

## Chapter 9: Ethics

### Article I: In General

#### *Section 1: Definitions*

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

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

*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 five percent of the outstanding equity, or any business or organization in which a public servant or a partner in interest has a personal interest.

*Benefit* means:

(1) Anything having a monetary value in excess of \$100.00. 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.

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

- (1) 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, City Code, contract, executive action or any other lawful means; and
- (2) Any part of which its membership is appointed by the Mayor 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 City Council; nor does it include any city administrative agency, bureau, department, division or office which is administered by individuals rather than by a body.

*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.

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

- (1) The public servant is an owner, partner, director, officer, employee or independent contractor in relation to the business;
- (2) A public servant's partner in interest is an owner, partner, director or officer;
- (3) The public servant or a partner in interest is a stockholder of close corporation stock which is worth at least \$1,000.00 at fair market value or which represents more than a five percent (5%) equity interest;
- (4) The public servant or a partner in interest is a stockholder of publicly traded stock which is worth at least \$5,000.00 at fair market value or which represents more than five percent (5%) equity interest, other than publicly traded stock under a trading account if the public servant reports the name and address of the stockholder; or
- (5) 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.

*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.

*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.

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

*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:

- (1) 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;
- (2) Any nonwritten 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
- (3) 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.

*Conflict of interest* means ~~not only~~ a personal pecuniary interest, ~~as defined in this Chapter, but also a professional or nonpecuniary 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.~~

*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 Chapter 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.

*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. The term "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 Chapter 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 Chapter, 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.

*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~~ receives a personal benefit.

*Disclose* means, unless the context of this Chapter 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 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 Chapter 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, the phrase "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 before whom the matter is pending or may be brought, and within adequate time to allow the decision maker to review the disclosure before taking any official action.

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

*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 Chapter and for no other purpose, the term "employee" includes volunteers, notwithstanding the fact that they are unpaid.

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

*Gift* means any benefit or thing or act of monetary value of over \$100 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.

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

*Immediate family* means:

- (1) A public servant's spouse, children, grandchildren, parents, parents-in-law, grandparents, grandparents-in-law, sisters, sisters-in-law, brothers, brothers-in-law, sons-in-law, daughters-in-law, nieces, nephews, aunts, or uncles (whether by marriage, lineal descent or adoption);
- (2) A public servant's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his support from the public servant or from whom the public servant receives, directly or indirectly, more than one-half of his support; and
- (3) An individual claimed by the public servant or the public servant's spouse as a dependent under the United States Internal Revenue Code.

*Interest* means any personal pecuniary 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.

*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.

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

*Matter* means, unless the context of this Chapter 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, division, 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.

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

*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 the public servant responds in a positive way.

*Office* means any of the following:

- (1) An elective position within the government of the City;
- (2) A City Attorney;
- (3) 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
- (4) An appointive city position which is filled by the City Council 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.

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

*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.

*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.

*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 Chapter.

*Organization* means, unless the context indicates otherwise, any nonprofit business other than an individual or governmental agency.

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

- (1) A member of the public servant's immediate family;
- (2) A business with which the public servant or a member of the public servant's immediate family is associated;
- (3) 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 transaction 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; or
- (4) 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.

*Personal benefit* means any benefit which is offered or received, or reasonably 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 personal pecuniary~~ gain by acting against the public interest; provided, however, that the term "personal benefit" within the meaning of this Chapter 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:

- (1) 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;
- (2) Fees, expenses, or income, including those resulting from outside employment, which are permitted and reported in accordance with the policies of the City;
- (3) Authorized reimbursement of actual and necessary expenses;

- (4) Admission, regardless of value, to events to which public servants are invited in their official, representative capacity as public servants;
- (5) Campaign or political contributions which are made and reported in accordance with state law;
- (6) 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;
- (7) Awards publicly presented in recognition of public service, acts of heroism or for solving crimes;
- (8) 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;
- (9) 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;
- (10) Complimentary copies of trade publications;
- (11) 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;
- (12) 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;
- (13) 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;
- (14) 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;
- (15) Anything of value received as a devise, bequest or inheritance;

- (16) 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
- (17) 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.

*Personal interest* means a direct or indirect interest having pecuniary 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 division, 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.

*Public servant* means any member of the City Council 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.

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

*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.

*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.

*Voting body* means the City Council 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.

## *Section 2: Declaration of Policy*

- (a) The city 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 Chapter, 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;
  - (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;
  - (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;
  - (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
- (d) This Chapter 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 Chapter 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;
  - (2) Are motivated and committed to pursue ethical ideals which always exceed minimum standards and often achieve the highest standards;
  - (3) Encourage ethical practices which protect, advance and promote the public interest;
  - (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;
  - (5) When they observe serious unethical practices, promptly disclose them to appropriate authorities, and encourage others to do the same;
  - (6) Ensure 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 3: Purposes of Ordinance*

This Chapter, including the definitions set forth in Section 1 of this Article, is adopted to:

- (1) Identify the minimum standards of ethical conduct which public servants must meet;
- (2) Adequately educate public servants, and any subordinates, in the principles of ethics;
- (3) Encourage public servants to pursue the highest ethical ideals which they can achieve;
- (4) Provide a process by which public servants may identify and resolve ethical issues;
- (5) Provide a process to ensure the prompt disclosure by public servants of serious unethical practices, and encourage others to do the same;
- (6) Provide a fair and impartial process by which alleged violations of this Chapter may be heard;
- (7) Provide for a just and reasonable balance among the rights of all individuals who are directly affected by the operation of this Chapter; and
- (8) Establish penalties, as appropriate, for public servants who violate the public trust.

### *Section 4: Applicability of Chapter*

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

### *Section 5: Exemptions*

- (a) This Chapter 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 public duties, provided that the public servant complies with all applicable City requirements, including any requirements imposed by this Chapter.
- (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 Chapter 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 Chapter 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 Chapter 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 Chapter 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 Chapter 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 of Ethics in accordance with the procedures established in this Chapter;
  - (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 6: Penalties*

Any violations of this Chapter shall be punishable up to the maximum extent permitted by law. Any disciplinary action shall be carried out in accordance with the provisions of this Chapter, 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 of Ethics 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 for suspension, demotion, forfeiture of office or removal from office, and/or termination from employment, as allowed by applicable law.

#### *Section 7: Penalties cumulative*

The penalties prescribed in this Chapter 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 8: Liberal Construction of Chapter*

The provisions of this Chapter 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 9: Duties of Public Servant*

- (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 position in advance of the time prescribed by the City Council, 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 of Ethics in connection with the investigation of an alleged or potential violation of this Chapter. 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 Chapter or other applicable law.
- (c) ~~All public servants must report a violation of this Chapter of which they have knowledge to the city clerk or the mayor, who shall forward such report to the City attorney or Board of Ethics.~~
- (~~c~~) In addition to being a violation of other laws, it is also a violation of this Chapter for any public servant to:
  - (1) Be convicted of any felony involving moral turpitude;
  - (2) Be found liable of violating any Federal, State or City law prohibiting discrimination or sexual harassment;
  - (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 knowingly and willfully violating any State laws governing lobbying activities or regulating political activity.

*Section 10: Conflict of interest 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 unduly 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 under circumstances in which it can reasonably be inferred that the benefit is intended to unduly influence the public servant or as a reward for any official action 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 or the promise of receiving a personal benefit in the future, for the public servant under circumstances in which it can reasonably be inferred that the benefit is intended to unduly influence the public servant or as a reward for any official action of 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 official position or activities in any way that could likely 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;
  - (2) Prohibit the disclosure of information the public servant has been authorized to disclose;
  - (3) Prohibit the disclosure of any such information to incumbent public servants to whom the information may be pertinent;
  - (4) Prevent the disclosure of violations of this Chapter 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 11: Duty to leave meeting*

- (a) 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.
- (b) 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 12: Public contracts*

- (a) 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:
  - (1) The solicitation of a contract;
  - (2) The bidding of a contract;
  - (3) The negotiation of a contract; or
  - (4) The approval of a contract by the City Council.

*Section 13: Disclosure of conflict of interest or potential conflict of interest*

- (a) A member of the City Council 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 City Council believes that no conflict of interest exists, or that despite any alleged or potential special interest, such city councilmember 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 of Ethics 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 of Ethics, 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 City Council.
- (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 of Ethics 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 of Ethics and the City Attorney.

- (f) A public servant, in addition to disqualifying himself 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 14: Unauthorized outside employment*

- (a) Purpose of policy. 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) Conflict of interest. A public servant shall not accept any employment, nor enter into any contract, nor perform any service for compensation that results in a financial conflict of interest or a conflict of loyalties which would affect the performance of the public servant's official duties.
- (c) Employees.
  - (1) An employee of the City may be self-employed or may take occasional or part-time jobs if, in the opinion of his or her department head, there is no conflict with working hours, the employee's efficiency in his or her city work, or other interests of the City.
  - (2) Before engaging in outside employment, employees shall have the written approval of their department heads or designee in emergency situations.
  - (3) Public servants who hold management level positions shall notify the City Manager prior to creating, contracting with, or being employed by any business other than the City. The City Manager shall provide written approval or disapproval of the notification within a reasonable time. Any action undertaken by the City Manager shall require prior approval by the City Council.
  - (4) All requests for approval of outside employment shall state the type and place of employment, the hours of work and the employer's name and address.
  - (5) City employment shall remain the employee's first priority, and if at any time the outside employment interferes with an employee's job requirements or performance for the City, the employee shall be required to modify the conditions of the outside employment or terminate either the outside employment or the City employment.

*Section 15: Prohibited conduct and other abuses or misuses of position*

- (a) Public servants of the City shall treat all citizens with courtesy, impartiality, fairness, and equality under the law, and shall avoid both actual and potential conflicts between their

private self-interest and the public interest. Prohibited conduct of each such public servant shall include, but not be limited to, the following:

- (1) Intentionally granting or making available to any person any special consideration, treatment, advantage, or favor beyond that which it is the general practice to grant or make available to the public at large;
- (2) Intentionally requesting, using or permitting the use of any publicly owned or publicly supported property, vehicle, equipment, labor, or service for the personal convenience or the private advantage of oneself or any other person, except as otherwise allowed by law or as authorized by the City;
- (3) Knowingly participating in the deliberation of or voting on any matter involving personal financial or personal interest, or where the public servant has a ~~personal~~ interest which is materially adverse to the applicant or person affected by the outcome of the matter;
- (4) Engaging in private employment with, or rendering services for, any private person who has business transactions with the City, unless the employee has made full public disclosure of such employment or services and received approval of their supervisor or the City Manager;
- (5) Appearing on behalf of any private person, other than oneself, before any public body in the City;
- (6) Accepting any gift, whether in the form of money, thing, favor, loan, or promise, that would not be offered or given to the employee if the individual were not an official or employee that would thereby cause the official or employee to place themselves in a position in which the giver of the gift could expect special consideration or in which the public could reasonably assume that special consideration is being given. ~~Thus, the official or employee should be firm in refusing gifts, favors, or gratuities, large or small, which can, in the public mind, be reasonably interpreted as capable of influencing his or her judgment in the discharge of his or her duties;~~
- (7) Intentionally disclosing any confidential information concerning any official or employee, or any other person, or any property or governmental affairs of the City, without prior formal authorization of the City Council;
- (8) Intentionally using or permitting the use of confidential information to advance the financial or personal interest of the individual or any other person;
- (9) Ordering any goods and services for the City without prior official authorization for such an expenditure;
- (10) Intentionally, use his or her superior position to request or require an employee to:



- (A) 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;
  - (B) Perform any work outside the employee's normal course of municipal employment;
  - (C) Purchase goods and services for personal, business, or political purposes; or
  - (D) Work for him personally without offering just compensation;
- (11) A Public Servant shall not draw per diem or expense monies from the City to attend a seminar, convention, or conference and then fail to attend the seminar, convention, or conference without refunding the pro-rata unused per diem or expense monies to the City.
- (12) Intentionally violating any provision of the City Charter which prescribes the conduct of a public servant.
- (b) No public servant shall hold any other office, elected or appointed, in any other governmental entity, when the duties of such office are incompatible with the proper discharge of the public servant's duties with the City as defined by any one of the following circumstances:
- (1) Where one office is subordinate to the other;
  - (2) Where one office carries the power of removal of the other; or
  - (3) Where the occupancy of both offices is prohibited by the City Charter or other law.
- (c) No public servant shall falsely represent his personal opinion to be the official position of the City, and no public servant shall falsely represent his 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 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 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 City Council having a personal interest in a matter shall represent himself or any other person before the City Council 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 any other person before that Board in connection with that matter, nor in connection with any matter in which a member of his immediate family or a business with which he, or a member of his immediate family, is associated has a prohibited personal 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 before that Board shall represent himself in the appeal of any decision of that Board to any decision maker.
- (k) No public servant shall, while in the course and scope of their duties, engage in any kind of behavior towards another public servant or member of the public that is threatening or abusive in nature

## **Article II: Board of Ethics**

### *Section 1: Creation; membership; term; compensation*

- (a) Created; membership. There is created a Board of Ethics consisting of five (5) members, and two (2) alternate 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) Member restrictions. 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) Appointment. Members of the Board shall be appointed by the Mayor and approved by the City Council. Each City Council member may submit to the Mayor up to two (2) names to consider for appointment to the Board and the Mayor may, but is not required to, choose to appoint members of the Board from the names submitted by Councilmembers. An

appointment to fill a vacancy on the Board shall be made by the Mayor and approved by the City Council.

- (d) Chairperson. The Board shall elect one of its members to serve as Chairperson and one as Vice Chairperson of the Board.
- (e) Term of Office. Board members shall serve staggered terms of no more than three (3) years. A member shall hold office until a member's successor is appointed.
- (f) Limit of term. No person may serve more than two (2) consecutive terms as a Board member.
- (g) Deliberations, actions open to the public. The Board's deliberations and actions upon requests shall be open to the public.
- (h) Compensation. Members of the Board are volunteers and shall serve without compensation. The City Council 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) Staff support. The City Council shall provide such staff support for the Board as the City Council 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 2: Duties and powers*

- (a) The Board shall, in addition to its other duties:
  - (1) Develop and adopt written by-laws and procedural rules, which rules shall be subject to the approval of the Mayor and City Council, and filed with the City Clerk;
  - (2) Be authorized to administer oaths;
  - (3) Conduct hearings as needed to hear and decide specific cases in which a violation of this Chapter is alleged. All cases to be investigated by the City Attorney or outside counsel and heard by the Board of Ethics regarding alleged violations of this Chapter as a result of the conduct of individuals must be initiated by the filing of a written complaint in accordance with the procedure as set forth below;
  - (4) No later than December 1 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;

- (5) Establish a process for evaluating all significant aspects of the administration and implementation of this Chapter;
  - (6) Prescribe and make available necessary forms for use under this Chapter;
  - (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 City Council 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:
    - (A) 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
    - (B) For any other purpose for which the Board is authorized to conduct hearings;
  - (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;
  - (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;
  - (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 Chapter 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;
  - (5) Prepare and publish special reports, technical studies, and recommendations to further the purposes of this Chapter;

- (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 Chapter, new Board members, and the public about their rights, duties and responsibilities hereunder.

*Section 3: 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 Chapter.

*Section 4: Requests for actions*

- (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 5: Limitations of power*

The Board does not have the authority to reverse or otherwise modify a prior action of the Mayor, City Council, or an officer or employee of the City. If the Board finds a prior action of the Mayor, the City Council, 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 may 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 6: Procedures for bearing 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 Chapter.
- (b) A complaint shall specify the provisions of this Chapter alleged to have been violated and facts alleged to constitute the violation.

- (c) Every ethics complaint filed shall contain the following statement: “I have read the complaint and aver that the facts contained therein are true to the best of my knowledge and belief and I am aware that the Ethics Ordinance that created the Ethics Board authorizes the Board to impose penalties for filing a frivolous complaint including, without limitation, dismissal of my complaint, payment of costs associated with the handling and processing of the complaint, and/or all other penalties applicable under the law.”
- (d) Upon receipt of such a complaint, and until an investigation of the complaint is concluded, all matters regarding the investigation, facts of the matter giving rise to the complaint and status of the investigation shall not be disclosed and shall be kept in confidence. Neither the Board of Ethics, City Council or any other Board or Commission shall entertain public comment, place the matter on its agenda, or entertain discussion of the issue until the report of investigation is delivered to the Board of Ethics for its consideration and the Board of Ethics makes a final determination or forwards its report to the City Council for a final determination.
- (e) Upon receipt of such a complaint, but in any event not later than five (5) working days after receipt, the City Clerk shall acknowledge receipt to the complainant, and forward the complaint simultaneously to the Board, the person who is complained against and the City Attorney.
- (f) The City Attorney shall provide the Board with a preliminary written analysis of the complaint no later than 30 days from the date the complaint is filed with the City Clerk.
- (g) During any investigation and during any hearing which is conducted to determine whether a violation of this Chapter has occurred:
  - (1) The person under investigation or the accused may be represented by counsel of his own choosing; and
  - (2) The accused or his representative, if any, shall have an opportunity to:
    - (A) Challenge the sufficiency of any complaint which has been filed against him;
    - (B) Examine all documents and records obtained or prepared by the Board in connection with the matter heard;
    - (C) Bring witnesses;
    - (D) Establish all pertinent facts and circumstances;
    - (E) Question or refute testimony or evidence, including the opportunity to confront and cross examine adverse witnesses; and
    - (F) Exercise, to the extent the Board, in its discretion, determines to be just and reasonable, any pretrial discovery procedure usually available in civil actions.

- (h) The following principles shall apply regarding evidence in connection with hearings conducted by the Board:
  - (1) The Board shall be bound to adhere to statutory rules of evidence;
  - (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;
  - (3) The accused or any other person under investigation shall be afforded adequate opportunity to rebut or offer countervailing evidence;
  - (4) The Board shall inform the accused or his counsel of exculpatory evidence in its possession; and
  - (5) The standard of evidence sufficient to prove a violation in hearings conducted under this Chapter shall be by a preponderance of the evidence admitted at the hearing.
  
- (i) The Board, in addition to its other duties and powers, may:
  - (1) Appoint a hearing officer to conduct hearings under this Chapter;
  - (2) With the approval of the City Council, 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 City Council of a contract for services approved as to form by the City Attorney;
  - (3) Request testimony to be taken by deposition before any individual who is designated by the Board and, in such instances, to compel testimony and the production of evidence to the extent it is otherwise lawfully authorized to do so;
  - (4) Request any person to submit in writing such reports and answers to questions relevant to the proceedings as the Board may prescribe, such submission to be made within such period and under oath or otherwise as the Board may determine; and
  - (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.
  
- (j) The person complained against shall have 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.
  
- (k) Any person whose name is mentioned or who is otherwise identified during a hearing and who, in the opinion of the Board, may be adversely affected thereby may, upon request of the person or a representative of the person, or upon the request of any member of the

Board, appear at the hearing to testify on his 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.

- (l) Upon request of the accused, on its own motion, or upon request of the City Attorney, the board shall be authorized to issue subpoenas to compel the attendance of necessary witnesses.
- (m) Within 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 30 days of said review by the Board, unless the accused petitions for and the Board consents to a later date.
- (n) As soon as practicable after giving due consideration to a complaint, or, if a preliminary hearing was held, after the preliminary 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:
    - (A) The complaint does not allege facts sufficient to constitute a violation of this Chapter;
    - (B) The Board has no jurisdiction over the matter;
    - (C) Failure of the complainant to cooperate in the Board's review and consideration of the complaint; or
    - (D) 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 Chapter has occurred;
  - (3) Determine that the complaint alleges facts sufficient to constitute a violation of this Chapter 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 this Chapter; and
    - (A) Conduct its own investigation of any alleged violation; or
    - (B) Request the City Attorney to investigate the complaint and report all findings back to the Board;
    - (C) 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;



- (D) Refer the complaint for criminal investigation or prosecution; or
  - (E) 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 Chapter.
- (o) 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 7: Those subject to removal only by the City Council*

- (a) If findings relative to an elected or appointed official are filed by the Board with the City Council, the matter shall be referred to the appropriate standing committee of the City Council for a report, or the City Council 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 City Council, may recommend a dismissal of the charges, a reprimand, or a hearing before the City Council to determine whether removal from office is warranted under the applicable provisions of the state and local laws. Failure of an elected official to file the required financial disclosure statement may constitute grounds for removal from office.
- (c) Any hearing by the City Council or by a special or standing committee, as designated by the City Council, shall be conducted in accordance with the following provisions:
  - (1) The accused official must be given at least 30 days notice of the hearing date.
  - (2) The rules of evidence of Georgia State law shall apply to the hearing. All evidence, including certified copies of records and documents which the City Council 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 Chapter, the official or any person whose activities are under investigation shall be entitled to be represented by counsel of his choosing. The City Council shall immediately disclose and forward to the official or his counsel any and all exculpatory evidence.
  - (5) The accused official or his 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 City Council 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 City Council may request income tax returns of the official whose conduct or activities are under consideration by the City Council. The examination of the official's income tax returns shall be in accordance with State Law.
- (d) City Council action. The City Council shall make a determination in regard to the recommendation of the committee. Dismissal of the findings of the Board as referred to the City Council, or reprimand by the City Council shall be by a majority vote. Removal from office shall be in accordance with all applicable state and local laws.

*Section 8: Ex Parte communications*

- (a) After a complaint has been filed and during the pendency of a complaint before the Board, no member of the Board may communicate directly or indirectly with any party or other person about any issue of fact or law regarding the complaint, except that:
  - (1) The members of the Board may obtain legal advice from the City Attorney and may discuss the complaint with their staff; and
  - (2) The members of the Board may discuss the complaint at a lawfully conducted meeting.
- (b) 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.
- (c) No Board member shall undertake an independent investigation of any complaint or matter before the Board.

*Section 9: 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 10: 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 11: Statute of Limitations*

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

*Section 12: Wrongful use of Board of Ethics*

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

*Section 13: Wrongful use of this Chapter*

- (a) A wrongful use of this Chapter shall occur if and when a frivolous or false complaint is filed in a negligent, reckless or purposeful manner without a basis in law or fact and for a purpose other than reporting a violation of this Chapter. A person has not filed a frivolous complaint if he/she reasonably believes that facts exist to support the claim and either reasonably believes that under those facts the complaint is valid under this Chapter or acts upon the advice of counsel sought in good faith and given after full disclosure of all relevant facts within his/her knowledge and information.
- (b) In deciding if a complaint is a “Wrongful use of this Chapter,” the Board of Ethics may also consider:
  - (1) The timing of the complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;
  - (2) The nature and type of any publicity surrounding the filing of the complaint, and the degree of participation by the complainant in publicizing the fact that a complaint was filed with the Board of Ethics;
  - (3) The existence and nature of any relationship between the respondent and the complainant before the complaint was filed;

- (4) If respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;
- (5) Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and
- (6) Any evidence of the complainant's motives in filing the complaint.

*Section 14: Severability*

If any provision of this Chapter 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 provisions of this Chapter shall be considered a separate, distinct and independent part of this Chapter, and such holding shall not affect the validity and enforceability of this Chapter, or any part other than the part declared to be invalid.