

**CITY OF DUNWOODY
OCTOBER 1, 2008
COUNCIL MEETING MINUTES**

The Mayor and Council of the City of Dunwoody held their initial council meeting on Wednesday, October 1, 2008 at 7:00pm. The Council Meeting was held in the Media Center at the Peachtree Middle School located at 4664 North Peachtree Road, Dunwoody, Georgia 30338. Present for this meeting were the following:

District 1, Post 1	Denis Shortal, Council Member
District 3, Post 3	Tom Taylor, Council Member
At Large, Post 4	Robert Wittenstein, Council Member
At Large, Post 5	Danny Ross, Council Member
At Large, Post 6	John Heneghan, Council Member
	Ken Wright, Mayor

Mayor Ken Wright called the meeting to order. A Roll Call was taken and Mayor Wright asked for any general announcements from council. There being no announcements he asked everyone to stand for the Pledge of Allegiance.

MINUTES: No Minutes needed approving.

AGENDA APPROVAL: Mayor Wright asked council for any changes to the presented agenda. Council Member Taylor made a motion to amend the agenda by deleting Agenda Item 11-*Discussion of the contract with Boyken International for implementation of City Services* and to delete Agenda Item 12-*Consideration of approval of resolution approving and adopting the contract with CH2MHill for implementation of City Services* and place these on the council's next Work Session. Council Member Wittenstein seconded the motion. The motion carried unanimously.

Council Member Heneghan made a motion to add an Agenda Item #13 as *Discussion of City of Dunwoody Website*. Council Member Taylor seconded the motion. The motion carried unanimously.

Mayor Wright asked for a motion to approve the agenda as amended. Council Member Wittenstein motioned to approve tonight's agenda as amended. Council Member Ross seconded. The motion carried unanimously.

PUBLIC COMMENT: Mayor Wright reminded everyone of the time limit for public comment. The Public Comment Statement was read into the record outlining the time limit of three (3) minutes for public comment with a maximum time for public comment period being thirty (30) minutes. Mayor Wright called for any Public Comment

Steve Ludwick asked for an agenda, there being no agenda available, he referenced the agenda he reviewed on line and voiced concern to the council regarding the applications

for positions and/or appointments including contract negotiations and the lack of disclosure and would like more information as to what they are proposing to do for the City of Dunwoody. He is concerned the CH2M price is too high and just would like more information.

Yvonne Williams congratulated the council and presented information to them about the Perimeter Community Improvement District (CID Program) which is a beautification program, including maintenance, tree replacement, medians etc. This program will be featured in an upcoming issue of Georgia Trend Magazine and she asked to be on a future Council Agenda for a more formal presentation.

Brian Sims asked council for openness and transparency on the hiring process and council to be wise in their decision, the council has two (2) years to set up their system to take their time, suggesting zoning, road, parks and traffic to be considered first. In addition Mr. Sims would like to receive documents electronically with no fees and/or reduced fees and to limit the time of contracts and watch the monies closely and addressed the possibility of donating website domain names.

Bob Dallas state he looks forward to working with council as he has, over the past few years, he asked council to consider closely their future vision for the city, i.e. parks, adding to our amenities, the hours for operation as it is an important part of the development to the area and how to create Dunwoody as the place to live.

Brett Hensley addressed concern that this council has to quickly sign contracts to provide services for the city, was concerned about any pitfalls, what services, what our expenses will be. He asked if council by charter is required to accept all the services from Dekalb County at once or is there an opportunity to accept the requirements at a slower pace.

Doug Thompson asked council to make the right decision when considering the CH2M privatization contract, he urged council to take the time necessary to understand the contract, not to rush, but make the correct decision. In addition, Mr. Thompson addressed the council regarding the cost of operating our own police department with Dekalb County currently charging approximately \$500,000 monthly the city could do it for about \$300,000 and that would save us monies.

There being no further public comments, Mayor Wright asked for clarification on the previously amendment to the Agenda. Council Member Taylor made a motion to amend the agenda to consider Agenda (duplicate numbering) Item I: *Discussion of City Implementation options* be moved to the next Work Session. Council Member Wittenstein seconded the motion. The motion carried unanimously.

ADOPTION OF CITY COUNCIL RULES AND PROCEDURES: Council Member Shortal made a motion to approve the Resolution to adopt the Rules and Procedures for City Council Meetings and Public Hearings. Council Member Wittenstein seconded the motion. Under discussion, Council Member Wittenstein made a motion to amend Section 6 *to delay the selection of a Mayor Pro Tem until the full council is seated.*

Council Member Heneghan seconded the amendment. Further discussion was held on the start date of the two term; using October 1 or December 1 as the first date. Councilor Bill Riley suggested December 1st would be the appropriate date to start the two year term due to the timing of the election process and the charter. Mayor Wright called for a vote on the amended motion. The amendment carried unanimously. Mayor Wright asked for any further discussion on the main motion, there being no further discussion, he called for a vote. The motion carried unanimously. **(RESOLUTION 2008-10-01)**

APPOINTMENT OF CITY CLERK: Brian Anderson presented the Resolution to appoint the Acting City Clerk. Council Member Wittenstein made a motion to approve Resolution to appoint an Acting City Clerk with the substitution of Joan Jones in place of Christina Rowland. Council Member Taylor seconded the motion. The motion carried unanimously. **(RESOLUTION 2008-10-02)**

APPOINTMENT OF CITY ATTORNEY: Brian Anderson presented the Resolution to appoint the Acting City Attorney. Council Member Shortal made a motion to approve the Resolution to appoint the Acting City Attorney that names Brian Anderson, Esquire as Acting City Attorney. Council Member Taylor seconded the motion. Under discussion, Council Member Wittenstein stressed there is a task force that is currently taking/reviewing applications for a city attorney, this information will be reported to the Mayor who will come back to the council with his recommendation; however, the city needs an interim attorney at this time until a permanent City Attorney can be appointed. Council Member Shortal reiterated this is a temporary appointment. Mayor Wright called for any further discussion. There being no further discussion, the motion carried unanimously. **(RESOLUTION 2008-10-03)**

ADOPTION OF CITY SEAL: Brian Anderson presented the Resolution to Adopt the City Seal for the City of Dunwoody which had been presented at a previous work session. Council Member Ross made a motion to approve the Resolution to adopt the City Seal for the City of Dunwoody. Council Member Shortal seconded. Under discussion, Council Member Ross explained this has been approved by all parties, he thanked the Dunwoody Perseveration Trust that worked on the development of this city seal; this is the icon of Dunwoody. Council Member Shortal voiced agreement with Council Member Ross. The motion carried unanimously. **(RESOLUTION 2008-10-04)**

APPOINTMENT OF LEGAL ORGAN(S): Council Member Wittenstein made a motion to approve the Resolution to designate the Dunwoody Crier and the Atlanta Journal Constitution as the newspapers for official publication and notices. Council Member Ross seconded the motion. Under discussion, Council Member Shortal asked for confirmation this meets all the legal requirements and the number of publications. Council Member Heneghan outlined the council has been given the cost of ad rates included in the package so council does have a sense of the cost involved. Acting City Attorney Anderson explained why both these publications, (one weekly and one daily) are being considered and explained the requirements for the county legal organ, however the requirements for municipal legal organ is not specified so this resolution will meet the legal requirements. Council Member Heneghan explained information will be posted on

city websites, once developed, will have a section regarding public notices as policy. The motion carried unanimously. (**RESOLUTION 2008-10-05**)

ADOPTION OF REGULAR COUNCIL MEETING SCHEDULE: Brian Anderson reviewed this resolution which outlines the council will meet the second and fourth Monday of each month, with a Work Session held on the third Monday of each month. Should these dates fall on a national holiday; the council will meet the following Tuesday. Council Member Shortal made a motion to approve Resolution establishing a Regular City Council Meeting Schedule. Council Member Ross seconded. Under discussion council agreed that more meetings will be needed in the beginning and the issue of using Peachtree Middle School does include having to pay the cost of overtime for the custodial staff and running into times when the school is closed for the holidays, teachers work days or whenever the school is not in session. Council Member Wittenstein made a motion to amend the motion to include a standard meeting time of 6:30pm. Council Member Ross seconded. Council Member Heneghan voiced concern this time may limit public attendance. Council Member Wittenstein amended his amendment, seconded by Council Member Ross to change the time to 7:00pm. The amendment carried unanimously. Mayor Wright called for any further discussion on the main motion. The motion carried unanimously. (**RESOLUTION 2008-10-06**)

ADOPTION OF VISIONS AND MISSIONS: Council Member Ross made a motion to approve the Resolution adopting the City of Dunwoody Mission Statement, Vision and Values Statement as guidelines which had been discussed by council at their Work Session. Council Member Wittenstein seconded. The motion carried 5-1 with Council Members Taylor, Wittenstein, Ross, Heneghan and Mayor Wright voting in favor of the motion and Council Member Shortal opposing the motion. (**RESOLUTION 2008-10-07**)

CONTINUATION OF LAW DURING TRANSITION: The First Read of the Ordinance providing for the Continuation of Ordinance and Law during the transition period legislatively established for the City of Dunwoody, Georgia and the Adoption of Ordinances by the City of Dunwoody, Georgia was held. Formal presentation will be given at the second reading and prior to adoption. (**ORDINANCE 2008-10-01-First Read Only**)

CHAPTER 1, GENERAL PROVISIONS: The First Read of the Ordinance to Adopt and Approve Chapter 1, General Provisions and providing for Inclusion and Identification in the Code of Ordinances for the City of Dunwoody, Georgia to be referenced in the future as Chapter 1 (General Provisions) as attached hereto and incorporated herein was held. Formal presentation will be given at the second reading and prior to adoption. (**ORDINANCE 2008-10-02-First Read Only**)

CHAPTER 2, ADMINISTRATION: The First Read of the Ordinance to Adopt and Approve Chapter 2, Administration, providing for Inclusion and Identification in the Code of Ordinances for the City of Dunwoody, Georgia to be referenced in the further as Chapter 2 (Administration) as attached hereto and incorporated herein was held. Formal presentation will be given at the second reading and prior to adoption. (**ORDINANCE 2008-10-03-First Read Only**)

Councilor Bill Riley reviewed the process on how to make changes/amendments to these ordinances prior to adoption.

PUBLIC COMMENT: No public comments at this time.

Mayor Wright asked for discussion on the added agenda item, discussion of the website. Council Member Heneghan asked for clarification with the lack of a city website at this time, other options for public notices to help get information out to the public. The Dunwoody Home Owners Association, the Dunwoody Crier, posting on the Dunwoody Preservation Trust Website will be notified of the meetings. Council Member Heneghan stated the city should use the .gov as the domain name for the city. Mayor Wright asked this be placed on the next work session agenda for further discussion.

Mayor Wright called for any other business. General discussion was held on the next meeting date. As the calendar calls for the next scheduled meeting be held on a holiday, followed by the October 14th Elections, Mayor Wright announced the next meeting will be Monday, October 6th at 7:00pm as a Special Called Meeting here at Peachtree Middle School. This will be a Work Session, with the next regular council meeting to be held Tuesday, October 7th at 7:00pm held here at Peachtree Middle School.

There being no further business, Council Member Heneghan motioned to adjourn, seconded by Council Member Ross. The motion carried unanimously. The meeting was adjourned.

Approved:

Ken Wright, Mayor

Attest:

Joan C. Jones, Acting City Clerk

(Seal)

AN ORDINANCE PROVIDING FOR THE CONTINUATION OF ORDINANCE AND LAW DURING THE TRANSITION PERIOD LEGISLATIVELY ESTABLISHED FOR THE CITY OF DUNWOODY, GEORGIA, AND THE ADOPTION OF ORDINANCES BY THE CITY OF DUNWOODY, GEORGIA.

BE IT ORDAINED by the City Council for the City of Dunwoody, Georgia, while in regular session on _____ at ____ p.m. as follows:

SECTION 1. That the General law of the State of Georgia provides for a transition period, not to exceed twenty-four (24) months, for the orderly transition of governmental functions from the county to a new municipal corporation during which the new municipal corporation can assume individual governmental functions as authorized by law. O.C.G.A. §36-31-8; and,

SECTION 2. That the Charter Act for the City of Dunwoody, Georgia (SB 82, General Assembly 2008) provides for the transition period beginning December 1, 2008, and ending at midnight on November 30, 2010, during which transition period, until assumed by the City, Dekalb County shall continue to provide within the territorial limits of Dunwoody all government services and functions which Dekalb County provided in that area as of the date of enactment of the Charter for Dunwoody, except as is otherwise provided by the Charter; and,

SECTION 3. That accordingly, it is hereby declared by the City Council for the City of Dunwoody that until: (1) repealed by the City Council by specific reference to the law or Ordinance of the Code of Dekalb County, or (2) the City Council adopts regulations by the valid passage and adoption of an ordinance by the City Council affirmatively replacing specific Dekalb County ordinances in conformance with the Charter of the City of Dunwoody, Georgia, and O.C.G.A. §36-31-8, all existing laws and ordinances of Dekalb County, in effect as of December 1, 2008 shall continue in full force and effect within the territorial limits of the City of Dunwoody for the term of the Charter transition period, or until otherwise repealed or replaced as contemplated herein. Subject to the following exception, to wit: as general law of the State of Georgia prohibits a local government from taking action resulting in a zoning decision without compliance with statutory requirements (O.C.G.A. Title 36, Chapter 66) the zoning ordinances of Dekalb County as relating to zoning procedures to be applied are specifically not continued as a part of the ordinances of the City of Dunwoody; and,

SECTION 4. The City Council hereby affirmatively adopts and enacts all of those provisions of the Dekalb County, Georgia Code of Ordinances, which are not repealed or replaced by those certain Ordinances of the City of Dunwoody, Georgia which are enacted contemporaneously herewith; and,

For the purposes of this adoption, and is consistent based upon the text of the ordinance, any reference contained in the Dekalb County Code of Ordinances to: (1) Dekalb County, Georgia shall be deemed to refer to the City of Dunwoody, Georgia; (2) the Dekalb County Board of Commissioners shall be deemed to refer to the Mayor and City Council

of Dunwoody, Georgia; (3) the County Manager shall be deemed to refer to the interim and/or permanent City Manager of Dunwoody, Georgia. Further, any duties or functions carried out by boards, authorities, commissions, and/or other entities in the Dekalb County Code of Ordinances shall be carried out by the Mayor and Council of Dunwoody, Georgia, or their duly authorized designees. Further, any other reference to any staff member or staff function set out in the Dekalb County Code of Ordinances shall be deemed to be the responsibility of the closest corresponding staff member or department in the City of Dunwoody, or the interim and/or permanent City Manager of Dunwoody, Georgia, or his/her duly authorized designees. It is the intent of this provision that as to the names, designations of persons or entities, and construction as to other issues, the existing Dekalb County Code be construed in a manner to allow for appropriate implementation as it applies within the City of Dunwoody.

Further, the City Clerk is directed forthwith to maintain a copy of the Official Code of Dekalb County, Georgia, as it exists on December 1, 2008 in the Office of the City Clerk of Dunwoody and to make the same available for public inspection upon request.

SECTION 5. That this Ordinance shall become effective on December 1, 2008.

SECTION 6. In the event that any one or more of the provisions contained in this ordinance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect any other provisions of this ordinance, but this ordinance shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ORDAINED this the ____ day of _____, 2008.

Approved:

Ken Wright, Mayor

Attest:

Approved as to Form:

Joan C. Jones, Acting City Clerk
Seal

Brian Anderson, Acting City Attorney

**AN ORDINANCE TO ADOPT AND APPROVE CHAPTER 1, GENERAL PROVISIONS, AND
PROVIDING FOR INCLUSION AND IDENTIFICATION IN THE CODE OF ORDINANCES
FOR THE CITY OF DUNWOODY, GEORGIA TO BE REFERENCED IN THE FUTURE AS
CHAPTER 1 (GENERAL PROVISIONS) AS ATTACHED HERETO AND INCORPORATED
HEREIN**

WHEREAS: The Ordinance relating to Chapter 1, General Provisions is hereby adopted and approved; and is attached hereto as if fully set forth herein; and,

WHEREAS: This Ordinance shall be designated as Chapter 1 of the Code of Ordinances of the City of Dunwoody, Georgia; and

WHEREAS: This Ordinance shall become effective on December 1, 2008.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF DUNWOODY HEREBY ORDAINS that Chapter 1, General Provisions is hereby adopted and approved as part of the Code of Ordinances for the City of Dunwoody, Georgia. Any ordinances in conflict with this Ordinance are hereby repealed.

SO ORDAINED AND EFFECTIVE this the _____ day of _____, 2008.

Approved:

Ken Wright, Mayor

Attest:

Joan C. Jones, Acting City Clerk
(Seal)

Approved as to Form and Content:

Brian Anderson, Acting City Attorney

Chapter 1: General Provisions

Article 1: Code Established

Section 1: City Ordinance Defined

The Ordinances embraced in the following chapters, articles and sections shall constitute and be designated "Code of Ordinances of the City of Dunwoody, Georgia" and may be so cited.

Article 2: Definitions and Rules of Construction

Section 1: Applicability.

In the construction of this Code and of all ordinances, the rules of construction and definitions set out in this section shall be observed. The rules of construction and definitions set out in this section shall not be applied to any section of this Code which contain any express provisions excluding such construction or where the subject matter or context of the section may be repugnant thereto.

Section 2: Liberal construction; minimum requirements; overlapping provisions.

- (a) The ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter when they shall have the signification attached to them by experts in such trade or with reference to such subject matter.
- (b) In all interpretations the courts shall look diligently for the intention of the city council, keeping in view, at all times, the old law, the evil, and the remedy. Grammatical errors shall not vitiate, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands.
- (c) All general provisions, terms, phrases, and expressions contained in this Code shall be liberally construed to carry out the full intention of the City Council. In the interpretation and application of any provision of this Code, they shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare.
- (d) Where any provision of this Code imposes greater restrictions on the subject matter than the other provisions of this Code, the provisions imposing the greater restriction or regulation shall be deemed to be controlling. The specific provisions shall control over the general.

Section 3: Terms Defined

As consistent with the Charter, definitions shall be construed liberally in favor of the City.

As soon as possible. The term "as soon as possible" means within a reasonable time, having due regard to all the circumstances.

County: the word "county" shall mean DeKalb County, Georgia.

City: The word "City" refers to the City of Dunwoody, Georgia.

Charter: The word "Charter" refers to the enabling legislation creating a municipal charter for the City of Dunwoody, enacted as SB 82 during the General Session of the 2008 General Assembly.

Computation of time. When a number of days is prescribed for the exercise of any privilege or the discharge of any duty, the first and last day shall be counted. If the last day falls on Saturday or Sunday, the party having such privilege or duty shall have through the following Monday to exercise such privilege or to discharge the duty. When the last day prescribed for such action shall fall on a public or legal holiday as set forth in state law, the party having such privilege or duty shall have through the following business day to exercise such privilege or to discharge the duty. When the period of time prescribed is less than seven days, an intermediate Saturday, Sunday, and legal holiday shall be excluded in the computation.

Code: The word "Code" refers to the Code of Ordinances of the City of Dunwoody, Georgia.

Council: The word "Council" refers to the six Council members and the Mayor.

Council Member: The words "Council Member" refers to the individual members of the City Council, including the Mayor.

Fire Department: The term "Fire Department" shall refer to the DeKalb County Fire Department or the City of Dunwoody Fire Department, whichever provides services to the City of Dunwoody.

Gender: A word importing one (1) gender shall extend and be applied to the other genders, except where inappropriate.

Keeper, proprietor. The terms "keeper" and "proprietor" shall mean and include persons as the term "person" is defined herein, whether acting by themselves or through an agent or employee.

Month. The word "month" shall mean a calendar month.

Number. A word importing only the singular number may extend and be applied to several persons or things as well as to one (1) person or thing.

Oath. The word "oath" shall include an affirmation in all cases in which by law an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Officials: The name or title of any officer or department shall be read as though the words “of the City of Dunwoody” were added thereto.

O.C.G.A.: The abbreviation “O.C.G.A.” refers to the Official Code of Georgia Annotated.

Owner. The word “owner” applies to a building or land and shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or person in possession under a bond for title.

Person: The word “person” shall extend and be applied to firms, partnerships, associations, organizations, and bodies political and corporate, or any combination thereof, as well as to individuals.

Personal property. The words “personal property” shall include every species of property except real property, as herein defined.

Police: The term “Police” shall refer to the Police Department or Police Chief of DeKalb County or of the City of Dunwoody, whichever is serving as the police force for the City.

Preceding, following. The words “preceding” and “following” shall mean next before and next after respectively.

Property. The word “property” shall include real and personal property.

Public place: The term “public place” shall mean any park, cemetery, shopping center, schoolyard, or open space adjacent thereto, or any area available and accessible to the public, regardless of whether privately or publicly owned.

Real Property. The words “real property” shall include lands, tenements, and hereditaments.

Shall, may. The term “shall” is mandatory; the term “may” is permissive.

Sidewalk. The word “sidewalk” shall mean any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians, excluding parkways.

Signature or subscription: The terms “signature” and “subscription” include a mark when the person cannot write.

State: The words “the State” or “this State” shall mean the State of Georgia.

Street: The word “street” shall mean and include any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge, and the approaches thereto and area owned or dedicated as public right of way, within the City.

Tenant, occupant. The terms “tenant” and “occupant,” applied to a building or land, shall include any person holding a written or oral lease of, or who occupies the whole or a part of, such building or land, either alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present. Title of officer or official. Whenever the title of an officer is given, it shall be construed as though the words “of the City of Dunwoody” were added.

Title of officer or official. Whenever the title of an officer is given, it shall be construed as though the words “of the City of Dunwoody” were added.

Week. The word “week” shall mean seven (7) calendar days unless otherwise specified.

Written, in writing. The terms “written” and “in writing” shall be construed to include any representation of words, letters, or figures, whether by printing or otherwise.

Year. The word “year” shall mean a calendar year.

Section 4: Non-exclusivity

Terms not defined by this section may be defined elsewhere in the Code.

Article 3: Violations

Section 1: Punishment

- (a) Unless specified elsewhere in the Code, any violation of this Code shall be punishable up to a maximum penalty allowed by state law or the City charter.
- (b) All fines shall be paid into the City Treasury.
- (c) Community service may be substituted for the fine with the rate of hourly work set to that of the Federal Minimum Wage.
- (d) If it is deemed by a court of competent jurisdiction that a punishment imposed under this section conflicts with the laws of Georgia, then State law applies to that particular punishment.
- (e) In addition to the penalties provided in subsection (a), any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be abated by the City, as provided by law, and each day that such condition continues shall be regarded as a new and separate offense.

Article 4: Miscellaneous Provisions

Section 1: Exercise of Powers

The powers of the City may be exercised, as provided by the charter, by the City, and by the parties with whom the City contracts for municipal services.

Section 2: Severability

It is declared to be the intention of the Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph, or section of this Code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Code.

Section 3: Catchlines of Sections, Effect of Notes and References

- (a) The catchlines of the several sections and subsections of this Code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections or subsections, nor as any part of the section or subsection, nor unless expressly so provided shall they be so deemed when any of such sections or subsections, including the catchlines, are amended or reenacted.
- (b) The history or source notes appearing in parentheses after sections in this Code are not intended to have any legal effect but are intended merely to indicate the source of matter contained in the section. Editor's notes, Charter references and state law references and other references that appear after sections or subsections of this Code or which otherwise appear in footnote form are provided for the convenience of the user of the Code and have no legal effect.
- (c) All references to chapters, articles, divisions, subdivisions, or sections are to chapters, articles, divisions, subdivisions, or sections of this Code, unless otherwise specified.
- (d) References in city forms, documents, citations, and regulations to city ordinances codified in this Code shall be construed to apply to the corresponding provisions contained within this Code.

Section 4: Effect of Repeal of Ordinances

- (a) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.
- (b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect.

Section 5: Amendments to Code; effect of new ordinances; amendatory language

(a) All ordinances passed subsequent to the passage of the ordinances originally Included herein, which amend, repeal or in any way affect this Code, may be numbered in accordance with the numbering system of this Code and added hereto. In the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby.

(b) Amendments to any of the provisions of this Code may be made by amending such provisions by specific reference to the section number of this Code in the following language: "That section of The Code of the City of Dunwoody, Georgia is hereby amended to read as follows: _____." The new provision may then be set out in full as desired.

(c) In the event a new section not theretofore existing in the Code is to be added, the following language may be used: "That The Code of the City of Dunwoody, Georgia is hereby amended by adding a section (or article or chapter) to be numbered _____, which said section (or article or chapter) reads as follows: _____." The new section (or article or chapter) may then be set out in full as desired.

(d) All sections, articles, chapters, or provisions desired to be repealed shall be specifically repealed by section, article or chapter number, as the case may be.

Section 6: Supplementation of Code

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the Council. A supplement to the Code shall include all substantive, permanent and general parts of ordinances passed by the Council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete. The new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement. Charter amendments may be included in like manner.

(b) In the preparation of a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified Code. For example, the codifier may:

(i) Organize the ordinance material into appropriate subdivisions;

(ii) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;

- (iii) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (iv) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ through _____" (inserting section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated into the Code); and
- (v) Make other non-substantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but, in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Section 7: Provisions Considered as Continuation of Existing Ordinances

The provisions appearing in this Code, so far as they are substantially the same as ordinances existing at the time of the effective date of this Code, shall be considered continuations thereof and not as new enactments.

Section 8: Altering Code, Ordinance or Other Public Document

(a) It shall be unlawful for any person in the city to change or amend by additions or deletions, any part of this Code, or to insert or delete pages or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby.

(b) It shall be unlawful for any person to deface, mutilate, or in any other manner alter any ordinance book or minute book, or any notice posted by the city for the benefit of the public, or any other document or record of the municipal government of the city.

Section 9: Certain Ordinances Not Affected by Code

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following:

- (a) Any rates, fees or charges consistent with this Code;
- (b) Any ordinance promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds for the city or any evidence of the city's indebtedness, or any contract or obligation assumed by the city;

(c) Any ordinance consistent with this Code prescribing traffic regulations for specific locations, such as prescribing through streets, parking limitations, parking prohibitions, one-way traffic or limitations on loads of vehicles or loading zones;

(d) Any ordinance consistent with this Code fixing salaries of, or providing policies and programs for, providing retirement, disability or death benefits for, officials, officers or employees of the city;

(e) Any budget ordinance or appropriation ordinance; any ordinance levying any tax;

(f) Any right or franchise granted by any ordinance or resolution;

(g) Any ordinance dedicating, naming, establishing, locating, relocating, opening, closing, paving, widening or vacating any street or public way in the city;

(h) Any ordinance establishing and prescribing the street grades of any street in the city;

(i) Any ordinance providing for local improvements or assessing taxes for local improvements;

(j) Any ordinance dedicating or accepting any plat or subdivision in the city;

(k) Any ordinance establishing or changing the boundary of the city;

(l) Any zoning ordinance, use permit or any ordinance regulating subdivisions or any ordinance regulating signs or any ordinance regulating building design standards;

(m) Any resolution of the city not in conflict with this Code;

All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

AN ORDINANCE TO ADOPT AND APPROVE CHAPTER 2, ADMINISTRATION, PROVIDING FOR INCLUSION AND IDENTIFICATION IN THE CODE OF ORDINANCES FOR THE CITY OF DUNWOODY, GEORGIA TO BE REFERENCED IN THE FUTURE AS CHAPTER 2 (ADMINISTRATION) AS ATTACHED HERETO AND INCORPORATED HEREIN

WHEREAS: The Ordinance relating to Chapter 2, Administration is hereby adopted and approved; and is attached hereto as if fully set forth herein; and,

WHEREAS: This Ordinance shall be designated as Chapter 2 of the Code of Ordinances of the City of Dunwoody, Georgia; and

WHEREAS: This Ordinance shall become effective on December 1, 2008.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF DUNWOODY HEREBY ORDAINS that Chapter 2, Administration, is hereby adopted and approved as part of the Code of Ordinances for the City of Dunwoody, Georgia. Any ordinance in conflict with this Ordinance is hereby repealed.

SO ORDAINED AND EFFECTIVE this the ____ day of _____, 2008.

Approved:

Ken Wright, Mayor

Attest:

Joan C. Jones, Acting City Clerk
(Seal)

Approved as to Form and Content:

Brian Anderson, Acting City Attorney

Chapter 2: Administration

Article 1: General Provisions

Section 1: Meetings

(a) *Meeting Times.* As described in Section 2.09 of the Charter, the Council shall meet at least once a month. Regular meetings shall be held on the second and fourth Mondays of each month at 7:00 p.m. The Council may designate alternative meeting times and days so long as the time is published either electronically on the City website or through other means, including posting at the building designated as City Hall at least 24 hours before the meeting.

(b) *Meetings scheduled on a Federal or State Holiday.* If the regular meeting falls on a Federal or State holiday, the Council may reschedule the meeting to the next Monday, and publish the time change as described in subsection (a) of this section.

(c) *Special Meetings.* Special meetings may be called in accordance with the Charter provision 2.09.

(d) Any meeting of the Council may be continued or adjourned from day to day, or for more than 1 day, but no adjournment shall be for a longer period than until the next regular meeting thereafter.

Section 2: Open Meetings and Records

(a) All meetings shall be held in accordance with the Georgia Open and Public Meetings Act codified at O.C.G.A. § 50-14-1 et seq.

(b) All City records subject to the Georgia Open Records Act, codified at O.C.G.A. 50-18-70 et seq, shall be available to the public. The City Clerk shall comply with any valid requests under the Georgia Open Records Act and prepare any materials requested.

Section 3: Document Retention

Pursuant to the Georgia Records Act, O.C.G.A. § 50-18-90 et seq, the City of Dunwoody adopts the records management plan and record retention schedules recommended by the Georgia Secretary of State as amended from time to time by future resolutions of the Mayor and Council of the City of Dunwoody. The City Clerk shall coordinate all records management for the City including storage, archiving, and destruction of records. Records shall be maintained according to approved retention schedules. All requests made under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq, excepting standardized routine requests of the City of Dunwoody Police Department, the City of Dunwoody Fire Department, and the City of Dunwoody Municipal Court shall be made to the City Clerk. No record shall be destroyed except as provided in the approved retention schedule; provided, however, a written record may be destroyed if it is otherwise preserved by means of microfiche, scanning, or other reliable

photographic or digital means as permitted by law. Changes to the retention schedules shall be adopted by resolution of the Mayor and Council.

Section 4: Fees

The City Clerk shall charge the full amount permitted by Georgia law to copy the records subject to the Georgia Open Records Act. If compilation and replication of such documents takes more than 15 minutes, the City Clerk may charge an additional reasonable administrative charge.

Section 5: Subpoenas

(a) The Council, when sitting as a judicial or quasi-judicial body pursuant to public law, its charter, or its ordinances, shall compel the attendance of witnesses by subpoena under the same rules as prevail in the superior courts, and any witness who shall fail to respond to the subpoena, or who shall refuse to testify under oath, shall be guilty of contempt.

(b) The subpoenas as authorized in the preceding section shall bear witness in the name of the Mayor; shall be issued by the City Clerk; and shall be served by the Chief of Police, any police officer, or by such other person as the Mayor may designate.

(c) Should any person fail to respond to a subpoena of the Council, after having been lawfully served, without good cause, or should the person refuse to testify under oath, then the Council shall hold the person in contempt, and, in their discretion, punish the person by the imposition of a fine according to the maximum allowed by state law. Each of the failures or refusals herein described shall constitute a separate contempt.

Section 6: Reimbursement and Travel

(a) The Mayor and Council Members shall be reimbursed for their own reasonable travel expenses incurred in connection with City business related to travel outside the City, and those Cities that share borders with the City.

(b) Overnight Travel. The City shall reimburse the Mayor or Council members for actual expenses of meals incurred in connection with overnight travel, lodging, ground transportation and incidental expenses incurred in connection with City business.

(c) Expense Reports. Within 60 days after incurring the aforementioned expenditure(s), the Mayor or Council Members shall file with the City Manager a signed travel expense form setting forth the reasonable expenses incurred for which City payment is sought. Original receipts documenting each expense over \$10.00 must accompany the form, except for reasonable and customary out-of-pocket expenses such as tolls, valet services, gratuities, and mileage. If a travel expense form has not been filed within 60 days after incurring an expenditure, the City shall not reimburse such expenses.

(d) Notwithstanding any provision to the contrary, no expenses shall be reimbursed that exceeds the maximum expense amount allowed by the Charter.

Article 2: Personnel

Section 1: Personnel Manual

The City Manager shall establish a personnel manual for all municipal employees. In addition to sections deemed necessary by the City Manager, the manual shall include policies regarding equal employment opportunity, nondiscrimination, and sexual harassment. The manual will be updated from time to time as required by federal and state laws.

Section 2: Employees

(a) In general, municipal employees shall be categorized as full time, part time or by terms decided by contract with the City.

(b) Municipal Employees. Full-time employees will be paid an hourly salary, weekly salary or some other pay rate; part-time employees will work at irregular intervals on a short-term basis, and temporary workers will be hired to fill a temporary need for a specified period of time.

(c) Contract Employees. The City Manager shall have the authority to propose contractual employment relationships between the City and third parties. The terms of these third party contracts will be established by the contract at the time of hiring. The Council must approve a contract worth more than \$25,000.00. Issues of liability and scope of agency are to be defined by the contract.

Section 3: Job Descriptions

The City shall maintain a job specification for each position held by a Municipal Employee. The City may provide a job specification for contracted positions. Such specification shall describe the duties of the position, the qualifications necessary, licenses required, to whom such employee reports, expected salary range, and such other information as is necessary to recruit for such position effectively. Such specifications may be amended from time to time by the City Manager.

Section 4: Benefits

It shall be the policy of the City of Dunwoody to attract and retain a qualified workforce through the provision of a comprehensive package of benefits. To that end, the City shall be authorized to contract with benefits providers for the purpose of providing insurance, retirement, pension plans and other benefits deemed necessary by the Council upon approval of the benefit program by the City Council. Eligibility for benefits and the cost to employees shall be specified in the Personnel Manual.

Section 5: Records

The City shall keep such records and make such reports as may be required by applicable state or federal laws or regulations.

Article 3: City Departments

Section 1: Authorization

The following departments may be established by the Council:

- (a) Administration
- (b) Finance
- (c) Community Development
- (d) Transportation
- (e) Public Works
- (f) Police
- (g) Fire & EMS
- (h) Parks and Recreation
- (i) Building

One or more department may be combined to form one or more multifunctional departments.

Section 2: Right of Contract

The City may contract with third parties to provide all or portions of the functions of any municipal department.

Section 3: Oversight

- (a) There shall be a director of each department or agency who shall be its principal officer. Each director shall, subject to the direction and supervision of the City Manager, be responsible for the administration and direction of the affairs and operations of the director's department or agency.

Article 4: City Boards and Commissions

Section 1: Creation

There may be created a Board of Zoning Appeals, a Design Review Board, a Historic Preservation Board, a Planning Commission, a Construction Board of Appeals, and an Alcohol Licensing and Appeals Board, which shall have the powers and duties and be subject to and governed by the regulations set forth in this Article and this Code. The duties of each Board are defined in the corresponding City Code section.

Section 2: Composition

All Board members must be appointed by the Mayor and approved by the Council.

Section 3: Membership

(a) The Council shall determine by Resolution the number of members of each Board or Commission. Except as provided in subsection (b) below, the Council shall establish qualifications for members of each Board. Each Board member shall be nominated by the Mayor and approved by the Council. The Council shall determine if and at what amount Board members will be compensated.

(b) Except as otherwise provided herein, each Board or Commission member must be a resident of the City of Dunwoody. Should the Board member move out of the City; he or she may remain active until the Mayor and Council appoint his or her replacement.

(c) Members must attend two-thirds of meetings in a calendar year. Failure to do so warrants removal from the Board.

Section 4: Terms

(a) Each member shall serve a specified term of not more than 4 years. Consecutive terms are permissible, and terms may be staggered. Each member, but the Mayor and Council members that may serve on a Board, shall have equal terms of an amount to be specified by the Mayor.

(b) The Mayor and Council members may serve as ex-officio members without a vote on a Board or Commission so long as they remain elected to office. A former Council member or former Mayor may serve on a Board.

(c) Members filling vacancies shall serve the remainder of the term to which they were appointed. A consecutive appointment is permissible.

(d) Any member may be removed for cause by the Mayor and a majority of the Council.

Section 5: Quorum

A majority of actual Board members establishes a quorum. Any action taken requires a majority of affirmative votes of the quorum present.

Section 6: Procedure

(a) Each of the Boards shall adopt its rules of procedure, which shall be substantially similar to the Rules of Procedures of the City Council, and determine its time of meetings. The date and time of each meeting as well as agenda items to be considered shall be publicized in the same manner as meetings of Mayor and Council.

(b) Each of the Boards shall elect, annually, at its first meeting of the calendar year, one of its members to serve as Chair, and one to serve as Vice Chair. Each Board or Commission shall also appoint a Secretary to serve as the official record keeper for the Board or Commission. The

Secretary of the Planning Commission may be the Director of Community Development or his designee.

(c) All meetings at which official action is taken shall be open to the public and all records maintained by the Committee shall be public records unless expressly excepted by a provision of the Georgia Open Records Act. The Boards shall keep minutes of their formal proceedings, showing the vote of each member upon each question; and records of their examinations and other official actions, all of which shall be filed in the office of the City Clerk. Copies of the minutes shall be sent to the Mayor and each member of the Council. The minutes of the meetings shall be a public record. This section shall not be construed as prohibiting closed sessions when permitted by the Georgia Open Meetings and Open Records Acts.

Section 7: Training

The Council may establish a mandatory training program for Board members.

Section 8: Additional Guidelines of the Planning Commission

- (a) Any vacancy in the membership shall be filled in the same manner as the original appointment.
- (b) The Planning Commission may receive reimbursement for customary expenses incurred in conjunction with any authorized activity of the Planning Commission.
- (c) The Planning Commission shall meet monthly in accordance with an established schedule of meetings as prepared by the Dunwoody Department of Community Development.
- (d) It shall be the function and duty of the Planning Commission to review and make recommendation(s) for action by the Mayor and City Council on the following:
 - i. All applications for annexation, rezoning, master plans, concurrent ordinances and/or variances;
 - ii. Applications for use permits and modifications to same;
 - iii. Amendments to the text of the Dunwoody Zoning Ordinance, Dunwoody Subdivision Regulations, the Dunwoody Comprehensive Plan, the Future Land Use Map, and the Zoning Map.
 - iv. Perform other functions of the Planning Commission as may be required by Federal and State law.

Nothing contained herein shall prevent the Mayor and City Council from hereafter assigning other duties to the Planning Commission.

- (e) Any application that is to be considered by the Planning Commission must be submitted to the Department of Community Development in accordance with the established filing schedule as prepared by said department or as stated in the Dunwoody Zoning Ordinance.
- (f) At the close of each public hearing, the Chair of the Planning Commission shall call the members to order for consideration and a vote on the issue currently before them. The vote of the Planning Commission shall be nonbinding and shall be made in the form of a recommendation to the Mayor and City Council from the following list:
 - 1. Approval as recommended by staff with recommended conditions;
 - 2. Approval as recommended by staff with revised conditions as presented by the Planning Commission;
 - 3. Denial.
- (g) The Planning Commission may move to table an item for a specified period of time in order to receive additional information necessary to make a recommendation to the Mayor and City Council. Should a request to table an item be made by the applicant and/or the property owner, the Planning Commission shall consider the request and if granted shall not table said request longer than for a period of ninety (90) days. The 90-day period shall begin on the same day the action is made by the Planning Commission. If the tabled item is not returned within the prescribed period, the item shall then be automatically withdrawn and shall be required to follow the prescribed and established procedure to re-file applications before the Planning Commission.

Section 9: Additional Guidelines of the Design Review Board

If created by Resolution of City Council, the Dunwoody Design Review Board shall consist of residents, land owners, business owners and professional architects and/or land planners, who either maintain primary residences and/or businesses or own land in the City. The Design Review Board shall review all plans for development in the City for compliance with standards delineated by the Community Guidelines as established in the City of Dunwoody Zoning Resolution or other ordinance of City Council, and shall make recommendations to the Department of Community Development prior to the approval of a Concept Plan, Land Disturbance Permit, Building Permit, or Sign Permit.

Article 5: City Advisory Committees

Section 1: Authorization

The Mayor may establish Advisory Committees. Each Committee may have one or more Council members. The Mayor is an ex-officio member of every Committee. The City Manager or a designee shall oversee the meetings of each Committee and is an ex-officio, non-voting, member of each.

Section 2: Duties

- (a) Each Committee may, from time to time, propose policies and ordinances to the Council in the subjects germane to the Committee.
- (b) This section shall not be interpreted to require Committee approval for a measure to be heard before the Council.
- (c) Members must attend two-thirds of meetings in a calendar year. Failure to do so warrants removal from the Committee.

Section 3: Membership

- (a) Except as provided in subsection (b) below, the Mayor shall establish qualifications for members of each Committee. Each committeeperson shall be nominated by the Mayor and approved by the Council.
- (b) Each Committee member must be a resident of the City of Dunwoody. Should the Committee member move out of the City, he or she may remain active until the Mayor and Council appoint his or her replacement.

Section 4: Terms

- (a) Each Committee member shall serve a specified term of not more than 4 years. Consecutive terms are permissible. Each Committee member, but the Mayor and Council members serving thereon, shall have staggered terms of an amount to be specified by the Mayor.
- (b) The Mayor and Council members on each Committee shall serve on that Committee so long as they remain elected to office. A former Council member or former Mayor may serve on a Committee, but such person shall not take the place of the elected member.
- (c) Members filling vacancies shall serve the remainder of the term to which they were appointed. A consecutive appointment is permissible.
- (d) Any member may be removed with or without cause by the Mayor.

Section 5: Compensation

Committee members may serve without compensation. Reasonable expenses for travel may be reimbursed and committee members may be compensated pursuant to a policy to be established by the City Manager and approved by the Council.

Section 6: Quorum

A majority of actual Committee members establishes a quorum. Any action taken requires a majority of affirmative votes of the quorum present.

Section 7: Procedure

(a) Each of the Committees shall adopt its rules of procedure, which shall be substantially similar to the Rules of Procedure of the City Council, and determine its time of meetings. The date and time of each meeting as well as agenda items to be considered shall be publicized in the same manner as meetings of the Mayor and Council.

(b) All meetings at which official action is taken shall be open to the public and all records maintained by the Committee shall be public records unless expressly excepted by a provision of the Georgia Open Records Act. The Committees shall keep minutes of their formal proceedings, showing the vote of each member upon each question; and records of their examinations and other official actions, all of which shall be filed in the office of the City Clerk. Copies of the minutes shall be sent to the Mayor and each member of the City Council. The minutes of the meetings shall be a public record. This section shall not be construed as prohibiting closed sessions when permitted by the Georgia Open Meetings and Open Records Acts.

(c) Expenditures of the Committees, if any, shall be within the amounts appropriated for the purpose intended by the Mayor and Council during the annual budgeting process.

Section 8: Training

The Mayor may establish a mandatory training program for Committee members.

Article 6: City Finances

Section 1: Fiscal Year

The fiscal year of the City shall be set by Ordinance of the City Council.

Section 2: Finance Director

(a) The functions of the City Accountant and City Treasurer shall be performed by the Finance Director or his/her designee with the Finance Department under the direction of the Finance Director.

(b) The Finance Director shall perform at least the following duties:

- (1) Managing, planning, directing, and maintaining the city's financial operations, including serving as chair of the city finance department, if such a department is established;

(2) Directing and supervising the work of personnel involved in performing the accounting, utility billing, property tax, payroll, and purchasing functions for the city;

(3) Providing technical leadership in budgeting, overseeing, and directing investment opportunities and debt administration, as well as ensuring proper record retention policies are strictly followed;

(4) The council may require the finance director to perform other duties.

(c) The City may contract with a third party to serve as Finance Director.

Section 2: City Tax Collector

(a) The Mayor shall nominate a City Tax Collector, subject to ratification by the Council. The City Tax Collector also may serve as the City Treasurer, City Accountant, and City Finance Director.

(b) The City may contract with a third party, including the Tax commissioner of DeKalb County, Georgia, to serve as City Tax Collector.

(c) The City Tax Collector shall perform at least the following duties. The Mayor and Council may require the City Tax Collector to perform other duties:

(i) Managing, planning, and directing the collection of all City taxes.

(ii) Notifying delinquent taxpayers of their status in accordance with Georgia law.

Section 3: Audits

(a) The City Council shall appoint an internal auditor to audit the financial records and expenditures of city funds and to report the results of such audits in writing to the city council at times and intervals set by the city council but no less than quarterly. Such audit reports shall, at a minimum, identify all city expenditures and other financial matters that the internal auditor either determines are not in compliance with or cannot conclusively be determined to be in compliance with (a) the provisions of the charter, (b) the applicable city budget, and (c) applicable ordinances, resolutions, or other actions duly adopted or approved by the City council.

(b) The City Council shall appoint an auditor to perform an annual independent audit of all city accounts, funds, and financial transactions by a certified public accountant selected by the city council. The audit shall be conducted according to generally accepted accounting principles. Any audit of any funds by the state or federal government may be accepted as satisfying the requirements of this charter. Copies of all audit reports shall be available at printing cost to the public. As a minimum, all audits and budgets of the city shall satisfy the requirements of Chapter 81 of Title 36 of the O.C.G.A. relating to local government audits and budgets.

Article 7: Purchasing

Section 1: Definitions

When used in this Article, the following words, terms, and phrases, and their derivations shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Any terms not defined by this Article shall have the meaning ascribed to them elsewhere in this Code.

(a) *City Finance Director* means the City Accountant, his agent, or the Chair of the City Finance Department, if such a department is created, or is in existence.

(b) *Construction* means the process of building, altering, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term "Construction" does not include the routine operation, repair and/or maintenance of existing structures, building, or real property.

(c) *Contract* means any City agreement, regardless of form or title, for the procurement or disposition of goods, commodities, and services.

(d) *Employee* means an individual drawing a salary or wage from the City whether on a full-time or part-time basis. The term shall encompass all members of the Governing Authority without regard to whether or not such individual is compensated.

(e) *Gifts or Favors* means any thing or any service of value.

(f) *Goods or Commodities* means supplies, apparatus, materials, equipment, and other forms of tangible personal property.

(g) *Governing Authority* means the City entity responsible for the contract.

(h) *Ordinance* means this Article.

(i) *Purchase Order* means the document used by the City to obtain supplies, goods, commodities and services from vendors.

(j) *Purchasing Agent* means the principal purchasing official of the City pursuant to Section 2 of this Article.

Section 2: Purchasing Agent

(a) The Mayor may appoint the City Manager or his agent to serve as the Purchasing Agent for the City, or the Mayor may contract with an independent third party to serve as the Purchasing Agent.

(b) The purchasing agent shall have the following duties and powers:

(i) Arrange and negotiate the purchase or contract for all equipment, supplies, and contractual services for the city or any using agency; arrange and negotiate for the sale or otherwise dispose of all surplus equipment and supplies or real estate of the city or any using agency;

(ii) Maintain a perpetual or periodic inventory record of all materials, supplies, or equipment stored in city storerooms, warehouses, and elsewhere, including monthly reports that provide:

A. The titles of all requests for proposals and the method of source selections to be used;

B. All contracts authorized by the council, the method of source selection used, and the total dollar amount;

C. All emergency contracts awarded pursuant to this article;

D. All change orders or contract modifications authorized by the council, the dollar amount, and the reason;

E. All change orders or contract modifications authorized by the purchasing agent, the dollar amount, and the reason; and

F. An explanation of any changes, and the costs involved, in the scope of services made between the time a contract is awarded and the time that a resolution authorizing the contract is sent to the council for adoption;

(iii) Control and supervise all city storerooms and warehouses, unless otherwise provided in this Code;

(iv) Develop and maintain a purchasing policy and procedure manual which will be updated by the purchasing agent periodically and approved by the City council;

(v) Direct efforts to procure services through advertisements of bids as required by this article and by state law;

(vi) Require bonds, insurance, and other forms of protection for the city on the process of procuring goods and services for the city;

(vii) Terminate solicitations for bids for any goods or services when, in the opinion of the purchasing agent, it is in the city's best interest to do so, including termination for breach of contract or anticipated breach of contract;

(viii) Reject any and all bids when, in the opinion of the purchasing agent, it is in the city's best interest;

(ix) Consult with the city attorney if a contracting party breaches or is reasonably anticipated to breach its contract with the city.

Section 3: Legal representation.

The city attorney represents the city in all legal matters and has the authority to provide standard terms and conditions of contracts and purchase orders and approves all contracts.

Section 4. Purchasing policy.

The purchasing policy, as amended from time to time and approved by Resolution of the City Council, is adopted by reference as if set out at length in this Code

**AN ORDINANCE TO ADOPT AND APPROVE CHAPTER 9, ETHICS, PROVIDING FOR
INCLUSION AND IDENTIFICATION IN THE CODE OF ORDINANCES FOR THE CITY OF
DUNWOODY, GEORGIA TO BE REFERENCED IN THE FUTURE AS CHAPTER 9 (ETHICS)
AS ATTACHED HERETO AND INCORPORATED HEREIN**

WHEREAS: The Ordinance relating to Chapter 9, Ethics, is hereby adopted and approved; and is attached hereto as if fully set forth herein; and,

WHEREAS: This Ordinance shall be designated as Chapter 9 of the Code of Ordinances of the City of Dunwoody, Georgia; and

WHEREAS: This Ordinance is shall become effective on December 1, 2008.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF DUNWOODY HEREBY ORDAINS that Chapter 9, Ethics, is hereby adopted and approved as part of the Code of Ordinances for the City of Dunwoody, Georgia. Any ordinance in conflict with this ordinance is hereby repealed.

SO ORDAINED AND EFFECTIVE this the ____ day of _____, 2008.

Approved:

Ken Wright, Mayor

Attest:

Joan Jones, Acting City Clerk
(Seal)

Approved as to Form and Content:

Brian Anderson, Acting City Attorney

Chapter 9: Ethics

Article I: In General

Section 1: Definitions

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

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

Associated, when used with reference to a business or an organization, includes any business or organization in which a public servant or a public servant's partner in interest is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least five percent of the outstanding equity, or any business or organization in which a public servant or a partner in interest has a personal interest.

Benefit means:

- (1) Anything having a monetary value in excess of \$100.00;
- (2) 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 a public servant in the performance or nonperformance of an official action; or
- (3) Anything, regardless of its monetary value, which, under the circumstances, a reasonably prudent person in the position of the public servant to whom the thing is or may be offered, would recognize as being likely to be intended to influence the public servant in the performance or nonperformance of an official action.

The term "benefit" includes, but is not limited to, a valuable act, advance, award, contract, compensation, contribution, deposit, emolument, employment, favor, fee, forbearance, fringe benefit, gift, gratuity, honorarium, loan, offer, payment, perquisite, privilege, promise, reward, remuneration, service, subscription, or the promise that any of these things will be conferred in the future.

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

- (1) Which is established to participate as a body in some manner in the conduct of the city government, including participation which is merely advisory, whether

established by state law, City Charter, City Code, contract, executive action or any other lawful means; and

- (2) Any part of which its membership is appointed by the Mayor acting on behalf of the City; but the term "board" does not include a board, commission or committee which is the governing body of a separate political subdivision of the State, or whose membership, after appointment, is not subject to any regulation by the City Council; nor does it include any city administrative agency, bureau, department, division or office which is administered by individuals rather than by a body.

Business means an activity, association, commercial entity, corporation, enterprise, firm, franchise, holding company, joint stock company, organization, partnership, receivership, self-employed individual, sole proprietorship, trust or other legal entity established to earn or otherwise obtain money, whether for profit or nonprofit, excluding a municipal corporation or governmental entity.

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

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

Candidate means an individual who is a candidate for an elective office in the City, as defined in the City Charter, or an applicant for city employment or for an appointive city position.

Child means a son or daughter, whether or not the son or daughter is the biological offspring of the legal parent or parents and whether or not the son or daughter is financially dependent on the parent or parents.

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

Confidential information means information which has been obtained in the course of holding public office, employment, an independent contract or otherwise acting as a public servant, and which information is not available to members of the public under the Georgia Open Records Act or other law or regulation and which the public servant is not authorized to disclose, including:

- (1) Any written information that could lawfully be excepted from disclosure pursuant to state law, unless the public servant disclosing it is authorized to do so by state law, or pursuant to some other pertinent law, policy or procedure;
- (2) Any nonwritten information which, if it were written, could be excepted from disclosure under state law, unless the public servant disclosing it is authorized to do so by the state law, or pursuant to some other pertinent law, policy or procedure; and
- (3) Information which was obtained in the course of or by means of a record or oral report of a lawful executive or closed session, whether or not the disclosure of the information would violate state law, unless the public servant disclosing it is authorized by state law to do so, or unless the public servant disclosing it has been properly authorized to disclose it pursuant to an applicable law, policy or procedure; however, when such information is also available through channels which are open to the public, this provision does not prohibit public servants from disclosing the availability of those channels.

Conflict of interest means not only a personal interest, as defined in this Chapter, but also a professional or nonpecuniary interest, such as arises when the City Attorney is precluded from representing one public servant because of the City Attorney's preexisting attorney-client relationship with another public servant.

Controlled or illegal substance means any drug or other substance, the use of which is regulated by federal or state law, except that within the meaning of this Chapter the term does not include any drug or substance which has been lawfully prescribed by an authorized person for the use of a public servant, and which is used by the public servant in accordance with the prescription.

Decision maker means any public servant or group of public servants empowered to act in a discretionary manner on behalf of the City in any capacity whatsoever, including the making of recommendations. The term "decision maker" includes, but is not limited to, any city agency, bureau, department, division, office, administrator or person who is charged with implementing and administering particular legislation or executive or administrative decisions, and, to the extent this Chapter is applicable to them, any volunteer or independent contractor who is empowered to exercise any discretionary power which could influence a public servant in the

performance or nonperformance of an official action. In this Chapter, the term "decision maker" is used to represent any and every public servant who could take any discretionary action regarding a matter in which a public servant or a partner in interest has or may have a conflict of interest, or as a result of which a public servant might receive a personal benefit.

Decision making means the exercise of any discretionary public power in any capacity whatsoever, including the making of recommendations, by any public servant whose action pertains to a matter in which a public servant or a public servant's partner in interest has or may have a conflict of interest, or as a result of which a public servant might receive a personal benefit.

Disclose means, unless the context of this Chapter indicates otherwise, to provide the City Clerk with written notice of a conflict of interest or a potential conflict of interest, and any other pertinent information, including the nature and extent of the public servant's conflict of interest, the decision maker who may act on the matter, and the name and address of any person alleged to have a conflict of interest or a potential conflict of interest. Unless this Chapter or a law which supersedes it requires or permits another procedure, information shall be deemed disclosed if any public servant within a reasonable time before any official action is to be taken by the decision maker provides the City Clerk with written notice disclosing the conflict or potential conflict. For purposes of this provision, the phrase "within a reasonable time" means within adequate time to allow the City Clerk, acting within the City's normal schedule and procedures for transmitting written documents, to forward the disclosure to the decision maker before whom the matter is pending or may be brought, and within adequate time to allow the decision maker to review the disclosure before taking any official action.

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

Employee means a person, other than an elected public officer, employed and paid a salary to work for the City, whether under civil service or not, whether full-time, part-time, or on a contract basis, and including those officially selected but not yet serving; and, for purposes of establishing ethical obligations under this Chapter and for no other purpose, the term "employee" includes volunteers, notwithstanding the fact that they are unpaid.

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

Gift means any benefit or thing or act of monetary value which is conveyed to or performed for the benefit of a public servant or a partner in interest, including any advance, award, contract, contribution, deposit, employment, favor, forbearance, gift, gratuity, honorarium, loan, payment, service, subscription, or the promise that any of these things or acts of value will be conferred in the future, if such thing or act of value is conferred or performed

without the lawful exchange of consideration which is at least equal in value to the thing or act conferred or performed.

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

Immediate family means:

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

Interest means any personal benefit accruing to a public servant or the public servant's partner in interest, whether in the public servant's own name or the name of any person or business from which the public servant is entitled to receive any personal benefit, as a result of a matter which is or which is expected to become the subject of an official action by or with the City.

Loan means a transfer of money, property or anything else of ascertainable monetary value in exchange for an obligation, conditional or not, to repay in whole or in part.

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

Matter means, unless the context of this Chapter indicates otherwise, any act, action, agenda item, allegation, application, amendment, auction, bill, business, case, charge, claim, consideration, contract, controversy, decree, deed, deliberation, discussion, hearing, issue, lease, license, measure, offer, order, division, permit, personnel action, petition, policy, presentation, procedure, privilege, proceeding, project, proposal, proposition, purchase, recommendation, regulation, rental, request, resolution, sale, subject, transaction, use, variance or other discretionary choice pending before a city decision maker when a public servant or a partner in interest has a personal interest in the outcome of the decision, or the decision may result in a personal benefit to a public servant or a partner in interest.

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

Negotiating concerning prospective employment means one or more discussions between a public servant and a potential employer other than the City concerning the possibility of the public servant or a partner in interest considering or accepting employment with the employer, in which discussion the public servant responds in a positive way.

Office means any of the following:

- (1) An elective position within the government of the City;
- (2) A City Attorney;
- (3) An appointive city position in which a public servant serves for a specified term, except a position limited to the exercise of ministerial functions or a position filled by an independent contractor; or
- (4) An appointive city position which is filled by the City Council or the executive or administrative head of the City, and in which the incumbent serves at the pleasure of the appointing authority, except a clerical position, a position limited to the exercise of ministerial functions or a position filled by an independent contractor.

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

Official action means any act, action, approval, decision, denial, directive, disapproval, inaction, order, performance, nonperformance, recommendation, vote, or other direct result of a public servant's exercise of discretionary authority in connection with the public servant's public position.

Official duty means any official action or ministerial action which a public servant is obligated or authorized to perform by virtue of being a public servant.

Official records means any minutes, papers, documents, completed forms, or other records maintained by a public agent for the purpose of fulfilling the disclosure requirements of this Chapter.

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

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

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

- (3) Any other person with whom the public servant or a member of his immediate family is in business, or is negotiating or has an agreement concerning future employment or the future conferring of any personal benefit, whether in the public servant's own name or the name of any business or person from whom the public servant is entitled, or expects to become entitled, to receive any personal benefit, as a result of a contract or transaction which is, or which is expected to become, the subject of an official action by or with the City. The term partner in interest does not imply or require any form of legal partnership or formal agreement; or
- (4) When used in the phrase "a public servant or a partner in interest," the term "partner in interest" refers only to a partner in interest of the public servant to whom reference is being made, and not to any other person's partner in interest.

Personal benefit means any benefit which is offered or received, or reasonably perceived to be offered or received, primarily for the purpose of influencing the manner in which a public servant performs or refrains from performing an official action, so that an attempt is made to induce the public servant, or the public servant is induced, to act in favor of some interest other than the public interest on the basis of an expectation or hope that the public servant or a partner in interest of the public servant will obtain some private gain by acting against the public interest; provided, however, that the term "personal benefit" within the meaning of this Chapter does not include any of the following, which, although they may benefit individual public servants, are deemed to be primarily public benefits rather than personal benefits:

- (1) Payment by the City of salaries, compensation or employee benefits; or payment by an employer or business other than the City of salaries, compensation, employee benefits or pursuant to a contract, when the payment is unrelated to a public servant's status as a public servant and is not made for the purpose of influencing, directly or indirectly, the vote, official action or decision of a public servant;
- (2) Fees, expenses, or income, including those resulting from outside employment, which are permitted and reported in accordance with the policies of the City;
- (3) Authorized reimbursement of actual and necessary expenses;
- (4) Admission, regardless of value, to events to which public servants are invited in their official, representative capacity as public servants;
- (5) Campaign or political contributions which are made and reported in accordance with state law;
- (6) Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official city business, if furnished by the sponsor of such public event; or in connection with speaking engagements, teaching or rendering

other public assistance to an organization or another governmental entity; this provision applies only if the City does not also pay the person for the same activity;

- (7) Awards publicly presented in recognition of public service, acts of heroism or for solving crimes;
- (8) Anything of value, regardless of the value, when the thing of value is offered to the City, is accepted on behalf of the City, and is to remain the property of the City;
- (9) Commercially reasonable loans made in the ordinary course of the lender's business in accordance with prevailing rates and terms, and which do not discriminate against or in favor of an individual who is a public servant because of such individual's status as a public servant;
- (10) Complimentary copies of trade publications;
- (11) Any unsolicited benefit conferred by any one person or business if the economic value totals less than \$250.00 per calendar year, and if there is no express or implied understanding or agreement that a vote, official action or decision of a public servant will be influenced;
- (12) Reasonable compensation for a published work which did not involve the use of the City's time, equipment, facilities, supplies, staff or other resources, if the payment is arranged or paid by the publisher of the work;
- (13) Reasonable compensation for a published work which did involve the use of the City's time, equipment, facilities, supplies, staff or other resources, if the payment of the compensation to the public servant is lawfully authorized by a representative of the City who is empowered to authorize such compensation;
- (14) Anything of value, if the payment, gift, or other transfer of value is unrelated to and does not arise from the recipient's holding or having held a public position, and if the activity or occasion for which it is given does not involve the use of the City's time, equipment, facilities, supplies, staff or other resources which is not available to the general public;
- (15) Anything of value received as a devise, bequest or inheritance;
- (16) A gift received from a relative within the third degree of consanguinity, under the civil law computation method, to the public servant, or the spouse of such a relative; or

- (17) A gift received from a spouse of a public servant, or a spouse's relative within the third degree of consanguinity to the spouse, under the civil law computation method.

Personal interest means a direct or indirect interest having value peculiar to a particular individual or group, whether the value is pecuniary or non-pecuniary, which value may accrue to such individual or group or result in such individual or group deriving or potentially deriving a personal benefit as a result of the approval or denial of any division, resolution, order or other official action, or the performance or nonperformance thereof, by a public servant, and which interest is not shared by the general public.

Public servant means any member of the City Council or of any City agency, board, commission, committee, or other voting body, and any agent, department head, employee, official, supervisor, volunteer, or other person, whether elected or appointed, or legally authorized by contract or in any other manner to act in any capacity under the authority of the City.

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

Relative means a person who is related to an official or employee (whether by marriage, lineal descent or adoption) as spouse, parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, parents-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law.

Volunteer means an individual who is permitted by the City, or by a person authorized to act on behalf of the City, to assist public servants in performing any kind of official duty or action without any expectation of receiving compensation.

Voting body means the City Council and any other City authority, board, commission, committee, council or group, regardless of whether its function is legislative, administrative, quasi-administrative or quasi-judicial or any combination thereof, which must act as a body on the basis of a vote of some or all of its members.

Section 2: Declaration of Policy

- (a) The city government is a representative democracy. Those who are elected, appointed, hired, volunteer or campaign to serve the public as representatives accept a public trust, which they share with those whom they elect, appoint, hire or otherwise enlist to help them serve the public. Public trust requires that acts which are contrary to the public interest be defined and prohibited; that there be an orderly procedure for raising and addressing ethical questions; that ethical behavior be encouraged and suitably rewarded; and that unethical behavior be discouraged and suitably disciplined through a process which is fundamentally fair.

- (b) It is the responsibility of each public servant to act in a manner which contributes to cultivating public trust in the integrity of government and avoiding even lawful activity when the appearance of impropriety would lessen the public's confidence.
- (c) In adopting this Chapter, the City recognizes that:
 - (1) Public servants are also members of society and, therefore, share the same general personal and economic interests in the decisions and policies of government as all members of the community;
 - (2) Public servants retain their rights to publicly express their views on matters of general public interest, and to express their opinions on the effect of public actions on their personal or economic interests or rights;
 - (3) It is sound public policy for standards of ethical conduct for public servants to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are personal, material and avoidable;
 - (4) Public servants are entitled to engage in employment, professional or business activities, other than official duties, in order to support themselves and their families and to maintain a continuity of professional or business activity, and are entitled to maintain investments; and
- (d) This Chapter provides the minimum standards below which a public servant's conduct cannot fall without the risk of penalty. The principal policy which forms the foundation of this Chapter is to encourage internal commitment by establishing and maintaining a work environment which supports integrity with pride and enthusiasm. A work environment which supports integrity includes public servants who:
 - (1) Recognize with gratitude that the primary reason they hold a public position is to serve the public;
 - (2) Are motivated and committed to pursue ethical ideals which always exceed minimum standards and often achieve the highest standards;
 - (3) Encourage ethical practices which protect, advance and promote the public interest;
 - (4) Recognize that the most effective way to eradicate unethical practices is to consistently act ethically themselves, and to consistently react appropriately with respect to the ethical decisions of others;
 - (5) When they observe serious unethical practices, promptly disclose them to appropriate authorities, and encourage others to do the same;

- (6) Ensure that those for whom they are responsible are aware of minimum standards of ethics below which their conduct cannot fall without the risk of disciplinary consequences; and
- (7) When circumstances warrant, appropriately discipline those who are proven to have engaged in unethical behavior.

Section 3: Purposes of Ordinance

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

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

Section 4: Applicability of Chapter

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

Section 5: Exemptions

- (a) This Chapter does not prevent any public servant from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his public duties, provided that the public servant complies with all applicable City requirements, including any requirements imposed by this Chapter.

- (b) No public servant shall be deemed to have a conflict of interest by virtue of carrying out any contract pursuant to which the public servant directly or indirectly received income or benefits in the form of compensation for the performance of official duties.
- (c) A former public servant is not prohibited from entering into a contract to represent the City in any matter.
- (d) No public servant shall be deemed to have a conflict of interest by virtue of sharing, directly or indirectly, in the benefit of a lawful City action when the benefit to the public servant is substantially the same as the benefit to the public at large or to a segment of the public to whom the benefit is provided in a nondiscriminatory manner.
- (e) This Chapter does not prohibit any public servant from taking any action to approve the lawful payment of salaries, employee benefits, reimbursements of actual and necessary expenses, or other lawful payments which are authorized in accordance with City policies.
- (f) This Chapter does not prohibit public servants from taking any official action properly within the scope of their duties with respect to any proposal to enact or modify law or public policy.
- (g) This Chapter does not prohibit an elected official or other public servants from raising campaign contributions in any manner which is otherwise permitted by law.
- (h) This Chapter does not prohibit communication between an individual or organization and a candidate regarding the candidate's views, record or plans for future action regarding an issue or measure in an attempt to determine a candidate's viewpoints or how the candidate plans to act in the future, if such communication results in an endorsement of the candidate, a decision not to endorse the candidate, or a contribution or expenditure required to be recorded or reported under a state statute.
- (i) Actions which might otherwise be alleged to constitute a conflict of interest shall be deemed to comply with this Chapter and not to be a conflict of interest if:
 - (1) Before acting, the public servant requested and received a written opinion from the City Attorney or a formal ethics opinion or a confidential advisory opinion from the Board of Ethics in accordance with the procedures established in this Chapter;
 - (2) The material facts, as stated in the request for an opinion, are true and complete; and
 - (3) The actions taken were consistent with the opinion.

Section 6: Penalties

Any violations of this Chapter shall be punishable up to the maximum extent permitted by law. Any disciplinary action shall be carried out in accordance with the provisions of this Chapter, as well as any other applicable laws, policies and procedures applicable to the position of the offender and the gravity of the offense. The Board of Ethics is permitted to take any action which it is otherwise lawfully permitted to take, including, but not limited to, any one or combination of the following which the Board deems appropriate under the circumstances: public admonition by the Board; public reprimand by the Board; and recommendation for suspension, demotion, forfeiture of office or removal from office, and/or termination from employment, as allowed by applicable law.

Section 7: Penalties cumulative

The penalties prescribed in this Chapter shall be cumulative and not exclusive of each other or of any other penalties which may be imposed pursuant to any other laws or policies.

Section 8: Liberal Construction of Chapter

The provisions of this Chapter are to be construed liberally, to the end that the public interest be fully protected, and shall be construed in a manner consistent with all applicable Federal and State laws and applicable provisions of the City Charter.

Section 9: Duties of Public Servant

- (a) No public servant or former public servant shall divulge any confidential information to any person who is not authorized to have it nor divulge to any unauthorized person confidential information acquired in the course of holding his position in advance of the time prescribed by the City Council, administrators, or other applicable law for its release to the public.
- (b) All public servants shall respond fully and truthfully to any inquiries by the City Attorney or the Board of Ethics in connection with the investigation of an alleged or potential violation of this Chapter. All public servants shall cooperate fully in any investigation by the City Attorney or the Board, and shall locate, compile and produce for them such information as they may request, unless the information requested is exempt from disclosure under this Chapter or other applicable law.
- (c) All public servants must report a violation of this Chapter of which they have knowledge to the city clerk or the mayor, who shall forward such report to the City attorney or Board of Ethics.
- (d) In addition to being a violation of other laws, it is also a violation of this Chapter for any public servant to:
 - (1) Be convicted of any felony involving moral turpitude;

- (2) Be found liable of violating any Federal, State or City law prohibiting discrimination or sexual harassment;
- (3) Be found liable of violating any Federal, State or City laws prohibiting retaliation against public servants who assert a lawful claim of any nature or otherwise engage in lawfully protected activity; or
- (4) Be found liable of knowingly and willfully violating any State laws governing lobbying activities or regulating political activity.

Section 10: Conflict of interest and personal benefits prohibited

- (a) Except as otherwise permitted under applicable Federal, State and City laws and policies, including the City's procurement policies, no public servant shall have a personal interest in any official action.
- (b) No public servant shall accept or receive, directly or indirectly, from any person, including one whose identity is unknown to the public servant, any personal benefit under circumstances in which it can reasonably be inferred that the benefit is intended to unduly influence the public servant or as a reward for any official action of the public servant.
- (c) No person, including any vendor, contractor, business, or board of the City, shall offer or give any personal benefit to any public servant or any partner-in-interest of the public servant under circumstances in which it can reasonably be inferred that the benefit is intended to unduly influence the public servant or as a reward for any official action of the public servant.
- (d) No public servant nor partner in interest of that public servant shall solicit from any person, directly or indirectly, any personal benefit or the promise of receiving a personal benefit in the future, for the public servant under circumstances in which it can reasonably be inferred that the benefit is intended to unduly influence the public servant or as a reward for any official action of the public servant.
- (e) No current or former public servant shall intentionally use or disclose information gained in the course of, or by reason of, his official position or activities in any way that could likely result in the receipt of any personal benefit for the public servant, for a partner in interest of that public servant, or for any other person. This provision shall not:
 - (1) Prohibit the disclosure of public information;
 - (2) Prohibit the disclosure of information the public servant has been authorized to disclose;
 - (3) Prohibit the disclosure of any such information to incumbent public servants to whom the information may be pertinent;

- (4) Prevent the disclosure of violations of this Chapter or other illegal acts to the proper authorities; or
- (5) Prohibit the disclosure of any such information the disclosure of which is required by law.

Section 11: Duty to leave meeting

- (a) To avoid the appearance of impropriety, after any public servant or a partner in interest is determined to have a conflict of interest or a potential conflict of interest in any matter, and once all questions relating to the conflict of interest have been answered to the satisfaction of the decision maker, the public servant shall immediately leave the meeting room, except that if the matter is being considered at a public meeting, the public servant may remain in the area of the room occupied by the general public.
- (b) Nothing herein shall require members of voting bodies to leave their seats while action is taken regarding any item contained on a consent agenda on which there is no deliberation, the public servant's conflict has been disclosed, and the public servant abstains from voting on the item.

Section 12: Public contracts

- (a) Any public servant who has or may have a personal interest in any contract shall disclose such interest prior to the first of any of the following events:
 - (1) The solicitation of a contract;
 - (2) The bidding of a contract;
 - (3) The negotiation of a contract; or
 - (4) The approval of a contract by the City Council.

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

- (a) A member of the City Council who has or may have a conflict of interest in a matter which requires an official action by any decision maker shall, before the matter is decided, disclose the conflict of interest or the potential or alleged conflict of interest; if the member of the City Council believes that no conflict of interest exists, or that despite any alleged or potential special interest, such city councilmember is nevertheless able to vote and otherwise participate fairly, objectively and in a manner consistent with the public interest, then the member shall so state in the written disclosure.
- (b) If any member of the Board of Ethics has or may have a conflict of interest in any matter before the Board, such member shall not appear before the Board, discuss, debate,

deliberate about, act upon, vote upon or otherwise participate in or influence the decision-making process pertaining to the matter in which the member has a conflict of interest.

- (c) If the City Attorney or any Assistant City Attorney has or may have a conflict of interest in any matter before the Board of Ethics, or if any attorney who is responsible for performing any functions on behalf of the Board is precluded from doing so because of a legal conflict of interest which cannot be resolved by the City Attorney's office internally by screening or some other method, the City Attorney shall disclose the personal interest, or the nature of the conflict, to the Board. If the Board determines that the City Attorney has a personal interest in the matter, or if the City Attorney determines that the City Attorney's office cannot resolve the conflict in a manner which will allow the City Attorney's office to perform its duties properly, then the Board may engage outside counsel upon terms and conditions approved by the City Council.
- (d) Any public servant who has or may have a conflict of interest shall disclose it. After receiving a disclosure, the City Clerk shall:
 - (1) Maintain a record of such disclosure; and
 - (2) Promptly forward copies of the disclosure to any person named in the disclosure, the Board of Ethics and the City Attorney.
- (e) Any public servant who believes that any other public servant has a conflict of interest in any agenda item before a governmental body shall disclose such interest to the City Clerk, and the City Clerk shall forward copies of such disclosure to the person alleged to have a conflict of interest, the Board of Ethics and the City Attorney.
- (f) A public servant, in addition to disqualifying himself from participation in any decision regarding the pecuniary or employment interest of a partner in interest, shall make known the existence of the relationship and the interest by filing, with the City Clerk a written disclosure of the relationship and the nature and extent of the conflict of interest involved.

Section 14: Unauthorized outside employment

- (a) Purpose of policy. The purposes of the policies governing unauthorized outside employment are to prevent conflicts of interest and conflicts of loyalty; to prevent abuses regarding dual compensation, payment for work not done, or unlawful gifts of public funds; and to prevent excessive loss of efficiency in the performance of public service.
- (b) Conflict of interest. A public servant shall not accept any employment, nor enter into any contract, nor perform any service for compensation that results in a financial conflict of interest or a conflict of loyalties which would affect the performance of the public servant's official duties.
- (c) Employees.

- (1) An employee of the City may be self-employed or may take occasional or part-time jobs if, in the opinion of his or her department head, there is no conflict with working hours, the employee's efficiency in his or her city work, or other interests of the City.
- (2) Before engaging in outside employment, employees shall have the written approval of their department heads or designee in emergency situations.
- (3) Public servants who hold management level positions shall notify the City Manager prior to creating, contracting with, or being employed by any business other than the City. The City Manager shall provide written approval or disapproval of the notification within a reasonable time. Any action undertaken by the City Manager shall require prior approval by the City Council.
- (4) All requests for approval of outside employment shall state the type and place of employment, the hours of work and the employer's name and address.
- (5) City employment shall remain the employee's first priority, and if at any time the outside employment interferes with an employee's job requirements or performance for the City, the employee shall be required to modify the conditions of the outside employment or terminate either the outside employment or the City employment.

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

- (a) Public servants of the City shall treat all citizens with courtesy, impartiality, fairness, and equality under the law, and shall avoid both actual and potential conflicts between their private self-interest and the public interest. Prohibited conduct of each such public servant shall include, but not be limited to, the following:
 - (1) Intentionally granting or making available to any person any special consideration, treatment, advantage, or favor beyond that which it is the general practice to grant or make available to the public at large;
 - (2) Intentionally requesting, using or permitting the use of any publicly owned or publicly supported property, vehicle, equipment, labor, or service for the personal convenience or the private advantage of oneself or any other person, except as otherwise allowed by law or as authorized by the City;
 - (3) Knowingly participating in the deliberation of or voting on any matter involving personal financial or personal interest, or where the public servant has an interest which is materially adverse to the applicant or person affected by the outcome of the matter;

- (4) Engaging in private employment with, or rendering services for, any private person who has business transactions with the City, unless the employee has made full public disclosure of such employment or services and received approval of their supervisor or the City Manager;
- (5) Appearing on behalf of any private person, other than oneself, before any public body in the City;
- (6) Accepting any gift, whether in the form of money, thing, favor, loan, or promise, that would not be offered or given to the employee if the individual were not an official or employee that would thereby cause the official or employee to place themselves in a position in which the giver of the gift could expect special consideration or in which the public could reasonably assume that special consideration is being given. Thus, the official or employee should be firm in refusing gifts, favors, or gratuities, large or small, which can, in the public mind, be reasonably interpreted as capable of influencing his or her judgment in the discharge of his or her duties;
- (7) Intentionally disclosing any confidential information concerning any official or employee, or any other person, or any property or governmental affairs of the City, without prior formal authorization of the City Council;
- (8) Intentionally using or permitting the use of confidential information to advance the financial or personal interest of the individual or any other person;
- (9) Ordering any goods and services for the City without prior official authorization for such an expenditure;
- (10) Intentionally, use his or her superior position to request or require an employee to:
 - (A) Do clerical work on behalf of the member's family, business, social, church or fraternal interest when such work is not furthering a City interest;
 - (B) Perform any work outside the employee's normal course of municipal employment;
 - (C) Purchase goods and services for personal, business, or political purposes;
or
 - (D) Work for him personally without offering just compensation;
- (11) A City Councilmember shall not draw per diem or expense monies from the City to attend a seminar, convention, or conference and then fail to attend the seminar, convention, or conference without refunding the pro-rata unused per diem or expense monies to the City.

- (12) Intentionally violating any provision of the City Charter which prescribes the conduct of a public servant.
- (b) No public servant shall hold any other office, elected or appointed, in any other governmental entity, when the duties of such office are incompatible with the proper discharge of the public servant's duties with the City as defined by any one of the following circumstances:
 - (1) Where one office is subordinate to the other;
 - (2) Where one office carries the power of removal of the other; or
 - (3) Where the occupancy of both offices is prohibited by the City Charter or other law.
- (c) No public servant shall falsely represent his personal opinion to be the official position of the City, and no public servant shall falsely represent his personal opinion to be the official position of any Board or city administrators. This subsection shall not apply to statements of elected officials made in the course of fulfilling the responsibilities of their offices or in running for election to office, nor shall it apply to the professional opinions of city officers or employees rendered in the course of performing their duties, provided that such opinions are clearly identified as professional opinions.
- (d) All public servants have a fiduciary duty to use city fiscal and human resources in a manner which advances the public interest, and to refrain from using city resources for their personal benefit; therefore, public servants are prohibited from using city resources in any manner which violates any applicable law or policy, and are expressly prohibited from using any city resource to obtain any personal benefit.
- (e) No public servant shall use his official authority or position to influence or interfere with or affect the results of any election, nor to solicit or receive contributions from city employees in connection with any city election.
- (f) No public servant shall suppress any public document, record, report or any other public information available to the general public because it might tend to unfavorably affect their private financial, personal, or political interest.
- (g) When a public servant, in the course of carrying out his duties, has been offered or is discussing future employment with a business that is presently dealing with the City concerning matters within the public servant's current official duties, that person shall disclose such possible future employment to the City Manager. The city manager shall disclose such possible future employment to the City Council.
- (h) No member of the City Council having a personal interest in a matter shall represent himself or any other person before the City Council in connection with that matter, nor in

connection with any matter in which a partner in interest has a personal interest, except in cases where a legal right to self-representation exists.

- (i) No member of a Board having a conflict of interest shall represent himself or any other person before that Board in connection with that matter, nor in connection with any matter in which a member of his immediate family or a business with which he, or a member of his immediate family, is associated has a prohibited interest, except in cases where a legal right to self-representation exists.
- (j) No member of a Board who is prohibited by this provision from representing himself before that Board shall represent himself in the appeal of any decision of that Board to any decision maker.
- (k) No public servant shall, while in the course and scope of their duties, engage in any kind of behavior towards another public servant or member of the public that is threatening or abusive in nature

Article II: Board of Ethics

Section 1: Creation; membership; term; compensation

- (a) Created; membership. There is created a Board of Ethics consisting of five (5) members, and two (2) alternate members. Each member of the Board of Ethics shall have been a resident of the City for at least one (1) year immediately preceding the date of taking office and shall remain a resident of the City while serving as a member of the Board of Ethics.
- (b) Member restrictions. Members of the Board shall not be elected officials, persons appointed to elective office, full-time appointed officials (whether exempt or nonexempt), or city employees, and shall hold no elected public office nor any other city office or employment.
- (c) Appointment. Members of the Board shall be appointed by the Mayor and approved by the City Council. An appointment to fill a vacancy on the Board shall be made by the Mayor and approved by the City Council.
- (d) Chairperson. The Board shall elect one of its members to serve as Chairperson and one as Vice Chairperson of the Board.
- (e) Term of Office. Board members shall serve staggered terms of no more than three (3) years. A member shall hold office until a member's successor is appointed.
- (f) Limit of term. No person may serve more than two (2) consecutive terms as a Board member.

- (g) Deliberations, actions open to the public. The Board's deliberations and actions upon requests shall be open to the public.
- (h) Compensation. Members of the Board are volunteers and shall serve without compensation. The City Council shall provide meeting space for the Board of Ethics. Subject to budgetary procedures and requirements of the City, the City shall provide the Board of Ethics with such supplies and equipment as may be reasonably necessary to perform its duties and responsibilities.
- (i) Staff support. The City Council shall provide such staff support for the Board as the City Council determines to be necessary for the Board to fulfill its duties and responsibilities. The City Attorney is designated to be the legal advisor for the Board, except that the City Attorney is not authorized to represent the Board in any legal action if doing so would create a conflict which would prevent the City Attorney from also representing the Mayor, the City Manager, or City Council. The City Clerk shall serve as recording secretary to the Board.

Section 2: Duties and powers

- (a) The Board shall, in addition to its other duties:
 - (1) Develop and adopt written by-laws and procedural rules, which rules shall be subject to the approval of the Mayor and City Council, and filed with the City Clerk;
 - (2) Be authorized to administer oaths;
 - (3) Conduct hearings as needed to hear and decide specific cases in which a violation of this Chapter is alleged. All cases to be investigated by the City Attorney or outside counsel and heard by the Board of Ethics regarding alleged violations of this Chapter as a result of the conduct of individuals must be initiated by the filing of a written complaint in accordance with the procedure as set forth below;
 - (4) No later than December 1 of each year, submit an annual report to the Mayor and City Council concerning its action, if any, in the preceding year, which shall contain a summary of its decisions and opinions; the Board shall make any alterations in the summaries necessary to prevent disclosure of any confidential information pertaining to any individual or organization;
 - (5) Establish a process for evaluating all significant aspects of the administration and implementation of this Chapter;
 - (6) Prescribe and make available necessary forms for use under this Chapter;
 - (7) When necessary, request assistance from the City Attorney in compelling the production of documents and witnesses to assist in any investigation; and

- (8) When necessary, retain outside legal counsel and other experts as needed after solicitation of recommendations from the City Attorney (unless the need to retain outside counsel is caused by a conflict involving the City Attorney's office), and upon approval by the City Council of a contract for services approved as to form by the City Attorney.
- (b) The Board may:
- (1) Conduct meetings and hearings as the Board determines necessary or appropriate:
 - (A) To ascertain public opinions and to gather information from the general public, employees, or others regarding any aspect of the City's ethics policies or practices; and
 - (B) For any other purpose for which the Board is authorized to conduct hearings;
 - (2) Respond, as it deems appropriate, to requests for confidential advisory opinions; the Board may decline to render an opinion in response to any request for an advisory opinion;
 - (3) Render and publish written formal opinions on any matter within the scope of the Board's authority; the Board may initiate opinions on its own motion or upon request;
 - (4) At the request of a person, the City Attorney may render an informal opinion with respect to the prospective conduct of such person. Nothing in this Chapter shall be construed to prohibit a request for an informal opinion by any public servant from the City Attorney regarding a potential conflict of interest. If the City Attorney elects to render an informal opinion, the City Attorney shall, within a reasonable time, submit a written summary of the opinion to the Board for the Board's information; if the City Attorney declines to render an informal opinion, nothing shall preclude the person requesting the opinion from requesting the Board for an opinion;
 - (5) Prepare and publish special reports, technical studies, and recommendations to further the purposes of this Chapter;
 - (6) Make recommendations to the Mayor and City Council of legislative or administrative actions regarding the City's policies and practices which the Board believes could enhance the ethical environment in which public servants work; and
 - (7) Make recommendations to the City Manager and City Attorney with respect to the development of an educational program for public servants subject to this

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

Section 3: Custodian of records

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

Section 4: Requests for actions

- (a) Any person may file a request for Board action with the City Clerk, either personally or on behalf of an organization or governmental body, and may request of the Board an ethics opinion, whether a formal opinion or a confidential advisory opinion, regarding the propriety of any matter or matters to which the person is or may become a party; and any decision maker, with the consent of a prospective appointee, may request of the Board an ethics opinion regarding the propriety of any matter to which the public servant, prospective public servant or former public servant is or may become a party.
- (b) Any request for Board action shall be in writing, and shall be signed by the person making the request.

Section 5: Limitations of power

The Board does not have the authority to reverse or otherwise modify a prior action of the Mayor, City Council, or an officer or employee of the City. If the Board finds a prior action of the Mayor, the City Council, officer or employee to have been ethically improper, the Board may advise the appropriate party or parties that the action should be reconsidered. Upon such advice by the Board, the action may be reconsidered by the appropriate person or public body. If the Board determines an existing City Contract to be ethically improper, after such determination and advice from the Board, the City may void or seek termination of the contract if legally permissible. The Board may refer a matter to the City Attorney for review and consideration for appropriate action. Upon completion of review and consideration, the City Attorney's office shall report its findings to the Board.

Section 6: Procedures for hearing complaints

- (a) Any person may file a written complaint, signed and sworn in the presence of a notary, with the City Clerk alleging a violation of this Chapter.
- (b) A complaint shall specify the provisions of this Chapter alleged to have been violated and facts alleged to constitute the violation.
- (c) Every ethics complaint filed shall contain the following statement: "I have read the complaint and aver that the facts contained therein are true to the best of my knowledge and belief and I am aware that the Ethics Ordinance that created the Ethics Board

authorizes the Board to impose penalties for filing a frivolous complaint including, without limitation, dismissal of my complaint, payment of costs associated with the handling and processing of the complaint, and/or all other penalties applicable under the law.”

- (d) Upon receipt of such a complaint, and until an investigation of the complaint is concluded, all matters regarding the investigation, facts of the matter giving rise to the complaint and status of the investigation shall not be disclosed and shall be kept in confidence. Neither the Board of Ethics, City Council or any other Board or Commission shall entertain public comment, place the matter on its agenda, or entertain discussion of the issue until the report of investigation is delivered to the Board of Ethics for its consideration and the Board of Ethics makes a final determination or forwards its report to the City Council for a final determination.
- (e) Upon receipt of such a complaint, but in any event not later than five (5) working days after receipt, the City Clerk shall acknowledge receipt to the complainant, and forward the complaint simultaneously to the Board, the person who is complained against and the City Attorney.
- (f) The City Attorney shall provide the Board with a preliminary written analysis of the complaint no later than 30 days from the date the complaint is filed with the City Clerk.
- (g) During any investigation and during any hearing which is conducted to determine whether a violation of this Chapter has occurred:
 - (1) The person under investigation or the accused may be represented by counsel of his own choosing; and
 - (2) The accused or his representative, if any, shall have an opportunity to:
 - (A) Challenge the sufficiency of any complaint which has been filed against him;
 - (B) Examine all documents and records obtained or prepared by the Board in connection with the matter heard;
 - (C) Bring witnesses;
 - (D) Establish all pertinent facts and circumstances;
 - (E) Question or refute testimony or evidence, including the opportunity to confront and cross examine adverse witnesses; and
 - (F) Exercise, to the extent the Board, in its discretion, determines to be just and reasonable, any pretrial discovery procedure usually available in civil actions.

- (h) The following principles shall apply regarding evidence in connection with hearings conducted by the Board:
 - (1) The Board shall not be bound to adhere to statutory rules of evidence, but shall be fundamentally fair and reasonable in its administration of evidence;
 - (2) All evidence including certified copies of records which the Board considers shall be fully offered and made a part of the record in the proceedings;
 - (3) The accused or any other person under investigation shall be afforded adequate opportunity to rebut or offer countervailing evidence;
 - (4) The Board shall inform the accused or his counsel of exculpatory evidence in its possession; and
 - (5) The standard of evidence sufficient to prove a violation in hearings conducted under this Chapter shall be by a preponderance of the evidence admitted at the hearing.
- (i) The Board, in addition to its other duties and powers, may:
 - (1) Appoint a hearing officer to conduct hearings under this Chapter;
 - (2) With the approval of the City Council, retain outside legal counsel and other experts as needed with respect to hearings in accordance with its policies. The selection of a hearing officer and outside counsel and other experts and any contract for such persons shall be made after solicitation of recommendations from the City Attorney and upon approval by the City Council of a contract for services approved as to form by the City Attorney;
 - (3) Request testimony to be taken by deposition before any individual who is designated by the Board and, in such instances, to compel testimony and the production of evidence to the extent it is otherwise lawfully authorized to do so;
 - (4) Request any person to submit in writing such reports and answers to questions relevant to the proceedings as the Board may prescribe, such submission to be made within such period and under oath or otherwise as the Board may determine; and
 - (5) Request and obtain copies of state income tax returns and access to other appropriate information as permitted under state law regarding all persons who are the subject of such investigation.

- (j) The person complained against shall have 30 days from the date of receipt of the complaint from the City Clerk to submit a written response prior to the Board deciding whether to hold a hearing.
- (k) Any person whose name is mentioned or who is otherwise identified during a hearing and who, in the opinion of the Board, may be adversely affected thereby may, upon request of the person or a representative of the person, or upon the request of any member of the Board, appear at the hearing to testify on his own behalf or have a representative appear to so testify, and the Board may permit any other person to appear and to testify at a hearing.
- (l) Upon request of the accused, on its own motion, or upon request of the City Attorney, the board shall be authorized to issue subpoenas to compel the attendance of necessary witnesses.
- (m) Within 30 days, following receipt of the City Attorney's analysis, the Board shall review and consider the complaint and the City Attorney's analysis, and, if a hearing is to be held, shall set a date certain for the hearing to take place within 30 days of said review by the Board, unless the accused petitions for and the Board consents to a later date.
- (n) As soon as practicable after giving due consideration to a complaint, or, if a hearing was held, after the hearing, the Board shall take any action or combination of actions which it deems appropriate and which it is lawfully empowered to take, including, but not limited to, the following:
 - (1) Dismiss the complaint based on any of the following grounds:
 - (A) The complaint does not allege facts sufficient to constitute a violation of this Chapter;
 - (B) The Board has no jurisdiction over the matter;
 - (C) Failure of the complainant to cooperate in the Board's review and consideration of the complaint; or
 - (D) The complaint is defective in a manner which results in the Board being unable to make any sound determination; and
 - (2) Determine that no violation of this Chapter has occurred;
 - (3) Determine that the complaint alleges facts sufficient to constitute a violation of this Chapter and that the Board will conduct a hearing, in which case the Board shall promptly send written notice of such determination to the accused and to the complainant; or

- (4) Determine that further information is required to determine whether the complaint alleges facts sufficient to constitute a violation of this Chapter; and
 - (A) Conduct its own investigation of any alleged violation; or
 - (B) Request the City Attorney to investigate the complaint and report all findings back to the Board;
 - (C) Schedule the complaint for further review and consideration at a future time certain, in which case the Board shall promptly send written notice of such determination to the accused and to the party who made the complaint;
 - (D) Refer the complaint for criminal investigation or prosecution; or
 - (E) Refer the complaint, along with the board's findings and conclusions, to any appropriate administrative authority for disciplinary action or other suitable remedial action; the Board, although it has no independent administrative authority, may make any recommendation to any city administrator at any level of supervision, if the Board finds that the recommendation will advance the objectives of this Chapter.
- (o) After it has made its final determination, the Board shall issue its written findings of fact and conclusions, and may issue any additional reports, opinions and recommendations as it deems necessary. All such reports shall be in compliance with all state and city laws governing confidentiality, open government, and torts. All such reports shall be reviewed by the City Attorney prior to issuance.

Section 7: Those subject to removal only by the City Council

- (a) If findings relative to an elected or appointed official are filed by the Board with the City Council, the matter shall be referred to the appropriate standing committee of the City Council for a report, or the City Council may appoint a special committee and proceed in accordance with any other applicable state or local laws.
- (b) The committee, in reporting the matter to the City Council, may recommend a dismissal of the charges, a reprimand, or a hearing before the City Council to determine whether removal from office is warranted under the applicable provisions of the state and local laws. Failure of an elected official to file the required financial disclosure statement may constitute grounds for removal from office.
- (c) Any hearing by the City Council or by a special or standing committee, as designated by the City Council, shall be conducted in accordance with the following provisions:
 - (1) The accused official must be given at least 30 days notice of the hearing date.

- (2) The rules of evidence of Georgia State law shall apply to the hearing. All evidence, including certified copies of records and documents which the City Council considers, shall be fully offered and made part of the record in the case.
- (3) Each party shall be afforded adequate opportunity to rebut or offer countervailing evidence, and to examine and cross examine witnesses.
- (4) During the entire hearing conducted under the provisions of this Chapter, the official or any person whose activities are under investigation shall be entitled to be represented by counsel of his choosing. The City Council shall immediately disclose and forward to the official or his counsel any and all exculpatory evidence.
- (5) The accused official or his representative shall have an adequate opportunity to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, and to question or refute any testimony or evidence, including the opportunity to confront and cross examine adverse witnesses.
- (6) The City Council shall have the power to compel the attendance of witnesses and to issue subpoenas for books, records, documents or papers therein to be designated under the authority granted to it by State Law.
- (7) The City Council may request income tax returns of the official whose conduct or activities are under consideration by the City Council. The examination of the official's income tax returns shall be in accordance with State Law.
- (d) City Council action. The City Council shall make a determination in regard to the recommendation of the committee. Dismissal of the findings of the Board as referred to the City Council, or reprimand by the City Council shall be by a majority vote. Removal from office shall be in accordance with all applicable state and local laws.

Section 8: Ex Parte communications

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

- (b) If any person attempts to communicate with a Board member regarding the pending complaint, the Board member shall report the substance of the communication to the Board on the public record at the next meeting or hearing of the Board.
- (c) No Board member shall undertake an independent investigation of any complaint or matter before the Board.

Section 9: Confidentiality of Board information

No member of the Board nor any public servant who has access to any confidential information related to the functions or activities of the Board shall divulge that information to any person not authorized to have it. The identity of a person who requests a confidential advisory ethics opinion is confidential, as is information describing or pertaining to any organization mentioned if the disclosure of the information could lead to the disclosure of the identity of the person requesting the confidential advisory opinion.

Section 10: Waiver of Confidentiality

A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of that person is deemed to have waived the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the Board in connection with the request.

Section 11: Statute of Limitations

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

Section 12: Wrongful use of Board of Ethics

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

Section 13: Wrongful use of this Chapter

- (a) A wrongful use of this Chapter shall occur if and when a frivolous or false complaint is filed in a negligent, reckless or purposeful manner without a basis in law or fact and for a

purpose other than reporting a violation of this Chapter. A person has not filed a frivolous complaint if he/she reasonably believes that facts exist to support the claim and either reasonably believes that under those facts the complaint is valid under this Chapter or acts upon the advice of counsel sought in good faith and given after full disclosure of all relevant facts within his/her knowledge and information.

- (b) In deciding if a complaint is a "Wrongful use of this Chapter," the Board of Ethics may also consider:
- (1) The timing of the complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;
 - (2) The nature and type of any publicity surrounding the filing of the complaint, and the degree of participation by the complainant in publicizing the fact that a complaint was filed with the Board of Ethics;
 - (3) The existence and nature of any relationships between the respondent and the complainant before the complaint was filed;
 - (4) If respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;
 - (5) Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and
 - (6) Any evidence of the complainant's motives in filing the complaint.

Section 14: Severability

If any provision of this Chapter is deemed invalid by any court or by any federal or state agency of competent jurisdiction, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such provision, the conflicting provisions of this Chapter shall be considered a separate, distinct and independent part of this Chapter, and such holding shall not affect the validity and enforceability of this Chapter, or any part other than the part declared to be invalid.

**AN ORDINANCE TO ADOPT AND APPROVE CHAPTER 10, ELECTIONS, PROVIDING FOR
INCLUSION AND IDENTIFICATION IN THE CODE OF ORDINANCES FOR THE CITY OF
DUNWOODY, GEORGIA TO BE REFERENCED IN THE FUTURE AS CHAPTER 10
(ELECTIONS) AS ATTACHED HERETO AND INCORPORATED HEREIN**

WHEREAS: The Ordinance relating to Chapter 10, Elections, is hereby adopted and approved;
and is attached hereto as if fully set forth herein; and,

WHEREAS: This Ordinance shall be designated as Chapter 10 of the Code of Ordinances of
the City of Dunwoody, Georgia; and

WHEREAS: This Ordinance is shall become effective on December 1, 2008.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF DUNWOODY HEREBY
ORDAINS** that Chapter 10, Elections, is hereby adopted and approved as part of the Code of Ordinances
for the City of Dunwoody, Georgia. Any ordinance in conflict with this ordinance is hereby repealed.

SO ORDAINED AND EFFECTIVE this the ____ day of _____, 2008.

Approved:

Ken Wright, Mayor

Attest:

Joan Jones, Acting City Clerk
(Seal)

Approved as to Form and Content:

Brian Anderson, Acting City Attorney

Chapter 10: Elections

Article 1: General Provisions

Section 1: Compliance with State Law.

All elections and challenges thereto shall be in compliance with the Georgia Election Code codified at O.C.G.A. Chapter Two, Title Twenty-One.

Section 2: General Elections.

In accordance with Section 2.02 of the Charter, general municipal elections shall be held on the Tuesday next following the first Monday in November of each odd-numbered year.

Section 3: Special Elections:

Special elections shall be held as needed according to the City Charter Section 2.03 and shall be conducted in accordance with Chapter 2, Title 21 of O.C.G.A.

Section 4: Superintendents.

The City Manager shall appoint the Municipal Superintendent in accordance with O.C.G.A. § 21-2-70.1. The Council shall provide for the Superintendent in accordance with O.C.G.A. § 21-2-71.

Section 5: Conducting Elections.

The City of Dunwoody shall coordinate all elections with the DeKalb County Board of Elections and Registration. The City may contract or otherwise decide by agreement with the DeKalb County Board of Elections and Registration for that Board to coordinate and conduct all elections in the City of Dunwoody.

Article 2: Candidate Qualifications.

Section 1: Candidate Requirements.

(a) Residency: In accordance with Section 2.02 of the Charter, candidates for Mayor and City Council must have been a resident of the City for a continuous period of at least 12 months immediately prior to the date of election; and each such person shall continue to reside within the City during said period of service and shall be registered and qualified to vote in municipal elections of this City. In addition to the above requirements, no person shall be eligible to serve as a councilmember representing a council district unless that person has been a resident of the district such person seeks to represent for a continuous period of at least six months immediately prior to the date of the election for

councilmember and continues to reside in such district during that person's period of service.

(b) Age: No person shall be eligible to serve as Mayor or Council member unless that person is at least 21 years of age.

Section 2: Notice of Candidacy.

Filing of notice of candidacy for municipal office shall be conducted in accordance with O.C.G.A. § 21-2-132 as amended. The qualifying period shall commence no earlier than 8:30 a.m. on the last Monday in August immediately preceding the general election and shall end no later than 4:30 p.m. on the following Friday. In special elections, the qualifying period shall commence no earlier than the date of the call and shall end no later than 25 days prior to the election.

Section 3: Fees.

(a) Except as provided in subsection (b) below, each candidate shall pay a fee of 3 percent of the total salary of the office sought. Such fee shall be deposited into the City Treasury in accordance with O.C.G.A. § 21-2-131.

(b) A pauper's affidavit may be filed in lieu of the qualifying fee in accordance with O.C.G.A. § 21-2-132.

Section 4: Withdrawal.

Any candidate may withdraw his name as a candidate prior to October 15th of the election year. No refund will be made to any candidate for the fee remitted to qualify for office.

Article 3: Voting.

Section 1: Electors to Be Registered By County.

The City Council shall provide for the use of the County voter registration list. Any person who is a resident of the City and who is registered as an elector with the County shall be eligible to vote in any municipal primary or election.

Section 2: Absentee Ballots.

Voting by absentee ballots in a method consistent with Georgia law shall be permitted in municipal elections.

Article 4: Voting Records.

To the extent required by O.C.G.A. § 21-2-72, voting records and documents shall be made available in accordance with that statute. The maintenance of said records shall be kept in compliance with O.C.G.A. § 21-2-73.