

ARTICLE X. CODE OF ETHICS¹

Sec. 2-361. Purpose.

Declaration of policy. It is the policy of the City of Douglasville that the proper operation of democratic government requires that public officials be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all city officials is adopted.

This article has the following purposes:

- (1) To encourage high ethical standards in official conduct by city officials;
- (2) To establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the best interest of the city;
- (3) To require disclosure by such officials of private financial or other interests in manners affect the city; and
- (4) To serve as a basis for disciplining those who refuse to abide by its terms.

It is the intent of this article that city officials shall avoid any action, whether or not specifically prohibited by section 2-364 of this article, which might result in, or create the appearance of the following:

- (1) Using public office for private gain;
- (2) Impeding government efficiency or economy; or
- (3) Affecting adversely the confidence of the public in the integrity of the government.

The provisions of this article shall not apply to political contributions, loans, expenditures, reports or regulation of political campaigns.

(Ord. No. O-00-59, § 1, 6-5-00; Ord. No. O-2013-51, § 1, Exh. A, 11-18-13)

Sec. 2-362. Scope of persons covered.

The provisions of this article shall be applicable to the City of Douglasville mayor, all members of the city council, the board of adjustments and appeals, the zoning board, the downtown development authority, the historic preservation commission, the convention and conference center authority, the convention and visitors bureau, the development authority of the city, the personnel appeals board, the ethics board, and all advisory commissions and committee members.

(Ord. No. O-00-59, § 1, 6-5-00; Ord. No. O-2013-51, § 1, Exh. A, 11-18-13)

¹Editor's note(s)—Ord. No. O-00-59, § 1, adopted June 5, 2000, did not specifically amend this Code. Hence, its inclusion as §§ 2-361—2-365 was at the discretion of the editor to read as herein set out. See the Code Comparative Table.

Sec. 2-363. Definitions.

As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

Accident or automobile accident means an incident where a driving official's act or omission in driving or operating a city-owned vehicle contributes or may contribute to a result which includes property damage, personal injury or death.

City official or official, unless otherwise defined, means the City of Douglasville mayor, all members of the city council, the board of adjustments and appeals, the zoning board, the downtown development authority, the convention and conference center authority, the convention and visitors bureau, the development authority of the city, the personnel appeals board, the ethics board, and all advisory commissions and committee members.

Controlled substance means and includes the substances defined as "controlled substances" in the Georgia Controlled Substances Act, O.C.G.A. 16-13-20 and 16-12-21(4) as said Act shall appear from time to time.

Confirmed positive result means, after an initial test for drugs or alcohol is found to be positive, the laboratory's additional tests pursuant to laboratory testing guidelines which confirm that the initial positive indication was correct.

Driving official shall mean an official in the course of operating a city-owned motor vehicle, whether on official business or personal business.

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 or any board or commission which can or may lead to a vote or formal action by that body.

Disclose means to notify the city clerk and the mayor and city council promptly and in writing, of the fact and nature of any interest or other pertinent fact which creates a conflict of interest for a city official.

Discretionary authority means the power to exercise any judgment in a decision or action.

Entity means a sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, receivership, trust or any other entity recognized by law through which business may be conducted.

Financial interest means a known interest, either directly or through a member of the immediate family, 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) Funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000.00 in salary, bonuses, commissions or professional fees or \$5,000.00 in payment in goods, products or nonprofessional services;
- (3) The person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity other than a corporate entity owned or created by the city council; or
- (4) The person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000.00 or more. Financial interest in real property means an interest in real property which is an equitable or legal ownership with a market value of \$5,000.00 or more.

Immediate family means spouse, mother, father, brother, sister, son or daughter of any city official.

Medical review officer means a properly licensed physician who reviews and interprets the results of drug tests and evaluates those results together with medical history and any other relevant biomedical information to confirm positive results.

Thing of value means any item, consideration, or benefit other than those exempted under O.C.G.A. § 16-10-2(a)(2). Thing of value shall not include the following:

- (1) Food or beverage consumed at a single meal or event;
- (2) Legitimate salary, benefits, fees, commissions, or expenses associated with a recipient's non-public business, employment, trade, or profession;
- (3) An award, plaque, certificate, memento, or similar item given in recognition of the recipient's civic, charitable, political, professional, or public service;
- (4) Food, beverages, and registration at group events to which all members of the council, board or commission are invited;
- (5) Actual and reasonable expenses for food, beverages, travel, lodging, and registration for a meeting which are provided to permit participation or speaking at the meeting;
- (6) A commercially reasonable loan made in the ordinary course of business;
- (7) Any gift with a value less than \$100.00;
- (8) Promotional items generally distributed to the general public or to city officials;
- (9) A gift from a member of the city official's immediate family; or
- (10) Food, beverage, or expenses afforded city officials, members of their immediate families, or others that are associated with normal and customary business or social functions or activities.

Use or abuse with regard to drugs, controlled substances or alcohol shall mean consumption while driving a city-owned vehicle, or so recently before driving a city-owned vehicle that it is less safe for the official to drive.

(Ord. No. O-00-59, § 1, 6-5-00; Ord. No. O-2013-51, § 1, Exh. A, 11-18-13; Ord. No. O-2014-45, § 1, 8-18-14)

Sec. 2-364. Standards of conduct.

- (a) Elected officials and appointed officials of the city are trustees and servants of the residents of the city and shall act in a fiduciary capacity for the benefit of such residents.
- (b) *Conflict of interest.* No elected official or appointed official of the city or any agency or political entity to which this code applies shall knowingly:
 - (1) Engage in any business or transaction or have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of that person's official duties or which would tend to impair the independence of that person's judgment or action in the performance of that person's official duties;
 - (2) Engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of that person's official duties or would tend to impair the independence of that person's judgment or action in the performance of that person's official duties;
 - (3) Disclose confidential information, including information obtained at meetings which are closed pursuant to the O.C.G.A. chapter 14 of title 50, concerning the property, government, or affairs of the governmental body by which that person is engaged without proper legal authorization or use such information to advance the financial or other private interest of that person or others;
 - (4) Solicit or accept anything of value, (and for the purpose of this section, the term "thing of value" shall have the meaning provided by O.C.G.A. section 16-10-2, as now enacted or hereafter amended)

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- whether in the form of service, loan, thing, or promise, from any person, firm, or corporation which to that person's knowledge is interested, directly or indirectly, in business dealings with the governmental body by which that person is engaged; provided, however, that an elected official who is a candidate for public office may accept campaign contributions and services in connection with any such campaign;
- (5) Represent other private interests in any action or proceeding against this city or any portion of its government; or
 - (6) Vote or otherwise participate in the negotiation or in the making of any contract with any business or entity in which that person has a financial interest.
- (c) *Disclosure.* Any elected official or appointed official who shall have any financial interest, directly or indirectly, in any contract or matter pending before or within any department of the city shall disclose such interest to the city council. The mayor or any councilmember who has a financial interest in any matter pending before the city council shall disclose such interest and such disclosure shall be entered on the records of the city council, and that person shall disqualify himself or herself from participating in any decision or vote relating thereto. Any elected official or appointed official who shall have any financial interest, directly or indirectly, in any contract or matter pending before or within such entity shall disclose such interest to the governing body of such agency or entity.
- (d) *Use of public property.* No elected official or appointed official of the city or any agency or entity to which this charter applies shall use property owned by such governmental entity for personal benefit, convenience, or profit except in accordance with policies promulgated by the city council or the governing body of such agency or entity.
- (e) *Contracts voidable and rescindable.* Any violation of this section which occurs with the knowledge, express or implied, of a party to a contract or sale shall render such contract or sale voidable at the option of the city council.
- (f) *Ineligibility of elected official.* Except where authorized by law, neither the mayor nor any councilmember shall hold any other elective or compensated appointive office in the city or otherwise be employed by said government or any agency thereof during the term for which that person was elected. No former councilmember and no former mayor shall hold any compensated appointive office in the city for which compensation (other than reimbursement for actual expenses) is paid until one year after the expiration of the term for which that person was elected.
- (g) *Political activities of appointed board members and employees.* No city employee, and no appointed member of any board, commission or authority created by or exclusively for the City of Douglasville, shall continue to serve in such employment or appointment after qualifying as a candidate for election: (1) for any public office which is inconsistent, incompatible, or in conflict with his continuing duties as a city employee or appointed board member, or (2) for the office of the city's mayor or councilmember. Such determination of inconsistency, incompatibility, or conflict shall be made by the mayor and city council either immediately upon election or at any time such conflict may arise.
- (h) *Penalties for violation.*
- (1) Any elected official or appointed official who knowingly conceals such financial interest or knowingly violates any of the requirements of this section shall be guilty of malfeasance in office or position and shall be deemed to have forfeited that person's office or position.
 - (2) Any elected official or appointed official of the city who shall forfeit an office or position as described in paragraph (1) of this subsection shall be ineligible for appointment or election to a position in the city government for a period of three years thereafter.

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- (i) *Improper use of city communication devices.* No city official shall make use of city-owned computers or city-owned electronic communication devices in a manner that: (i) is hateful, bullying, or harassing toward any person or group, and (ii) is expressly based on race, religion, color, age, national origin, gender, sexual orientation, or disability; the penalties for violation of this subsection shall be limited to censure, written or oral reprimand, and request for resignation.
- (j) *Improper use of social media.* No city official shall make use of electronic social media in a manner that: (i) identifies the official by association with the city and purports to be in the person's official capacity with the city, and (ii) is hateful, bullying, or harassing toward any person or group, and (iii) is expressly based on race, religion, color, age, national origin, gender, sexual orientation, or disability; the penalties for violation of this subsection shall be limited to censure, written or oral reprimand, and request for resignation.
- (k) *Unearned per diem or expenses.* No city official shall draw per diem or expense monies from the city to attend a seminar, convention, or conference and then fail to attend some portion of the seminar, convention, or conference without refunding the per diem or expense monies to the city.
- (l) *Use of public employees.* No city official shall use the attorney or attorneys who are employed or appointed by the city for personal or private business without paying just compensation. No city official shall use his superior position to request or require an employee to:
- (1) Do clerical or other work on behalf of his family, business, social, church, or charitable or fraternal interests;
 - (2) Purchase goods and services to be used for personal, business, or political purposes; or
 - (3) Work for him personally without offering just compensation.
- (m) *Special favors for others.* No city official shall grant or make available to any person or entity any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large. No city official shall ask or require any city employee to grant or make available to any person or entity any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large or to exercise any discretionary authority except in accordance with established law.
- (n) *Open meetings.* Meetings of the city council and all other city boards, commissions, and agencies shall be conducted in accordance with the O.C.G.A., title 50, chapter 14, as amended, and title 36, chapter 80, section 1, as amended, as it applies to municipalities.
- (o) *Use or abuse of drugs, controlled substances or alcohol while operating a city-owned vehicle.*
- (1) *Drug and alcohol use prohibited while driving.* Alcohol or controlled substance use by a driving official shall be prohibited. Abuse of prescribed drugs by a driving official shall be prohibited. This shall include the use or possession of controlled substances, the abuse of prescription medications, the possession of prescription medications by anyone other than the person for whom the medication was prescribed, and the use or abuse of alcohol, while driving a city-owned vehicle.
 - (2) *Prescription drug use.* Any official using prescription medication while driving or just before driving a city-owned vehicle shall do so in strict accordance with medical directions. It is the official's responsibility to notify the prescribing physician of the driving the official is planning to do and to ensure that the physician approves the use of the prescription medication while the official is driving. The abuse and/or inappropriate use of legally prescribed drugs, including driving when the official knows or should know that he is potentially impaired due to prescription drug use, shall be prohibited and shall be deemed a violation of this policy.
 - (3) *Testing required after an accident.* The occurrence of an automobile accident resulting in property damage, bodily injury or death, shall constitute reasonable cause for drug and alcohol testing of a

driving official, promptly after the accident. A driving official shall take a drug and alcohol test whenever, while driving a city-owned vehicle, the driving official is involved in an automobile accident resulting in property damage, bodily injury or death. Such testing shall be required regardless of whether there is other evidence of use of alcohol or drugs by the driving official.

Immediately after such an accident, the subject driving official shall contact the city manager, who will arrange for prompt testing. Additionally, it shall be the duty of every official who witnesses an accident where another official is driving a city-owned vehicle, to promptly notify the city manager of any such accident.

Driving officials shall, at the time of testing, provide the testing laboratory with a list of those prescriptions and over-the-counter medications the official recently has used. The list of medications shall be kept confidential until there has been a test result. The list of medications shall be disclosed only to the medical review officer, who will determine whether the positive result was due to the lawful and medically approved use of any of the listed medications.

- (4) *Consent for testing.* Before a drug and/or alcohol test is administered, or after a test for convenience, a driving official involved in an automobile accident will be asked to sign a consent form authorizing the test and permitting release of test results to the City of Douglasville, the medical review officer and to the public generally. The consent form shall provide a space for the official to acknowledge that he has been notified of the requirements of this policy. If the driving official is not conscious or is unable to consent for other reasons after an accident and immediately prior to testing, then the driving official will be deemed to have consented to testing by virtue of having elected to drive the city-owned vehicle.
- (5) *Refusal to consent or to test.* An official who refuses to sign the required consent form or to submit to a drug and/or alcohol test as required shall be deemed to have violated this policy. An official who fails to appear at the designated collection site to submit to a required drug and/or alcohol test when so directed by the mayor, the mayor pro tempore or the city manager shall be deemed to have refused to submit to the test shall be deemed to have violated this policy. A "no show" shall include any attempt to adulterate a test sample or otherwise frustrate, impair, or otherwise impede the testing process.
- (6) *Testing laboratory guidelines.* All testing procedures shall be administered and accounted for by an approved laboratory and/or medical facility operating in compliance with the National Institute of Drug Abuse (NIDA) or College of American Pathologists (CAP) guidelines.

Urine samples shall be provided in a private restroom stall or similar enclosure so that officials may not be viewed while providing the sample, unless circumstances require monitored testing. Outer garments, bags, briefcases, purses, or other containers will not be permitted into the test area. The water in the commode shall be colored with dye to protect against dilution of test samples. If the drug and/or alcohol test is to be conducted using a specimen other than urine (e.g., hair, saliva, blood, etc.), the sample shall be collected in a manner consistent with the privacy of the official and the need to minimize the possibility of adulteration and/or mislabeling of the sample.

Whenever an initial test for drugs and alcohol is found to be positive, the laboratory will then carry out additional tests pursuant to laboratory testing guidelines to confirm that the initial positive indication was correct. If the second procedure also indicates the presence of drugs or alcohol, the test result is considered a confirmed positive result.

- (7) *Results of testing.* Any results of an official's drug and alcohol screening shall be non-confidential. A confirmed positive result for use or abuse of controlled substances, drugs or alcohol for a driving official shall be evidence of violation of this article.
- (8) *Violations.* Each of the following shall be a violation of this article:

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- a. The use or abuse of controlled substances, drugs or alcohol by a driving official, without regard to whether such conduct results in an automobile accident;
 - b. Failure by a driving official to promptly report an automobile accident in which the driving official was involved;
 - c. Failure by a witnessing official to promptly report an automobile accident in which a driving official was involved;
 - d. Failure by a driving official to submit to and cooperate with drug and alcohol testing after an accident; and
 - e. Failure by a driving official to sign the consent form for drug and alcohol testing after an automobile accident in which the driving official was involved.

(Ord. No. O-00-59, § 1, 6-5-00; Ord. No. O-02-28, § 1, 7-1-02; Ord. No. O-04-36, § 1, 8-16-04; Ord. No. O-2013-51, § 1, Exh. A, 11-18-13; Ord. No. O-2014-45, § 1, 8-18-14; Ord. No. O-2021-12, § 2, 4-19-21)

Sec. 2-365. Administration.

- (a) *Ethics board.* The ethics board shall consist of three persons: a post one member appointed by the mayor, a post two member appointed by the council, and a post three member appointed by the two members above named. The post one and post two members shall each serve four-year terms; the post three member shall serve an initial term of three years for the appointment prior to April 1, 2014, and at the end of such initial term, the post three member shall serve four-year terms. The members of the ethics board shall select one of their number to serve as chairman for a term ending each year on December 31. The chairman shall be a voting member in all respects. All members shall be residents of the city. Members shall serve until expiration of their appointed term, and may be reappointed, but shall not serve after expiration of their term and before a successor is appointed.
- (b) *Standing and time for filing complaints.* Any complaint alleging a violation of this article shall be filed within 90 days of the occurrence of the violation alleged. A complaint alleging a violation of this article may be filed only by:
 - (1) An individual who is at least 18 years old and a resident domiciled in the city at the time of filing; or
 - (2) An applicant who has sought any decision or exercise of discretionary authority by the city within the 90 days immediately preceding filing of the complaint.
- (c) *Receipt of complaints; attorney representation.* All complaints against city officials shall be type-written and signed and verified by the applicant, and filed with the city clerk. All complaints shall be filed and signed by an attorney licensed to practice law in Georgia and representing the applicant. All complaints shall state, clearly and with particularity, the sections and subsections of this article alleged to have been violated, the name of the city official alleged to have violated this article, and substantially all facts and sources of information pertinent to the allegations. The applicant shall be represented by a licensed Georgia attorney, at his own cost, at all stages of the complaint process; where the applicant's attorney withdraws from representation of the applicant, the applicant shall cause a replacement attorney to file a written notice of representation for the applicant within five business days after withdrawal; failure to comply with this requirement shall be grounds for dismissal of the complaint. The respondent city official may be represented by an attorney at law, but may not be represented by the city attorney nor any attorney employed by the city.
- (d) *Processing of complaints.* Upon receipt of a complaint in proper form, the city clerk shall forward a copy of the same to the mayor, to all council members, to the respondent city official(s) alleged to have violated this article, and to each member of the ethics board, and its chairman shall schedule a hearing date for the ethics

board within 30 days of dispatch of the city clerk's notice, for which the respondent city official shall be given at least five days' advance notice. All meetings of the ethics board other than deliberations shall be subject to the provisions open meetings act, and the city clerk shall facilitate the ethics board in perfecting all necessary notices and postings for such purpose.

- (e) *Hearing of the ethics board.* The ethics board shall review the complaint and hold a hearing and such deliberations as are necessary and advisable to investigate the matter and to render a finding. The ethics board shall be empowered to conduct preliminary probable cause investigations, and to dismiss any complaint without a full hearing where there is no reasonable evidence to go forward, or the ethics board may proceed to full hearing initially and take evidence. The ethics board may seek and receive legal assistance from the city attorney. Any applicant shall have the right to be present at the public hearing upon the matter. Any respondent city official shall have the right to be present at all public hearings upon the matter, to be represented by legal counsel, to cross-examine witnesses and to present evidence to the board. The ethics board shall disregard hearsay evidence, except as permitted by law, and witnesses shall give testimony under oath.
- (f) *Decisions of the ethics board.* Upon completion of its investigation of a complaint and deliberation thereon, the ethics board shall render its decision, in writing and signed by all members, to the city clerk. In no event shall the written decision of the ethics board be rendered later than 20 calendar days after the initial hearing date concerning the matter scheduled by the chairman. If the board finds, by a preponderance of the evidence, that allegations of the complaint have been sustained and that a violation of the standards of conduct of this article has occurred, then the ethics board shall forward to mayor and city council a written "finding of violation," which shall specify the section and subsection of this article violated and the conduct of the respondent city official(s) which caused the violation, and shall include a recommendation for any appropriate sanctions against the city official(s) found to be in violation. If the board fails to make a "finding of violation" by a preponderance of the evidence, that allegations of the complaint have been sustained and that a violation of the standards of conduct of this article has occurred, then the ethics board shall forward to mayor and city council a "finding of no violation," and the matter shall be dismissed. Provided, however, that a "finding of no violation" on any complaint by the ethics board shall not deprive the complaining party of any action he might otherwise have at law or in equity against the respondent city official. The city clerk shall notify the mayor, all council members and the respondent city official of any decision of the ethics board.
- (g) *Penalty imposed.* Upon receipt by the city clerk of a written "finding of violation," the mayor and city council shall schedule the matter for a public hearing upon the issue of sanctions. The mayor and city council may, in their sole discretion, make such inquiry and take such evidence upon the matter as they deem relevant to the issue of an appropriate sanction, and thereafter shall either impose a penalty authorized by this article or make a finding that, notwithstanding the "finding of violation" by the ethics board, no penalty is appropriate. Any respondent city official may make a statement or offer evidence to the mayor and council relevant to the issue of an appropriate penalty. The mayor shall have no vote, except in the case of a tie vote by the council. No respondent city official shall vote or participate in the process for imposition of sanctions with regard to any "finding of violation" for which he or she has been found to be in violation.
- (h) *Penalties available.* Any persons violating any provisions of this article are subject to:
 - (1) Censure;
 - (2) Written or oral reprimand;
 - (3) A fine greater than \$100.00 but less than \$500.00;
 - (4) Request for resignation; or
 - (5) Removal from office pursuant to Section 5.16 of the city charter.

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- (i) *Right to appeal.* Any final decision by the mayor and city council pursuant to this article for city council members or the mayor shall be reviewable by the Superior Court of Douglas County. The review by the superior court shall be limited to an inquiry of whether there was any evidence before the ethics board which supported the decisions of the ethics board and the mayor and city council. Provided however, no failure or refusal of the ethics board or the mayor and council to take action pursuant to this article shall be reviewable by the superior court.
 - (j) *Bar against subsequent complaints.* Where a complainant files a complaint for which the ethics board fails to make a "finding of violation" or for which the mayor and council fail to determine that any penalty is appropriate, the complainant shall be barred from filing any subsequent complaint against the same respondent city official for a period 12 months after termination of the original complaint proceeding. Where a complainant files a complaint for which the ethics board fails to make a "finding of violation" or for which the mayor and council fail to determine that any penalty is appropriate, the complainant shall be barred from filing any subsequent complaint against the same respondent city official alleging substantially the same facts and circumstances as the basis for the subsequent complaint.
 - (k) *Respondent's attorney fees.* For any complaint the city shall pay reasonable attorney fees not to exceed \$5,000.00 for representation and defense of the respondent city official before the ethics board and before the mayor and council. Defense attorney fees up to \$5,000.00 shall be approved or disapproved as to reasonableness by the city attorney; reasonable defense attorney fees in excess of \$5,000.00 may be approved only by the mayor and council, in their sole discretion, upon request of the respondent city official.
 - (l) *Additional regulations.* 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 article. This article shall be interpreted to supplement, and not replace, said provisions of state law, the charter, any other ordinance, resolution or act now existing.

(Ord. No. O-00-59, § 1, 6-5-00; Ord. No. O-04-36, §§ 2, 3, 8-16-04; Ord. No. O-2013-51, § 1, Exh. A, 11-18-13; Ord. No. O-2021-12, § 3, 4-19-21)

Secs. 2-366—2-380. Reserved.