



## MEMORANDUM

**To:** Mayor and City Council

**From:** Warren Hutmacher, City Manager

**Date:** February 11, 2013

**Subject:** **Review of Ethics Ordinance templates**

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### ITEM DESCRIPTION

This memorandum is a review of the major discussion items for Ethics Code procedures and processes culled from various jurisdictions throughout the State of Georgia.

### BACKGROUND

At the January Work Session, the Mayor and City Council adopted a moratorium on the application of the City's Ethics Code for ninety days, to allow time for the City Council to review the Ethics Code procedures and determine a better and clearer process for filing and adjudicating ethics complaints filed with the City in anticipation of the Council revising the current City Ethics Code. The Mayor and Council requested the City Manager and City Attorney to review various procedures utilized by other local governments in the State of Georgia and to present different alternatives for discussion. The City Manager and City Attorney conducted an extensive review of such Ethics Codes. The outline of an ethics ordinance is fairly consistent throughout Georgia. The major steps in the ordinance are listed below.

### ANALYSIS

Each ethics ordinance deals with the follows issues. Based on the attached analysis of ethics codes in Georgia, staff recommends the following procedure:

1. Filing of the complaint:
  - a. Complaint is filed with the City Clerk
2. Review of the complaint for adequacy and frivolity
  - a. City attorney can deny a claim for inadequacy or a Hearing Officer can deny a claim for frivolity
3. Legitimate complaint investigation:
  - a. Hearing officer will investigate claims
4. Presentation of evidence and argument



- a. Hearing officer will preside over a "trial" to hear evidence and arguments as Judge.
  - b. Citizen Ethics Committee will sit as a silent Jury through these public proceedings
5. Findings
- a. Hearing officer recommends a Finding of fact and the Ethics Committee can either agree or disagree with the findings of the Hearing Officer.
6. Penalties
- a. The Ethics Committee recommends penalties as set in the Ethics Code and Council has final authority on their recommendations by a 2/3 majority vote.

Staff recommends no changes to the listing of ethical offenses, but would recommend a clear standard be developed to determine whether a ethics complaint is frivolous.

Staff further recommends that the Ethics Ordinance remove the City Clerk, City Attorney and City Manager from the Ordinance since those officials can be removed at any time by a vote of the City Council.

The recommendation from staff is based on the concerns voiced by the Council that the current ordinance is too complicated, too costly and takes too long to bring to conclusion from the time of the filing to the recommendation of penalties.

## **RECOMMENDATION**

Staff recommends the Council review the City Attorney's analysis and the staff recommendation for an outline of a revised ethics ordinance. Following Council feedback, the City Attorney will draft a Ethics Ordinance for your review in March, 2013.



## MEMORANDUM

**To:** Mayor and City Council

**From:** Warren Hutmacher, City Manager, and Cecil G. McLendon, City Attorney

**Date:** February 11, 2013

**Subject:** **Review of Ethics Ordinance templates**

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### ITEM DESCRIPTION

This memorandum is a review of the different templates for Ethics Code procedures and processes culled from various jurisdictions throughout the State of Georgia.

### BACKGROUND

At the January Work Session, the Mayor and City Council adopted a moratorium on the application of the City's Ethics Code for ninety days, to allow time for the City Council to review the Ethics Code procedures and determine a better and clearer process for filing and adjudicating ethics complaints filed with the City in anticipation of the Council revising the current City Ethics Code. The Mayor and Council requested the City Manager and City Attorney to review various procedures utilized by other local governments in the State of Georgia and to present different alternatives for discussion. The City Manager and City Attorney conducted an extensive review of such Ethics Codes and presents the alternatives available in other jurisdictions as presented below.

### ANALYSIS

The current City Ethics process works as follows: an Ethics Complaint naming a City official is filed with the City Clerk and must be notarized, cite to provisions of the Ethics Code alleged to be violated, and present facts in the form of specific accusations or documentation to support the alleged violation. The Complaint is then forward to the Board of Ethics, the accused, and the City Attorney. Within thirty (30) days after the filing of the Complaint, the City Attorney presents to the Ethics Board an analysis of the Complaint and the accused may submit a response to the Board. Within thirty days after submission of any responses and City Attorney's analysis, the Board must determine the plan of action to deal with the Complaint, including setting any meetings to determine its efficacy and, if they so desire, setting dates for evidentiary hearings, during which time each side can present evidence and witnesses subject to all the requirements of the State of Georgia evidentiary rules (like a civil trial process). After the conclusion of the evidentiary hearings, the Board makes a determination as to whether there has been a violation and, if they determine a violation exists, recommend how said accused should be punished for said violations to the City Council. Once that recommendation is received, the Mayor and City Council determine whether they will accept the recommendation or deal with the "convicted" violator in another fashion.



*Other jurisdictions with same or similar Ethics Code:*

*Dallas, Helen and Temple – exception being that the Rules of Evidence do not explicitly apply and there is no provision for City Attorney analysis; Sandy Springs, Georgia; Savannah, Georgia – exception being that there's no City Attorney analysis, the Rules of Evidence do not apply, and the Board must conclude its investigation within 60 days of receiving the Complaint from the City Clerk's office; Marietta, Georgia – exception being that there's no City Attorney analysis and Board must conclude its investigation within 30 days of receiving Complaint or it is automatically dismissed.*

The following are other alternative options to the above-procedure as gathered from other jurisdictions throughout the state:

### **Option 1**

When a Complaint is filed (with the City Manager or City Clerk), the City Manager appoints three members of the City Council, and the City Attorney, as an "investigating committee" to determine whether the Complaint presents the necessary facts and circumstances to forward the Complaint to the Board of Ethics. If the Complaint is found to lack facts or is frivolous, the investigating committee dismisses the Complaint. If the Complaint is found to state sufficient facts to warrant further investigation, it is forwarded to the Board of Ethics.

The Board of Ethics is composed of a possible 12 people appointed by Mayor and Council and if the Complaint is forwarded to the Board, the City Manager picks five names at random to serve for that particular case. Once the Board as the Complaint, they must set a hearing within sixty (60) days to hear the Complaint. If there's no hearing set, the Complaint is automatically dismissed. If the hearing is scheduled, it is conducted like an administrative hearing, with evidentiary presentations and witnesses, who may be cross-examined. There is no requirement, however, for the Rules of Evidence to apply. The decision is rendered to the Mayor and Council within five (5) days of the hearing. The official being accused is afforded at least ten (10) days' notice of the hearing prior to the hearing and may be represented by an attorney. Any appeals of Board decisions can be filed as Petitions for Writ of Certiorari with the County Court.

*Cities utilizing this Option: Ashburn, Grovetown, Monroe, Newnan, Oakwood, Eatonton (with the exception that the City Attorney does not serve as part of the "investigative committee") Fort Oglethorpe and Woodstock; Kingsland (with greatly reduced procedures and the "investigative" committee is composed of the Mayor or Mayor Pro Tem if the complaint is against the Mayor and the Ethics Board is set); Lavonia, Roswell and Valdosta (with the exception that the Mayor appoints the "investigating committee" and the hearing must be set within thirty (30) and not 60 days); Duluth and Statesboro (with the difference that the "investigative committee" is composed of some members of the City Council).*

### **Option 2**

Complaints are filed with the Municipal Court and the Clerk of the Court forwards the Complaint to the accused within seven (7) days. The Municipal Court determines whether



the Complaint presents facts sufficient to invoke the disciplinary jurisdiction of the Mayor and City Council and, if the Court determines that it does, it may conduct additional investigation and collection of evidence and present its findings. If the Court determines the complaint to be insufficient, unjustified, or frivolous, it may dismiss the Complaint. If the Court decides not to dismiss, it is empowered to hold hearings to address the subject matter of the Complaint during its investigation. Any hearings the Municipal Court decides to hold on the Complaint must be held within sixty (60) days of filing of the Complaint. The hearings conducted are evidentiary, with evidence presentation and witnesses, including cross-examination by the accused and the accuser. The accused shall be entitled to at least 7 days' notice of the hearing. After the Court conducts any necessary hearings, it must present its findings to the Mayor and City Council, which may punish the violator as presented in the Ordinance (either through public reprimand, censure or request for resignation). Appeals may be done to the County Court by Petition for Writ of Certiorari 30 days after the decision of the Municipal Court.

*Cities utilizing this Option: Brooklet, Perry.*

### **Option 3**

Complaint is filed with the governing body (City Council). The City Council holds an evidentiary hearing, giving the accused at least 30 days' notice of such hearing. At the end of the hearing, the Council votes on whether to find the accused guilty of said charges by majority vote and, if found guilty, can take disciplinary action against the accused (if employee), removal (if position is appointed by City Council), or public reprimand/censure if member of the City Council.

A version of this procedure has the Complaint directly filed with the Ethics Board who sets an automatic evidentiary hearing within 60 days of the Complaint, giving the accused at least 15 days notice prior to the hearing. After the hearing, the Ethics Board must deliver their findings and recommendations to the Mayor and City Council within five (5) days.

*Cities utilizing this Option: Clayton County (City Council option) and Stone Mountain (Ethics Board option). Athens, Georgia utilizes a very procedurally relaxed version of this Option.*

### **Option 4**

Complaints are filed with the City Clerk. The requirements is that each violation being alleged be listed as a separate "Count," the specific Ethics Code provision be referenced, allege facts with specificity, attach evidence, and be notarized under oath. Complaints may not stem from any facts previously adjudicated as an Ethics Complaint and may not be alleged against anyone currently qualified for office until after the election. A separate Complaint is required against each of the accused, who may not all be lumped into the same Complaint. Once received, the City Clerk sends the Complaint to the City Manager. The City Clerk must also serve the accused with the Complaint within seven days of filing. The accused has fifteen (15) days to file the response, though no response is required. A hearing officer, previously pre-approved and/or appointed by the Mayor and City Council, would review the complaint and any response and determine the efficacy of the Complaint, both procedurally and substantively and may determine to dismiss it due to



procedural or substantive deficiencies. If the Hearing Officer chooses not to dismiss, he may conduct an investigation into the Complaint and gather evidence, including through written questions to the accuser and the accused, and, if still necessary, conduct a hearing in accordance with administrative hearing procedures, whereby evidence and witnesses can be presented and cross-examined. The hearing officer's investigation must be completed within forty-five days or the complaint is automatically dismissed. Within seven (7) days of the completion of the investigation, the Hearing Officer may dismiss the Complaint substantively or prepare a report of his findings for the Mayor and Council that has a findings of fact and conclusion that a violation occurred beyond a reasonable doubt and a recommendation on punishment. The Report is delivered to the City Clerk, who forwards it to the City Manager, Mayor and Council, the Complainant and the accused. The Mayor and City Council then take a vote to either (1) accept the findings and reject recommendation, putting in a replacement recommended punishment (majority vote), (2) accept the findings and recommendation (majority vote), (3) reject findings and recommendation and dismiss the Complaint or conduct their own hearing on the Complaint (supermajority – majority of present quorum plus one). If the complaint is against the Mayor or one of the Councilmembers, they must recuse themselves from hearing/vote. Once the vote has been taken, the final approved minutes of that meeting are served by the City Clerk upon the accused.

*Cities utilizing this (or substantially similar) Option: Johns Creek, Macon and Suwanee.*

### **Option 5**

Complaints are submitted under Oath to a full-time Ethics Officer employed by the City. The Ethics Officer then forwards the Complaint the next day to the accused. Ethics Officer then reviews the complaint for completeness and proper procedure and, if defective, sends defect notice to Complainant to correct the Complaint or have it dismissed. The Ethics Officer conducts a preliminary investigation of the Complaint and provides the Board of Ethics written findings and recommendations, and whether there is probable cause to proceed. If the Board determines that there was no Probable Cause, the Board dismisses the Complaint. If they determine there was probable cause, a hearing is set up and the accused notified. At the hearing, the accused has the right to present evidence in defense, and the Board as well as the accused can call witnesses and cross examine witnesses, though the Rules of Evidence do not strictly apply. Following the Hearing, the Board makes the decision, by preponderance of the evidence, as to whether there has been an Ethics violation. Once the Board makes a determination, the decision of the Board is made final. Appeals are done by Writ of Certiorari from the Board's decisions.

*Cities utilizing this Option: Atlanta.*

### **Option**

Leave Ethics Code as "self-enforcing," without a Board or process for complaints or adjudication.

*Cities utilizing this Option: Alpharetta, College Park, Snellville (also has criminal penalty provisions which each Board/Council enforces upon itself), and Union City.*