

**BYLAWS AND RULES OF PROCEDURE
BOARD OF ETHICS
CITY OF DUNWOODY, GEORGIA**

**SECTION 1
The Ethics Board**

1.1 Membership. Membership of the Ethics Board of the City of Dunwoody (hereinafter, the “Board”) shall be as provided in Part II, Chapter 2, Article VIII, Division 2, Section 2-253 of the Code of the City of Dunwoody (hereinafter, “Ethics Ordinance”).

1.2 Purpose. The main purpose of the Board is to determine whether a violation of the Ethics Ordinance has occurred and, if so, to assess and recommend the appropriate penalty under the circumstances.

1.3 Powers and Duties. The Board shall have those powers and duties prescribed in Section 2-254 of the Ethics Ordinance.

**SECTION 2
Officers and Members**

2.1 Members. The Board shall consist of five (5) members; if appointed by Mayor and City Council, there also shall be two (2) alternates to serve in a member position when a member is absent.

2.2 Alternates. Alternates, if appointed by Council, shall have the duties, powers and limitations set forth in Section 2-254 of the Ethics Ordinance, and such other duties and powers as may be provided from time to time by the Board

2.3 Officers. The Board shall elect one (1) of its members to serve as Chairperson and one (1) of its members to serve as Vice Chairperson to the Board. Alternates may not serve as officers of the Board. Said elections shall be held at the first meeting of each calendar year, if a meeting is called in a specific calendar year. Elected officers shall assume their duties immediately until a successor is named. The City Clerk or designee shall serve as the Recording Secretary to the Board.

2.4 Chairperson. The Chairperson shall have those duties and powers usually attendant upon the office of the Chairperson, and such other duties and powers as may be provided from time to time by the Board. The Chairperson shall preside at all meetings and hearings of the Board. The Chairperson may present to the Board matters judged to require attention and need not vacate the chair for that purpose. In its absence, the Vice-Chairperson shall preside over meeting and hearings.

2.5 Recording Secretary. The City Clerk or designee shall serve as the Recording Secretary of the Board. The Recording Secretary shall conduct administrative duties on behalf of the Board as it shall decide and 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 the Ethics Ordinance.

2.6 Removal of Board Members. A Board member or alternate may be removed for a stated cause by the affirmative vote of the Mayor and City Council.

2.7 Board Vacancy. Should there be a vacancy on the Board, the Board's Chairperson shall inform the Mayor and City Council. An appointment to fill a vacancy on the Board shall be made by the Mayor and approved by the City Council as set forth in Section 2-253 of the Ethics Ordinance.

2.8 Conflicts. The Board officers, members and alternates shall comply with the conflict of interest provisions set forth in Sections 2-217 and 2-218 of the Ethics Ordinance.

SECTION 3

Meetings

3.1 Meetings. Meetings of the Board shall be held whenever necessary to review or investigate an active Complaint and shall meet otherwise as decided by the Chairperson of the Board or any two Board members to review and deal with any administrative items of the Board. All Meetings of the Board shall be Special Called Meetings. Board members and alternates shall be notified of a special meeting by personal notice or by cable, telegraph, facsimile transmission or electronic mail, or by regular mail by depositing the same in the post office or letter box in a postage paid sealed wrapper, addressed to such Board member or alternate. Such notice shall be deemed to be given at the time the same is sent or mailed. The meetings shall be held at City Hall unless a different location of said meeting is desired.

3.2 Agenda. Prior to each meeting of the Board, the Chairperson or his/her designee shall prepare an agenda. The agenda for all meetings shall include, but not be limited to, the following:

- (a) approval of the minutes of the previous meeting;
- (b) items for action or discussion;
- (c) staff reports, committee reports; and
- (d) other business.

Any Board member or alternate may place an item on the agenda of any regular meeting, under the heading "Other Business". Copies of the agenda shall be sent to each Board member and alternate and any other parties requesting such agenda at least three (3) working days before a regular Board meeting. Agendas may also be sent to any person or organization requesting said agenda. All persons appearing before the Board, either on their own behalf, or in a representative capacity shall conform to standards of reasonable orderly conduct. If any person does not conform to such standards the Chairperson may decline to permit such persons to address the Board at said proceeding.

3.3 Meeting Attendance. Board members and alternates are expected to attend all meetings of the Board. Members and alternates who are unable to attend scheduled meetings, for any reason, are encouraged to submit to the Board's Secretary in advance of said meeting notice for such absence. In the event a Board member or alternate fails to submit said notice of absence for two (2) consecutive meetings, the Secretary shall notify the Chairperson, and the Chairperson shall be empowered to take whatever action, if any, is deemed necessary. In the event of repeated and continued absences on the part of any Board member or alternate after said notification of the Chairperson, the Chairperson may then

decide to bring this matter before the Board, and by majority vote of the Board, to send a recommendation to the Mayor and City Council asking that the appointment be reconsidered.

3.4 Quorum and Voting. A quorum for any full Board meeting shall be four (3) Board members, including any alternate who is appointed to serve as a substitute for an absent Board member. Unless appointed to serve as substitutes for absent Board members, an alternate shall have no right to vote at Board meetings and hearings. No business shall be transacted at any meeting except when a quorum is present. All recommendations and actions shall be by a majority vote of the Board members or alternates appointed to serve as substitutes for absent Board members. Except as otherwise provided herein, alternates shall not be included as part of the quorum.

3.5 Meeting Minutes. The Recording Secretary shall be responsible for the minutes of all Board meetings. In the event the Recording Secretary is unable to attend a Board meeting, it shall be the responsibility of the Recording Secretary to send a representative in his or her stead. All votes taken at any Board meetings shall be noted in the minutes. Upon approval of the minutes by the Board, the Chairperson's signature shall be affixed to the minutes. The Recording Secretary shall not be required to attend or take minutes at any Committee Meeting.

SECTION 4 Formal Advisory Opinions

4.1 Who May Request. The Board may issue a formal advisory opinion on its own initiative or on the request of any person or entity to which the Ethics Ordinance applies. A request for a formal advisory opinion may be made only by a person or entity that intends to use the opinion to guide the said individual or entity's own conduct.

4.2 Requests Must Be In Writing. Requests for formal advisory opinions shall be in writing and must set out with reasonable specificity the facts and circumstances of a case. Requests shall be filed with the City Clerk.

4.3 Discretion to Issue. Requests shall be submitted upon receipt by the City Clerk to the Chairperson who shall expeditiously determine whether to issue a formal advisory opinion addressing the issues raised. The Chairperson's decision to issue or deny a request for a formal advisory opinion shall be reported to the Board and may be overridden by majority vote of the Board.

4.4 Issuance. A formal advisory opinion shall only be issued by official action of the Board and shall be forwarded to the person requesting it. The Board may publish an opinion or a summary of an opinion, but may not include in the publication the name of the requestor, the name of a person covered by a request from a City Department or entity, or any other information that might identify the requestor, unless all affected persons consent to the inclusion.

4.5 Binding. Written formal advisory opinions issued by the Board are binding on the Board as precedent in a subsequent Board proceeding, unless:

- (a) the Board has amended or revoked the opinion before the initiation of the Board proceeding, has notified the person making or covered by the request of its action, and has allowed at least

thirty (30) calendar days for the person to do anything that might be necessary to comply with the amended or revoked opinion;

- (b) the Board finds that the request omitted or misstated material facts; or
- (c) the Board finds that the person making or covered by the request has not acted in good faith in reliance on the opinion.

4.6 Normal Time Frame. The Board shall strive to issue its opinion within sixty (60) calendar days of the filing of the request for an advisory opinion with the City Clerk. However, the Chairperson may determine that additional time may be required for issuing an opinion.

SECTION 5

Complaints Alleging Violations of the Ethics Ordinance

5.1 Complaint. Any person may submit a written Complaint alleging a violation of the City’s Ethics Ordinance to the Board. The Board may not consider any alleged violation that occurred before the adoption of the City’s Ethics Ordinance or more than one (1) year before the date of the filing of a Complaint. If the violation is alleged to have begun more than a year before the filing of the Complaint and to have continued to a time within the one (1) year period, the Board may consider the Complaint.

5.2 Form of Complaint. For a Complaint to be considered by the Board, the Complaint must be in the form as directed by Section 2-258 of the Ethics Code, and Complainant must submit the complete Complaint to the City Clerk.

5.3 Insufficient Complaints. No investigation or ruling is required if a Complaint is deemed by the Board to be frivolous, illegible, too indefinite, does not identify the alleged violator, is unsigned, or unsworn to, by the Complainant.

A Complaint (or any claim contained therein) is “frivolous” and/or insufficient if the Board determines, by a majority vote, that the Complaint (or any claim contained therein), on its face, does not state a violation of the Ethics Ordinance upon which relief can be granted. In deciding whether a Complaint (or a claim contained therein) is “frivolous”, the Board may also consider those items listed in Section 2-265 of the Ethics Code.

5.4 Oral or Anonymous Complaints. The Board shall not consider oral or anonymous Complaints.

5.5 Confidentiality and Public Disclosure. Each Complaint shall be deemed a separate pending investigation at the time it is reported. Except for the initial Complaint, the Board’s records in any pending investigation or enforcement proceeding are exempt from disclosure under the Georgia Open Records Act, as is the identity of confidential sources and records of confidential investigations.¹

5.6 No ex parte communications with Board. No Complainant or Respondent, or any persons acting

¹ See OCGA § 50-18-72.

on their behalf shall engage or attempt to engage, directly or indirectly, in any *ex parte* communication about the subject matter of a Complaint with a Board member or alternate prior to the disposition of the Complaint. A Board member or alternate shall not knowingly participate, directly or indirectly, in any *ex parte* communication with any person, other than a Board member, alternate or Board staff, about any issue of fact or law relating to the Complaint prior to the disposition of the Complaint.

SECTION 6 Investigations and Hearings

6.1 Initiation of Investigations. The Board has the authority to investigate any alleged violation of the Ethics Ordinance based on a sworn and signed written Complaint by any person. If the Board, by a majority vote, determines that there is a basis for proceeding on a Complaint under any provision of the Ethics Ordinance within the Board's jurisdiction, the Board shall initiate an investigation into suspected violations of the Ethics Ordinance as necessary and described by the Ethics Code.

6.2 Referral to Other Agencies. If another city, state or federal agency is investigating the same Complaint or a Complaint involving similar allegations, the Board may suspend and defer the matter until the other investigation or proceeding is completed. In addition, the Board may refer a Complaint for investigation to other agencies that have authority over the subject matter contained therein. Complaints that allege violations of criminal laws shall be reported to the appropriate city, state, or federal law enforcement agencies. If a Complaint is referred to other outside agencies and the Board determines that it no longer has jurisdiction over the subject matter of the Complaint, then the Board may dismiss the Complaint so as not to interfere with any further proceedings of an outside agency assuming jurisdiction over the Complaint.

6.3 Hearing Rules.

- (a) Procedural Rules. A quorum of three (3) Board members, including any alternate who is appointed to serve as a substitute for an absent Board member, must be present for a hearing. Any Board member or alternate who is not present at a hearing, or at any continuance of the same hearing, on a Complaint may not participate in any discussion, voting, or recommendation regarding the Complaint. The Chairperson or Vice Chairperson shall preside over the hearing, unless the Board appoints a hearing officer to preside. The Board may call and question any witness. All evidence including certified copies of records which the Board considers shall be fully offered as evidence and made a part of the record in the proceedings. The hearing shall be electronically recorded and may be recorded by a certified court reporter.
- (b) Respondent. The Respondent shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts in this state and has the right to attend the hearing, challenge the sufficiency of any Complaint which has been filed against him or her, the right to make a statement, the right to examine all documents and records obtained or prepared by the Board in connection with the matter heard, the right to present and cross-examine witnesses, and the right to be represented by legal counsel or other advisor. The Respondent or his or her counsel or representative shall be informed by the Board of all evidence in its possession.

- (c) Complainant. The Complainant has the right to attend the hearing, make a statement at the hearing, testify and present documentary evidence at the hearing in support of the allegation in the Complaint, and may be accompanied by legal counsel or other advisor. The Complainant is not required to actively prosecute the Complaint and may limit his or her role to simply responding to any reasonable requests from the Board for further information or testimony.
- (d) Persons Adversely Affected. 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, file a written sworn statement for incorporation into the record, appear at the hearing to testify on his or her own behalf or, or have a representative appear to so testify, and the Board may permit any other person to appear and to testify at a hearing, if relevant to the subject matter under investigation.
- (e) Closing Statement. At the conclusion of the evidence, the Respondent, the Complainant, and their counsel or other advisor, may make a closing statement to the Board.
- (f) Standard of Evidence. The standard of evidence sufficient to prove a violation of the Ethics Ordinance in hearings shall be by a preponderance of the evidence admitted at the hearing. "Preponderance of the Evidence" is that measure or degree of proof which is more probable than not.
- (g) Recess and Continuance. At any time after convening a hearing, the Board may recess the hearing and continue it to another date, place, and time. Any Board member may move to continue a hearing. After being seconded by a Board member, a motion to recess or adjourn the hearing and continue it at another time must be approved by a majority vote of the Board.

6.4 Time Limits. The Chairperson may extend any of the time limits in these Bylaws and Rules of Procedure for a reasonable period at the request of the Complainant or the Respondent, or on the Chairperson's own initiative, in order to promote full, fair, and orderly proceedings.

6.5 Public Deliberations. At the close of evidence, the Board shall immediately begin deliberations on the evidence and proceed to determine by a majority vote of the Board whether there has been a violation of the Ethics Ordinance and if so, the recommended penalty for said violation(s). The Board must issue its recommendation as required by the Ethics Code.

SECTION 7

Findings

After it has made its final determination as to the Complaint and appropriate penalties, if necessary, the Board shall issue its written findings of fact, conclusions and penalties recommended. The Board may issue any additional reports, opinions and recommendations as it deems necessary.

Following review by the City Attorney, the Board's reports and the record of the proceedings shall be made public as soon as practicable. All such reports shall be in compliance with all state and city laws governing confidentiality, open government, and other applicable laws.

SECTION 8 Amendment

8.1 The Board shall review these Bylaws and Rules of Procedure at least annually. Any change in these Bylaws and Rules of Procedure of the Board is not adopted unless each proposal is approved by a majority vote of the Board.

SECTION 9 Decorum

All Board Members, as well as any representatives of the Complainant or Accused shall conduct themselves in a professional and respectful manner. All remarks shall be directed to the Board Chairman unless the Chairman opens the discussion to the other Board Members to ask questions or make remarks directly to the representatives of the accused or Complainant, unless a hearing is being conducted where witness testimony is being taken, at which point the Board Members may ask questions after being recognized by the Chairman. Personal remarks are inappropriate and may be ruled out of order. Members of the public present at the meetings, as well as the witnesses, who shall be properly sworn, and representatives of the Accused or Complainant, shall conduct themselves as if in a Court of law. The Chairman shall have the duty to keep the decorum and any member of the public may be reprimanded and required to exit the room if that member of the public consistently breaks decorum with any comments or noises unless otherwise directed or requested by the Board.

SECTION 10 Public Participation

Though meetings of the Ethics Board are open to the public in accordance with the Georgia Open Meetings Act, the meetings of the Ethics Board are not public hearings. Therefore, unless otherwise requested by the Chairman of the Board or at least two Ethics Board members, there shall be no public comments allowed at the meetings of the Board. Aside from Board members and the Board-appointed attorney or Hearing Officer, the only other persons who may speak at the hearing meetings of the Board are appropriately sworn witnesses and representatives of the Accused or Complainant or otherwise allowed representatives of affected persons. There shall be no public comment portion of any Board Agenda.

SECTION 11 Meeting Summary

A summary of the subjects acted upon in a meeting and the names of the Board Members present at a meeting shall be prepared by the Board Secretary. They shall be open and public documents. If a hearing is taking place during a meeting of Board and evidence is being taken in the form of testimony, only the name of the person testifying and general topic of testimony need be put in the Summary. Any

documents tendered into evidence should at least be noted by name in the summary, including who tendered the documents into evidence and whether they came in without objection.

SECTION 12
Roberts Rules of Order

This document shall serve as the rules and procedures of the Board of Ethics. In the absence of applicable rules and procedures which may from time to time be encountered during the public meetings, Roberts Rules of Order shall be followed so long as said rules of Order do not conflict with the Ethics Code or, during evidentiary hearings, with the Georgia Rules of Evidence.