

Ordinance O-16-13

AN ORDINANCE
AMENDING
CHAPTER 2
ADMINISTRATION

BE IT ORDAINED by the City Commissioners of the City of Decatur, Georgia, and it is hereby ordained by authority of the same, that Chapter 2, Administration, of the Code of the City of Decatur, Georgia, be and the same is hereby amended by establishing Section 2-5. City Commission Code of Ethics.

Sec. 2-5. – City Commission Code of Ethics.

ARTICLE I – Basis for Code

Section I. Foundation.

The public trust requires public servants to fulfill their duties faithfully and honestly and to subordinate any personal interest which conflicts with the public interest. A public servant is a trustee of the people and should strive to further the general welfare and not use public office in order to improve his or her own private standing. The principal policies which form the foundation of this Code of Ethics are:

- (A) Public trust in the integrity of government is cultivated when individual public servants act with integrity and when the public is aware that its servants act with integrity.
- (B) In speaking about the conduct of those in public service, or in responding to others who speak about it, express approval of positive ethical principles and behavior and refrain from unjustly despairing or demeaning those who advocate ethical principles or practice ethical behavior.
- (C) Recognize that the most effective way to eradicate unethical practices is to consistently act ethically and to consistently react appropriately with respect to the ethical decisions of others.
- (D) Exercise sound judgment to act ethically in situations where others may be inclined to act unethically.

ARTICLE B – General.

Section I. Intent.

It is the intent of this Code of Ethics that a City Commissioner shall not knowingly engage in any activity which is incompatible with the proper discharge of his or her official duties or which would tend to impair his or her judgment or actions in the performance of his or her official duties. Furthermore, City Commissioners should avoid any action, which might result in or create the appearance of the following:

- (A) Using public office for private gain.
- (B) Impeding City efficiency or economy.
- (C) Affecting adversely the confidence of the public in the integrity of the City.

Section II. Definitions.

(A) *Admonishment* shall mean a statement of disapproval, used to express displeasure with actions that technically violate this Code of Ethics but that do not involve intentional acts or omissions or direct private gain, and that typically involve an appearance of impropriety rather than actual impropriety.

(B) *Benefit* shall mean:

1. Anything regardless of its monetary value, perceived or intended by either the one who offers it or the one to whom it is offered, to be sufficient in value to influence a City Commissioner in the performance or non-performance of an official action; or,
2. Anything, regardless of its monetary value, which, under the circumstances, a reasonably prudent person would recognize as being likely to be intended to influence a City Commissioner in the performance or non-performance of an official action.

(C) *Censure* shall mean a stern condemnation, reserved for the most egregious violations of this Code of Ethics, which involve intentional acts and private gain and which result in a significant erosion of the public trust in the City government.

(D) *City Commissioner* shall mean any person who is an elected city official, including any person who has been elected but whose term of office has not started.

(E) *Complainant* shall mean a person who files a complaint alleging a violation of this Code of Ethics.

(F) *Employee* shall mean any person who is employed in a position covered by the position classification plan of the City of Decatur; any person who is employed part-time by any operating department of the City of Decatur; and any person who is employed through a contractual agreement with the City of Decatur.

(G) *Government* or *City* shall mean the City of Decatur, Georgia.

(H) *Interest* shall mean any direct or indirect financial gain accruing to a member of the City Commission as a result of a contract or transaction that is, or may be, the subject of an official act or action by, or with, the City. *Interest* shall not mean any direct or indirect financial gain which is remote or insignificant.

(I) *Reprimand* shall mean a formal rebuke, used for mid-level violations of this Code of Ethics that involve intentional or reckless acts or omissions and/or direct or indirect private gain.

(J) *Respondent* shall mean a City Commissioner who is the subject of a complaint filed pursuant to this Code of Ethics.

Section III. Acceptance of Gifts.

City Commissioners shall not solicit or accept, directly or indirectly, any benefit from any person, corporation or group which has, or is seeking to obtain, contractual or other business or financial relationships with the City of Decatur.

Section IV. Financial Interests.

(A) A City Commissioner may not:

1. Have a direct or indirect financial interest that conflicts with his or her responsibilities and duties as a trustee of the public good.
2. Either directly or indirectly engage in financial transactions as a result of, or primarily relying upon, information obtained in the course of his or her office or received due to his or her position.

(B) A City Commissioner shall be deemed to have a financial interest in transactions involving the following:

1. Any person in the City Commissioner's immediate family.
2. Any person with whom a contractual relationship exists whereby the City Commissioner may receive any payment or other benefits.
3. Any business in which the City Commissioner is a director, officer, employee, agent, or shareholder.

Section V. Use of public property.

A City Commissioner shall not use City of Decatur property of any kind for other than officially approved activities, nor shall he or she direct employees to use such property for other than official purposes.

Section VI. Use of confidential information.

A City Commissioner shall not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, City information not made available to the general public.

Section VII. Coercion.

- (A) A City Commissioner shall not use his or her position in any way to coerce, or give the appearance of coercing, another person to provide any benefit to him or her or to persons with his or her immediate family, or for those with whom the City Commissioner has business or financial ties.
- (B) A City Commissioner shall not use his or her position in any way to coerce, or give the appearance of coercing, a City employee, an appointed official of the City or a contract employee to provide any benefit to him or her or to persons with his or her immediate family.
- (C) A City Commissioner shall not use his or her position in any way to coerce, or give the appearance of coercing, a Municipal Court Judge in the outcome of matters before the municipal court.

Section VIII. Purchases.

A City Commissioner shall not order any goods or services for the City of Decatur or on behalf of the City of Decatur without prior authorization from the City Commission or its designee.

Section IX. City employees.

A City Commissioner shall not use a City employee or employees for personal or private business during regular business hours or during the employee's scheduled shift. A City Commissioner shall pay just compensation and shall not receive or expect a discount or special rate.

Section X. Travel expenses.

A City Commissioner shall not draw per diem or expense money from the City of Decatur to attend a seminar, convention, conference or similar meeting and then fail to attend the seminar, conference, convention or similar meeting.

Section XI. Commitments.

A City Commissioner shall not act or create the appearance of acting on behalf of the City Commission by promising to authorize or prevent any future official action of any nature, without prior authorization from the City Commission or its designee.

ARTICLE C – Requirements.

Section I. Disclosure.

A City Commissioner shall disclose the nature of any interest or benefit he or she has at the time such matter is presented to the City Commission for discussion and/or action. Such disclosure shall be recorded into the minutes of the meeting and become part of the public record. Following any disclosure made pursuant to this Code of Ethics, the member shall not participate in any ex-parte communications with other members regarding the matter at hand.

Section II. Deliberation and Vote Prohibited.

No City Commissioner shall participate in the discussion, debate, deliberation or vote, or otherwise take part in the decision-making process on any agenda item, any official act or action in which he or she has a conflict of interest.

Section III. Duty to Leave Meeting.

To avoid the appearance of impropriety, after any City Commissioner is determined to have a conflict of interest or a potential conflict of interest in any matter, the City Commissioner shall leave his or her regular seat as a member of the City Commission and not return to it until deliberation and action on the matter is completed.

Section IV. Penalties.

Any violation of this Code of Ethics shall subject the offender to:

- (A) Disciplinary action which may include admonishment, reprimand or censure; and
- (B) A fine up to \$1,000.

ARTICLE D - Process

Section I. Ethics Committee.

- (A) The City Commission shall appoint an ethics committee consisting of three (3) persons. At least one member shall be in good standing with the State Bar of Georgia. All members shall be residents of the City of Decatur and shall serve a three year term. Members of the Ethics Committee must be approved by at least a four-fifths vote of the City Commission.
- (B) In the event two or more members of the Ethics Committee recuse themselves from consideration of a complaint, the City Commission shall appoint temporary, alternate members to serve with respect to that complaint so that at least two members participate in consideration of that complaint. A City Commissioner who is the subject of the complaint or who filed the complaint or actively participates in or encouraged the filing of the complaint shall not participate in the City Commission's appointment of a temporary, alternate member to serve with

respect to the complaint.

(C) Two members of the Ethics Committee, including, when applicable, temporary, alternate members appointed pursuant to the foregoing sub-section, shall constitute a quorum for the transaction of business.

Section II Complaint Process.

(A) Filing of Complaint.

1. A complaint alleging a violation of this Code of Ethics by a City Commissioner is initiated through the filing of a sworn, written complaint with the City Manager, on a form prescribed by the Ethics Committee.
2. At minimum, the complaint shall contain the following information:
 - a. The name and mailing address of the person filing the complaint;
 - b. The name of the City Commissioner against whom the complaint is filed;
 - c. The section or sections of the Code of Ethics that are alleged to have been violated;
 - d. A clear and concise statement of the facts on which the complaint is based, including relevant dates, places and actions.
3. The complaint shall contain an oath that, to the best of the complainant's knowledge, information and belief, the facts set forth therein are true and correct.
4. A complaint is filed when received by the City Manager, either by hand delivery to the City Manager's office or by email addressed to the City Manager's official city email address. If filed by email, the date of filing shall be the date the City Manager provides the complainant with a return email acknowledging receipt of the filing.

(B) Maintaining records relating to Complaint.

The City Manager shall serve as the custodian of all records, communications, pleadings, rulings, and evidence filed or submitted in connection with the complaint, serving in the role of filing clerk for the Ethics Committee and responsible for compiling, certifying and transmitting a record of proceedings as may be required pursuant to an appeal from a decision by the City Commission.

(C) Service of Complaint.

1. The City Manager shall cause a copy of the complaint to be served on the Respondent within ten (10) days of the date the complaint is filed. Service shall be by personal service on the Respondent or by certified mail, return receipt requested, to the Respondent's residence address.
2. The City Manager shall provide copies of the complaint to members of the Ethics Committee within ten (10) days of the date the complaint is filed.

(D) Preliminary Review of Complaint.

Within twenty (20) days of the date the complaint is filed, the Chair of the Ethics Committee shall review the complaint, determine if it complies with the minimum requirements of Section II(A), and, if it does not, issue a written dismissal. The first such dismissal shall be without prejudice to the right of the Complainant to refile the complaint in a form that addresses deficiencies in the original complaint. In the event a re-filed complaint is dismissed for non-conformity, such dismissal shall be with prejudice.

(E) Answer by Respondent.

Within thirty (30) days of service of the complaint on the Respondent, the Respondent may, but is not required, to file an answer, in which the Respondent may admit or deny the allegations set forth in the complaint and assert any applicable defenses.

(F) Preliminary Hearing.

If the complaint is not dismissed pursuant to Section II (D), the Ethics Committee shall conduct a preliminary hearing within sixty (60) days of the date the complaint is filed for the limited purpose of determining whether the complaint is time barred, unjustified, frivolous or patently unfounded, or if it fails to allege facts sufficient to invoke the jurisdiction of the Code of Ethics. Such consideration shall be based on and limited to review of the actual complaint. The Ethics Committee shall make such determination at the conclusion of the preliminary hearing and issue a written decision within five (5) business days thereafter, either dismissing the complaint with prejudice or providing notice to the Complainant and the Respondent that the complaint will proceed to a full hearing on the merits.

(G) Evidentiary Hearing.

1. The hearing on the merits of the complaint shall be conducted within one hundred twenty (120) days of the date the complaint is filed, unless continued to a later date by the Ethics Committee.
2. The Complainant and the Respondent shall receive written notice of the date, time and place of the hearing no less than fourteen (14) days prior to the hearing.
3. The burden shall be on the Complainant to show, by clear and convincing evidence, that the Respondent violated the Code of Ethics.
4. At the hearing, the Complainant, on their own behalf or through counsel, shall have the right to submit evidence, to call witnesses, to cross-examine adverse witnesses, and to be heard on the merits.

5. At the hearing, the Respondent, on their own behalf or through counsel, shall have the right to submit evidence, to call witnesses, to cross-examine adverse witnesses, and to be heard on the merits.
6. The Chair of the Ethics Committee or such other member as designated by the Ethics Committee shall preside over the hearing, including regulating the course of the proceedings, administering oaths to witnesses, and using their discretion to rule on the admissibility of evidence, guided by the rules of evidence applicable in civil non-jury trials.
7. All testimony shall be under oath.
8. Members of the Ethics Committee may question witnesses.
9. The hearing shall be open to the public.
10. The hearing may continue for multiple days, if necessary. At the conclusion of the hearing, the Chair may adjourn the hearing for a period of not more than five (5) days and reconvene the hearing within such five (5) day period for the purpose of the Ethics Committee's deliberation and entry of a disposition pursuant to Section II (H).

(H) Disposition by Ethics Committee.

1. Upon the conclusion of the hearing or within five (5) days of the conclusion of the hearing, if adjourned and reconvened pursuant to Section II(G)10, the Ethics Committee shall deliberate and enter one of the following dispositions:
 - a. Dismiss the complaint on the grounds that it is time barred, unjustified, frivolous or patently unfounded; or
 - b. Find that there has not been a violation of the Code of Ethics; or
 - c. Find that there has been a violation of the Code of Ethics, recommend that the City Commission invoke disciplinary action and/or impose a fine pursuant to Article C, Section IV, and recommend the specific form of disciplinary action that should be taken and/or fine amount that should be imposed.
2. Such disposition shall be established by the concurring votes of at least two (2) members of the Ethics Committee.
3. The Ethics Committee shall transmit a written report to the City Commission within twenty (20) days of the conclusion of the hearing. In the event there is a finding of a violation of the Code of Ethics, the report shall include a summary of the facts established, an explanation of how the Code of Ethics was violated, and rationale for the recommended form of disciplinary action and/or fine amount.

(I) Action by City Commission.

1. In the event the Ethics Committee finds that there has been a violation of the Code of Ethics, the City Commission shall determine at a meeting of the City Commission the following:
 - a. whether to accept the Ethics Committee's finding of a violation of the Code of Ethics;
 - b. if the finding of a violation is accepted, whether to accept the Ethics Committee's recommended form of discipline and/or fine amount or to substitute a different form of discipline and/or fine amount.
2. The City Commission's determination in the preceding section shall be by a majority of those City Commissioners present and not disqualified from voting.
3. A City Commissioner who is the subject of a complaint shall not participate in the City Commission's deliberations or determination of the matter. The City Commissioner shall leave his or her seat as a member of the City Commission throughout the time that the matter is being considered, although he or she may remain present in the City Commission meeting room in their capacity as a respondent.
4. A City Commissioner who files a complaint alleging a violation of this Code of Ethics or otherwise actively participates in or encourages the filing of such a complaint, shall not participate in the City Commission's deliberations or determination of the matter. The City Commissioner shall leave his or her seat as a member of the City Commission throughout the time that the matter is being considered, although he or she may remain present in the City Commission meeting room in their capacity as a complainant and/or interested citizen.

(J) Time Limitation.

A complaint alleging a violation of this Code of Ethics shall be time barred if filed more than one (1) year after the violation is alleged to have occurred.

(K) Moratorium During Election Period.

To protect the public perception and integrity of the complaint process and to reduce the possibility that a complaint is being filed primarily for political purposes, complaints alleging that a City Commissioner who has qualified for re-election has violated the Code of Ethics shall not be accepted for filing during the period between the date qualifying closes and the date the election results are certified. Likewise, a complaint alleging a violation of the Code of Ethics by a newly elected City Commissioner shall not be accepted for filing until after the election results are certified. The limitation period in the foregoing section shall be tolled during such moratorium periods.

(L) Compliance with Timeframes.

A schedule of deadlines is set forth in this section in order to ensure the timely disposition of complaints -- for the benefit of complainants, respondents, and the public. General compliance is expected, but failure to strictly comply with every deadline shall not invalidate an otherwise valid complaint or otherwise deprive the Ethics Committee and the City Commission of their authority to adjudicate violations of this Code of Ethics.

(M) Legal Counsel.

The Ethics Committee shall be advised and assisted in carrying out its responsibilities by the City Attorney and/or such other attorney or attorneys authorized by the City Manager.

(N) Administrative Support.

The Ethics Committee shall be assisted in carrying out its responsibilities by the City Manager and/or the City Manager's designee(s).

Section III. Right to Appeal.

Decisions of the City Commission pursuant to this Code of Ethics shall be reviewable by writ of certiorari to the Superior Court of DeKalb County pursuant to O.C.G.A. § 5-4-1, et seq. Review by the Superior Court shall be limited to an inquiry of whether there was any evidence before the City Commission which supported the decision of the City Commission. Provided, however, no action of the City Commission refusing or failing to take action pursuant to this Code of Ethics shall be reviewable by the Superior Court.

Adopted the 17th day of October, 2016.

Patricia M. Garrett,
Mayor

Attest:

Acting City Clerk