



CITY COUNCIL WORK SESSION
MAY 15, 2023

ALPHARETTA CITY HALL
COUNCIL CHAMBERS
2 PARK PLAZA
5:30 PM

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE TO THE FLAG**
4. **WORK SESSION ITEMS**
 - A. **Ethics Ordinance**
Presentation and discussion of proposed text amendments to Article V of The Code of the City of Alpharetta, the City's Code of Ethics and Conduct.
5. **EXECUTIVE SESSION (IF NECESSARY)**
6. **ADJOURNMENT**



STAFF REPORT

Department: Administration
Submitted By: Lauren Shapiro
Meeting Date: May 15, 2023

AGENDA ITEM:

Ethics Ordinance

Presentation and discussion of proposed text amendments to Article V of The Code of the City of Alpharetta, the City's Code of Ethics and Conduct.

STAFF RECOMMENDATION:

This item is for Work Session discussion purposes only. No formal action or vote will be requested or taken for this item.

BUDGET & PROCUREMENT:

BUDGETED ITEM: NO

FISCAL IMPACT: NO

INCLUDED IN CURRENT FY CPTL BUDGET: NO

INCLUDED IN CURRENT FY OPRT. BUDGET: NO

TOTAL PROJECT COST:

APPROPRIATIONS:

| <u>ACCOUNT TITLE/NUMBER</u> | <u>DOLLAR AMOUNT</u> |
|-----------------------------|----------------------|
|-----------------------------|----------------------|

EXTERNAL FUNDING SOURCES:

| <u>ACCOUNT TITLE/NUMBER</u> | <u>DOLLAR AMOUNT</u> |
|-----------------------------|----------------------|
|-----------------------------|----------------------|

ITEM DESCRIPTION:

During the November 28, 2022 City Council Work Session, the City Attorney's office presented proposed text amendments to Chapter 2, Article V Code of Ethics and Conduct of the Alpharetta City Code. The proposed amendments were suggested after adjudication of the City's first ethics complaint.

The purpose of this Work Session discussion is to determine the Mayor and City Council's preferences as to the composition of the Ethics Board.

Attached is also a copy of the current Ethics Ordinance and the proposed text amendments that were discussed during the previous Work Session.

ALTERNATIVES:

ATTACHMENTS:

1. Ethics Ordinance Text Amendment Presentation
2. Ethics Ordinance Proposed Text Amendments
3. Ethics Ordinance Current

Ethics Ordinance Revisions

ALPHARETTA CITY COUNCIL

MAY 15, 2023

Existing Ordinance

- 5 member board
- Randomly drawn from a panel of fourteen (14) individuals
 - Mayor and Councilmembers each appoint 2 individuals for the panel

Draft Ordinance

- On an annual basis, City Council will jointly appoint no less than six (6) and no more than twelve (12) individuals from which to draw members of ethics panels.
- Qualifications:
 - Attorney in good standing;
 - At least five (5) years experience, with at least three (3) years experience in general civil litigation;
 - Does not reside in or maintain an office in the City;
 - Is not, and has never been, an employee or City official, and not the spouse, parent, child or sibling of an existing or former City employee or official;
 - Has no business or contractual relationship with the City or City Council members;
 - Has not provided money or in kind campaign contributions to City Council members;
 - Has not been convicted of a felony involving moral turpitude

Alternate Compositions

- 7 citizens for a set term
- Mayor and Councilmembers each appoint one member
- Two alternates to be appointed by majority vote of Mayor and Council for service in the event of a conflict.
- Training required prior hearing a case/complaint

Alternate Compositions

- 5 members for a set term
- Each member appointed by majority vote of Mayor and Council
- 2 alternates appointed in the same manner to serve if conflicts arise
- Training required prior to hearing a case/complaint

Alternate Compositions

- 5 members for a set term
- Each member appointed by majority vote of Mayor and Council
- Composition would be varied:
 - 3 citizen members
 - 2 members from the legal profession with experience in civil litigation
- 1 citizen alternate and 1 lawyer alternate appointed in the same manner to serve if conflicts arise
- Training required prior to hearing a case/complaint

Ethics Ordinance Proposed Text Amendments

Sec. 2-195. Implementation.

Ethical standards shall be included in the regular orientations for candidates for City Council, applicants to boards and commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they have read and understood the city code of ethics and conduct.

Sec. 2-196. Ethics complaints.

- (a) Any person may file an ethics complaint alleging a violation of any of the provisions of this article by a City Official by completing and submitting to the City Clerk the ethics complaint form adopted by the City Council. The person filing an ethics complaint shall be referred to in this article as the "complainant." In the event the City Clerk is the subject of an ethics complaint, all duties of the City Clerk in this article shall be undertaken by the City Administrator.
- (b) The ethics complaint shall, at a minimum, identify the specific provisions of this Article alleged to be violated, shall be supported by affidavits based on personal knowledge, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. All documents referred to in an affidavit shall be attached to the affidavit. Every ethics complaint shall be signed and notarized, and shall contain the following statement:

"I have read the ethics 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 authorizes the imposition of penalties against me for filing a frivolous complaint, including without limitation, payment of costs and attorney's fees associated with the handling and processing of the ethics complaint, and/or all other penalties applicable under the law."
- (c) An ethics complaint shall be filed within six months of the date the alleged violation is said to have occurred, or in case of concealment or nondisclosure, within six months of the date the alleged violation was or should have been discovered by the complainant after due diligence so long as such date is not more than one (1) year after the date the alleged violation is said to have occurred.
- (d) No action may be taken on any ethics complaint which arises out of substantially the same facts or circumstances which have previously served as the basis for an ethics complaint pursuant to this article.
- (e) A separate ethics complaint shall be filed for each person alleged to have engaged in any activity violating this article even if the allegations arise from the same factual basis. The person alleged to have violated this article shall be referred to in this article as the "respondent."
- (f) An ethics complaint against an elected official who is a candidate for reelection may not be filed and shall not be accepted by the City Clerk for a period three (3) months leading up to an election (whether a primary or general election). However, this three (3) month period shall not count towards the time limitation for filing an ethics complaint as provided in paragraph (c) above. In such cases, the time limitation set forth in paragraph (c) above shall be tolled.

Sec. 2-197. Ethics panel.

- (a) Each ethics panel shall be constituted for the sole purpose of considering a single ethics complaint.
- (b) Each ethics panel shall consist of three randomly selected members from a list maintained by the City Clerk.
- (c) Notwithstanding the requirements of Section 2-111 of this Code, the City Clerk shall maintain a list of not less than six (6) nor more than twelve (12) qualified individuals from which to draw members of ethics panels. The City Clerk shall confirm the qualifications and willingness to serve of the members of the ethics panel not less than once per year. The list of qualified individuals shall reviewed and confirmed by the City Council at the first regular meeting of City Council in January of every year.
- (d) Individuals shall be deemed qualified to serve on the ethics panel for so long as they:
 - (1) Are attorneys at law in good standing with the State Bar of Georgia;
 - (2) Have at least five years experience in the practice of law, with no less than three of those years dedicated to general civil litigation practice;
 - (3) Are not, and have never been, an employee or City official, and are not the spouse, parent, child, or sibling of an existing or former employee or City official;
 - (4) Have no, and the members of their immediate family have no, business or contractual relationship with the City of Alpharetta or any sitting City Council members, have not provided monetary or in-kind campaign contributions to sitting City Council members, and otherwise have no conflict of interest in providing service on the ethics panel; and
 - (5) Have not been convicted of a felony involving moral turpitude in this state or any other state, unless such person's civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude.
- (e) Upon the City Clerk determining that an ethics complaint meets the requirements of section 2-196 of this article on its face, the City Clerk shall promptly draw names randomly from the list of qualified individuals and contact the individual to determine their availability to serve on the ethics panel. The drawing of names by the City Clerk shall be witnessed by at least one other member of the City staff or the City Attorney to ensure the integrity of the selection process. Upon selection of three qualified individuals who are available to serve on the ethics panel, the City Clerk shall prepare a document identifying panel membership and both the City Clerk and the staff member or City Attorney that witnessed the selection process shall attest on that document to the legitimacy of the selection process.
- (f) Upon selection, members of the ethics panel shall sign an affidavit attesting to their qualification to serve as a member of the ethics panel.
- (g) No person shall be qualified to serve on more than one ethics panel at any given time unless all other qualified individuals are either serving on an ethics panel or have expressed their unavailability to so serve. Service on an ethics panel shall be deemed to have terminated upon the entry of the written dismissal or decision of the ethics panel after the conclusion of an ethics hearing.

- (h) An individual shall cease to be qualified immediately upon the third consecutive refusal (whether by choice or unavailability) to serve on an ethics panel after being randomly drawn from the list and contacted by the City Clerk to serve.

Sec. 2-198. Processing ethics complaints.

- (a) Upon receipt of an ethics complaint, the City Clerk shall, within five business days from receipt of the ethics complaint, determine whether the ethics complaint on its face satisfies the requirements of section 2-196 of this article.
 - (1) If the ethics complaint does not meet the requirements set forth in section 2-196 of this article, the City Clerk shall notify the complainant in writing of the defect(s) via certified mail, return receipt requested. Thereafter, the complainant shall be afforded ten (10) business days from receipt of the notification of defect from the City Clerk to cure any defects that may be cured and re-submit the ethics complaint. If an ethics complaint is not re-submitted within the allotted time period, the City and the City Clerk shall take no further action on the ethics complaint.
 - (2) If the City Clerk finds that the ethics complaint meets the requirements of section 2-196 of this article on its face, the ethics complaint will be processed pursuant to the provisions of this article.
- (b) Upon confirmation by the City Clerk that the ethics complaint meets the requirements of section 2-196 of this article on its face, the City Clerk shall promptly forward a copy of the ethics complaint by certified mail, return receipt requested, to the City official against whom the ethics complaint was filed. In addition, the City Clerk shall promptly begin the process of randomly selecting an ethics panel as provided in section 2-197 of this article.
- (d) The respondent shall respond to the ethics complaint within 30 days of receipt of the ethics complaint from the City Clerk. The respondent's response shall be supported by affidavits based on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The response may include allegations of a violation of section 2-210 of this Article. All documents referred to in an affidavit shall be attached to the affidavit. The respondent shall verify the response by his or her signature thereon, which shall be notarized.
- (e) Within 60 days of the determination by the City Clerk that the ethics complaint meets the requirements of section 2-196 of this article, unless such time is extended by the ethics panel convened to hear the ethics complaint upon good cause shown, the ethics panel shall convene a meeting to conduct an initial review of the ethics complaint to determine whether specific, substantiated evidence from a credible source(s) exists in the ethics complaint to support a reasonable belief that there has been a violation of this article.
- (f) If, after reviewing the ethics complaint, the ethics panel determines that no specific, substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of this article or determines that no violation occurred as a matter of applying the facts alleged and accepted as true to the terms of the article, the ethics panel shall dismiss the ethics complaint without further proceedings. Such dismissal shall be entered in writing stating the basis therefor.

- (g) If the ethics panel determines that specific, substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of this article by the respondent, the ethics panel shall set a hearing for consideration of the allegations of the ethics complaint ("ethics hearing"). Written notice of the ethics hearing, containing the time, date, and place of such hearing, shall be sent to the complainant and the respondent by the City Clerk by certified mail, return receipt requested.

Sec. 2-199. Ethics hearings.

- (a) All ethics hearings shall be conducted so as to ensure the requirements of due process. At the ethics hearing, the complainant and respondent shall be entitled to make opening statements, testify, present witnesses and evidence, and make a closing statement after the submission of all evidence. Both the complainant and the respondent shall be allowed to question any witness that testifies.
- (b) The respondent and the complainant shall be entitled to be represented by legal counsel at all stages of consideration of an ethics complaint, including at the ethics hearing.
- (c) The ethics panel may not call witnesses or tender evidence of its own accord; however, members of the ethics panel may question any witnesses that are called to testify by either the respondent or the complainant.
- (d) Any final determination resulting from the ethics hearing shall include written findings of fact and conclusions of law. In reaching its decision on the ethics complaint, the ethics panel shall decide if clear and convincing evidence presented at the ethics hearing establishes a violation of this article.

Sec. 2-200. Organization and internal operating regulations.

- (a) Each ethics panel shall elect a chairperson and vice chairperson to serve during the pendency of the ethics panel.
- (b) Members of the ethics panel shall serve without compensation.
- (c) The City Council shall provide meeting space for the ethics panel. Subject to budgetary procedures and requirements of the City, the City shall provide the ethics panel with such supplies and equipment as may be reasonably necessary to perform its duties and responsibilities. The City Clerk shall serve as recording secretary to the ethics panel.
- (d) Subject to budgetary procedures and requirements of the City, the City Attorney shall be available to assist the ethics panel in carrying out its responsibilities or to act as an ethics hearing administrator, whose duties shall be limited to conducting the ethics hearing as directed by the ethics panel. In the event the City Attorney has a conflict of interest in acting as an ethics hearing administrator on a particular case, the ethics panel may petition the City Council for appointment of counsel on a case-by-case basis. Any such appointed counsel shall be approved by the City Council, shall perform services at an approved hourly rate, and shall serve at the joint pleasure of the ethics panel and the City Council.
- (e) The chairperson shall be entitled to the same voting rights as the other members of the ethics panel.
- (f) All meetings or public hearings shall be open to the public and conducted in accordance with the open meeting requirements under state law. Deliberations may be conducted in

executive sessions. Any final report or recommendation to the mayor and council shall be conducted in an open meeting.

- (g) No official action concerning complaints shall be taken by an ethics panel, except by the affirmative vote of at least two members of the ethics panel.

Sec. 2-201. Removal of members.

The City Council may remove a member of the ethics panel on grounds of neglect of duty or misconduct in office. For purposes of this section, an ethics panel member that, without good cause, misses two scheduled ethics panel meetings during the handling of a single case shall be deemed to have neglected their duty such that no further evidence demonstrating neglect need be shown. Before initiating the removal of a member from the ethics panel, the City Council shall give the member written notice of the reason for the intended action, and the member shall have the opportunity to reply. Thereafter, the City Council shall afford such member an opportunity for a hearing before the City Council. Upon removal of a member by the City Council, the City Clerk shall promptly undertake the same process as set forth in subsection 2-197(e) to designate a replacement member of the ethics panel, and the selection process shall be subject to the same witnessing protocol as set forth in subsection 2-197(e).

Sec. 2-202. Resignation of member.

If a member of the ethics panel decides to resign prior to the final resolution by the ethics panel of an ethics complaint, the member's resignation shall be submitted in writing to the City Clerk who shall forward the resignation to the City Council, the Mayor, and the other members of the ethics panel. A resignation shall be deemed effective upon submission to the City Clerk and cannot be revoked. Upon receipt of the resignation, the City Clerk shall promptly undertake the same process as set forth in subsection 2-197(e) to designate a replacement member of the ethics panel, and the selection process shall be subject to the same witnessing protocol as set forth in subsection 2-197(e).

Sec. 2-203. Duties and powers.

The ethics panel shall have the following duties and powers:

- (1) To establish any procedures, rules, and regulations governing its internal organization and conduct of its affairs, provided that such procedures, rules, and regulations do not conflict with any provision contained herein;
- (2) To consider and hear complaints of violations of this article;
- (3) To administer oaths;
- (4) To recommend such action as provided in this article as deemed appropriate because of any violation of this article; and
- (5) To perform any other function authorized by this article.

Sec. 2-204. Custodian of records.

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

Sec. 2-205. Limitation of liability.

No member of the ethics panel, or any person acting on behalf of the ethics panel, shall be liable to any person for any damages arising out of the enforcement or operation of this ethics article, except in the case of willful or wanton misconduct. This limitation of liability shall apply to the City, the members of the ethics panel, the City Clerk, the City Attorney, and any person acting under the direction of the ethics panel.

Sec. 2-206. Disciplinary action.

- (a) Upon a determination that a City official has violated this article, the ethics panel shall recommend to the mayor and the City Council that the City impose any combination of the following penalties and actions:
 - (1) No further action;
 - (2) Written warning, censure, or reprimand;
 - (3) Request for resignation from office;
 - (4) Removal from office to the extent provided by Georgia law; and
 - (5) Repayment to the City of any unjust enrichment.
- (b) The City Council shall retain the discretion to determine whether any recommendation presented by the ethics panel under subsection (a) shall be imposed. In exercising this discretion, the City Council shall not be bound by the recommendation of the ethics panel and may impose any combination of the penalties listed in the relevant section. This discretion shall not entitle the City Council to override a determination by the ethics panel that a violation has occurred.
- (c) In addition to any other remedy provided herein, upon determination of a violation of this article, the ethics panel may recommend to the mayor and the City Council in writing that any contract, bid, or change order that was the subject of the violation be cancelled or rescinded. The City Council shall retain the discretion to determine whether such a cancellation or rescission would be in the best interest of the City and shall not be bound in any way by a recommendation of the ethics panel.
- (d) In addition to any other remedy provided herein, the ethics panel may also forward its written decision to the Fulton County District Attorney's Office and/or the Office of the Governor for appropriate action.

Sec. 2-207. Judicial review.

- (a) Any party against whom a decision of the ethics panel is rendered may obtain judicial review of the decision by writ of certiorari to the Superior Court of Fulton County. The application for the writ shall be filed within 30 days from the date of the decision of the City Council with respect to the punishment to be imposed. If the ethics panel dismisses the ethics complaint or finds no violation to have been proven by clear and convincing evidence after an ethics hearing, the writ shall be filed within 30 days of the written dismissal or decision. Judicial review shall be based upon the record. No party shall be entitled to a de novo appeal.

- (b) Upon failure to timely request judicial review of the decision by writ of certiorari as provided in this section, the decision shall be binding and final upon all parties.

Sec. 2-208. Ex parte communications.

- (a) After an ethics complaint has been filed and during the pendency of an ethics complaint before the ethics panel, no member of the ethics panel may communicate directly or indirectly with any party or other person about any issue of fact or laws regarding the ethics complaint, except as follows:
 - (1) The members of the ethics panel may obtain legal advice from the City attorney and may discuss the ethics complaint with any City staff provided by the City Council to assist the ethics panel; and
 - (2) The members of the ethics panel may discuss the ethics complaint at a lawfully conducted meeting.
- (b) If any person attempts to communicate with an ethics panel member regarding an ethics complaint pending before the ethics panel, the ethics panel member shall report the substance of the communication to the ethics panel on the public record at the next meeting or hearing of the ethics panel.
- (c) No ethics panel member shall undertake an independent investigation of any complaint or matter before the ethics panel.

Sec. 2-209. Confidentiality of ethics panel information.

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

Sec. 2-210. Wrongful use of this article.

- (a) The purpose of this article is to maintain a high standard of ethical behavior by City officials. This will be most effective when City officials and citizens work together to set and maintain high ethical standards.
- (b) In order to accomplish this purpose, ethics complaints shall be based on fact and have the intent to improve the ethical climate of the City.
- (c) A wrongful use of this article shall occur if and when a frivolous, false, or politically motivated ethics complaint is filed in a negligent, reckless, or purposeful manner without a basis in law or fact and for purpose other than reporting a violation of this article.
- (d) In deciding if an ethics complaint is a wrongful use of this article, the ethics panel shall consider the following, without limitation:
 - (1) The timing of the ethics complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, when the ethics complaint was filed, and 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 publicity surrounding the filing of the ethics complaint, and the degree of participation by the complainant in publicizing the fact that an ethics complaint was filed;
 - (3) The existence and nature of any relationship between the respondent and the complainant before the ethics 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) Whether the complainant knew or reasonably should have known that the allegations in the ethics complaint were groundless; and
 - (6) The complainant's motives in filing the complaint.
- (e) Allegations of a violation of this section shall be raised by the respondent as part of the respondent's response to an ethics complaint.
 - (f) Allegations of a violation of this section shall be considered by the ethics panel considering the ethics complaint that is alleged to be a violation of this section. Evidence supporting and opposing the allegations of a violation of this section shall be presented at the same ethics hearing conducted with respect to the ethics complaint that is alleged to be a violation of this section.
 - (g) Upon a finding by the ethics panel that clear and convincing evidence of a violation of this section was presented at the ethics hearing, the ethics panel shall recommend to the mayor and the City Council that the City impose any combination of the following penalties and actions:
 - (1) Public reprimand;
 - (2) Criminal prosecution for perjury; and
 - (3) Payment of costs and attorney's fees associated with the handling and processing of the ethics complaint. For purposes of this subsection, the term "costs" shall include the staff time dedicated to processing the ethics complaint as well as copy costs and other directly attributable administrative expenses. For purposes of this subsection, the phrase "attorney's fees" shall include the reasonable fees of the attorney retained, if any, by the subject of the ethics complaint as well as any fees necessary to be paid to the ethics panel attorneys.

Sec. 2-211. Reimbursement for reasonable attorney's fees.

In the event an ethics complaint brought against the respondent arising out of their official duties is dismissed (by either voluntary withdrawal of the complaint by the complainant or by action of the ethics panel dismissing the complaint as unfounded or otherwise subject to dismissal), the respondent shall be entitled to reimbursement from the City for reasonable attorney's fees incurred in defending said ethics complaint. Upon securing a final determination by the ethics panel of the complaint being dismissed (to include voluntary withdrawal of the complaint by the complainant), the respondent shall submit a copy of the order making such findings or complainant's withdrawal, whichever is applicable, to the Alpharetta City Administrator along with a copy of all applicable itemized attorney's fees incurred in defending

same. The itemized attorney's fees shall have attorney time and tasks broken down in one-tenth of an hour increments along with the attorney's hourly fee, coupled with a sworn statement by the attorney that the amount submitted for repayment is the same amount for which the respondent would otherwise have been responsible, or has already paid. Other than attorney time, no other expense or fees shall be subject to reimbursement.

The City Administrator shall submit the attorney fee statement to the City Attorney for a determination of reasonableness, of which determination shall be provided in writing (including e-mail) to the City Administrator. Upon all or a portion of the fees being deemed reasonable, the City Administrator shall submit all documentation to the City Finance Department for issuance of a reimbursement check to the respondent or respondent's attorney, at respondent's discretion. In no event shall reimbursement under this paragraph exceed \$10,000.00 per ethics complaint.

Secs. 2-212—2-224. Reserved.

ARTICLE V. CODE OF ETHICS AND CONDUCT¹

Sec. 2-189. Purpose.

Recognizing that stewardship of the public interest must be their primary concern, city officials will work for the common good of the people of Alpharetta and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the city council, boards and commissions.

The purpose of this code of ethics is to:

- (1) Encourage high ethical standards in official conduct by city officials;
- (2) Establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the interest of the city;
- (3) Require disclosure by such officials of private financial or other interest in matters affecting the city; and
- (4) Serve as a basis for disciplining those who refuse to abide by its terms.

(Ord. No. 755, § 1, 4-30-2018)

Sec. 2-190. Scope.

The provisions of this code of ethics shall be applicable to all elected or appointed city officials. Notwithstanding anything herein to the contrary, state law and the Charter of the city shall be controlling in the event of an actual conflict with the provisions of this code of ethics. This article shall be interpreted to supplement, and not replace, said provisions of state law and the Charter. These laws include, but are not limited to: the United States and Georgia Constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and city ordinances and policies.

(Ord. No. 755, § 1, 4-30-2018)

Sec. 2-191. Definitions.

Solely for the purpose of this code of ethics:

City official or *official*, unless otherwise expressly defined does not include city employees but does mean the mayor and members of the city council. The term "city official" also includes all individuals, including city

¹Editor's note(s)—Ord. No. 755, § 1, adopted Apr. 30, 2018, amended art. V in its entirety to read as herein set out. Former art. V, §§ 2-189—2-204, pertained to similar subject matter, and derived from Code 1989, §§ 2-141—2-147, 2-149—2-155, 2-157, 2-158; Ord. No. 587, §§ 1—7, 9—15, 17, 18, adopted May, 1, 2006; and Ord. No. 662, §§ 1—7, 9—15, 17, 18, adopted May, 21, 2012.

State law reference(s)—Code of ethics for governmental service, O.C.G.A. § 45-10-1; conflicts of interest, O.C.G.A. § 45-10-10 et seq.

employees, appointed by the mayor and/or city council as appropriate to city authorities, commissions, committees, boards, task forces, or other bodies which can or may vote or take formal action or make official recommendations to the mayor and/or city council.

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

Employee means any person who is a full-time or part-time employee of the city.

Financial interest means any interest which shall yield, directly or indirectly, a monetary or other material benefit to the official, other than the duly authorized salary or compensation for the official's services to the city, or to any person employing or retaining the services of the official or to a person or entity in which the official has a substantial interest.

Immediate family means the spouse, mother, father, grandparent, brother, sister, son or daughter of any city official related by blood, adoption or marriage. The relationship by marriage shall include in-laws.

Incidental interest means an interest in a person, entity or property which is not a substantial interest as defined herein and which has insignificant value.

Reasonably foreseeable means a result or event that can be reasonably anticipated or expected, and is more than hypothetical or theoretical.

Remote interest means an interest of a person or entity, including a city official, which would be affected in the same way as the general public. For example, the interest of an official in the property tax rate, general city fees, city utility charges or a comprehensive zoning ordinance or similar matters is deemed remote to the extent that the official would be affected in common with the general public.

Substantial interest means an interest, either directly or through a member of the immediate family, in another person or entity, where:

- (1) The interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000.00 or more of the equity or market value of the entity; or
- (2) The funds received by the person from the other person or entity during the previous 12 months either equal or exceed (a) \$5,000.00 in salary, bonuses, commissions or professional fees, or \$5,000.00 in payment for goods, products or services, or (b) ten percent of the recipient's gross income during that period, whichever is less;
- (1) The person serves as a corporate officer or member of the board of directors or other governing board of a for-profit entity other than a corporate entity owned or created by the city council; or
- (2) The person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000.00 or more.

(Ord. No. 755, § 1, 4-30-2018)

Sec. 2-192. Conduct.

- (a) *Conduct of city officials.* The professional and personal conduct of city officials must be above reproach and avoid even the appearance of impropriety. City officials shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of council, boards and commissions, or the staff.
- (b) *Respect for process.* City officials shall perform their duties in accordance with the processes and rules of order established by the city council and boards and commissions governing the deliberation of public policy

issues, meaningful involvement of the public, and implementation of policy decisions of the city council by city staff.

- (c) *Conduct of public meetings.* City officials shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers, making personal comments not germane to the business of the body, or otherwise interfering with the orderly conduct of meetings.
- (d) *Decisions based on merit.* City officials shall base their decisions on the merits and substance of the matter at hand.
- (e) *Communication.* City officials shall publicly share substantive information that is relevant to a matter under consideration by the council or boards and commissions which they may have received from sources outside the public decision-making process.
- (f) *Policy roles of city officials.* City officials shall respect and adhere to the structure of government of Alpharetta as outlined in the city Charter and policies and procedures. In this structure, the city council determines the policies of the city with the advice, information and analysis provided by the public, boards, commissions, and city staff.
- (g) *Liaison responsibility.* City officials serving as liaisons to city departments shall serve to facilitate communications and information from those departments to city council, but shall not direct the activities of the department directors. City officials shall not interfere with the day-to-day administrative functions of the city or the professional duties of city staff; nor shall they impair the ability of staff to implement council policy decisions.
- (h) *Independence of boards and commissions.* Because of the value of the independent advice of boards and commissions to the public decision-making process, city officials of council shall refrain from using their position to influence unduly the deliberations or outcomes of board and commission proceedings.
- (i) *Positive work place environment.* City officials shall support the maintenance of a positive and constructive work place environment for city employees and for citizens and businesses dealing with the city. City officials shall recognize their special role in dealings with city employees and refrain from creating the perception of inappropriate direction to staff.

(Ord. No. 755, § 1, 4-30-2018)

Sec. 2-193. Prohibitions.

- (a) No city official shall use such position to secure special privileges or exemptions for himself or herself or others, or to secure confidential information for any purpose other than official duties on behalf of the city.
- (b) No city official, in any matter before the council or other city body, relating to a person or entity in which the official has a substantial interest, or where it is reasonably foreseeable to a reasonable person that the decision will have a financial effect to a person or entity in which the official has a substantial interest unless it can be demonstrated that the financial effect is indistinguishable from the effect on the public generally, shall fail to disclose for the record the substantial interest prior to any discussion or vote or fail to recuse himself/herself from such discussion or vote as applicable.
- (c) Where the substantial interest of a city official has not been disclosed as required by subsection (b) of section 2-193 by reason of a city official's absence from the meeting referred to therein, the city official shall disclose the interest and otherwise comply with subsection (b) of section 2-193 at the first meeting of the council, board or commission, as the case may be, attended by the city official after the meeting referred to in subsection (b) of section 2-193.

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- (d) No city official shall act as an agent or attorney for another in any matter before the city council or other city body.
 - (e) No city official shall directly or indirectly receive, or agree to receive, any compensation, gift, reward, or gratuity in any matter or proceeding connected with, or related to, the duties of his office except as may be provided by law.
 - (f) No city official shall enter into any contract with, or have any interest in, either directly or indirectly, the city except as authorized by state law. All public funds shall be used for the general welfare of the people and not for personal economic gain.
 - (g) Public property shall be disposed of in accordance with state law.
 - (h) No city official shall solicit or accept other employment to be performed, or compensation to be received, while still a city official if the employment or compensation could reasonably be expected to impair such official's judgment or performance of city duties.
 - (i) If a city official accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official might reasonably be expected to act, investigate, advise, or make a recommendation, the official shall disclose the fact to the city council and shall recuse himself/herself and take no further action on matters regarding the potential future employer.
 - (j) No city official shall use city facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.
 - (k) No city official shall utilize the city's name or logo for the purpose of endorsing any business.
 - (l) No city official shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large.
 - (m) A city official shall not directly or indirectly make use of, or permit others to make use of, official information not made available to the general public for the purpose of furthering a private interest.
 - (n) A city official shall not use his or her position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to such official or persons within the official's immediate family, or those with whom the official has business or financial ties amounting to a substantial interest.
 - (o) A city official shall not order any goods and services for the city without prior official authorization for such expenditure. No city official shall attempt to obligate the city nor give the impression of obligating the city without proper prior authorization.
 - (p) No city official shall draw travel funds or per diem from the city for attendance at meetings, seminars, training or other educational events and fail to attend such events without promptly reimbursing the city therefore.
 - (q) A city official shall represent the official policies or positions of the city council, board and commission to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, city officials shall explicitly state they do not represent their body or the city, nor will they allow the inference that they do.
 - (r) In keeping with their role as stewards of the public interest, members of council shall not appear on behalf of the private interests of third parties before the council or any board or commission, or proceeding of the city, nor shall members of boards and commissions appear before their own bodies or before the council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

(Ord. No. 755, § 1, 4-30-2018)

Sec. 2-194. Conflict of interest.

- (a) A city official may not participate in a vote or decision on a matter affecting an immediate family member or any person, entity, or property in which the official has a substantial interest.
- (b) A city official who serves as a corporate officer or member of the board of directors of a nonprofit entity must disclose their interest in said entity to the mayor and council prior to participating in a vote or decision regarding funding of the entity by or through the city.
- (c) Where the interest of a city official in the subject matter of a vote or decision is remote or incidental, the city official may participate in the vote or decision and need not disclose the interest.

(Ord. No. 755, § 1, 4-30-2018)

Sec. 2-195. Board of ethics.

- (a) The board of ethics of the city (the "board") shall be composed of five residents of the city to be appointed as follows: the mayor and councilmembers shall each designate two qualified citizens to provide a pool of 14 individuals who have consented to serve as a member of such board and who will be available for a period of two years to be called upon to serve in the event a board is appointed. The city clerk shall maintain a listing of these qualified citizens. Upon receipt of a properly verified complaint and timely forwarding of that complaint to the city official charged in the complaint, the mayor and council, at the next regularly scheduled public meeting or at a specially called public meeting, shall draw names randomly from the listing of qualified citizens until five members of the board have been appointed. Such board will elect one of its members to serve as chair.
- (b) All members of the board shall be residents of the city for at least one year immediately preceding the date of taking office and shall remain a resident while serving on the board.
- (c) The selected members of the board shall serve until the complaint is resolved, at which time the selected members shall no longer be in the pool of 14. The mayor and councilmembers who originally designated the departing members shall designate their replacements.
- (d) No person shall serve as a member of the board if the person has, or has had within the preceding one-year period, any interest in any contract or contracting opportunity with the city or has been employed by the city.
- (e) Members of the board with any permit or rezoning application pending before the city, or any pending or potential litigation against the city or any city official charged in the complaint shall be disqualified from serving on the board for that complaint. An alternate member of the board shall be selected in the same manner as the disqualified individual.
- (f) The members of the board shall serve without compensation. The city council shall provide meeting space for the board and, subject to budgetary procedures and requirements of the city, such supplies and equipment as may be reasonably necessary for the board to perform its duties and responsibilities.
- (g) No person shall serve on the board who has been convicted of a felony involving moral turpitude in this state or any other state, unless such person's civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude.
- (h) No person shall serve on the board who is less than 21 years of age, who holds a public elective office, who is physically or mentally unable to discharge the duties of a member of the board, or who is not qualified to be a registered voter in the City of Alpharetta.

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- (i) Upon appointment, members of the board of ethics shall sign an affidavit attesting to their qualification to serve as a member of the board.
 - (j) Members of the board may be removed with or without cause by majority vote of the city governing authority.
 - (k) The city attorney shall be available to provide legal advice to the board and shall attend all meetings and hearings of the board to insure that all proceedings are conducted properly and in accordance with applicable law. The proceedings of the board shall, to the extent authorized by law, remain confidential and not be disclosed to third parties. All meetings or public hearings where evidence is taken shall be open. Deliberations may be conducted in executive sessions. Any final report or recommendation to the mayor and council shall be conducted in an open meeting. The mayor and council shall be the body to take final action as provided in section 2-199.

(Ord. No. 755, § 1, 4-30-2018)

Sec. 2-196. Receipt of complaints; initial review.

- (a) All complaints against city officials shall be filed with the city clerk. All complaints shall be submitted in writing and signed under oath, shall be legibly drawn and shall clearly address matters within the scope of this article. Upon receipt of a complaint in proper form, the city clerk or the clerk's designee shall forward a copy of the complaint to the mayor and council and city official or officials charged in the complaint within no more than seven calendar days. The charged official may, but is not required, to file a response to the board. If a response is provided, it shall be filed not later than ten calendar days after receipt of the complaint. The response shall be submitted in writing and signed under oath and shall address why the complaint is invalid on its face. All determinations under this section shall be made not later than 30 days after the filing of the complaint.
- (b) Upon receipt of a complaint in proper form, the board shall conduct an initial review to determine whether the complaint on its face is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary jurisdiction of the city council. The board is empowered to dismiss in writing complaints that it determines are unjustified, frivolous, patently unfounded or fail to state facts sufficient to invoke the disciplinary jurisdiction of the city council; provided, however, that a rejection of such complaint by the board shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official. The board shall report in writing to the city council any complaint dismissed under this section. For complaints that are not dismissed or adjudicated within the deadline under this section, the board shall proceed as set forth in section 2-197.
- (c) The board is empowered to adopt forms for formal complaints, notices, and any other necessary or desirable documents within its jurisdiction where the city council has not prescribed such forms.

(Ord. No. 755, § 1, 4-30-2018)

Sec. 2-197. Further proceedings on complaints.

- (a) If the board does not dismiss the complaint pursuant to section 2-196 or if no action is taken within the deadline stated in this section, the city clerk or board shall cause the complaint to be formally served on the city official charged as soon as practicable but in no event later than seven calendar days after the determination of the board. Service may be by personal service, by certified mail, return receipt requested or by statutory overnight delivery. The official shall, within 20 days of service submit a response to the board addressing the charges. Such response shall be in writing, and under oath. A hearing shall be held within 60 calendar days after filing of the complaint. The board is empowered to conduct investigations, to take

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evidence, and to hold hearings to address the subject matter of a complaint. The board shall conduct hearings in accordance with the procedures and regulations it establishes but, in all circumstances, at least one hearing shall include the taking of testimony and the cross-examination of available witnesses. The decision of the board shall be rendered to mayor and council within seven calendar days after completion of the final hearing. At any hearing held by the board, the city official who is the subject of inquiry shall have the right to written notice of the hearing and the allegations at least seven calendar days before the first hearing, to be represented by counsel, to hear and examine the evidence and witnesses and, to oppose or try to mitigate the allegations. The city official subject to the inquiry shall also have the right but not the obligation of submitting evidence and calling witnesses. Failure to comply with any of time deadlines in this section of the article shall not invalidate any otherwise valid complaint or in any way affect the power or jurisdiction of the board or the city council to act upon any complaint.

(Ord. No. 755, § 1, 4-30-2018)

Sec. 2-198. Right to appeal.

- (a) Any city official or complainant adversely affected by the findings or recommendations of the board may obtain judicial review of such decision as provided in this section.
- (b) An action for judicial review may be commenced by filing an application for a writ of certiorari in the superior court of Fulton county within 30 days after the decision of the board. The filing of such application shall act as supersedeas.

(Ord. No. 755, § 1, 4-30-2018)

Sec. 2-199. Penalty.

Any person violating any provision of this article is subject to:

- (1) Public reprimand or censure by the city council; or
- (2) Request for resignation by the vote of city council.

(Ord. No. 755, § 1, 4-30-2018)

Sec. 2-200. Implementation.

Ethical standards shall be included in the regular orientations for candidates for city council, applicants to boards and commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they have read and understood the city code of ethics and conduct.

(Ord. No. 755, § 1, 4-30-2018)

Secs. 2-201—2-224. Reserved.