

ARTICLE III. CODE OF ETHICS

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, ~~or on behalf of the city without prior authorization from the mayor and the city council, unless otherwise provided for by local ordinance.~~ 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, ~~without prior authorization from the mayor and city council or its designee.~~

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.
- ~~(4) Contracts entered into under circumstances that constitute an emergency situation, provided that the mayor prepares a written record explaining the emergency.~~
- ~~(5) Contracts entered into with the mayor or a member of the city council, or with a business in which he or she has an interest, provided that such contract is the result of a competitive bid, disclosure of the nature of such person's interest is made prior to the time any bid is submitted, and waiver of the prohibition contemplated by the section is issued by the city clerk following disclosure.~~

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.

~~Sec. 2-55. Ethics committee.~~

~~The mayor and city council shall appoint an ethics committee consisting of three (3) persons, one of whom shall be an attorney in good standing with the State Bar of Georgia who shall serve as chairperson. All members shall serve three-year terms. The chairperson need not reside in the city but the other two (2) members must be residents of the city. Members shall be nominated by the mayor and approved by an affirmative vote of the city council. Initially, members shall be appointed in such manner as to permit one (1) term to end each year. The members of the ethics committee shall serve without compensation. Subject to budgetary procedures and requirements of the city, the city shall provide the ethics committee with such supplies and equipment as may be reasonably necessary for it to perform its duties and responsibilities. The ethics committee shall have the following duties:~~

~~(1)~~

~~To establish procedures, rules and regulations governing its internal organization and how it will conduct its affairs.~~

~~(2)~~

~~To review a complaint to determine whether the complaint is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary action or is to be considered for further investigation. It shall be empowered to dismiss those complaints which are unjustified, frivolous, patently unfounded or which fail to state facts sufficient to invoke their jurisdiction; provided, however, that a rejection of such complaint by the ethics committee shall not deprive the complaining party of any action he or she might otherwise have at law or in equity against the respondent government servant.~~

~~(3)~~

~~To investigate the complaint and to hold a hearing within thirty (30) days after the receipt of any complaint requiring further investigation and to receive and collect evidence and information concerning any complaint. The ethics committee shall conduct the hearing in accordance with the procedures and regulations it establishes, provided, however that the accused public official shall have the right to written notice of the allegations at least ten (10) days prior to any hearing, the right to be represented by legal counsel, the right to hear and examine the evidence and witnesses, to cross-examine such witnesses and the right to present evidence and witnesses in opposition or in extenuation. Unless continued with agreement of all parties, failure to hold a hearing within the specified time shall result in dismissal of the complaint as to the transaction and shall prevent refiling if a complaint arises in the same incident for at least a period of six (6) months.~~

(4)

~~The decision of the ethics committee shall be reduced to writing and served upon all parties at interest within five (5) days of reaching a decision. The ethics committee shall make recommendations to the mayor and the city council whether to invoke the disciplinary actions described in section 2-58 of this article.~~

~~The mayor and city council shall take action upon the recommendation of the ethics committee at the next regular meeting of the mayor and council following receipt of the recommendation.~~

~~Sec. 2-56. Receipt of complaints.~~

~~All complaints against the mayor or a member of the city council for a violation of this code of ethics shall be filed in writing with the city clerk within six (6) months of the date of the alleged violation. The city clerk shall thereafter refer the complaint within three (3) working days to the ethics committee in such form as the ethics committee shall prescribe. Said complaint shall be verified.~~

~~Sec. 2-57. Appeals.~~

~~Decisions of the mayor and city council pursuant to the code of ethics shall be reviewable by the Superior Court of DeKalb County upon notice in writing filed within thirty (30) days of action by the mayor and city council in response to the recommendations of the ethics committee. Said notice of appeal shall be filed with the city clerk. Review by the superior court shall be limited to an inquiry of whether there was any evidence before the mayor and city council which supported the decision of the mayor and council. Failure or refusal of the~~

~~mayor and city council to take action pursuant to this code of ethics shall be not be reviewable by the superior court.~~

Sec. 2-58. 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). ~~five hundred dollars (\$500.00).~~