

# ARTICLE III. CODE OF ETHICS

## DIVISION 1 – ETHICS RULES

### Sec. 2-40. Preamble.

All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them. (Ga. Const. art. I, § II, ¶ I). The public trust requires public servants to fulfill their duties faithfully and honestly and to subordinate any personal interest which conflicts with the public interest. A public servant is a trustee of the people and should strive to further the general welfare and not use public office in order to improve his or her own private standing. The principle policies which form the foundation of this code of ethics are:

- (1)  
The trust of citizens in their government is cultivated when individual public servants act with integrity and when the public is aware that its servants act with integrity.
- (2)  
The constitutions, laws and regulations of the United States and the State of Georgia and the ordinances of the City of Clarkston should be upheld as a de minimus standard of conduct.
- (3)  
The most effective way to eradicate unethical practices is to consistently act with the highest moral principles and to consistently react appropriately to the ethical decisions of others.
- (4)  
Elected officials should exercise sound judgement and apply ethical principles in making decisions that in any manner reflect upon their elected office.
- (5)  
All citizens should be treated with courtesy, impartiality and equality.

### Sec. 2-41. Intent.

It is the intent of this code of ethics that neither the mayor nor any member of the city council shall knowingly engage in any activity which is incompatible with the proper discharge of his or her official duties or which would tend to impair his or her judgement or actions in the performance of his or her official

duties. Furthermore, the mayor and members of the city council should avoid any action which might result in or create the appearance of the following:

- (1) Using public office for private gain.
- (2) Impeding city efficiency or economy.
- (3) Affecting adversely the confidence of the public in the integrity of those who conduct the affairs and business of the city.

**Sec. 2-42. Definitions.**

- (a) *Benefit* shall mean:
  - (1) Anything, regardless of its monetary value, perceived or intended by either the one who offers it or the one to whom it is offered, to be sufficient in value to influence the mayor or a member of the city council in the performance or non-performance of an official action; or,
  - (2) Anything, regardless of its monetary value, which, under the circumstances, a reasonably prudent person would recognize as being likely to be intended to influence the mayor or a member of the city council in the performance or non-performance of an official action.
- (b) *Employee* shall mean any person who is employed by the City of Clarkston; any person employed part-time by any operating department of the city; and any person who is employed through a contractual agreement with the city.
- (c) *Government* or *city* shall mean the City of Clarkston.
- (d) *Immediate family* shall mean spouse, child, parent or sibling of an elected city official.
- (e) *Interest* shall mean any direct or indirect financial gain accruing to the mayor or a member of the city council as a result of a contract or transaction that is, or may be, the subject of an official act or action by, or

with, the city. Interest shall not mean any direct or indirect financial gain which is remote or insignificant.

(f)

*Mayor and council* shall mean any person who is an elected city official, including any person who has been elected but whose term of office has not started.

### **Sec. 2-43. Acceptance of gifts.**

The mayor and members of the city council shall not solicit or accept, directly or indirectly, any benefit from any person, corporation or group which has, or is seeking to obtain contractual or other business or financial relationships with the city.

### **Sec. 2-44. Financial interests and conflicts of interest.**

(a)

Neither the mayor nor any member of the city council shall:

(1)

Have a direct or indirect financial interest that conflicts with his or her responsibilities and duties as a trustee of the public good.

(2)

Either directly or indirectly engage in financial transactions as a result of, or primarily relying upon, information obtained in the course of his or her office or received due to his or her position.

(3)

Use his or her official position to attempt to secure privileges that are not available to the general public.

(4)

Engage in any activity or transaction that is prohibited by law now existing or hereafter enacted which is applicable to him or her by virtue of being an elected city official.

(5)

Accept a benefit from any person, company or group which has any official business pending for decision by the city, including but not limited to applications for zoning or variance approval or contracts with the city.

(6)

Accept a benefit from any person, company or group which the mayor or member knows or has reason to believe will have official business pending for decision by the city, including but not limited

to applications for zoning or variance approval or contracts with the city within a year of the offer or acceptance of the benefit.

(b)

The mayor or a member of the city council shall be deemed to have a financial interest in transactions involving the following:

(1)

Any person in the mayor or member's immediate family.

(2)

Any person with whom a contractual relationship exists whereby the mayor or a member may receive any payment or other benefits.

(3)

Any business or other entity, for profit and not for profit, in which the mayor or a member of the city council is a director, officer, employee, agent, or shareholder.

#### **Sec. 2-45. Use of public property.**

Neither the mayor nor any member of the city council shall use city property of any kind for other than officially approved activities, nor shall he or she direct employees to use such property for other than official purposes.

#### **Sec. 2-46. Use of confidential information.**

Neither the mayor nor any member of the city council shall directly make use of, or permit others to make use of, for the purpose of furthering a private interest, city information not made available to the general public.

#### **Sec. 2-47. Coercion.**

(a)

Neither the mayor nor any member of the city council shall use his or her position in any way to coerce, or give the appearance of coercing, another person to provide any benefits to him or her or to his or her immediate family, or for those with whom the mayor or a member of the city council has business or financial ties.

(b)

Neither the mayor nor any member of the city council shall use his or her position in any way to coerce, or give the appearance of coercing, a city employee, an appointed official of the city or a contract employee to provide any benefit to him or her or to his or her immediate family.

(c)

Neither the mayor nor any member of the city council shall use his or her position in any to coerce, or give the appearance of coercing, a municipal

court judge, prosecutor, or public defender in the outcome of matters before the city court.

**Sec. 2-48. Purchases.**

Neither the mayor nor any member of the city council shall personally order any goods or services for the city. All purchases shall be made by the City Manager, with approval by the City Council as a body where appropriate.

**Sec. 2-49. City employees.**

Neither the mayor nor any member of the city council shall use a city employee for personal or private business during regular business hours or during the employee's scheduled shift. The mayor and any member of the city council shall pay just compensation to any city employee who provides services to the mayor or any member of the city council outside of city working hours and shall not receive or expect a discount or special rate.

**Sec. 2-50. Travel expenses.**

Neither the mayor nor any member of the city council shall draw per diem or expense money from the city to attend a seminar, convention, conference or similar meeting and then fail to attend that seminar, conference, convention or similar meeting.

**Sec. 2-51. Commitments.**

Neither the mayor nor any member of the city council shall act or create the appearance of acting on behalf of the council by promising to authorize or prevent any future official action of any nature.

**Sec. 2-52. Candidates.**

No person who has qualified seeking to become an elected official shall make a false or materially misleading statement or in any manner commit fraud or conceal wrong doing or withhold information regarding wrong doing in relation to any city or public business.

**Sec. 2-53. Prohibited contracts.**

The city shall not enter into any contract involving services or property with the mayor or any member of the city council or with a business in which the mayor or any member of the city council has an interest. This section shall not apply to the following contracts:

- (1) The designation of a bank or trust company as a depository for city funds.
- (2) The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest in the community for such loan;
- (3) A contract entered into in accordance with O.C.G.A § 16-10-6.

The provisions of this section shall also apply to any person or business represented by such person, who has been, within the preceding twelve-month period, an elected official of the city, unless the contract is awarded by a competitive bid.

#### **Sec. 2-54. Disclosure and actions following disclosure.**

- (a) The mayor and any member of the city council shall disclose the nature of any interest or benefit he or she has at the time such matter is presented to the mayor and council for discussion and/or action. Such disclosure shall be recorded into the minutes of the meeting and become part of the public record. Following any disclosure made pursuant to this code of ethics, the mayor or council member shall not participate in ex-parte communications with other members regarding the matter at hand.
- (b) To avoid the appearance of impropriety, after the mayor or any member of the city council is determined to have a conflict of interest or a potential conflict of interest in any matter, the mayor or that member of the city council shall leave his or her regular seat as a member of city government and not return to it until deliberation and action on the matter is completed.
- (c) Neither the mayor nor any member of the city council shall participate in the discussion, debate, deliberation or vote, or otherwise take part in the decision making process on any agenda item or any official act or action in which he or she has a conflict of interest.

## **DIVISION 2 – ETHICS PROCEDURE**

### **Sec. 2-60. Hearing Officer.**

Initial review of ethics complaints, investigations and hearings pursuant to this Article shall be conducted by a neutral hearing officer. Such hearing officer shall be a member in good standing of the State Bar of Georgia for at least the most recent five (5) years. The ethics hearing officer shall be nominated by the city manager and approved the city council. Such hearing officer shall be engaged by the city pursuant to an annual contract for services and shall be compensated for said services at a reasonable hourly rate to be determined by such contract. The ethics hearing officer shall not reside in nor have a business license with the city. The hearing officer shall be prohibited from engaging in city election political activities and from making campaign contributions to candidates in city elections during his term as ethics hearing officer and for six months prior to his appointment and shall not have any other contract or business with the city.

### **Sec. 2-61. Receipt of complaints.**

- A. All ethics complaints against an elected official shall be filed with the city clerk. The city clerk shall open a file for the complaint where all pleadings, findings and other materials related to the complaint shall be maintained. All complaints shall be under oath, shall identify the specific section of the code of ethics alleged to have been violated and shall state the facts which constitute a violation of the code of ethics. Every ethics complainant shall complete a memorandum of complaint in such form as may be prescribed or approved by the city council. Complaints may be filed only by residents of the city and any complaint filed by any other person shall be dismissed. The person filing the complaint shall swear under oath at the time of the filing that he or she is a resident of the city, state his or her residence address (post office box is not sufficient) and contact information. The complaint shall be based on personal knowledge. All document(s) referred to in the memorandum of complaint shall be attached to the complaint.
  
- B. Upon receipt of a complete complaint in proper form, the city clerk shall forward copies of the complaint to the ethics hearing officer and the official that is the subject of the complaint. The hearing officer shall be empowered to collect evidence and information concerning the complaint and to add the findings and results to the file containing such complaint. The hearing officer shall make a preliminary review of the complaint and determine whether it is unjustified, frivolous, patently unfounded, or fails to state facts sufficient to invoke the disciplinary jurisdiction of the city council. If so, the hearing officer shall dismiss the complaint by written

order. If after such review the complaint is not dismissed, the hearing officer shall schedule a full hearing on the merits of the complaint at which hearing the complainant and respondent may present evidence.

### **Sec. 2-62. Hearings.**

- A. In all hearings under this section, the burden of proof shall be on the complaining party. The Georgia Administrative Procedures Act shall control as to rules of evidence and procedure. Hearings pursuant to this section shall be open to the public and members of the public shall be permitted to record such proceedings by photo, audio and/or video means.
- B. After full hearing before the hearing officer, the hearing officer shall be empowered to enter an order dismissing the complaint if it is not supported by the evidence. Upon the conclusion of the hearing by the hearing officer, the hearing officer shall have the following options:
  - 1. Dismiss the complaint; or
  - 2. Refer the complaint to the city council if the evidence presented by the complainant establishes by a preponderance of the evidence the likelihood of a violation.
- C. Failure of the hearing officer to take either action above within 60 days of receipt of the complaint shall constitute dismissal of the complaint and no other evidence of dismissal shall be needed. In the event of dismissal of the complaint by the hearing officer, the hearing officer shall set forth the reason for dismissal in a written order to be recorded in the file related to the complaint and maintained by the city clerk. If the hearing officer refers the complaint to the city council for consideration, the hearing officer shall provide the city council with written findings of fact, conclusions of law and recommendation for punishment.

### **Sec. 2-63. City Council Action.**

If the hearing officer determines that a preponderance of the evidence supports a finding of a violation of the code of ethics, the city council shall take action on the complaint at the next regular meeting of the council after the hearing officer refers the matter to the council for action. If a majority of a quorum of the city council finds by clear and convincing evidence that a violation of the code of ethics has in fact occurred, it is authorized to punish the offender according to the punishments set forth in Section 2-71. After the city council finds an offender guilty of the violation charged, a majority of a quorum of the city council must agree to the punishment.

**Sec. 2-64. Participation by accused members prohibited.**

If the mayor or any city council member is charged with a violation of the code of ethics, he or she shall not actively participate in or preside over the discussion to determine guilt or punishment in their official capacity as an elected official. Such accused elected official shall not discuss the matter (other than in their capacity as respondent in a public meeting) with other members of the city council and shall not be allowed to vote or veto to determine his or her innocence or guilt nor his or her punishment.

**Sec. 2-65. Participation by complaining official prohibited.**

An elected official who files a complaint, initiates a complaint or investigation or otherwise actively participates in or encourages the filing of a complaint against a member shall not actively participate, preside, vote, or veto in any matter related to such complaint, other than as a witness or as the complainant to present the complaint at a hearing.

**Sec. 2-66. Statute of limitations.**

- A. No proceedings under this chapter shall be instituted or prosecuted unless the complaint is filed within six months after the commission of the act or omission complained of. The period within which a proceeding under this chapter shall be initiated does not include any period in which the alleged violation is unknown to someone directly injured by the offense and who makes the complaint or is generally unknown to the public. In all cases, the period shall not be tolled in the event the complainant knew or should have known about the alleged violation.
- B. An accused official that desires to raise a statute of limitations defense pursuant to subsection (A) of this section shall do so by written pleading. If such a defense is raised, the hearing officer shall decide whether such defense prevents the complaint and shall issue his decision in writing.
- C. No proceedings under this chapter shall be instituted or prosecuted after the earlier of:
  - 1. The expiration of the term of office, if not re-elected, of the person complained against; or
  - 2. The resignation, death, vacancy, disqualification or withdrawal from office of the person against whom a complaint is filed.

### **Sec. 2-67. Rights of accused.**

An elected official accused of violations of the code of ethics shall be entitled to due process, which shall include:

- A. To representation by counsel of his choice at his expense at all stages of these proceedings;
- B. To written notice of any complaints or charges filed against him;
- C. To copies of all pleadings filed in a case against him;
- D. To at least ten days notice prior to any hearing held by the hearing officer under this article; and
- E. To cross-examine witnesses and to call witnesses and otherwise present evidence in his defense at a hearing, unless the complaint is dismissed upon initial review by the hearing officer.

### **Sec. 2-68. Right to appeal.**

Any final decision by the city council pursuant to this code of ethics for elected officials shall be reviewable by writ of certiorari to the superior court of DeKalb County as set forth in O.C.G.A. § 5-4-1 et seq. The review by the superior court shall be limited to an inquiry of whether there was any evidence before the city council which supported the decision of the city council. Provided, however, no action of the city council refusing or failing to take action pursuant to this code of ethics shall be reviewable by the superior court.

### **Sec. 2-69. Advisory opinions.**

- A. Elected officials may request advisory opinions as to whether actual or contemplated conduct by such elected official is or would be compliant with the Code of Ethics. Such written request shall fully set forth the circumstances to be evaluated. Requests for advisory opinions shall be submitted in writing to the City Clerk, who will forward the request to the City Manager. The City Manager will then determine whether the request will be presented to the hearing officer.
- B. If the City Manager directs the hearing officer to proceed, it shall be the responsibility of the hearing officer to interpret this Code of Ethics and render an advisory opinion as to whether the actual or contemplated conduct by the elected official requesting the opinion is or would be compliant. The opinion of the hearing officer

rendered pursuant to this section shall be made available to the public to examine and for the press to publish.

- C. The hearing officer shall dismiss any complaint filed against an elected official based upon facts or grounds for which any elected official has previously submitted and received an advisory opinion from the hearing officer that renders an opinion that there is no violation of the code of ethics based upon a real or hypothetical set of circumstances submitted by the elected official.

### **Sec. 2-70. Bar against subsequent complaints.**

Where a complainant files a complaint for which the hearing officer fails to make a "referral to city council" or for which the city council fails to determine that any penalty is appropriate, the complainant shall be barred from filing any subsequent complaint against the same respondent elected official(s) for a period of six months after termination of the original complaint proceeding.

### **Sec. 2-71. Penalties.**

Any violation of this code of ethics shall subject the offender to:

- (1) Disciplinary action which may include a private reprimand, public reprimand, or impeachment; and may also include
- (2) A fine not to exceed one thousand dollars (\$1,000).