interests influenced people on those boards back then and around the entire Atlanta area because of the tremendous growth. He said that his focus and he believed the focus of these rules is on financial interests. He said that he believed if you are a member of a church, a member of a fraternal association like Rotary, or a member of a homeowner's association, he did not see those as being distinguishable and he did not think that -- maybe

thinking to what Carol Lane's comments are, he said he believes you have to have citizen involvement in this community and those groups -- he said he is not familiar with all of the groups that were mentioned -- but he had been and participated in BHA during the period of time when they were here and part of Fulton County government on zoning related issues, and he said he did not want to be impeded in anyway on speaking on any of those issues if he wants to speak on those or being part of any discussion. He said he did not think that this suggested in anyway a conflict of interest in a position he had in being a member of the board of that group, because he is not getting anything in the way of economic enrichment. He said he believed the concern they should have is about economic enrichment and financial benefit that would fall to someone because of decisions being made by anyone who is affiliated with the City of Milton government.

Chairman Clint Johnson said if they go too far into this, he would have a conflict of interest, because he is the President of North Valley Homeowners' Association at the moment, until April 22nd, at which time he will not be, he will guarantee it. He said three years was enough.

Board Member Skip Gray said that every one of us probably has some sort of conflict. He said he is involved in almost anything that goes on, but he said he lived in the poor side of Windward and he did not have any intentions of moving. He said he wished he had a smaller place, but he gets upset about all that is out here and nobody is widening the roads, and then there is this little place down here where they want a liquor store and it gets robbed all the time. He said he lives in the crime area and he has all the police cars in front of me, but he said he believed you can get a little overboard when you start asking for financial statements and such from us. He stated they are not making anything off of this deal.

Board Member John McMillan said that some of the other discussion he has heard as fair as community concerns is that some of the members of BARA, BHA, whoever that might be, might use undue influence if they were on the Planning Commission or City Council or something like that to unfairly promote their interests, so he believed this is something that may need to be considered. He said he believed what they all want is people that are interested in the community and who want quality -- we want to maintain the quality and promote that type of forward movement, so he believes that financial disclosure is probably asking way too much from the Mayor and a lot of the other guys unless it is a requirement of the law.

Board Member Carol Lane stated that the Planning Commission, the Board of Ethics and the other boards have influence over the City Council. She said now whether they want to do what they recommend is another thing. But, as far as influence from the group, if you have people that are sitting on these committees or boards that are financially interested in zoning issues or pursuing whatever issues it is for their own self interests. She believes that this is a concern and if it means filling out financial records -- just to see where people stand. She said she did not have a problem with it. She was not talking about campaign donations, but she believed that as far as understanding what business you are in and what influences you have in this community as far as financial.

Board Member Susan Campbell said she believed this would be somewhat of a "big brother" approach. She did not see how you could ask this of volunteers. She said that the Planning Commission and the Board of Ethics -- they are all there as checks and balances and what you would like to construe as a fair government process. She said that no one will want to be on these committees if this is going to be a prerequisite, nor has she ever heard of such a thing on any other city council, but if there are people that have to file financial disclosures on other city council boards, she would like to know about it. She said she believed it was unheard of.

Chairman Clint Johnson said he did not think that this is required in this case. He stated that as John McMillan will tell you, the two of them had to file forms when they started to run for Council and that is required by law and they did it. He said that they are not technically in an elected office -- that they are appointed and he said he served for six years on the Atlanta Fulton County Library Board and he never filed a financial statement and it was never required and that was where a lot of money changed hands. He said they were in control of almost \$30 million dollars a year and there was an awful lot of opportunity to lien contracts one way or the other and nobody filed any. He stated that they had to remember

**Regular Meeting
Ethics Board
Monday, April 9, 2007**

that the ordinance that set this up -- it says in there that they are supposed to act for the good of the city and they can suffer penalties if they do not act for the good of the city in a legal manner. He said that they are not going to pass laws -- they are not going to do zoning ordinances -- they are only determining that everyone else, including themselves, operates in an ethical manner. He said he did not believe this required filing a financial statement, so he would be inclined to -- but if you want to put it in a motion they can vote on it.

Board Member Susan Campbell said that also in the ordinance itself it seems that the checks and balances are there whereby they can as citizens sit on homeowners' associations and have their own opinion and certainly she would hope that if she were sitting on the Board of Ethics, that she would still have that right and it does say that in there. She stated that it is financial when they cross the line is when money is under the table so-to-speak to influence zoning and things and this is one of the things that they are supposed to look for and she believed that is well-covered in there without asking the Planning Commission to file a financial statement. She said that certainly if a citizen knows that someone in the Planning Commission is using undue influence because he is a real estate developer or something, she felt sure they would hear about it.

Chairman Clint Johnson said they can recuse themselves and they are required to by law to do that. He stated that there is nobody that does not have a financial interest in the city, even if it is just to make sure that your house retains its value - that is still a financial interest, so they cannot exclude everybody.

Board Member Carol Lane asked if they can just pass a motion that this is not an issue. She said she did not know how you would word it -- it keeps coming up and she felt they need to address it.

Board Member Joe Whitley asked if they could adopt what Susan just said, that sitting on a homeowners' association board or membership as part of a homeowners' association is not contemplated as a conflict of interest.

Board Member Susan Campbell said she believed it is already covered.

[Open discussion among board members about this issue]

Board Member Joe Whitley said one thing he wanted to point out a couple of things and told the Chair he may want to continue the discussion of this matter in light of time tonight, but he wanted to point out in Section VI, under 6(a), it says *except as otherwise permitted under applicable federal law, city laws*, so forth and so on -- *no public servant shall have a personal interest in any official action*. He said he was reading this as part of what they were talking about here tonight, as some sort of financial interest, then if you look at page 29 at the definitions of what personal interests are, page 29-34, he said it looks like this language may be too broad in some ways. He said he is not sure what a lot of the language means and for purposes of this evening, he has not studied this as much as Ms. Lane has studied it tonight, so he apologized for his lack of preparation for this meeting, but he said he did believe that -- it says that *or indirect interest having value peculiar to a particular individual or a group the value is pecuniary or non-pecuniary* and he said as he looked at the language in the ordinance, he said he did not want that, nor did he think it was the intention from their discussion tonight, to see any of that apply to a homeowners' association or group of people, like the North Valley Homeowners' Association or the Birmingham Hopewell Alliance or BARA -- but he did not know how they bring closure to this discussion.

Board Member John McMillan said if you want a piece of land or if you want a house on this side of the road, or a tree, then you have an interest in it -- he believed that is what this says -- personal interest.

[Open discussion among board about interpretation of this language]

Chairman Clint Johnson said that in the very last part of this, it states *which interest is not shared by the general public*. He stated okay, well anything you do where the interest is shared by the general public will let you off the hook -- that is the way he reads it.

Board Member Joe Whitley said he wanted to add to the conversation that this interpretation would permit the continuing participation in those groups by people who are affiliated or associated with Milton city government.

Board Member Carol Lane asked if they could do a recommendation to City Council of their opinion of this.

Chairman Clint Johnson said make a motion.

Board Member Joe Whitley said to Carol Lane, if you have any comments, please feel free to make a motion to amend his motion.

Board Member Joe Whitley made his motion and stated that it is the sense of the Board of Ethics that the language of the ordinance governing ethics of the City of Milton does not prohibit participation in homeowner associations or other similar groups by officials of the City of Milton or persons sitting on volunteer boards for the City of Milton.

Board Member Skip Gray said you mentioned the Rotary and he is a Rotarian. He said he belongs to a lot of things.

Board Member Joe Whitley said he wants to continue this -- *to include fraternal and civil organizations such as Rotary, Exchange Club, Sertoma and Civitan or any religious affiliation, and specifically referencing homeowner association groups such as BARA and BHA and North Valley Homeowners' Association.*

Board Member Skip Gray asked what about the Chamber of Commerce and things like that.

Board Member Joe Whitley said he would also add membership in the Chamber of Commerce.

Board Member John McMillan asked if this was a research motion.

Board Member Joe Whitley said to John McMillan that his thought would be to try to answer his question, that if this be done in the nature of a recommendation to the City Council for the purpose of amending or revising in better words than he used this evening regarding the ordinance regarding conduct of city officials and volunteer groups. He said this was his understanding of what the motion would be directed at. This is his understanding of what the motion is.

Chair Clint Johnson asked for a second.

Second: Seconded by Board Member Carol Lane.

Chairman Clint Johnson called for a vote. It was a tie, so the motion did not carry.

Chairman Clint Johnson asked if there were any friendly amendments to the motion.

Motion: Board Member Susan Campbell moved to recommend that this be placed on the agenda for the next meeting to review the Code of Ethics and Standards of Conduct, which she believed is already covered in the ordinance.

She said she just wants to make sure and that she feels she is just flying in the blind here and would like it placed on the agenda. She said she would like to make a motion that they table this referendum until their next meeting until further study of Chapter VI, Code of Ethics and Standard of Conduct and also the Ordinance.

Second: Board Member John McMillan seconded the motion.

Chairman Clint Johnson called for vote.

Board Member Carol Lane said she wanted to discuss it first. She stated the reason that she believed Tom Wilson put this on the agenda is because there was a work session on a Saturday and when they talked about the Ethics, he had brought this up and her contention is not to have to put in every single thing that you can or cannot belong to, but it is just that these things that need to be addressed and how to make an amendment -- she said she did not care if it is spelled out like that, it is just that they wanted a recommendation as to what our feelings were about these boards and again, when they talk about the financial interests of people on boards with the builders, association, or whatever, this is where there is a conflict.

Chairman Clint Johnson said, okay, there was a motion that was voted on and it failed to pass. A friendly amendment is on the floor and asked if there was a second on that.

Chairman Clint Johnson called for vote on the friendly amendment that they table for now and bring it up at the next meeting to consider this when there is more time to consider it with more thought behind it.

Board Member Joe Whitley said he endorsed some study of this proposal and said the reason he endorses the study is because they do not want to be exclusive of other groups that fit the definition of things they are contemplating there to include Rotary and other groups that would not receive, except what the public at large would receive a benefit from, and he would include in that group the Birmingham Hopewell Alliance, BARA and North Valley Homeowners' Association or any group of citizens in any community in this new City of Milton, to include homeowners' associations, such as the Homeowners' Association of White Columns and places like that. He said he has not heard anything from the discussion here tonight that suggests that it is the sense of any of them other than those people should be permitted to be members of those groups such as Homeowners' Association of White Columns and places like that, who are also on volunteer boards and also members of the City Council. He said this is his understanding and that he does not know that they are taking a vote on this, but it is his understanding. He said this is what he hears the Board doing here tonight.

Board Member Carol Lane said she agreed with what Joe Whitley said.

Chairman Clint Johnson said so the original vote failed, we have a friendly amendment or a substitute proposal that has been forwarded and seconded and so we have to vote. He stated that they can vote it up or down, but they have to vote. He then asked if there was anymore discussion

Chairman Clint Johnson then called for vote.

Vote: The vote was unanimous and friendly amendment passed, and they made recommendation to discuss it at the next meeting with more research.

Board Member Carol Lane asked if he was going to tell them what additional research they needed to do or do they do it on their own.

Chairman Clint Johnson said that they could do it on their own somewhat and told the Board that where they want to look since the subject has been brought up -- does a membership as an officer in a homeowners' association or is an officer VHA -- can that have a deleterious affect on their decisions when you are on a board.

Board Member Carol Lane said she did not think that is where they stop. She said she thought they still need to look at financial interest as far as the other side -- where those sitting on those boards can financially benefit if you have property you want to develop or whatever -- it is just not to be one-sided here and this is how she sees it. She said that also have to look at financial interests of every board or group.

Board Member John McMillan said it can cut both ways.

Board Member Carol Lane said that it only seems to be one way right now.

Chairman Clint Johnson said that this is what their research is for.

Board Member Joe Whitley said that for their research, it is important to think about the comments Ms. Campbell made earlier and which he felt were good ones, and that is they should look at what is the template in other places. He said for example, the template for him when he was a federal employee was that he did have to file a full financial disclosure form for all his personal assets and interests because that is what the federal law said, but he said he did know if such a requirement is necessary for the City of Milton, but he thought it would be useful to find out what the standards are in other municipalities so he would endorse looking at this as part of their study.

Board Member John McMillan said that you would have to have some kind of special interest, whether it is a church or a neighborhood that did not want a school beside it, or whatever it might be, so he thought these would all be things that would need to be looked at for special interests.

Board Member Susan Campbell said she wanted to through this out there, but Mr. Langlais said that we could call him anytime, and maybe he could give them some guidance for how this was done in Sandy Springs, the specific verbage that they would have to include here. She said she thought it could be broad or in context.

Board Member Carol Lane said that in her research she did not find in other municipalities where they had excluded homeowner associations or special interest groups of that kind and if you do look at the members of their City Council, they do list their membership.

Chairman Clint Johnson said that they can list their memberships.

Board Member Carol Lane said, no, that they are actively members.

Chairman Clint Johnson said that they can do it, but he did not know if they need to re-mandate that they do it. He said he has to think about this issue and was glad they moved it to the next meeting. He said he had to put some thought into this, but he personally is against this -- not being in a homeowners' association or anything else -- he did not think this should be restricted.

Board Member Carol Lane said that personally she is against it also.

Chairman Clint Johnson said that they have tabled it to the next meeting, so that is where it stands right now. He stated that this pretty much covered the agenda, and stated that he had one more thing. He said that in their break, the City Attorney was called and his reading of their Ethics Ordinance, Section 17, which would be on "Procedures for Hearing Complaints" and he did not speak to him so, he did not get a chance to argue this at all, but it says that the complaint must be in writing and notarized, and that they cannot consider the complaint in any way until it has been received in writing, acknowledged 5 days later, and until the City Attorney has conducted an investigation that can take up to thirty days.

Board Member John McMillan said so Mr. Cole's complaint has to go to him first and come back after his recommendation to us.

Chairman Clint Johnson said so there is actually a 35-day window on there after it is received. The City Clerk has 5 days to respond, I mean to acknowledge receipt of it, and then the City Attorney has thirty days to conduct an investigation and then they can consider it. He stated that for now, according to the City Attorney, it would illegal for them to consider this either in open or closed session. I am referring to Mr. Cole's complaint.

Board Member Joe Whitley said that he had studied and spent some quality time looking at the document and had scribbled all over it. He said that he would make a copy available to anyone on the Board who may want it. He said one of the challenges he had and he certainly wants to hear from the City Attorney and others if they want to share with him, but as an authority as an Ethics Board, he believes we would have the right to proceed on our own volition -- like if we read a newspaper article or see something that causes us some concern, or if we have an issue, it seemed to him that would be a driver in this decision-making process that would trump anything at all that we might be giving away things from a citizen because we are not charged with willful blindness by being on this Board.

We are charged with reading the newspaper and knowing what is going on around them, so he said he does not want to tread over into an area that would require us to go into a closed session, but he said he does feel it is important that they do this on appropriate occasions and this evening may not be this occasion, but he wanted to suggest that he did not know his reading of the ordinance and have not had a chance to discuss this with him or if you have had a chance to discuss it with him either, but he does want to in all circumstances refer to the City Attorney as much as possible, but he was concerned because he did not feel that his reading is consistent with the terms of this document as far as he sees in the Board's ability to consider things short of a formal complaint. He said he believes there is language in the ordinance that addresses that.

Chairman Clint Johnson said he discussed this earlier -- they can discuss anything that they want to, but however, he felt that where the City Attorney is coming from is that this is a complaint from an individual and it should be properly presented. He said if they wanted to -- externally from the complaint -- if they wanted to discuss this situation, they would be free to discuss it because it has been in the newspaper.

Board Member Joe Whitley said he believes in due process and believes that everyone around the table does, a process where they will look at this very carefully and whatever issue needs to be looked at, and that it be looked at very carefully and evaluated. He said he did not want to form opinions before he had all the facts in front of him, but one of the concerns he had this evening is without the complainant here and present to further express his concerns and also without the opportunity to sit across the table from their City Attorney in closed session and get direction from him -- he wants to make sure that whatever they do is applicable and lawful and takes into account the rights of the people of whom we may be assessing their conduct, and he said he did not know if that could be accomplished this evening. He said he would endorse and evaluation by the Chair and the City Attorney what the right process is and what is fair to anyone they may be evaluating for alleged misconduct.

Board Member Susan Campbell said that she had hoped that the Board would have had a little bit more of an Ethics Board tutorial so-to-speak, before they get involved in the issues of the day, because she said from a citizen's standpoint that she is doing the right thing and she wants to be knowledgeable. She said she was already uncomfortable when Mr. Cole said the City Attorney had given him some information, but they did not see it and she would much rather have the City Attorney sitting there with them advising them on this specific issue especially in lieu of the fact that he did not follow the proper procedure, so she said she was in agreement with Mr. Whitley.

Board Member Carol Lane said so they have to wait 30 days.

Chairman Clint Johnson said actually 35 days

Board Member Susan Campbell said well the complaint has to be notarized -- it could be today, tomorrow, it could be five days from now.

Chairman Clint Johnson said he could do it tomorrow afternoon.

Board Member Carol Lane said so from the time you get the complaint, and then the attorney has 30 days?

Chairman Clint Johnson said that he has thirty days, but he does not have to use the thirty days.

Board Member Carol Lane said but during that time, we as members of the Board of Ethics do nothing?

Chairman Clint Johnson said that they cannot discuss the formal complaint, but this does not mean that they cannot discuss the actual situation. It just means that they cannot discuss the formal complaint. He said he will read what the City Attorney said. He said *they cannot consider the complaint until it is received in writing, acknowledged 5 days later, until the city attorney has conducted an investigation which could take up to thirty days. They cannot go into a closed session or they will violate the open meeting laws.* He stated he was not sure he agreed with that, but he stated it will go along with what he said. He said that they cannot go into closed session on this complaint is what he believes he is saying. He said had Mr. Cole's complaint not shown up by copy of the email, he believes they could have discussed it as freely as they wanted to either open or closed. He said that under the open meeting laws, you can go into closed session when you are discussing individuals -- that is a reason to go into closed session -- when you are discussing individual names. He said also confidential information -- confidential to the City of Milton is what he was speaking about. Also for monetary situations -- where release of the information publicly could affect the city financially. Those are the reasons to go in. Personnel, financial and criminal.

Board Member Carol Lane said the problem that she has with this is that this is in the public -- it is in the papers -- it is not as private as -- I am just wondering what they can do as far as having city council gather more information.

Chairman Clint Johnson said no they cannot do that. They cannot operate off of the cuff like that. If they want city council to do anything about this, they have to be presented a formal recommendation from the Ethics Committee that has been voted on.

Board Member Joe Whitley said that he felt as one approach this evening would be to give some notification to city council that once they receive the formal complaint -- he wants to make sure they follow the rules and notify city council that they are undertaking a review of this and certainly the city council has authorities which could prompt them -- then if city council wants to undertake a review of this themselves, there is no way we can tell them not to do that. He told Ms. Lane that he understood what she was saying and they would be communicating with city council that they will be undertaking a review of this and he assumed would come through the Chair.

Board Member Carol Lane said you would not have to necessarily wait for the lawyers -- the city attorney's opinion -- what you are doing is just letting the city council know that this is being reviewed or taken on or something to notify them quicker than thirty days.

Chairman Clint Johnson said he would notify City Council when the formal complaint is received. Remember, he said he read that earlier that it is his responsibility to inform the city council and city attorney of any formal complaint and they will do when they receive the formal complaint. He said that this technically is not a legal complaint -- although he said he could argue that because there is another sentence in it that says it is. He said he will stick with what the lawyer said under Section 17 and stay with Section 17 for now. He said that when they get a little more comfortable in dealing with this and understand all the sections of it down the road, he felt they may be able to take a little more informal action, because it does say you can be informal.

Board Member Susan Campbell said she was wondering if it would be possible when situations like this arise that it can be placed on the agenda because certainly, all of them had read it in the paper and she said she wondered whether they would be reviewing that as an ethics board, so at that place and time it might be up to them as ethic board members to get in touch with you as Chairman or the City Clerk.

Chairman Clint Johnson said for now we need to let everything go through the Chair to go on the agenda. He said that does not mean that the City Clerk cannot recommend that something go on the agenda, but he said he will probably put it on 99% of the time. He said when he was Chairman of the Library Board, this is the why they operated. Nothing went on

the agenda unless the Chairman approved it -- that was it -- end of story. He said that this agenda was not approved by the Chairman because the Chairman was not elected Chairman -- that is why obviously. They had to have an agenda because it is required by law that there be an agenda. So he supposed it was written by the City Clerk, so this is not a problem for this first meeting, but from now on everything will go through the Chair and he will not table agenda items if he feels that they are reasonable. He said if someone comes up with something crazy, it may not make it to the agenda.

Board Member Carol Lane said so to put something on the agenda like Ms. Campbell was saying -- do they have to wait for a formal complaint or something they read in the paper, or whatever they want to discuss.

Chairman Clint Johnson said like he said before, if they had not received the email -- he made the mistake of asking for copies of it and if it had not been passed around and they knew there was a formal complaint coming, but it had not been made in the proper motion, then they probably could have discussed the situation, but now he believed it would be improper to discuss it opened or closed now that they know a formal complaint is coming. He said they did to just wait until they get the formal complaint.

Board Member Joe Whitley said he believed in either case, regardless of the interpretation, he would endorse that once they receive a formal complaint, that they utilize the services of the City Attorney or others to conduct the review so they make sure that they go beyond -- although he stated that he trusted that the newspaper on many occasions may be accurate -- but on some occasions fall from grace and may not be totally accurate, so he said that he believed some degree of review and monitoring of that review by the City Attorney and by the Ethics Board is appropriate so they do not have inordinate delays in the process and also that they monitor the costs just for the sense of discussion right now -- that they carefully monitor the costs and look at other avenues of gaining information in that regard to include conducting hearings and also making recommendations at some point to the City Council in the process to make things move more quickly. He stated that he did think that this evening had been rather a push into some hot issues and he said he thought they had done a tremendous job this evening dealing with those issues. He said that as they proceed he thought they would be better prepared to go with the issues that come up. He stated he wanted to do things totally legally and the correct way so he believed that some orientation or discussion with the City Attorney or others would be useful. He said he would endorse, regardless of the interpretation of the documentation referred to in the document, he felt it made sense to push this to the City Attorney.

Board Member Susan Campbell said that she believed if they could forward their agenda to the City Attorney so he would know what time he needed to be there to advise them on certain issues, it would help.

Board Member Skip Gray said we want to keep the attorneys out of this. He said that they are Ethics Board and they should be able to determine this between themselves. He said he knew about this crap before he left Washington, DC -- He stated he didn't even see the newspaper, but that is how I feel. I know what the information is and -- what would you have done if they did not have to spend so much time in talking about the city? Would you have left that out?

Chairman Clint Johnson said he did not know if that would have made it on there.

Board Member Skip Gray said that is right -- it should not have even been there.

Chairman Clint Johnson said that this was an agenda that the Board of Ethics did not get to write for them. He said that they are going to get to write their own agendas. He said the Board will bring things to him, things will be brought to him through the Board and then he will put them on the agenda. He stated that he wanted to make a generic comment about the Board of Ethics and this type of board activity. He said it is very easy to go down the slope of wanting to do things because you do not think they are right, and that is not the job of the Board. He said their job is to follow this as carefully as they can. He said there may be a lot of things that he does not like that are going on in the city, but that is not their job to take those things on just because they do not like them. He stated that that would really be a conflict of interest if you want to be really technical. He said that the job of the Board is to follow the guidelines of the ordinance and ensure that

**Regular Meeting
Ethics Board
Monday, April 9, 2007**

the rest of the people involved in the running of the city are following the guidelines and that is their only job, so having that, when you bring agenda items, bring agenda items in that light and this is the important thing. He said he did not want to get into playing their own game here -- that is not proper and they will get in trouble for it if they do that. He said that if you want to lose friends, operate that way. He said that one thing before they adjourn -- he asked if there were enough copies of the information sheet containing all of their contact information to pass around.

Copies were made and distributed.

Chairman Clint Johnson asked if there was anything else the Board wanted to cover -- any new business, old business.

Board Member Joe Whitley said maybe the frequency of meetings and this of that nature that are an issue, because he needs a little lead time to look at his schedule so he does not miss a meeting.

Chairman Clint Johnson said that he thought they all do -- people that travel have a little more stress.

[Open discussion about where the members may be when trying to schedule a meeting]

Chairman Clint Johnson said you brought up a point -- it was the last thing he wanted to discuss this evening, and that is, he asked the Board how they wanted to do the meetings -- did they want to have a regular monthly meeting or did they want to have the meetings called as necessary.

Board Member Carol Lane said that through her reading, it was her understanding that they are supposed to educate other commissions about the ethics and she believed that if that is what they are supposed to do, than she believed they should meet once a month so that they are familiar with the process.

Chairman Clint Johnson said that what he would like to do is set a standardized monthly meeting of some kind where they can pretty much depend on that happening on that day and try to make it as convenient with as many people as they can -- because he did not want to exclude anybody -- and then operate on the called meeting procedure also. He said if they have something come up that really needs some immediate attention, they will call a meeting. He said he cannot see anything that could be such an emergency situation with a 5-day delay for the complaint and a 30-day delay for the attorney -- he did not see anything that could be so critical they could not have at least 5-days warning for a called meeting also, or maybe a week. So if they are going to call a meeting for specific items, then they will call it a week in advance. He stated to the Board that they needed to remember that they have to have 24 hours notice anyhow, and they really cannot call the weekend because the city employees will not be there.

Board Member John McMillan said that if at night, they may just have a conference call for everybody.

Chairman Clint Johnson said that they cannot vote on a conference call and that is not an open meeting -- that is real dangerous.

Board Member Joe Whitley stated that he approved or endorsed the thinking of the Chair. He said he represents people that have made mistakes, but he thinks that it would be useful for the board to think of the City of Milton in a totally positive view. He said this is a great opportunity for them and they have been given this opportunity and they will set the goals and standards for ethical behavior. He said that when he represents companies that move toward a goal standard - which is what is here in Milton that they start thinking about the training and education of employees, setting the tone at the top with City Council and the Mayor. He said that we want them to do the right things, but he said that culturally what roles -- he would like for them to explore roles of training and education to employees -- that is part of their mandate and he said that to the extent they could stand it, he believed it would be useful here -- to John's reference to the private sector -- for them to hear from the private sector on some of the things they are doing for training that will put the city in another place and he said that he believed the good news is their corporate citizens like IBM and Verizon -- there is also Scientific

**Regular Meeting
Ethics Board
Monday, April 9, 2007**

Games that is located here -- they are many corporate citizens of this community who would maybe want them to take a look at what they are doing in the private sector to the extent that they can mimic some of what is being done there -- he suggested they do that -- Skip, without lawyers. This is one thorn in his side in terms of what they may want to do and he thinks it is important that they not forget about the proactive approach to ethics, which is --- he doubted, unless someone is forced to do it -- that too many people that are employed by the City of Milton will read the entire ordinance like they will have read it -- so how do they push it down to a code of conduct -- maybe a code of conduct for the City of Milton employees is something they may want to think about -- or maybe this is something that has already been done -- so on one page they could understand what they are expected to do as City of Milton employees.

Chairman Clint Johnson stated that Delta Airlines has in their monthly magazine is their business code of conduct, but he was not sure if they still do that, but they used to. He said that every month they had a little column space there that said how you were to conduct your business as an employee of Delta Airlines. He said he thought it was a good reminder because it showed all the employees that this was what the company wanted.

Chairman Clint Johnson said that they are there the first Monday of each month and asked employees if this day was good or not for the Board members to meet.

[Open discussion about setting date for meeting]

Chairman Clint Johnson called for a vote for Monday. They agreed on the first Monday of every month at 6:00 PM. The next meeting in May will be on Monday, May 7th at 6:00 PM, unless the Chairman calls a meeting towards the end of the month.

Board asked about sending in agenda items and if they should email their items to Chairman.

Chairman Clint Johnson said them to the City Clerk and the City Clerk will contact him and he will then write the agenda and give it to the City Clerk.

[Corrections to Board contact list were given to be updated]

ADJOURNMENT

After no further business, the Chairman called for adjournment and the meeting adjourned at 9:00 PM.

Dated Approved: _____

Francesca Ivie
City Clerk's office

Clint Johnson, Chairman
Ethics Board

**BYLAWS AND RULES OF PROCEDURE
BOARD OF ETHICS
CITY OF MILTON, GEORGIA**

**SECTION 1
The Ethics Board**

1.1 Powers and Duties. The powers and duties of the Ethics Board of the City of Milton (hereinafter, the “Board”) shall be as provided in The Code of Ethics and Standards of Conduct, City of Milton Code of Ordinances, Chapter 6 (hereinafter, “Ethics Ordinance”).

1.2 Membership. Membership of the Board shall be as provided in Section 12 of the Ethics Ordinance.

1.3 Purpose. The purpose of the Board is to operate exclusively for the purpose of determining whether a violation of the Ethics Ordinance has occurred and, if so, assessing and imposing the appropriate penalty for such violation under the circumstances.

**SECTION 2
Officers**

2.1 Officers. The officers of the Board shall be a Chairperson and Vice Chairperson.

2.2 Election of Officers. After its establishment, the Board shall elect one of its members to be Chairperson and one of its members to be Vice Chairperson. Thereafter, at the Board’s first meeting of each calendar year, the Vice Chairperson shall take the office of Chairperson and the Board shall elect one of its members to be the next Vice Chairperson.

2.3 Vacancy of Office. Should an office become vacant, the Board shall elect a successor for the unexpired term of said office.

2.4 Removal of Board Members. A Board member may be removed for a stated cause by the affirmative vote of the Mayor and City Council. A member who does not attend or submit a proxy for two successive meetings of the Board may be removed from the Board.

2.5 Vacancy of Board. Should there be a vacancy on the Board, the Board shall inform the Mayor and City County. An appointment to fill a vacancy on the Board shall be made by the Mayor and approved by the City Council in accordance with Section 12 of the Ethics Ordinance.

SECTION 3 Duties of Officers

3.1 Chairperson. The Chairperson shall have the duties and powers usually attendant upon the office of the Chairperson and such other duties and powers as may be provided from time to time by the Board. The Chairperson shall preside at all meetings of the Board. The Chairperson may present to the Board matters judged to require attention and need not vacate the chair for that purpose.

3.2 Vice Chairperson. The Vice Chairperson shall act in the absence of the Chairperson at any meeting and, when the Chairperson is absent or disabled, all duties of the office shall temporarily devolve upon the vice Chairperson.

3.3 City Clerk. The City Clerk shall serve as the Recording Secretary to the Board. The City Clerk shall conduct administrative duties on behalf of the Board as it shall decide and 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 the Ethics Ordinance.

SECTION 4 Meetings and Committees

4.1 Regular Meetings. Regular meetings of the Board shall be held at 6:00 PM on the first Monday of the months of January, April, July, and October of each calendar year. The meetings shall be held at City Hall unless a different location of said meeting is desired. Adjustments to the regular meeting schedule, including adjustments for meetings that fall on holidays, shall be approved on the last regular Board meeting of the year.

4.2 Special Meetings and Hearings. A special meeting of the Board, including a hearing on a complaint, may be called by the Chair at any time subject to applicable public notice requirements.

4.3 Notice to Board Members. Except as otherwise specifically provided in these bylaws and rules of procedure, whenever under the provisions of these bylaws and rules of procedure notice is required to be given to any Board member, it shall not be construed to mean personal notice, but such notice may be given by personal notice or by cable, telegraph, facsimile transmission or e-mail, or by mail by depositing the same in the post office or letter box in a postage paid sealed wrapper, addressed to such Board member, and such notice shall be deemed to be given at the time when the same shall be thus sent or mailed.

4.4 Absence from Meetings. A Board member who is unable to attend a regular or special meeting shall advise the Chairperson of his/her absence from the meeting and may designate a proxy for that meeting. All proxies shall be made in writing (by letter, facsimile transmission or e-mail) to another Board member or to a representative of such Board member. A copy of the proxy shall be made available to the Board at the time of the vote and shall be attached to the minutes for that meeting.

4.5 Quorum and Voting at Meetings. Four (4) members of the Board shall constitute a quorum. No business shall be transacted at any meeting except when a quorum is present. All recommendations and actions shall be by a majority vote of the membership of the Board.

4.6 Special Committees. The Chairperson may designate special committees to advise the Board on particular matters and for such other purposes as the Chairperson may deem appropriate or as the Board shall otherwise direct. Special committees may consist of Board members, non-Board members or a combination of both.

SECTION 5

Formal Advisory Opinions

5.1 Who May Request. The Board may issue a formal advisory opinion on its own initiative or on the request of any person or entity to which the Ethics Ordinance applies. A request for a formal advisory opinion may be made only by person or entity that wishes to use the opinion to guide the individual or entity's own conduct.

5.2 Requests Must Be In Writing. Requests for formal advisory opinions shall be in writing and must set out with reasonable specificity the facts and circumstances of a real or hypothetical case. Requests shall be filed with the Board.

5.3 Discretion to Issue. Requests shall be submitted upon receipt to the Chairperson who shall expeditiously determine whether to issue a formal advisory opinion addressing the issues raised. The Chairperson's decision to issue a formal advisory opinion shall be reported to the Board at the next regular meeting and may be overridden by majority vote of the Board.

5.4 Issuance. A formal opinion shall be issued by official action of the Board and shall be forwarded to the person requesting it. The Board may publish an opinion or a summary of an opinion, but may not include in the publication the name of the requester, the name of a person covered by a request from a City Department or entity, or any other information that might identify the requester, unless the person consents to the inclusion.

5.5 Binding. Written formal advisory opinions issued by the Board are binding on the Board in a subsequent Board proceeding concerning a complaint filed against the person making or covered by the request and the proceeding involves the subject matter of the requested opinion unless:

- (a) the Board has amended or revoked the opinion before the initiation of the Board proceeding, has notified the person making or covered by the request of its action, and has allowed at least thirty (30) days for the person to do anything that might be necessary to comply with the amended or revoked opinion;
- (b) the Board finds that the request omitted or misstated material facts; or
- (c) the Board finds that the person making or covered by the request has not acted in good faith in reliance on the opinion.

5.6 Normal timeframe. The Board shall strive to issue its opinion within sixty (60) days of the request. Additional time may be required for issuing an opinion due to the meeting schedule of the Board and the issues presented.

SECTION 6 Informal Non-Binding Advice

6.1 Authorization. The Board is authorized by the City's Ethics Ordinance and by these rules to give oral or written informal, non-binding advice to persons

seeking guidance as to the spirit or legal requirements of the City's Ethics Ordinance. The Board shall inform the requestor that such opinions are not binding upon the Board and although the advice is given in good faith, the person seeking the advice relies on it at the person's own risk.

6.2 Timing. The Board shall attempt to respond to each request within seven (7) business days and no later than fourteen (14) business days after receiving the inquiry. The Board may give a written or verbal response. When the Board addresses an issue that the Board has not previously considered, the letter should state that it is the Board's informal opinion.

SECTION 7

Complaints Alleging Violations of the Ethics Ordinance

7.1 Complaint. Any person may submit a written complaint alleging a violation of the City's Ethics Ordinance to the Board. The Board may not consider any alleged violation that occurred before the adoption of the City's Ethics Ordinance (October 17, 2006) or more than one (1) year before the date of the filing of a complaint. If the violation is alleged to have begun more than a year before the filing of the complaint and to have continued to a time within the one-year period, the Board may consider the complaint.

7.2 Form of Complaint. The Board shall provide a simple form for complaints. To be considered, any written complaint must include:

- (a) the name, address and telephone number of the Complainant;
- (b) the name and address of the subject of the Complaint;
- (c) a clear and concise statement of facts on which the complaint is based, including dates, times, places, and actions or inactions;
- (d) a general reference to the provision(s) of the Ethics Ordinance alleged to have been violated;
- (e) any further information that might support the allegations, including without limitation the names, phone numbers, and addresses of other persons with knowledge of the facts and any documents that support the allegations; and

- (f) the following verification signed by the Complainant in the presence of a notary:

I _____, hereby certify under penalty of perjury under the laws of the State of Georgia that the statements and information set forth in this complaint are true and correct to the best of my knowledge, information and belief.

No investigation is required if a complaint is frivolous on its face, illegible, too indefinite, does not identify the alleged violator, is unsigned by the Complainant, or is not notarized.

7.3 Oral or anonymous complaints. The Board shall not consider oral or anonymous complaints.

7.4 Defective Complaint. Upon the Board's determination that a complaint does not meet the requirements in Section 7.2 (above), the Board shall advise the Complainant of the defect in writing. The complaint shall be dismissed if the defect(s) is not corrected within five (5) business days of Complainant's receiving notice of said defect(s).

7.5 Confidentiality and Public Disclosure. Each Complaint shall be deemed a separate pending investigation at the time it is reported. Except for the initial complaint, the Board's records in any pending investigation or enforcement proceeding are exempt from disclosure under the Georgia Open Records, as is the identity of confidential sources and records of confidential investigations.¹

7.6 No *ex parte* communications with Board. No Complainant or Person Charged, or any persons acting on their behalf shall engage or attempt to engage, directly or indirectly, in any *ex parte* communication about the subject matter of a complaint with a member of the Board prior to the disposition of the complaint. A member of the Board shall not knowingly participate, directly or indirectly, in any *ex parte* communication with any person, other than a member of the Board or its staff, about any issue of fact or law relating to the complaint prior to disposition of the complaint.

¹ See OCGA § 50-18-72.

SECTION 8
Investigations and Hearings

8.1 Initiation of Investigations. The Board has the authority to investigate any alleged violation of the Ethics Ordinance based on a sworn written complaint by any person. If the Board, by a majority vote, determines that there is a basis for proceeding on a complaint under any provision of the Ethics Ordinance within the Board's jurisdiction, the Board shall initiate an investigation into suspected violations of the Ethics Ordinance as necessary.

8.2 Notice of the Complaint. Within three (3) business days from receipt of a complaint, the City Clerk shall forward a copy of the complaint and supporting materials to the subject of the complaint. The City Clerk shall simultaneously forward the Complaint to the Board and the City Attorney.

8.3 Written Response by the Subject of the Complaint. The subject of the Complaint shall have ten (10) business days from the date of receipt of the complaint from the City Clerk to submit to the City Clerk a written response to the allegations in the complaint, together with such other documents he or she feels are relevant, and the following verification signed by subject of the Complaint in the presence of a notary:

I _____, hereby certify under penalty of perjury under the laws of the State of Georgia that the statements and information set forth in this answer to the complaint are true and correct to the best of my knowledge, information and belief.

The City Clerk shall immediately forward the written response, together with any documents, to the Board and the City Attorney. Absent good cause shown, if a written response is not submitted, or not submitted in a timely manner (i.e., within ten (10) business days from the date of receipt of the complaint), the allegations of the complaint shall deemed admitted.

8.4 Written Analysis by the City Attorney. The City Attorney shall provide the Board with a written analysis of the complaint no later than five (5) business days from the date of receipt of the written response from the City Clerk. If a written response is not submitted by the subject of a Complaint, or not submitted in a timely manner, no written analysis of the complaint by the City Attorney is required.

8.5 Referral to Other Agencies. If another city, state or federal agency is investigating the same Complaint or a complaint involving similar allegations, the Board may suspend and defer the matter until the other investigation or proceeding is completed. In addition, the Board may refer a complaint for investigation to other agencies that have authority over the subject matter contained therein. Complaints that allege violations of criminal laws shall be reported to the appropriate city, state, or federal law enforcement agencies.

8.6 Preliminary Evaluation by the Board. Within three (3) business days after receipt of the City Attorney's Written Analysis, the Board shall make a preliminary evaluation of the complaint and any response provided by the subject of the complaint to determine whether there is probable cause to believe that there has been a violation of the Ethics Ordinance. "Probable cause" is that measure or degree of proof which would cause a reasonably intelligent and prudent person to believe that the subject of the Complaint had committed the violation(s) of the Ethics Ordinance for which he or she is charged; a fair probability that violation of the Ethics Ordinance will be found. If the Board, by a majority vote, determines that there is no probable cause for proceeding on a complaint under any Ordinance provision within the Board's jurisdiction, then the Board shall inform the Complainant, the subject of the Complaint, the City Clerk, and the City Attorney, and administratively dismiss the complaint without requiring any formal action by the Board. If the Board determines, by a majority vote, that there is probable cause to believe that there has been a violation of the Ethics Ordinance, the subject of the complaint shall be offered an opportunity for a hearing before the Board at which he or she is entitled to be represented by counsel. The hearing shall be scheduled within twenty (20) business days of the Board's determination of probable cause, unless the subject of the Complaint petitions for (and the Board consents to) a later date. The hearing notice shall provide the time and place for the hearing and shall state the specific provisions of the Ethics Ordinance alleged to have been violated.

8.7 Board Authority. The Board has the discretion to conduct additional investigation prior to the hearing and is authorized to:

- (a) issue subpoenas to compel any person to appear, give sworn testimony, or produce documents or other evidence; and
- (b) require 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

- (c) request and obtain copies of state income tax returns and access to other appropriate information as permitted under state law regarding the subject of the Complaint; and
- (d) request the City Attorney or any attorney from that office to advise the Board. In the event of a conflict, the Board may, with the approval of the Mayor and City Council, retain outside legal counsel as needed with respect to hearings in accordance with its policies. If approved by the Mayor and City Council, the selection of outside counsel and any contract for such persons shall be made after solicitation of recommendations from the City Attorney and upon approval of a contract for services approved as to form by the City Attorney; and
- (e) with the approval of the Mayor and City Council, retain experts as needed with respect to hearings. If approved by the Mayor and City Council, the selection of experts and any contract for such persons shall be made after solicitation of recommendations from the City Attorney and upon approval of a contract for services approved as to form by the City Attorney; and
- (f) by a majority vote of the Board, appoint a hearing officer to conduct hearings under the Ethics Ordinance. The selection of a hearing officer shall be made after solicitation of recommendations from the City Attorney and upon approval of a contract for services approved as to form by the City Attorney.

8.8 Hearing Rules.

- (a) Procedural Rules. A quorum of four (4) Board members must be present for a hearing. Any member of the Board who is not present at a hearing on a complaint may not participate in any discussion, voting, or recommendation regarding the complaint. The Chairperson or vice Chairperson shall preside over the hearing, unless the Board appoints a hearing officer to preside. The Board may call and question any witness. The Board is not bound by the rules of evidence and may establish time limits and other rules relating to the participation of any person in the hearing, subject to subsections 8.8.b and 8.8.c below. 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. The hearing shall be electronically recorded and recorded by a court reporter.

- (b) Subject of the Complaint. The subject of the complaint shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts in the state and has the right to attend the hearing, challenge the sufficiency of any complaint which has been filed against him or her, the right to make a statement, the right to examine all documents and records obtained or prepared by the Board in connection with the matter heard, the right to present and cross-examine witnesses, and the right to be represented by legal counsel or another advisor. The subject of the complaint or his or her counsel or representative shall be informed by the Board of all exculpatory evidence in its possession.
- (c) Complainant. The Complainant has the right to attend the hearing, may make a statement, may testify and present documentary evidence in support of the allegation in the Complaint, and may be accompanied by legal counsel or another advisor.
- (d) Persons Adversely Affected. 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, file a written sworn statement for incorporation into the record, appear at the hearing to testify on his or her own behalf or, or have a representative appear to so testify, and the Board may permit any other person to appear and to testify at a hearing.
- (e) Closing Statement. At the conclusion of the evidence, the subject of the complaint, or his or her counsel or representative, may make a closing statement to the Board.
- (f) Standard of Evidence. The standard of evidence sufficient to prove a violation of the Ethics Ordinance in hearings shall be by a preponderance of the evidence admitted at the hearing. "Preponderance of the Evidence" is that measure or degree of proof which is more probable than not.

8.9 Time Limits. The Chairperson may extend any of the time limits in this

section for a reasonable period at the request of the subject of the complaint or on the Chairperson's initiative in order to promote full, fair, and orderly proceedings.

8.10 Public Deliberations. At the close of evidence, the Board shall immediately begin public deliberations on the evidence and proceed to determine by a majority vote of the Board members whether there has been a violation.

SECTION 9 Disposition of Complaint

9.1 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:

- (a) 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; or
- (b) determine that no violation of the Ethics Ordinance has occurred; or
- (c) determine that a violation of the Ethics Ordinance has occurred.

9.2 Penalties. Following a finding that the subject of the Complaint had violated one or more provisions of the Ethics Ordinance, the Board shall assess and impose the appropriate penalty under the circumstances. Any violations of the Ethics Ordinance shall be punishable to the maximum extent permitted by law. Any disciplinary action shall be carried out in accordance with the provisions of the Ethics 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:

- (a) verbal admonition by the Board;
- (b) written reprimand by the Board; or
- (c) refer the complaint for criminal investigation or prosecution; or
- (d) refer the complaint, along with the Board's findings and conclusions, to any appropriate administrative authority for disciplinary action or other suitable remedial action; or
- (e) recommendation to the Mayor and City Council for demotion, suspension with pay, suspension without pay, removal from office, and/or termination, as allowed by applicable law.

The penalties prescribed for violations of the Ethics 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.

9.3 Written Findings of Fact and Conclusions, and Penalties Imposed. After it has made its final determination as to Complaint and appropriate penalties, if necessary, the Board shall issue its written findings of fact and conclusions and penalties imposed. The Board may issue any additional reports, opinions and recommendations as it deems necessary. Following review by the City Attorney, the Board's reports and the record of the proceedings shall be made public as soon as practicable. All such reports shall be in compliance with all state and city laws governing confidentiality, open government, and other applicable laws.

9.4 Right of Review. The decision of the Board shall be final. The proceeding shall be subject to review by writ of certiorari to the Fulton County Superior Court.

SECTION 10 Amendment of the These Bylaws and Rules

10.1 The Board shall review these bylaws and rules of procedure at least annually. Any change in the bylaws and rules of procedure of the Board is not adopted unless each proposal is submitted to the Board for a vote as to whether the proposal should be adopted, be adopted with amendments, or be rejected. Proposals may be initiated by a vote of the Board, or by any two member of the

Board. No proposal to change the bylaws is adopted unless a majority of the members affirmatively vote, with a quorum (i.e., at least 4 Board members) present at a meeting. Once adopted, any change to these bylaws is immediately effective, unless some later date is designated in the proposal.

SECTION 11
Effective Date

11.1 These bylaws and rules of procedure shall be effective on the date of approval by the Mayor and City Council.

Adopted by unanimous vote of the Board on the ____ day of _____, 2007.

Clint Johnson, Chairperson
Board of Ethics
City of Milton

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. Waiver of Confidentiality
- Section 22. Statute of Limitations
- Section 23. Penalties
- Section 24. Penalties Cumulative
- Section 25. Liberal Construction of Ordinance
- Section 26. Severability
- Section 27. Effective Date

APPENDIX OF DEFINITIONS

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 a confidential advisory opinion from the Board in accordance with the procedures established in this Ordinance; and

(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 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 Mayor, who shall forward such report to the Board.

(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 Clerk a written disclosure of the relationship and the nature and extent of

the conflict of interest involved.

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.

(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) 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) 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;

(3) participating in the deliberation of or voting on any matter involving personal financial or personal interest;

(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;

(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 employee if the individual were not an official or employee;

(7) 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) 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 prior official authorization for such an expenditure.

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

(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 City Council Member 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.

(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 administrators. This subsection shall not apply to statements of elected officials made in the course of fulfilling the responsibilities of their offices or in running for election to office, nor shall it apply to the 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.

(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 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 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 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.

Section 12. Board of Ethics

(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 appointed by the Mayor and approved by the City Council. Each member appointed to the Board shall be a resident of the electoral district for which they are nominated. An appointment to fill a vacancy on the Board shall be made by the Mayor and approved by the City Council.

(d) The Board shall elect one (1) of its members to serve as chairperson of the Board.

(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 member's successor is appointed.

(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

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

(1) develop and adopt written procedural rules, which rules shall be subject to the approval of the Mayor and City Council, and filed with the City Clerk; and

(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, whether such cases arise from a complaint or are brought on the Board's own motion; and

(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 (unless the need to retain outside counsel is caused by a conflict involving the City Attorney's Office), and upon approval by the governing body of a contract for services approved as to form by the City Attorney.

(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 confidential advisory opinions; the Board may decline to render an opinion in response to any request for an advisory opinion; and

(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

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.

Section 15. Who May Request Board Action

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

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 officer 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 shall 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 for review and consideration for appropriate action. Upon completion of review and consideration, the City Attorney's Office shall report its findings to the Board.

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) 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.

(d) The City Attorney 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.

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

(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.

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

(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.

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

(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) order 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

(4) require 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

(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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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:

(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 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 at least thirty (30) days notice of the hearing date.

(2) The rules of evidence of the Official Code of Georgia shall apply to the hearing. 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.

(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

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

(a) the members of the Board may obtain legal advice from the City Attorney and may discuss the complaint with their staff; and

(b) the members of the Board may discuss the complaint at a lawfully conducted meeting.

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.

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. 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. Waiver of Confidentiality

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.

Section 22. 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.

Section 23. Penalties

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 24. Penalties Cumulative

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 25. Liberal Construction of Ordinance

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 26. 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 27. Effective Date

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

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.

(16) *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.

(17) *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, 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.

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

(19) *Immediate family* means:

(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.

(20) *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.

(21) *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.

(22) *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.

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

(24) *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.

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

- (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.

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

(27) *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.

(28) *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.

(29) *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.

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

(31) *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:

(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.

(32) *Reasonable* means fair, proper, equitable and just under the circumstances.

(33) *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:

(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.

(34) *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..

(35) *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.

(36) *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.

(37) *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.

(38) *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.