



# **CITY OF WALNUT GROVE**

**May 25, 2023 - 10:00am**

**1021 PARK STREET MUNICIPAL BUILDING  
MAYOR AND COUNCIL**

## **Council Work Session Agenda**

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. ROLL CALL**
- V. AGENDA APPROVAL**
- VI. OLD BUSINESS**
  1. Budget – Public Hearing
    - a. Employee Salaries/Raises/ Benefits
  2. Sewer Upgrade
  3. Zoning Map
  4. Downtown Development Authority Appointment
  5. Code of Ethics Ordinance
  6. Council Reimbursement
  7. City Clerk
    - a. Open Records Officer
    - b. Records Custodian
- VII. NEW BUSINESS**
  1. CASE #RZ-18-03: ENCLAVE AT DIAL FARM PUD  
(COMMERCIAL)REQUEST TO APPROVE EXTERIOR  
ARCHITECTURAL EXTERIOR ELEVATIONS FOR PROPOSED GAS  
STATION (COMPLY WITH ZONING CONDITION #7) 1091 HWY 138  
PRESENTATION OF ELEVATIONS DISCUSSION/DECISION

2. CASE #WGRZ-23-02: PUBLIC HEARING - KIPPY CLARK C/O J. ALEXANDER BROCK, APPLICANT; WILLIAM PAUL JONES, JR AND TOBEY L. JONES, OWNERS PARCELS #WG010024 AND WG010025 - 1071/0 WALNUT GROVE PARKWAY REQUEST IS TO REZONE 9.4 ACRES FROM AG TO PUD FOR A MIXED-USE DEVELOPMENT
3. CASE #WGV-23-02 PUBLIC HEARING - APPLICANT: RELIANT HOMES, LLC; OWNER BI INVESTMENT COMPANY, LLC ADDRESS: OAK LANE/CANNON FARM ROAD PARCEL#WG010265A00 VARIANCE REQUEST: VARIANCE FROM SECTION 501.6. (C) (2) OF THE WALNUT GROVE LAND DEVELOPMENT ORDINANCE (CONNECTION TO PUBLIC SEWER)
4. CITY MASTER PLAN – HALL CONSULTING, INC
5. Responsibilities of Council and Mayor
  1. Mayor Pro Tem
  2. Operations of the City

## **VIII. EXECUTIVE SESSION**

## **IX. ADJOURNMENT**

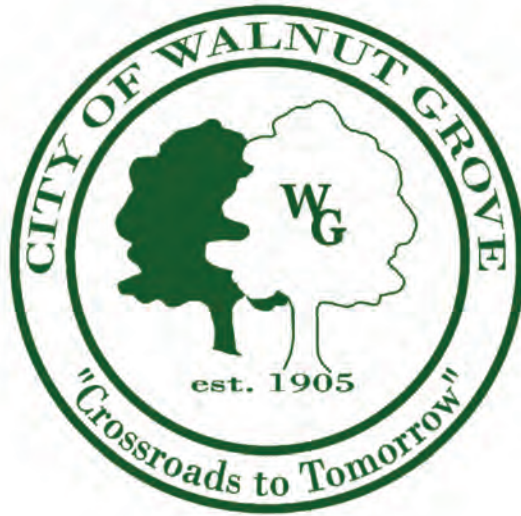


52.2242 Professional Services - Accounting			35,000.00								35,000.00											
52.2243 Professional Services - Legal			50,000.00	10,800.00							60,800.00											
52.2244 Professional Services - Security			1,800.00								1,800.00											
52.2250 Facility and Grounds Maintenance					7,500.00						7,500.00											
52.2260 Liability Insurance			27,000.00								27,000.00											
52.3200 Communications - Wireless Telephone			8,800.00		1,500.00						10,300.00											
52.3200 Communications - Telephone - Office			500.00		500.00						1,000.00											
52.3300 Advertising			2,500.00					2,500.00			5,000.00											
52.3500 Travel	1,000.00		2,500.00								3,500.00											
52.3600 Dues and fees	2,000.00		1,000.00								3,000.00											
52.3610 Bank Charges			750.00								750.00											
52.3700 Training and Education	12,500.00		3,000.00		1,500.00						17,000.00											
52.3850 Contract Labor ( General and Election Staff)			15,000.00								15,000.00											
52.3900 Other Expenses			1,000.00	2,500.00							3,500.00											
53.1100 Cleaning Supplies			450.00		50.00						500.00											
53.1110 Office Supplies			4,500.00		500.00						5,000.00											
53.1115 Pavilion Rental Expenses					500.00			150.00			650.00											
53.1120 Postage			1,000.00								1,000.00											
53.1130 General Supplies - Other			1,500.00		1,000.00			500.00			3,000.00											
53.1140 Community Support/Events			1,000.00					4,000.00			5,000.00											
53.1210 Utilities - Water			500.00		1,500.00			250.00			2,250.00											
53.1220 Utilities - Gas			1,000.00								1,000.00											
53.1230 Utilities - Electricity			36,000.00		4,500.00			5,000.00			45,500.00											
53.1240 Utilities - Cable			4,000.00		4,000.00						8,000.00											
53.1270 Gas, Oil, Diesel					8,000.00						8,000.00											
53.9999 Miscellaneous Expenditures			1,000.00		1,500.00						2,500.00											
54.1000 Property											0.00											
54.1400 Capital outlay - Roads Streets and Bridges											0.00											
54.2500 Equipment			5,000.00		9,000.00						14,000.00											
54.2600 New Construction					50,000.00						50,000.00											
57.1000 Other Business Expenses			720.00								720.00											
57.3000 Library								70,000.00			70,000.00											
57.3300 Peace Officer Annuity/Benefit Fund				2,500.00							2,500.00											
57.3320 Crime Lab Fees				50.00							50.00											
57.3340 Drivers Ed/Training Fund				50.00							50.00											
57.3370 Drug Abuse Treatment and Education				1,750.00							1,750.00											
57.3375 County Jail Fund				2,000.00							2,000.00											
57.3380 Peace Officer - Prosecutor's Fund				1,500.00							1,500.00											
57.3385 Local Victim Assist. Fund				1,500.00							1,500.00											
57.3390 GA Crime Victims Assist. Program				500.00							500.00											
57.3391 Peace Officer - Prosecution Indigent Fund				500.00							500.00											
57.3392 Sheriff's Retirement Fund of GA				500.00							500.00											
57.3393 GSCCCA Payouts				6,000.00							6,000.00											
57.4000 Walton County Board of Commissioners				10,000.00							10,000.00											
58.1000 Debt Service - Principal (Library)								36,000.00			36,000.00											
58.2000 Debt Service - Interest											0.00											
Transfers In (Out)											0.00											
<b>Total Expenses</b>	<b>\$</b>	<b>24,610.00</b>	<b>\$</b>	<b>-</b>	<b>\$</b>	<b>446,294.40</b>	<b>\$</b>	<b>42,650.00</b>	<b>\$</b>	<b>319,775.60</b>	<b>\$</b>	<b>-</b>	<b>\$</b>	<b>85,000.00</b>	<b>\$</b>	<b>12,400.00</b>	<b>\$</b>	<b>108,500.00</b>	<b>\$</b>	<b>20,000.00</b>	<b>\$</b>	<b>1,059,230.00</b>
<b>Net Income</b>	<b>\$</b>	<b>(24,610.00)</b>	<b>\$</b>	<b>180.00</b>	<b>\$</b>	<b>(381,294.40)</b>	<b>\$</b>	<b>700.00</b>	<b>\$</b>	<b>(319,775.60)</b>	<b>\$</b>	<b>-</b>	<b>\$</b>	<b>(85,000.00)</b>	<b>\$</b>	<b>(9,400.00)</b>	<b>\$</b>	<b>(108,500.00)</b>	<b>\$</b>	<b>(20,000.00)</b>	<b>\$</b>	<b>-</b>

**City of Walnut Grove, Georgia  
Payroll Budget**

<b>Position</b>	<b>Payrate</b>	<b>Annual Hours</b>	<b>Annual Salary</b>	<b>Merrit Increase</b>	<b>Annual Salary 2023-2024</b>	<b>IRA-Pension Retirement</b>
City Clerk	\$ 19.23	2080	40,000.00	25.00	52,000.00	\$1,000.00
Deputy Clerk	\$ 17.85	2080	37,130.42	18.93	39,374.40	\$12,000.00
Councilmember 1	\$ 1,200.00	1	1,200.00	1,200.00	1,200.00	
Councilmember 2	\$ 1,200.00	1	1,200.00	1,200.00	1,200.00	
Councilmember 3	\$ 1,200.00	1	1,200.00	1,200.00	1,200.00	
Councilmember 4	\$ 1,200.00	1	1,200.00	1,200.00	1,200.00	
Mayor	\$ 3,600.00	1	3,600.00	3,600.00	3,600.00	
Public Works	\$ 13.00	2080	\$ 27,040.00	14.00	29,120.00	\$1,000.00
Public Works	\$ 14.00	2080	29,120.00	15.00	31,200.00	\$1,000.00
Public Works	\$ 19.80	2080	41,184.00	21.00	43,680.00	
<b>Total Salaries</b>			<u>\$ 142,874.42</u>		<u>203,774.40</u>	<u>\$15,000.00</u>
General Administration			\$ 77,130.42	\$ 43.93	\$ 91,374.40	
Legislative			\$ 8,400.00	\$ 1,218.93	\$ 8,400.00	
Public Works			\$ 97,344.00	\$ 2,400.00	\$ 104,000.00	
<b>Total Salaries</b>			<u>\$ 182,874.42</u>		<u>203,774.40</u>	





**THE CITY OF WALNUT GROVE**

**BECOMING A**





City of Walnut Grove  
*Office of the Mayor*

Dear Council Members,

As we work towards building a better and more sustainable community, it is essential that we prioritize ethical behavior in all aspects of city governance, policies, and practices. Ethical conduct is not only a legal requirement but also a moral obligation to serve the public interest and promote trust, accountability, and transparency.

As elected representatives and city officials, we have a responsibility to ensure that our actions reflect the highest standards of integrity, honesty, and fairness. Our decisions and policies should be guided by the principles of equity, diversity, and inclusion, and be made in the best interest of the community we serve.

An ethical city is one that is transparent, accountable, and fair. It is a city that fosters citizen engagement, promotes diversity and inclusion, and provides a safe and healthy environment for all residents. It is a city that prioritizes transparency and accountability in its decision-making processes and financial practices, and that encourages ethical behavior among employees, contractors, and residents.

To be an ethical city, we must establish clear standards of behavior and conduct, provide training and support for ethical decision-making, and establish mechanisms for monitoring and addressing ethical violations. We must create a culture of openness and accountability that promotes trust and confidence in our government and institutions.

I urge you to prioritize ethics in all aspects of our city's governance and work towards creating an ethical and open city. Let us work together to build a community that is just, sustainable, and equitable, and that serves the needs and values of all our residents.

Sincerely,

Mark Moore

Mayor





## **Being an Ethical City**

Being an ethical city requires a commitment to upholding ethical values and principles in all aspects of city governance, policies, and practices. Here are some key steps that a city can take to be more ethical:

1. **Develop and implement a code of ethics:** A city can create a code of ethics that sets out the standards of behavior and conduct expected of its employees and elected officials. The code should be easily accessible and understandable to all stakeholders.
2. **Encourage ethical behavior:** City leaders should lead by example and encourage ethical behavior among employees, contractors, and residents. This can include providing training and support for ethical decision-making, as well as publicly recognizing and rewarding ethical behavior.
3. **Foster transparency and accountability:** A city should prioritize transparency and accountability in its decision-making processes and financial practices. This can include publishing budgets and financial statements, providing opportunities for public input and feedback, and conducting regular audits to ensure compliance with ethical standards.
4. **Promote equity and social justice:** An ethical city should work to address systemic inequalities and promote social justice through policies and initiatives that promote equality, diversity, and inclusion. This can include efforts to reduce poverty, address housing and food insecurity, and promote access to education and healthcare.
5. **Engage with the community:** City leaders should engage with residents and stakeholders to ensure that policies and decisions reflect the needs and values of the community. This can include holding public forums, conducting surveys, and creating citizen advisory committees.
6. **Monitor and address ethical violations:** A city should have mechanisms in place to monitor and address ethical violations, including a clear process for reporting and investigating complaints of unethical behavior. This can include disciplinary action, training and education, and other corrective measures as needed.

By taking these steps, a city can work to create a culture of ethical behavior that benefits all stakeholders and contributes to a more just and sustainable community.

## **Fostering an Ethical and Open City**

Fostering an ethical and open city requires a commitment to transparency, accountability, and fairness in all aspects of city governance, policies, and practices. Here are some key steps that a city can take to promote openness and ethical behavior:

1. **Promote transparency:** The city should prioritize transparency in its decision-making processes and financial practices. This can include publishing budgets and financial statements, providing opportunities for public input and feedback, and conducting regular audits to ensure compliance with ethical standards.



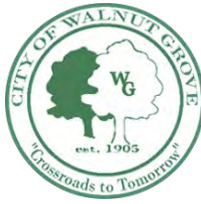
2. Encourage citizen engagement: City leaders should engage with residents and stakeholders to ensure that policies and decisions reflect the needs and values of the community. This can include holding public forums, conducting surveys, and creating citizen advisory committees.
3. Create a code of ethics: The city can develop and implement a code of ethics that sets out the standards of behavior and conduct expected of its employees and elected officials. The code should be easily accessible and understandable to all stakeholders.
4. Provide training and support for ethical decision-making: The city can provide training and support for employees and officials to develop ethical decision-making skills and promote ethical behavior. This can include training on conflict of interest, whistleblower protection, and anti-corruption measures.
5. Foster accountability: The city should establish mechanisms to monitor and address ethical violations, including a clear process for reporting and investigating complaints of unethical behavior. This can include disciplinary action, training and education, and other corrective measures as needed.
6. Embrace diversity and inclusion: The city should promote diversity and inclusion in all aspects of city life, including employment, housing, and public services. This can include efforts to reduce systemic inequalities and ensure that all residents have access to resources and opportunities.

By taking these steps, a city can work to create a culture of openness and ethical behavior that benefits all stakeholders and contributes to a more just and sustainable community.

### **The Requirements for a City to be Considered Ethical**

The requirements for a city to be considered ethical, there are several factors that could be taken into consideration. Here are some key aspects that could contribute to an ethical city:

1. Sustainability: An ethical city should prioritize sustainability by implementing policies and initiatives that aim to protect the environment and preserve natural resources for future generations.
2. Social Justice: An ethical city should work to ensure social justice by promoting equality and diversity, and by addressing issues such as poverty, homelessness, and discrimination.
3. Transparency: An ethical city should be transparent in its decision-making processes and in how it uses public resources, and should provide opportunities for public input and feedback.
4. Responsiveness: An ethical city should be responsive to the needs and concerns of its residents, and should work to address issues in a timely and effective manner.
5. Accountability: An ethical city should be accountable to its residents and to the broader community, and should be willing to take responsibility for any mistakes or shortcomings.
6. Civic Engagement: An ethical city should encourage civic engagement and active participation in local government, and should provide opportunities for residents to have a voice in shaping the future of their community.



These are just a few of the factors that could contribute to an ethical city. Each city will have its own unique set of challenges and opportunities, and the specific requirements for an ethical city will depend on the context and the needs of its residents.

## **Ethics and Nepotism**

Nepotism is the practice of showing favoritism or giving preferential treatment to relatives or friends, often without regard to their qualifications or abilities. This can be a violation of ethical principles in many contexts, including in the workplace or in public institutions.

Ethics is the study of moral principles and values that guide individual behavior and decision-making, as well as the behavior and decision-making of organizations and institutions. One of the core ethical principles is fairness, which means treating people equally and without bias.

Nepotism can violate the principle of fairness by giving unfair advantages to certain individuals based on their personal relationships rather than their qualifications or abilities. This can lead to negative consequences, such as reducing morale among employees or undermining trust in public institutions.

To ensure ethical behavior in relation to nepotism, organizations and institutions should establish clear policies and guidelines for hiring, promotions, and other forms of employment or service provision. These policies should emphasize fair and transparent selection criteria and procedures that are applied consistently to all candidates, regardless of their personal relationships.

Additionally, organizations and institutions should encourage employees and members to report any suspected cases of nepotism and should investigate and take appropriate action in response to such reports. By promoting transparency, accountability, and fairness, organizations and institutions can foster a culture of ethical behavior and prevent the negative consequences of nepotism.

## **A Clear Process for Reporting and Investigating Complaints of Unethical Behavior**

Establishing a clear process for reporting and investigating complaints of unethical behavior is critical to fostering a culture of transparency and accountability in a city. Here are some key elements of such a process:

1. Establish a reporting mechanism: The city should establish a reporting mechanism that is easily accessible and confidential, such as a hotline, email address, or online portal. This mechanism should be widely publicized and communicated to all stakeholders.
2. Define unethical behavior: The city should clearly define what constitutes unethical behavior, such as conflicts of interest, nepotism, harassment, fraud, or misuse of public resources. This definition should be easily accessible and communicated to all stakeholders.
3. Provide protection for whistleblowers: The city should provide protection for whistleblowers who report unethical behavior, such as protection from retaliation or discrimination. This protection should be clearly communicated to all stakeholders.



4. Investigate complaints: The city should have a clear process for investigating complaints of unethical behavior, including identifying who is responsible for conducting the investigation, how evidence will be gathered and evaluated, and how decisions will be made.
5. Impose consequences: The city should have a clear process for imposing consequences for unethical behavior, such as disciplinary action, training and education, or other corrective measures. This process should be fair and consistent for all stakeholders.
6. Communicate outcomes: The city should communicate the outcomes of investigations and consequences to all stakeholders, including the whistleblower and any affected parties. This communication should be transparent and timely.

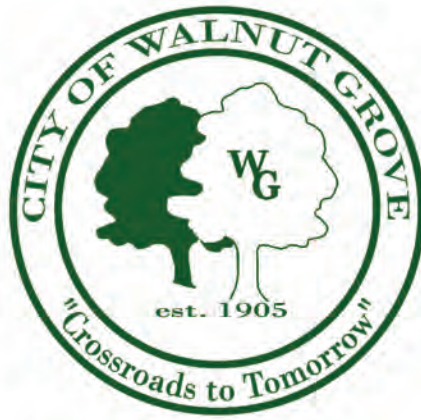
By establishing a clear process for reporting and investigating complaints of unethical behavior, a city can promote transparency, accountability, and fairness, and foster a culture of ethical behavior.

### **In Closing, The Advantages of Being an Ethical City**

In closing, there are numerous advantages to being an ethical city that can benefit all stakeholders. Here are some of the key advantages:

1. Promotes trust and confidence: An ethical city promotes trust and confidence in its government and institutions, which can lead to increased civic engagement, participation, and support.
2. Enhances reputation and competitiveness: An ethical city can enhance its reputation and competitiveness by attracting businesses, investments, and talent that prioritize ethical behavior and social responsibility.
3. Improves quality of life: An ethical city can improve the quality of life for its residents by providing safe, healthy, and equitable services, and promoting diversity, inclusion, and social justice.
4. Fosters innovation and creativity: An ethical city can foster innovation and creativity by promoting transparency, collaboration, and citizen engagement, and encouraging ethical behavior among employees and contractors.
5. Reduces risk and liability: An ethical city can reduce the risk of ethical violations and liability by establishing clear standards of behavior and conduct, providing training and support for ethical decision-making, and establishing mechanisms for monitoring and addressing ethical violations.

By prioritizing ethics in all aspects of city governance, policies, and practices, we can create a community that is just, sustainable, and equitable, and that serves the needs and values of all our stakeholders. Let us work together to build an ethical and open city that benefits us all.



**GEORGIA MUNICIPAL  
ASSOCIATION  
ON  
BECOMING AN  
ETHICS CITY**

GMA  
Legal  
Report  
July 2010



# Ethics in Government: Charting the Right Course



A Georgia Municipal Association  
Publication



**Ethics in Government:  
Charting the Right Course**

**July 2010**

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## FOREWORD

GMA is pleased to provide Ethics in Government: Charting the Right Course as an aid for municipal officials. Ethics in Government: Finding the Right Course (1993) was the product of a committee comprised of GMA elected and appointed city officials who spent a year developing the publication. In September 1999 GMA published a Model Code of Ethics for Georgia City Officials and launched the “Certified City of Ethics” program. The two ethics publications were brought together in 2005 in the first edition of Ethics in Government: Charting the Right Course. An Ethics Task Force comprised of elected municipal officials was appointed in 2008 to review the “Certified City of Ethics” program and make recommendations to continue its success. The Task Force recommended re-certification of cities every four years so that changing elected leadership would be aware of the city’s commitment to ethical conduct. The Task Force also approved a model ethics ordinance that includes appropriate alternative language to accommodate cities of differing size that want to join the “Certified City of Ethics” program. The publication before you, Ethics in Government: Charting the Right Course, is an updated version of the 2005 edition which includes the model ethics ordinance, major changes made to state law in the 2010 legislative session, and updated text and citations.

This publication is intended to be a guide assisting city officials in both considering the process of developing and enacting comprehensive codes of ethics and in facing ethical dilemmas on a day-to-day basis. No guide can answer every ethical question faced by municipal officials. We are hopeful, however, that the handbook will provide a framework for municipal officials to make appropriate decisions for the benefit of the citizens that they represent both in terms of their own actions and in terms of the ethics codes they enact. Although a sample ethics code is provided in this publication, it is provided as a guide only and city officials should thoroughly discuss and understand any ethics provisions they plan to adopt and tailor such provisions to the needs of their city and its citizens. . Always consult with your city attorney prior to enacting ethics ordinances.

All references to state law and local ordinances are accurate as of the date this document was published. Subsequent amendments and case law interpretations may be applicable. Therefore, the city attorney should always be consulted for up to date legal advice.

Jim Higdon  
GMA Executive Director

Susan Moore  
GMA General Counsel

## **ACKNOWLEDGEMENTS**

We express our thanks to Jeff Jeter, GMA 2010 Legal Intern, for his assistance in the crafting of this publication and to Ted Baggett, GMA Deputy General Counsel, for his editing assistance.

We extend our gratitude to Kelly Shields for her invaluable assistance in formatting and word processing.

We are also grateful to Richard A. Carothers for allowing us to reprint his article on ethics rules and trust in local government.

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## Defining Ethics: An Introduction

Ethics: 1. the discipline dealing with what is good and bad and with moral duty and obligation; 2. a. a set of moral principles or values; b. a theory or system of moral values; c. the principles of conduct governing an individual or a group; d. a guiding philosophy

– Merriam-Webster Online Dictionary

Ethics: 2. the study of the general nature of morals and of the specific moral choices to be made by a person; moral philosophy; 3. the rules or standards governing the conduct of a person or the members of a profession: medical ethics.

– The American Heritage Dictionary of the English Language, 4<sup>th</sup> Edition

Before beginning a discussion of ethics in municipal government, we must understand what ethics entails. The foregoing definitions are as ambiguous as the concept itself, and are thus appropriate, for ethics is an area in which difficult distinctions between good and bad must be made. The public rightfully expects its elected officials to conduct themselves with honesty and integrity while working for the common good and representative democracy demands such action if it is to function effectively. Therefore, in order to instill confidence in the electorate, it is imperative that local governments establish a mechanism to ensure that elected officials observe a prescribed set of ethical guidelines in performing the duties of office.

Trust is the key word to describe the appropriate relationship between elected officials and their constituents. An elected official obtains the privilege to serve only by earning the trust of a majority of the electorate, and the official must be careful not to compromise that trust in any way once he or she has been inducted into office. The elected official must always bear in mind:

All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them.<sup>1</sup>

With these words, the state constitution creates two roles for public officers – that of trustee and that of servant. The role of trustee has always been held to a higher standard in American law; it was said best by Justice Cardozo when he determined that “[a] trustee is held to something stricter than the morals of the marketplace.”<sup>2</sup> The public officer’s role as trustee of the people is perhaps the highest calling that one can be granted under law. As trustees, public officers have a fiduciary duty to their constituents.<sup>3</sup> A fiduciary is charged with managing something of value for a beneficiary, and the public officer’s fiduciary duty is to govern and manage public property so as to maximize the benefits to all citizens. A public officer should strive to further the general

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<sup>1</sup> Ga. Const. Art.I, Sec.II, Par.I.

<sup>2</sup> See Meinhard v. Salmon, 164 N.E. 545 (N.Y. 1928).

<sup>3</sup> See Black’s Law Dictionary, 7th Ed., pg. 1519.

welfare, and that officer should not seek to use public office in order to improve his or her own private standing to any greater extent than that enjoyed by the members of the public-at-large.

The second idea suggested by the constitutional provision is that the public officer is a servant of the people. A servant cannot exist without a master, and the Constitution establishes that the public is the “master.” Public officers are the servants who are charged with responding to the needs and wishes of the master. Both of these concepts serve to illustrate how the very sensitive relationship between elected officials and the public they serve is based on trust. The elected official’s own personal ethical standards as well as clear, readily enforceable ethics legislation will contribute greatly to the public’s confidence in that official.

Public officials must bear in mind that they act not only as individuals but also as leaders of the community, and they should consider their roles in that respect when determining a course of action or in formulating standards to govern their own behavior. Since values in modern society are not universally shared, there are no undisputed absolutes to indicate exactly what should be done in every possible situation. However, the public officer is conclusively bound by a fiduciary obligation to serve the public. This obligation figures very prominently in determining what is acceptable behavior for the public officer.<sup>4</sup>

Over the years, the State of Georgia has enacted a number of laws that deal with ethics, touching on several broad issues that arise in this area. Although the laws are varied and scattered throughout the code, they all emphasize the need for elected and appointed officials alike to show impartiality, efficiency, fairness and honesty in all of their dealings. In 1999 the GMA Ethics Task Force, seeing this trend, established five essential principles for effective, ethical government:

- Serve Others, Not Ourselves
- Use Resources with Efficiency and Economy
- Treat All People Fairly
- Use the Power of Our Position for the Well-being of Our Constituents
- Create an Environment of Honesty, Openness, and Integrity

The five ethics principles seek to capture, in the broadest statements possible, the central concepts that should underlie the conduct of municipal elected officials. While the principles themselves have overlapping characteristics, as a whole they embody the spirit with which government officials should represent their constituents.

The proper functioning of local government requires that public officers and employees act impartially and responsibly to the communities they serve. The public is entitled to governmental policies and decisions that have been made within the proper channels of the governmental structure; they are further entitled to public officers that do not exploit their office in pursuit of private gain. Adhering to these principles will contribute toward instilling greater confidence in the integrity of government, and codifying these standards into legislation will foster the development and maintenance of a tradition of responsible and effective governmental service. The public judges its government by the manner in which public officials conduct themselves in

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<sup>4</sup> Cooper, The Responsible Administrator, Josey-Bass Pub., San Francisco, 1990, pp. 36, 41, 42.

their elective or appointive posts; the best way to promote public confidence and respect is for every public official to uniformly “treat all citizens with courtesy, impartiality, fairness, and equality under the law...and...avoid both actual and potential conflicts between their private self-interest and the public interest.”<sup>5</sup>

Even though the public interest may represent no more than the accumulation of the various special interests held throughout society, the public officer has an obligation to always give objective consideration to all decisions made in his or her official capacity. This becomes even more important when the considerations involve the officer’s own personal interests, for it is well established that a public officer cannot be permitted to make a profit as a result of his or her fiduciary duty to the public.<sup>6</sup> Ethical conflicts may arise whenever the personal interest of a public official prevents or even appears to prevent an unbiased decision with respect to a matter before the official in his or official capacity.<sup>7</sup> These situations are inevitably a central focus of any comprehensive ethics code.

The public official regularly encounters potential violations of ethical principles in the conduct of governmental affairs. There are ample opportunities for profit in governmental service, and this factor combined with the official’s likely control over the situation represents a key element in the creation of ethical violations. An effective code of ethics seeks to nullify even the appearance of impropriety on behalf of the public officer by providing clear guidelines concerning what situations should be avoided and how to deal with those situations that cannot be avoided.

Ethical conflicts in the legislative setting are generally resolved according to two different approaches, either disclosure or disqualification. There are some situations that arise where the mere appearance of impropriety alone may be sufficient to warrant disqualifying the public officer from the consideration of certain matters, while in other situations the public officer’s disclosure of any possible interest he or she may have will be sufficient to allow the officer to participate in the resolution of the matter. Ethical codes often provide resolutions for conflicts that combine aspects of both approaches, according to the facts of the particular situation.

However, an important consideration for any ethics code should also be the recruitment and retention of those persons most qualified to provide effective leadership in government service. In order to satisfy this goal, there should be safeguards within the law to ensure that approaches to resolving ethical conflicts do not impair the ability of public officers to seek reasonable private gain to the same extent available to the general public. This principle illustrates the delicate balancing approach that goes into formulating effective ethics legislation without hindering the ability of government to operate efficiently.

Georgia law holds: “It is improper and illegal for a member of a municipal council to vote upon any question brought before the council in which he is personally interested.”<sup>8</sup> This long-

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<sup>5</sup> Matthews Model Ordinances § 30.135.

<sup>6</sup> See e.g. Twiggs v. Wingfield, 147 Ga. 790, 95 S.E. 711 (1918).

<sup>7</sup> Note, Fighting Conflicts of Interest in Officialdom: Constitutional and Practical Guidelines for State Financial Disclosure Laws, 73 Mich. L. Rev. 758 (1975).

<sup>8</sup> O.C.G.A. § 36-30-6

standing statutory provision is derived from an 1888 court case,<sup>9</sup> and “personal interest” has been subsequently construed by the courts to mean a financial interest.<sup>10</sup> A public officer should never take any official action with regard to any matter under circumstances in which the officer knows of any possible financial interests he or she may have in the matter if this action has the potential of benefiting the officer to a greater extent than that available to the public-at-large.

The prohibition on the use of office for personal financial gain to the public officer, his or her business interests, members of his or her household, or his or her clients is the most common prohibition contained in ethics codes around the country.<sup>11</sup> A majority of these codes call for the disqualification of the public officer from participating in the government’s deliberation of the matter in which he or she has an interest. Some ethics codes go further, prohibiting the public officer from conducting any business with the government, period, whenever the officer has a personal interest in the matter. These stricter regulations can handicap local governments by precluding some otherwise reliable sources from transacting with the government; this problem arises especially in smaller communities due to the limited number of alternative sources. These considerations require additional balancing to determine the extent to which a municipality’s representatives should be allowed to transact business with the government without violating the public trust.

At the other end of the spectrum, some ethics codes do not completely proscribe the officer from engaging in the performance of duties regarding matters in which he or she has a personal interest. Public disclosure of whatever interest the officer may have is sometimes considered an adequate safeguard of the public’s interest in these situations.

Transactional disclosure, where the public officer is required to disclose any personal interest he or she may have in the matter being considered by the governmental entity, is usually considered the most effective method. This procedure is based on the rationale that increased public scrutiny will insure accountability while at the same time allowing the public officer to share his or her distinctive insight into the matter in the formulating of governmental decisions and policies. Those officers having only an indirect interest in the matter, such as a member of a zoning board who is a real estate agent and would likely receive commissions based on the sale of new houses if a proposed development were to receive zoning approval, may be allowed to participate in the process.<sup>12</sup> This interest would be considered indirect only if the officer’s public capacity placed him or her in no greater position to profit from the zoning decision than any other real estate agent in the community at large.

Whether a particular situation calls for disqualification or disclosure depends in large part upon a value judgment, balancing efficient provision of governmental services with the harmful effects of the appearance of impropriety. These values are determined by the individual public official, the governmental body, and, most importantly, the members of the public. Often the mere threat of the appearance of impropriety suggests that the public official should be disqualified even though he or she may be the best available source for a particular product or service.

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<sup>9</sup> Daly v. Georgia S. and F.R.R., 80 Ga. 793, 7 S.E. 146 (1888).

<sup>10</sup> See Story v. City of Macon, 205 Ga. 590, 54 S.E.2d 396 (1949).

<sup>11</sup> See Carpinello, “Designing Municipal Ethics Codes,” Urban, State, and Local Law Newsletter, Vol.16, No.1, Fall 1992, p.6.

<sup>12</sup> Id.

With increasing frequency, the media is defining what is and is not ethical behavior for public officials. While it is clear to most people familiar with local government that the vast majority of public officials are honest and conscientious people who choose public service as a means of serving their community, the occasional high-profile case involving unscrupulous behavior can leave the public with the unfortunate impression that misconduct is the rule rather than the exception.<sup>13</sup> One measure often applied to determine whether conduct is ethical is the “How will it read in the newspaper?” test. While some people may view this test as being somewhat cynical, it is actually a natural reflection of the ambiguity involved in formulating an equitable code of ethics in modern society. The public’s potential reaction to the official’s conduct if it were reported in the news provides an objective yardstick for the public official; the perception of the public is intrinsic to achieving the objective of eliminating the appearance of impropriety. Other tests employed by local government officials include the “Golden Rule” test, in which the official asks whether he would approve if other officials did the same thing under similar circumstances, and the “Kid on Your Shoulder” test, in which the official asks whether he or she would feel comfortable with his or her child observing the official’s actions.<sup>14</sup> All of these techniques allow the official to utilize a degree of objective criteria in situations providing no clear boundaries between right and wrong.

Today’s population is larger, more diverse, more complex, and provided with access to more information than at any other time in our nation’s history. The media provides a great deal of access to governmental affairs; this access has been multiplied exponentially by the development and wide spread use of the Internet. Because of this increased access, public officials have come under increasing scrutiny, leading to a growing dissatisfaction in some segments of society with the way government operates, from the local level to the federal. Accordingly, the “How will it read in the newspaper?” test now assumes an even greater role in shaping the conduct of elected officials. An elected official must always remember that trust is the key to an effective relationship with his or her constituents, and the key to building that trust depends in large part on the official’s image as portrayed in the media. The media can act as an effective “watchdog,” keeping the public informed about their elected official’s behavior; it is in everyone’s best interest to have consistent ethics laws by which to measure that behavior.

Avoiding the appearance of impropriety becomes very difficult at times because impropriety can mean different things to different people. This is an inevitable result of the diverse views embraced within our democratic society today, and a continuous dialogue concerning this type of issue is essential to further improvement of our system of government. This provides little comfort for the elected official who must deal with situations involving real ethical dilemmas on a regular basis. That is why a concise code of ethics is useful to provide the official with clear guidelines and to provide a framework for determining the proper course of action in those situations not specifically provided for in the code.

Within a single governmental body there may be a range of viewpoints concerning ethics issues that is as broad as that represented within the general population. Since the beginning of

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<sup>13</sup> See Cox, Ethics in Government: The Cornerstone of Public Trust, 94 W. Va. L. Rev. 281, 300, Winter 1991/1992.

<sup>14</sup> Grubiak, “Ethics, Conflicts of Interest, and Abuse of Office,” Georgia County Government, November 1992, p.12.



civilization there has been a belief that a person must often put community obligations above personal gain, and this led to the eventual establishment of ethical standards and codes. Ethical standards define society's expectations of itself; they express our moral judgment and sharpen our awareness of its application.<sup>15</sup> Codifying these standards into law helps to ensure that the principles embodied therein will be complied with as well as providing some foundation for the official who legitimately needs guidelines to determine what is ethical in a given situation.

So long as the public official conducts himself or herself consistently within the norms provided in the ethics code, the members of a governmental body should strive to be tolerant of differing viewpoints concerning the various ethical issues that may arise. For example, some officials refuse to accept anything of value (even a lunch) out of concern for avoiding the appearance of impropriety. While this official may be looked upon by some cohorts as sort of a "goody-goody," such persons should be applauded for setting such high standards for the community.

Some actions are so egregious that any reasonable person would agree that they are ethical violations, such as trading zoning votes for cash (which would be illegal as well). Other situations may not be such clear violations, depending on one's perspective. For example, is it against public policy to include in a contract with an entertainment company for the use of city property that the company shall provide a certain number of "free" tickets to the event for the members of the municipal governing body? What about the purchase at public auction of a surplus city automobile by the son or daughter of a public official, when that official may have known about the particularly good condition of the car because of his or her position? Would the sale of insurance to the city by an agency that has a council member as a partner in the agency be in the public's best interest, even if the council member did not participate in the transaction in any way? Finally, what kinds of favors or gifts, if any, should someone who contracts or potentially contracts with the city be allowed to bestow upon a public official who happens to be a genuine personal friend? These and other situations are commonly encountered by public officials, and the proper resolution of these issues is instrumental in maintaining the public confidence necessary for government to operate effectively.

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<sup>15</sup> Cox, supra note 13, at 300.

## Conflicts of Interest

The subject of conflicts of interest is one of fundamental importance in the field of governmental ethics. A conflict of interest may be defined as any situation where the personal interest of a public official in a matter before them may prevent, or even appear to prevent, them from making an unbiased decision with respect to that matter. The principal evil conflict of interest laws seek to prevent is the danger of the public being “shortchanged” through the receipt of less than a public official’s most objective, fair-minded and best efforts on behalf of the public as the result of being influenced by the official’s possibly competing interests.<sup>16</sup>

The zealous belief that no public official should be led into the temptation to profit out of the public matters entrusted to them runs very strong in our nation, particularly in Georgia. The trust that is so important to an effective relationship between a public official and the public they serve depends on the avoidance of the mere appearance of impropriety as well. Therefore, public officials must always be mindful of the reality that circumstances and situations can by themselves create potential violations of ethical principles, regardless of the official’s actions. It has been said that the temptation to profit, combined with the opportunity to profit, can lead to impropriety; the prudent municipal official is always keenly aware of this.

The public’s interest in avoiding this problem was addressed early in our nation’s history when it was stated:

The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and the most virtue to pursue the common good of society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold the public trust.<sup>17</sup>

These profound words by one of our founding fathers continue to embody an ideal that holds true to this day, and in Georgia this ideal has been codified into law through the state Constitution, civil and criminal statutes, and court cases.

The Georgia Constitution provides that “Public officers are the trustees and servants of the people.”<sup>18</sup> This constitutional trust provision is applied when “a public officer had definitely benefited financially (or definitely stood to benefit financially) as a result of simply performing their official duties.”<sup>19</sup> Accordingly, a public office is a trust created for the benefit of the people. The Georgia Court has long held that public officials can be either elected or

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<sup>16</sup> See e.g., City of Coral Gables v. Weksler, 164 So.2d 260, 263 (Fla. Ct. App. 1964).

<sup>17</sup> The Federalist No. 57, at 348 (James Madison) (Clinton Rossiter ed. 2003).

<sup>18</sup> Ga. Const. Art.I, Sec.II, Par.I.

<sup>19</sup> Crozer v. Reichert, 275 Ga. 118, 561 S.E.2d 120 (2002) (stating that the burden of proof is on the interested official to show that 1) the official is not a “public officer” within the meaning of the constitutional trust provision and 2) the official did not have a conflict of interest), citing Ianicelli v. McNeely, 272 Ga. 234, 527 S.E.2d 189 (2000).

appointed;<sup>20</sup> the court determines whether an official is a public official based on an analysis of the person's duties, powers and obligations, rather than on the extent of his or her authority.<sup>21</sup> Historically, public officers were subject to every limitation imposed by law upon trustees generally, including those limiting personal financial gain from the discharge of official duties.<sup>22</sup> Those limitations extended to local government officers as well. The rule, while effective, was too limiting and appeared draconian in comparison to other jurisdictions. The Georgia Supreme Court finally reevaluated the rule in 2001;<sup>23</sup> upon finding that the earlier rule was too strict, they elected to adopt an ad hoc conflicts of interest standard.<sup>24</sup> The newer standard calls for a case-by-case evaluation of the circumstances surrounding each transaction in order to determine if an actual conflict of interest is present. The constitutional trust provision also suggests that public officers must consider themselves servants of the people. A servant cannot exist without a master. The Georgia Constitution establishes the public as masters and public officers as servants who are charged with responding to the needs and wishes of the master.

The constitutional trust provision provides the foundation for the subsequent legislative enactments concerning conflicts of interest. In the Code of Ethics for Government Service, the legislature recited a comprehensive, non-binding guide for public officials to follow:

- I. Put loyalty to the highest moral principles and to country above loyalty to persons, party or government department.
- II. Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.
- III. Give a full day's labor for a full day's pay and give to the performance of duties earnest effort and best thought.
- IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
- VI. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
- VII. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.
- VIII. Never use any information received in confidentiality in the performance of governmental duties as a means for making private profit.
- IX. Expose corruption wherever discovered.
- X. Uphold these principles, ever conscious that public office is a public trust.<sup>25</sup>

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<sup>20</sup> See Bradford v. Justices of Inferior Court, 33 Ga. 332 (1862). See also Templeman v. Jeffries, 172 Ga. 895, 159 S.E. 248 (1931) (holding that appointed officers are public officers).

<sup>21</sup> Bradford, 33 Ga. at 332.

<sup>22</sup> See Georgia Department of Human Resources v. Sistrunk, 249 Ga. 543, 291 S.E.2d 524 (1982).

<sup>23</sup> See Georgia Ports Authority v. Harris, 274 Ga. 146, 549 S.E.2d 95 (2001).

<sup>24</sup> Id.

<sup>25</sup> O.C.G.A. § 45-10-1.

Although this Code of Ethics is very extensive, it does not contain any enforcement mechanism and it carries no penalties for violation. Therefore, it is left to the various criminal and civil statutes to enforce the ideals behind this code.

The Georgia code has a number of statutory provisions with regards to ethics in the conduct of governmental affairs. These provisions consist of both civil restrictions and criminal sanctions.

### **Civil Statutes**

“It is improper and illegal for a member of a municipal council to vote on any question brought before the council in which he is personally interested.”<sup>26</sup> As discussed in the introductory section, “personally interested” has been interpreted as “financially interested.”<sup>27</sup> The Georgia courts have cited this statutory provision on a number of occasions as authority to void municipal contracts. For example, it has been wielded to void a contract between a city and a private corporation in which one of the council members owned stock.<sup>28</sup> It has also been used to void a rezoning application when one of the commissioners voting on the issue was related to a lawyer representing the applicants.<sup>29</sup> The Court has even granted this provision such broad construction as to void a contract after the contract had been reconfirmed subsequent to the financially interested member’s resignation from the council.<sup>30</sup> However, the Attorney General has insisted that the conflict of interest statutes be construed so as to not make unlawful “relationships which are not surreptitious and which are a benefit to the State rather than a source of corruption, real or potential.”<sup>31</sup>

These statutes and court decisions present realistic problems for municipal officials. Do they mean that a mayor and council are unable to purchase General Motors police cars merely because the Mayor owns 100 shares of General Motors stock, or is employed by the local General Motors plant? No, there must be some opportunity for measurable profit to the official in order for the prohibitions to apply.<sup>32</sup> What if a council member is an avid golfer, and a vendor who has a contract with the city invites the council member to an “all expense paid” golfing weekend at a resort – would this be ethical? Could the vendor ethically pay the city official’s greens fees at a local country club? Or what about the contractor who does business with the city and wants to take the council to see a baseball game from his club-level seats, is this ethical? Similar situations are commonly encountered by public officials, and become especially perplexing during a baseball pennant race. To address these types of situations, many local governments must turn to their own local ethics ordinance.

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<sup>26</sup> O.C.G.A. § 36-30-6.

<sup>27</sup> See Story v. City of Macon, 205 Ga. 590, 54 S.E.2d 396 (1949).

<sup>28</sup> Hardy v. Mayor of Gainesville, 121 Ga. 327, 48 S.E. 921 (1904).

<sup>29</sup> Dick v. Williams, 215 Ga. App. 629, 452 S.E.2d 172 (1994).

<sup>30</sup> Montgomery v. City of Atlanta, 162 Ga. 534, 134 S.E. 152 (1926).

<sup>31</sup> 1969 Op. Att’y Gen. 69-467.

<sup>32</sup> Sumner, “A Guide to Ethics in Municipal Government,” Urban Georgia. March 1989, p. 19, 20.

## Criminal Statutes

Suppose Mayor Smith owns the only hardware store in town. As a matter of course, employees in the public works department of the city occasionally go to the hardware store to pick up small tools and other items necessary in carrying out the department's daily activities. Is this action permissible? Georgia criminal law prohibits the sale of real or personal property by a public officer to a subdivision of government in which the individual serves.<sup>33</sup> A violation of this provision can result in imprisonment of not less than one to no more than five years.<sup>34</sup> Nevertheless, the statute does recognize an exception for sales of personal property that do not exceed a value of \$800 per calendar quarter, as well as for sales of personal property made pursuant to sealed competitive bids.<sup>35</sup> Accordingly, Mayor Smith would be able to sell tools and other items to the city so long as one of these two statutory exceptions was met.<sup>36</sup> Does the second exception to the criminal code mean that a court today will approve an arrangement whereby a mayor's dealership sells cars to the city on competitive bid? So long as a transaction complies with O.C.G.A. § 16-10-6(c), it will not be found invalid on other grounds.

**However, outside of Code section 16-10-6, just because an activity is free from criminal sanction does not mean that the transaction would be held valid in a court of law. A contract between a municipal official and the government with which they serve may still be voided on the grounds that the contract violates good public policy and the constitutional principles of public trusteeship, as well as the statutory provision barring a council member from voting on any matter in which he is personally interested.<sup>37</sup>**

An example that graphically illustrates the potential for peril in this scenario is that of the suspended Atlanta School Board member who allegedly received city school funds while working for a contractor doing business with the school board. The former board member was found guilty in federal court of 22 counts of mail fraud and 11 counts of money laundering stemming from payments he received from a school board contractor.<sup>38</sup> This case dramatically illustrates the inherent dangers confronted when public office is employed as a vehicle for private gain.

The sale of real estate by a city official to his or her own city is also exempted from the strictures of the criminal law provided certain guidelines are followed.<sup>39</sup> A sale of real property by a city official to his or her own city is exempt from criminal sanction if there has been a disclosure to the judge of the probate court of the county in which the city is located at least 15

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<sup>33</sup> O.C.G.A. § 16-10-6.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Sumner, supra note 32, at 21. See also Harris at 147 (holding that legal safeguards against conflicts of interest must be designed so as not to unnecessarily or reasonably impede the recruitment and retention by the government of those men and women who are best qualified to serve).

<sup>37</sup> O.C.G.A. § 36-30-6.

<sup>38</sup> Bill Rankin and Betsy White, Jury: Waymer Guilty of Fraud, Other Charges, Atlanta Journal and Constitution, July 22, 1993, at D1.

<sup>39</sup> O.C.G.A. § 16-10-6(b)(3).

days prior to the date the contract or agreement becomes binding.<sup>40</sup> This disclosure must show the name of the interested official, their position in the political subdivision or agency, the purchase price, and the location of the property being purchased by the city and the nature of the official's personal interest.<sup>41</sup>

Other potential criminal law violations arising from public service can include violation of oath of office,<sup>42</sup> bribery,<sup>43</sup> improperly influencing legislative action,<sup>44</sup> improperly influencing the action of a public officer or employee,<sup>45</sup> conspiracy to defraud,<sup>46</sup> and violation of campaign finance and disclosure laws. These and other potential violations are addressed in later sections of this publication.

Zoning decisions are a matter of distinctive concern for public officials. Georgia law requires that any local government official with an interest in zoning decisions must disclose the nature and extent of that interest in writing to the governing authority of the municipality in which the official is a member.<sup>47</sup> The courts have determined that for a conflict or self-interest to void a zoning decision, it must be financial.<sup>48</sup> The conflict arises "when a public officer, in the discharge of his public function, acts upon a measure relating to a specific transaction and such transaction shall directly and immediately affect his pecuniary interest."<sup>49</sup> Remote or speculative financial interests will not support allegations of conflict of interest.<sup>50</sup> The official must disqualify himself from voting on the rezoning action, as well as from taking any other action on behalf of himself or other persons intended to influence action on the matter.<sup>51</sup> This prohibition applies to any business or property interest the official owns when the official knows or reasonably should have known the interest would be affected by the zoning action. Any interests members of the official's family (including spouse, parents, siblings, and children) may have in the matter are also included in the prohibition.<sup>52</sup> The violation of this provision is a misdemeanor,<sup>53</sup> and it can have a very detrimental effect on the outcome of the zoning action as well. The constitutional trust provision has applications in zoning as well; the court has found that it prohibits a city planning commission chairman from participating in zoning applications filed by a corporation in which he had served as an officer, despite the chairman's abstention

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<sup>40</sup> O.C.G.A. § 16-10-6(c)(3).

<sup>41</sup> Id.

<sup>42</sup> O.C.G.A. § 16-10-1.

<sup>43</sup> O.C.G.A. § 16-10-2.

<sup>44</sup> O.C.G.A. § 16-10-4(b).

<sup>45</sup> O.C.G.A. § 16-10-5(b).

<sup>46</sup> O.C.G.A. § 16-10-21.

<sup>47</sup> O.C.G.A. § 36-67A-2.

<sup>48</sup> White v. Board of Commissioners of McDuffie County, 252 Ga. App.120, 555 S.E.2d 45 (2001).

<sup>49</sup> Department of Transportation v. Brooks, 254 Ga. 303, 317-318, 328 S.E.2d 705 (1985).

<sup>50</sup> Olley Valley Estates v. Fussell, 232 Ga. 779, 784, 208 S.E.2d 801 (1974).

<sup>51</sup> Id. See also Little v. Lawrenceville, 272 Ga. 340, 528 S.E.2d 515 (2000) (holding that the language of OCGA 36-67A-2 which prevents a disqualified official from taking "any other action to influence the application for rezoning" only applies to "action in his public capacity" as an elected official).

<sup>52</sup> Id.

<sup>53</sup> O.C.G.A. § 36-67A-4.

from voting and full disclosure of interests.<sup>54</sup> This prohibition only applies when a city official actually benefits or stands to benefit financially from an agreement, not when the conflict is purely speculative.<sup>55</sup>

### **Other Conflict of Interest Issues**

Purchasing and bidding practices can create a variety of conflicts of interest. For example, most ethics codes strictly prohibit the disclosure of confidential information concerning government operations and affairs, as well as the private use of such information by the public official in pursuit of personal gain. Just exactly what is “confidential information?” Literally, it is any information that is held in the confidence that it will be kept secret. Due to the public official’s role as trustee to the public, any disclosure or private use of such information would be a violation of the official’s fiduciary duty. However, it may sometimes be unclear to the public official whether certain information must necessarily be kept confidential. In those situations, the most prudent course of action may be nondisclosure, at least until the official can seek advice from the city attorney. The following passage provides keen insight into the reasoning for this:

Perhaps the most fundamental duty of a trustee is that he must display throughout the administration of the trust complete loyalty to the interests of the beneficiary and must exclude all selfish interest and all consideration of the interests of third persons.<sup>56</sup>

Because the public officer cannot be a trustee for competing interests, he or she must concentrate on administering the public’s affairs to the exclusive benefit of the public at large. Therefore, a city official would be remiss if he or she were to provide a favorite uncle with specifications to assist in obtaining a contract when those specifications were not available to other bidders in the general public, or to provide a close friend with information that would allow that friend to begin preparation for a bid well before the rest of the public was aware that a bidding process was forthcoming.<sup>57</sup> These proscriptions are wholly consistent with the notion that public officers must remain absolutely loyal to the public at large, as opposed to a select group of favored individuals.

Another issue often confronted when considering purchasing and bidding practices is whether government contracts should be advertised to the public for competitive bidding, or chosen from among a select group of vendors. While most municipal charters and codes vest the governing authority with broad discretionary powers regarding purchasing decisions, fair and unbiased application of this discretion is essential to effective government. Whenever there are a sufficient number of capable vendors available for a given product or service, opening the process up to the public by advertising for competitive bids will serve to enhance the public’s confidence that government is working for them, instead of “feathering the nest” of a favored

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<sup>54</sup> See Dunaway v. City of Marietta, 251 Ga. 727, 308 S.E.2d 823 (1983).

<sup>55</sup> Ianicelli v. McNeely, 272 Ga. 234, 236, 527 S.E.2d 189 (2000).

<sup>56</sup> Bogert, George Gleason and George Taylor Bogert, The Law of Trusts and Trustees, § 543, at 217, 218 (rev. 2d ed. 1993).

<sup>57</sup> These actions would also violate the public works construction contracts law. O.C.G.A. §§ 36-91-20 through 36-91-22.

few selected vendors who monopolize the local market. Everyone benefits greatly when contracts are awarded based on the most economically efficient bids, and this serves to avoid the appearance of impropriety as well. However, this may not be practical in emergency situations that demand immediate attention; therefore local ethics codes should provide a reasonable mechanism for government to purchase goods and services in emergency and other situations that are not conducive to open competitive bidding.

Some municipalities have begun to use the Internet for sealed competitive bidding, including services in which pre-qualified vendors are able to bid down the price that they are offering to the city on a given item or service. The only things that the vendor sees is what place they are in. They do not know how many other vendors are participating in the auction nor do they know the current bid price. By conducting the auction in this manner, the sealed bid process is preserved. Online sealed bidding enables cities to streamline the purchasing process, allows access to a greater number of vendors, and allows the market to determine the lowest cost.

There are two primary standards of selection employed in selecting competitive bids – “the lowest bidder” versus the “lowest responsive and responsible bidder” standards. Most purchasing codes advocate the use of the “lowest responsive and responsible bidder” model whenever possible because the lowest bid might not always be the least expensive proposal over the long run. To be most effective, the bid should be tailored to fit the specific needs of the situation. There should also be precise criteria established to inform bidders as to what the purchasing authority is looking for whenever discretion is allowed. Rigorous pre-qualification of bidders can help to ensure that the lowest responsive bidder is capable of fully supplying the good or service purchased.

There are some services that are typically not conducive to competitive bidding, such as legal, engineering, accounting, etc. These services are often so distinctive to the facts of the particular situation that price cannot be accurately measured among providers, and the importance of having these services rendered properly decreases the relative importance of price considerations. The purchasing authority should be granted sufficient discretion to obtain these services by whatever method is deemed most efficient for that particular locality.

Public officials must also be wary of potential conflicts arising from lawsuits involving the city. It is not uncommon for some city officials to “help” parties who are suing the city by leaking information about the city’s defense strategy that may be helpful to the plaintiffs. This activity conflicts with the official’s fiduciary duty to the general public, and is clearly something public officials should not do. Additionally the city’s insurer may regard this as a failure to cooperate and refuse to provide coverage for the city.

The potential situations from which conflicts of interest can arise are endless. For example, the issue of nepotism in the hiring and firing of public employees is one that often confronts public officials, and it is fraught with the perils of conflict. Giving preference to one’s own family is instinctive to human nature, and it follows that most people would tend to favor those closest to them whenever the opportunity presents itself. Yet every public officer also realizes that their fiduciary duty requires the selection of those best qualified for public employment. This sometimes places the public officer in a difficult position that can become more problematic because of potential emotional factors involved when dealing with family matters. Many municipalities have adopted ordinances specifically targeting the problem of



nepotism in order to provide guidance to officials when conflicts of this manner arise.<sup>58</sup> All public employees should be hired within the guidelines contained in the city charter and code, and careful and impartial consideration should be given to every potential employee's qualifications.

If the city plans to hire someone to maintain the lawn at City Hall for the summer, and Councilmember Jones happens to have a 15-year old son who needs to earn some money, there is probably nothing wrong with the city paying the younger Jones a reasonable rate to do the job. As the responsibilities and compensation of the job increase, however, the officer must exercise greater caution. For example, naming the mayor's husband as chief of police (when he has spent his entire working life selling insurance) may not be in the best interests of the community. Also, disciplinary action or removal from office could become extremely difficult if problems were to develop later. Remember, avoiding the appearance of impropriety is of the utmost importance to all public officials; anything that may be construed as "favoritism" in the treatment of municipal employees should be avoided whenever possible.

For an incident illustrating how pervasive the problems of nepotism can become, consider this: the parent of a long-time assistant city clerk became mayor of a Georgia municipality. The city clerk retired one year later. An ethical dilemma subsequently developed over whether the assistant clerk could be promoted to the position of city clerk. The mayor did not intend to vote on the issue, and would not exert any influence on salary consideration for the clerk's office. Should the well-qualified assistant, an emancipated adult who lived in her own household, be allowed to occupy the position of city clerk? This example illustrates the balancing act presented by potential conflicts of interest.

Conflicts of interest are probably the most commonly discussed issue in the field of ethics. While ethics in general pertain to moral character and values, conflicts of interest focus primarily on the ethical concerns involved in a particular transaction. Thus, conflicts laws frequently have greater practical applications than many other topics contained in a code of ethics.<sup>59</sup>

Most persons who comply with the conflicts provisions of an ethics code would conduct themselves according to those principles regardless of the code's existence. However, while the law in general is mainly concerned with the conversion of behavioral practices into legal standards (and the penalization of departures from those standards), conflict of interest laws are primarily concerned with proscribing certain conduct to apply in particular situations and circumstances – particularly those situations where the temptation and opportunity presented might lead to breach of a public trust.<sup>60</sup> Therein lies the special value of conflicts laws – a definite proscription for a potentially troublesome situation. Everyone can benefit from such legislation.

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<sup>58</sup> See e.g. Athens-Clarke Co. Code § 1-9-13; City of Marietta Code § 4-4-6-040; City of Gainesville Code §1-6-1; City of Warner Robins Code § 18-3.

<sup>59</sup> See Grubiak, "Ethics, Conflicts of Interest, and Abuse of Office," Georgia County Government, November 1992, p.12.

<sup>60</sup> 1976 Op. Att'y Gen. U76-66.

## Incompatible Offices

Holding incompatible offices is another aspect of municipal government law that is replete with the dangers of potential ethical violations. The problems arising from this issue may become even more complex in smaller municipalities, where there may be fewer persons available for public service.

In order to protect against the power of government accumulating in the hands of a select few, Georgia law restricts the ability of persons to hold multiple public offices. These restrictions also seek to prevent public officials from deriving personal economic gain out of public office. For example, a statute provides that a municipal official is ineligible to hold any other municipal office while serving as a member of the municipal governing body.<sup>61</sup> The prohibition against holding two offices only applies to holding two offices with the same government. What the elected official cannot do is be an employee of the same city in which he or she serves in an elected capacity. With respect to serving on boards appointed by elected officials, the general rule is that they may not appoint an elected official to the board unless there is a statutory or local legislative authority specifically allowing such an appointment.<sup>62</sup>

The rationale for the statutory prohibition on holding dual offices is that elected officials are charged with the duty of supervising municipal employees and operations and it creates a conflict of interest for an individual to be supervising himself or herself. Accordingly, the Georgia courts have held that city officials cannot also serve on municipal boards of education<sup>63</sup> or as city police officers,<sup>64</sup> that neither a mayor<sup>65</sup> nor a city commissioner<sup>66</sup> can serve as city manager, and that deputy sheriffs cannot serve as members of a school board for the same county.<sup>67</sup> The Attorney General has also declared that city officials cannot simultaneously serve on municipal planning commissions,<sup>68</sup> as city building inspectors,<sup>69</sup> as municipal court recorders,<sup>70</sup> nor as city clerks;<sup>71</sup> that a state-paid assistant district attorney may not offer for and hold a part time elective office with a political subdivision of the state (e.g., mayor);<sup>72</sup> that coroners or deputy coroners cannot also serve as sheriffs,<sup>73</sup> deputy sheriffs,<sup>74</sup> or Georgia Bureau of Investigation Division of Forensic Sciences employees;<sup>75</sup> and that an impermissible conflict of

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<sup>61</sup> O.C.G.A. § 36-30-4.

<sup>62</sup> See e.g. Development Authorities Law, O.C.G.A. § 36-62-5.

<sup>63</sup> See Matthews v. Morris, 169 Ga. 723, 151 S.E.2d 391 (1930).

<sup>64</sup> See Fowler v. Mitcham, 249 Ga. 400, 291 S.E.2d 515 (1982).

<sup>65</sup> Welsch v. Wilson, 218 Ga. 843, 131 S.E.2d 194 (1963).

<sup>66</sup> Board of Commissioners v. Montgomery, 170 Ga. 361, 153 S.E. 34 (1930).

<sup>67</sup> See Black v. Catoosa County School District, 213 Ga. App.534, 445 S.E.2d 340 (1994).

<sup>68</sup> 1971 Op. Att’y Gen. U71-107.

<sup>69</sup> 1962 Op. Att’y Gen., p.333.

<sup>70</sup> 1983 Op. Att’y Gen. U83-61.

<sup>71</sup> 1967 Op. Att’y Gen. No. 67-36.

<sup>72</sup> 2002 Op. Att’y Gen. U02-7.

<sup>73</sup> 1997 Op. Att’y Gen. U97-18.

<sup>74</sup> Id.

<sup>75</sup> 1997 Op. Att’y Gen. 97-21.

interest arises when a member of a county Board of Elections and Registration is also the full-time chief clerk of that Board.<sup>76</sup> Likewise, the historical custom of allowing the mayor of a municipality to serve as the presiding judge in the municipal court of that community has been declared an impermissible holding of two offices by the Judicial Qualifications Commission.<sup>78</sup> One of the few exceptions to this rule is that the Attorney General has declared that members of the Georgia General Assembly may simultaneously serve as a member of an advisory planning commission created by intergovernmental agreement.<sup>79</sup>

In some smaller jurisdictions, an elected municipal official may serve and receive compensation as a part-time city clerk, fire chief, street superintendent, or a host of other positions. This may seem necessary due to the fact that persons otherwise qualified to serve in these roles are either uninterested or unavailable. However, such situations can still lead to potentially troublesome consequences due to possible conflicts of interests as well as violations of the prohibition on holding dual offices. For example, the Supreme Court of Georgia held in Columbus, Ga. v. Board of Water Commissioners<sup>80</sup> that a conflict of interest would exist if a council member were to serve concurrently on the board of water commissioners and the city council of Columbus, because the city council serves a supervisory function over the board. The council member's position on the board of water commissioners would not allow him to make completely unbiased judgments with respect to his supervisory duties as a member of the city council, creating the potential for substantial conflicts.<sup>81</sup> The fact that Columbus is one of the state's larger municipalities further illustrates the inherent nature of these issues in all governments.

One of the most important duties of public officers entails the supervision of those employees who carry out the daily operations of government. How can an officer exercise the unbiased judgment that is central to the administration of effective government when it is his or her own actions that the officer is charged with supervising and evaluating? No matter how honorable the officer may be, the simple answer is that it is impossible for that person to measure his or her own job performance objectively. To some extent, a supervisor must maintain a relationship of master/servant between him or herself and those employees whose duties he or she oversees, but this relationship is not possible when the master is the same person as the servant. Therefore, holding multiple offices in which one office is charged with the supervision of the other cannot only cause legal problems for the public officer but problems of efficiency in government as well.

The Georgia Supreme Court addressed this issue in Welsch v. Wilson,<sup>82</sup> which held that a mayor was prohibited from being employed by the city to perform services usually rendered by the city manager. Because the mayor's official responsibilities included evaluating the performance of the city manager, the Court held that allowing the Mayor to serve in both offices was in violation of the statutory prohibition against serving as both master and servant.<sup>83</sup> This

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<sup>76</sup> 2004 Op. Att'y Gen. U04-2.

<sup>78</sup> See Judicial Qualifications Commission Op. No. 196 (1994).

<sup>79</sup> 1997 Op. Att'y Gen. U97-11.

<sup>80</sup> Columbus, Ga. v. Board of Water Commissioners, 261 Ga. 219, 403 S.E.2d 791 (1991).

<sup>81</sup> Id.

<sup>82</sup> Welsch v. Wilson, 218 Ga. 843, 131 S.E.2d 194 (1963).

<sup>83</sup> Id.

remains true even if the elected official is not monetarily compensated for performing the duties of a city employee.

There can also be conflicts between a public officer's private employment interests and his or her "official" interests. For example, a public officer who is also an attorney may not initiate or defend a lawsuit if that lawsuit seeks to defeat the official actions of other public officers.<sup>84</sup> In one case, a city attorney challenged the mayor's veto of his reappointment. The city attorney was represented by a lawyer who happened to also be the municipal court judge.<sup>85</sup> According to the Court, the municipal court judge should have been disqualified as legal counsel to the action because the municipal court judge, a public officer, was acting as an attorney for personal financial gain by initiating a lawsuit which sought to defeat the official actions of another public officer (the mayor). The court did not feel that this was in the public's best interest, and therefore the municipal court judge was not allowed to represent the city attorney in that action.<sup>86</sup>

The impression created when a municipal officer represents a private interest before the very government that officer has been elected to serve can be quite damaging. The public may presume that simply because an elected officer is involved in the matter, that matter will be treated differently than it would be under ordinary circumstances. Whether the officer exercises undue influence to help the cause of the party he represents may not even matter, because the damage caused by the appearance of impropriety will already be done. Regardless of how the officer handles this incident, the perilous appearance of impropriety may very well taint the entire situation.

Private employment in addition to public office is necessary in most municipalities. However, the public official should take care not to engage in private activities that will inevitably lead to conflicts of interests. This may be difficult at times, but sacrifice is often a necessary element of public service. Those who serve their communities often must forgo some opportunities for personal profit. While the general public may not be aware of the extent of these sacrifices, many citizens do appreciate the loyal and unbiased service these officials provide for their communities.

The occupation of public office represents a public trust, and the recruitment and retention of those citizens most capable of serving effectively is essential to our form of government's continued success. Therefore, a fair balance must be struck between protecting the integrity of government while at the same time not unnecessarily infringing upon the financial independence of those who serve in public office. While the various municipalities demand differing degrees of commitment in terms of time and energy from their officials, each government should strive to insure that public service does not impose financial hardship upon those who serve. Striking the appropriate balance to fit the circumstances of each individual city is not always easy, but doing this will lead to more effective government and will help avoid difficult situations in the future.

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<sup>84</sup> See Stephenson v. Benton, 250 Ga. 726, 300 S.E.2d 803 (1983).

<sup>85</sup> Id.

<sup>86</sup> Id.

Elected officials must be wary of holding multiple memberships on municipal boards and commissions. The Attorney General has opined that a member of a city commission should not serve in that capacity and at the same time serve on a city planning and zoning board,<sup>87</sup> nor should a person serve both as a city commissioner and a trustee for a city school board.<sup>88</sup> Because these “committees” are literally analogous to public offices, the same prohibitions that apply to holding multiple offices apply here as well. These prohibitions seek to insure that those who are charged with supervising the formulation and implementation of public policies exercise clear and unbiased judgment. It is very difficult for a public official to exercise unbiased judgment with respect to policies he or she helped to formulate, and responsible government demands that those who formulate public policy not be the same ones charged with implementing those same policies.

A similar instance of impropriety can occur where an official board has the power to appoint an office, and subsequently exercises that power to appoint one of its own members to that office (unless the statute conferring the appointing power expressly authorizes self-appointment).<sup>89</sup> This type of action could clearly lead to conflicts by allowing members of the board to exercise their influence as insiders to attain the position. Incompatibility occurs when a public officer serves multiple constituencies, which may consequently necessitate the representation of inconsistent interests.<sup>90</sup> Possible conflicts that may arise between these independent governing bodies and the different constituencies they represent illustrate the potential dangers involved in trying to serve two different “masters.”

The Georgia Constitution contains certain provisions designed to prevent the holding of incompatible offices. For example, the constitution provides that upon any state, county, or municipal elected official qualifying in either a general or special primary or election for another state, county, municipal, or national elective office for a term which will begin more than thirty days prior to the expiration of the official’s current term of office, said official’s current office shall be declared vacant.<sup>91</sup> This provision is designed to give the potential candidates for the vacated office time to qualify for the election.

Another complicated scenario arises when an elected official serves in a volunteer capacity. This frequently arises with respect to volunteer fire departments. Determining whether an elected official can participate as a member of the volunteer fire department requires a thorough examination of the relationship between the volunteer fire department and the local government and the existence and amount of compensation paid to the firefighters. If the fire department is a branch of the city government or is subject to supervision by the governing authority, the prohibition on holding dual offices will most likely continue to apply. If, however, the volunteer fire department is a completely independent organization with which the city contracts for fire protection services and is not established in the city charter, subject to city personnel policies, or otherwise subject to oversight by the local governing authority, a court may find that service as an elected official and volunteer firefighter does not violate the state law prohibition on holding two offices. Georgia law does allow members of the governing authority

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<sup>87</sup> 1971 Op. Att’y Gen. U71-107.

<sup>88</sup> 1982 Op. Att’y Gen. U82-27.

<sup>89</sup> Fowler, *supra* note 58, at 400.

<sup>90</sup> See 1978 Op. Att’y Gen. No. 78-32.

<sup>91</sup> Ga. Const. Art. II, § II, Par. V.

of a municipality or county to serve as volunteer firefighters for that municipality or county so long as the individual serving in both capacities receives no compensation for services as a volunteer firefighter other than actual expenses incurred, a per diem for services, contributions to the Georgia Firefighter's Pension Fund, worker's compensation coverage or any combination of the foregoing.<sup>92</sup>

An additional factor that might prove important in the volunteer firefighter scenario is the elected official's position within the volunteer fire department. As a regular member of the volunteer fire department, an elected official would be receiving the same pay per call that any other volunteer firefighter receives. However, if the elected official holds an office in the volunteer fire department, such as chief or assistant chief, and receives more than minimal pay, the potential for legal or ethical conflict increases, especially if the city is a source of operating funds or equipment for the volunteer fire department. Will the elected official be tempted to approve greater funding of equipment for the volunteer fire department if he or she becomes a member or officer of the department? Code section 36-20-22 establishes that dual service is legal as long as certain specified conditions are met. However, the potential for divided loyalties between the overall needs of the general community and the needs of the fire department still exists. The Attorney General has declared that dual service as a volunteer firefighter and a member of a city council or county commissioner does not appear to violate either code section 36-30-4 or code section 45-2-2.<sup>93</sup> That said, he has emphasized the need for cities and counties confronted with this situation to determine whether a common law conflict of interest exists on an individual case-by-case basis in accordance with the facts of each situation.<sup>94</sup>

The "revolving door" issue is also one that has received considerable attention as of late. This occurs when an elected official leaves public office to become an employee of the city, to do business with the city, or to represent others who do business with the city (i.e. "lobbying"). These activities can be ripe with the appearance of impropriety.

Most ethics codes prohibit public officers from representing private parties regarding any matters the officer worked on while in office. Allowing former officers to do this would be considered a violation of the public trust, because the former officer's efforts would be tainted by confidential information acquired while in office. The purpose of these regulations is obviously to create a cooling-off period between the time an employee leaves government service and the time he or she appears before the agency as an advocate for private interests.<sup>95</sup> Additionally, there should be regulations preventing former officers from appearing on behalf of private interests before their former governmental authority for a particular interval of time. For example, the City of Kennesaw Code of Ethics prohibits the city from entering into any contracts with, or taking any official action favorably affecting, any person or business represented by a person who has been a member of the governing authority within the 12 month period directly preceding such action, except under specially delineated circumstances.<sup>96</sup> Such prohibitions

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<sup>92</sup> O.C.G.A. § 36-60-23.

<sup>93</sup> See 1998 Op. Att'y Gen. U98-8.

<sup>94</sup> Id.

<sup>95</sup> Carpinello, George. "Postemployment Restrictions on Government Employees: Closing the 'Revolving Door'," Ethical Standards in the Public Sector: A Guide for Government Lawyers, Clients, and Public Officials. Salkin, Patricia E. ed., p.29 (1999).

<sup>96</sup> City of Kennesaw Code of Ethics § 2-97,

prevent former officials from exploiting their political influence to achieve favorable results on behalf of private clients in a manner that is not available to the public-at-large.<sup>97</sup>

Other laudable measures in this area include preventing public officials from working on contracts that affect their former employers, and provisions that prohibit government employees from negotiating future employment with any parties who have matters pending before the official in his or her official capacity.<sup>98</sup> These regulations provide safeguards to the public that their elected officers will not use their offices as vehicles for personal profit. The actions proscribed here are commonly called the “revolving door,” in recognition of the fact that persons may transfer between private employment and public office for the primary purpose of reaping tremendous financial rewards.

Former officeholders should not be given undue preference for employment within their government once their terms have expired. As with any other public employee, they should be hired and promoted based solely on their qualifications and the merits of their service. The former officer who unduly wields influence to secure a government position upon leaving office may violate precepts of good public policy, and such hires will not serve the best interests of efficient government if the former officer is not the best qualified candidate for the job.

Prohibitions on the holding of incompatible offices and employment are a demanding yet essential function of a valuable ethics code. Clear regulations need to be established, but these regulations also need to be flexible enough to apply in a plethora of situations. This will assist public officials in determining which course of action is appropriate in difficult situations, as well as serving to assure the public that their elected officials are striving to serve the best interests of everyone in the community.

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<sup>97</sup> Carpinello, George. “Designing Municipal Ethics Codes,” Urban, State, and Local Law Newsletter, Volume 16, Number 1, Fall 1992, p.8.

<sup>98</sup> Id.

## Open Meetings and Open Records

The topic of open meetings and open records is one of central importance to the public's perception of how government operates. A government that functions in secrecy, meeting behind closed doors and restricting public access to information about its operations, serves to alienate and discourage those citizens who wish to participate in its affairs. Therefore, the Georgia legislature has promulgated laws to facilitate open communications between citizens and their government, while at the same time attempting to provide for reasonable constraints where necessary for the efficient operation of government.

In 1992, GMA published a very comprehensive guide of the key features of the open meetings and open records laws for municipal officials entitled Government in the Sunshine: Open Meetings/Records Guide for City Officials; the ninth edition of the guide was published in June of 2010. Due to the extensive coverage this subject receives in that publication, this chapter will be limited to a brief discussion of some of the key issues addressed there. To obtain a copy of the guide, please visit the GMA website at [www.gmanet.com](http://www.gmanet.com).

### Open Meetings

The Georgia statutory provisions for Open Meetings are contained in code section 50-14-1 et. seq. The Open Meetings Act contains broad definitions in order to insure that almost every type of public entity will be subject to its provisions. A meeting falls under the Act whenever a quorum of the members of a governing body assemble according to a schedule or notice, at a specified time or place, to discuss official business, policy, or any public matter.<sup>99</sup> Thus, spontaneous and unplanned gatherings are not intended to qualify as meetings under the Act. Other examples of meetings not covered by this provision are conventions or large social events that a quorum of the governing body happens to attend. The statute declares that all meetings as defined in the statute shall be open to the public, and consequently, any action taken at such a meeting that is not open to the public shall not be binding, if challenged in a timely manner (as established by the code).<sup>100</sup> Thus, determining whether a meeting meets the criteria provided for in this Act becomes a major consideration in planning such events.

Unless a meeting falls clearly within one of the specific exemptions to the Open Meetings Act, it is recommended that legal counsel be obtained before closing the meeting to the public. This is particularly important considering that the Act subjects individuals who conduct or participate in closed meetings in violation of the Act to criminal sanctions as well as holding them liable for attorney's fees and other litigation costs incurred by the complaining party.<sup>101</sup> Council members have also been recalled for failing to abide by the open meetings act. In 1997, citizens of Auburn, GA initiated a recall against the mayor and two council members when they discussed closing the police department in a closed meeting.<sup>102</sup>

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<sup>99</sup> O.C.G.A. § 50-14-1(a)(2).

<sup>100</sup> O.C.G.A. § 50-14-1(b).

<sup>101</sup> O.C.G.A. §§ 50-14-5, 50-14-6.

<sup>102</sup> Phillips v. Hawthorne, 269 Ga. 9, 10, 494 S.E.2d 656 (1998).



For an example of how the Open Meetings Act can affect seemingly innocuous behavior, consider a spontaneous and informal gathering of a quorum of a city council over a cup of coffee at the local diner after the city council meeting has ended. Will this be considered a spontaneous gathering, or does it qualify as “planned?” Could this “gathering” lead to the filing of criminal charges against the council members present? What would be the consequences if a local reporter happened to stop by and see this “gathering?” These are the types of questions that public officials must ask in attempting to comply with the Open Meetings Act. In this instance the appearance of impropriety created by this gathering should be sufficient to alert elected officials not to engage in this behavior. While the officials may be using this opportunity merely to get to know each other as individuals or discuss sports events or family news, members of the media and of the public may infer that public business is being discussed and decided in an unofficial and surreptitious fashion.

Examples of how the Open Meetings Act has been treated in the courts include Steele v. Honea,<sup>103</sup> in which the Georgia Supreme Court held that a public official involved in a violation of the Open Meetings Act could be subject to recall for that action under the Recall Act of 1989 (although the circumstances did not warrant recall in that particular case), and Maxwell v. Carney,<sup>104</sup> in which the Court determined that the intent of the Open Meetings Act was to provide advance notice to all citizens of upcoming meetings rather than physical access to all members of the public. These decisions illustrate the far-reaching effects of the Act as well as its potentially severe implications.

### **Open Records**

The Open Records Act, contained in O.C.G.A. §§ 50-18-70 through 50-18-76, allows a party who is denied access to open records to recover attorney’s fees and litigation costs if the denial is not substantially justified. A person who knowingly and willfully denies access to public records not subject to an exemption under the Act is subject to criminal liability in the form of a misdemeanor and can be fined up to \$100. The GMA guidebook suggests that a city develop open records guidelines and policies now, rather than waiting until the onset of an open records “crisis” at a later date.

In McFrugal Rental of Riverdale, Inc. v. Garr,<sup>105</sup> it was held that the provision in the Open Records Act allowing the custodian of public records to charge a fee to members of the public must be narrowly construed, allowing the imposition of a fee only when the citizen seeking access requests copies of documents or other actions by the custodian that involve unusual administrative costs or burdens. Accordingly, a fee may not be imposed when a citizen merely seeks to inspect records that are routinely subject to public inspection (such as deeds, ordinances, zoning maps, etc.), and the custodian of the records carries the burden of demonstrating the reasonableness of any fee imposed. Also illustrative of the courts’ treatment of this law is Dortch v. Atlanta Journal,<sup>106</sup> in which the Court held that cellular telephone bills which include numbers called from city cellular telephones are subject to the Open Records Law

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<sup>103</sup> Steele v. Honea, 261 Ga. 644, 409 S.E.2d 652 (1991). But see Davis v. Shavers, 263 Ga. 785, 439 S.E.2d 650 (1994) (circumstances must be set out with reasonable particularity).

<sup>104</sup> Maxwell v. Carney, 273 Ga. 864, 548 S.E.2d 293 (2001).

<sup>105</sup> McFrugal Rental of Riverdale, Inc. v. Garr, 262 Ga. 369, 418 S.E.2d 60 (1992).

<sup>106</sup> Dortch v. Atlanta Journal, 261 Ga. 350, 405 S.E.2d 43 (1991).

and therefore must be released upon request, despite potential increases in telephone costs to the city and the resulting invasion of privacy of those citizens whose unlisted numbers happen to be called by the city official.

Alleged violations of the Open Meetings/Open Records Acts in Georgia often engender high-profile controversies that can be very embarrassing for public officials. The ideals embraced in these laws represent the epitome of our democratic system – government of the people, for the people, and by the people. Great care should be taken to avoid even the appearance of improperly circumventing these laws.

## Campaign Finance and Disclosure

It is commonly perceived that campaign money buys access, which can in turn buy influence. In this respect the field of campaign finances closely resembles that of influencing legislation and lobbying, and regulations affecting both areas share many of the same objectives.

The code provisions which regulate campaign financing and disclosure in Georgia can be found in O.C.G.A. §§ 21-5-30 through 21-5-36. While violation of the campaign finance disclosure laws is punishable as a misdemeanor, candidates should also remember that even allegations of a violation of these laws can be used as an effective tool against an opponent in an election.

### Campaign Finance Provisions

The first major provision of the campaign finance laws requires that all campaign contributions must be made directly to the candidate or the candidate's campaign committee.<sup>107</sup> Other requirements include the designation of a chairperson and treasurer for every campaign committee, separation of campaign funds in a campaign depository account, and aggregation of all separate contributions of less than \$100.00 knowingly received from a single source.<sup>108</sup> Campaign committees must register with the Secretary of State at the time the committee is formed, regardless of the amount of money to be raised or expended.<sup>109</sup> These requirements seek to insure that candidates remain accountable for the funds they obtain from the populace. In addition to state law, candidates should be aware of the ever increasing complexity of federal campaign finance laws.

The making and accepting of anonymous contributions are prohibited by state law, and any contributions so received are to be reported and deposited into the state treasury.<sup>112</sup> These regulations, which result from balancing an individual's right to contribute against the public's interest in fair elections,<sup>113</sup> seek to insure that campaigns are financed openly and honestly; allowing anonymous contributions would be an invitation to fraud for the less scrupulous members of society.

The Ethics in Government Act also prohibits agencies or those acting on behalf of agencies from making any contribution to any campaign committee, political action committee, political organization or candidate.<sup>114</sup> The definition of agency as used in this section extends to

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<sup>107</sup> O.C.G.A. § 21-5-30(a).

<sup>108</sup> O.C.G.A. § 21-5-30(b), (c), (d). But see State Ethics Commissioner v. Moore, 214 Ga. App.236, 447 S.E.2d 687 (1994) (holding that candidate could not be penalized for failing to disclose contributions where disclosure report was prepared by campaign treasurer who did not know of common source and candidate did not review report).

<sup>109</sup> 1985 Op. Att'y Gen. No. 85-51.

<sup>112</sup> O.C.G.A. § 21-5-30(e).

<sup>113</sup> See R. Perry Sentell Jr., The Omen of "Openness" in Local Government Law, 13 Ga. L. Rev. 97, 114 (1978).

<sup>114</sup> O.C.G.A. § 21-5-30.2.

counties and municipalities alike; therefore counties and municipalities are prohibited from making any campaign contributions. Furthermore, campaign committees and the like are constrained from accepting campaign contributions from any agency. Because so many uses of public facilities and equipment could be construed as “campaign contributions” in the context of an officer’s bid for re-election, the code specifically states that nothing prohibits “the furnishing of office space, facilities, equipment, goods, or services to a public officer for use by the public officer in such officer’s fulfillment of such office.”<sup>115</sup>

It is not too hard to imagine a situation where a municipal official may want to solicit monetary or other contribution from city employees on behalf of the official or another candidate. However, it is punishable as a misdemeanor for a public official to coerce, directly or indirectly, any other public official or employee to pay, lend, or contribute any sum of money or anything else of value to any person, organization, or party for political purposes.<sup>116</sup> The distinction between solicitation and coercion may not always be as clear as one would like; therefore extreme caution should be exercised in this arena. Even if the public official intends no harm in soliciting, the public employee may feel coerced to contribute out of concern for job security. Accordingly, everyone is better off if this situation is avoided entirely.

### **Financial Disclosure Requirements**

The transactional disclosure and disqualification methods of avoiding conflicts of interest can also be utilized in concert with campaign finance laws. For example, both an applicant before a zoning board and opponents to any rezoning actions must disclose to the local governing authority any contributions totaling \$250.00 or more made to local officials who will act upon the application.<sup>117</sup> It has also been suggested that municipalities can go even further and disqualify any person who has made contributions to candidates for municipal office in excess of a certain amount from doing any business whatsoever with the municipality.<sup>118</sup> This type of provision eliminates the appearance of contributors obtaining undue access to public officials. The key here is flexibility; the municipality does not want to unduly burden candidates from receiving unprejudiced contributions while at the same time safeguarding the public’s interest in unbiased government.

A candidate for municipal office must file reports with the Georgia Government Transparency and Campaign Finance Commission.

- (A) For any person making a contribution of more than \$100.00, include
  - a. The amount and date of receipt,
  - b. The name and mailing address of the contributor
  - c. If the contributor is an individual, the contributor’s occupation;Note: Contributions include the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events coordinated for the purpose of raising campaign contributions.

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<sup>115</sup> Id.

<sup>116</sup> O.C.G.A. § 45-11-10.

<sup>117</sup> O.C.G.A. § 36-67A-3

<sup>118</sup> Carpinello, “Designing Municipal Ethics Codes,” Urban, State, and Local Law Newsletter, Vol. 16, No. 1, Fall 1992, p. 7.

- (B) For any person receiving an expenditure of more than \$100.00, include
  - a. The amount and date of expenditure,
  - b. The person's name and mailing address,
  - c. If the recipient is an individual, the recipient's occupation and employer, and
  - d. The general purpose of the expenditure;
- (C) For any lending institution or party making a loan, advance, or other extension of credit, include
  - a. The names, addresses, occupations, and places of employment of all persons having any liability for repayment of such loan, and
  - b. If any such persons shall have a fiduciary relationship to the lender;
- (D) Any corporate, labor union, or other affiliation of any political action committee making a contribution of more than \$100.00;
- (E) For any investment made with funds of a campaign committee, independent committee, or PAC kept separate from the committee's deposit account, include
  - a. The name of any entity or person with whom an investment is made,
  - b. The initial and subsequent amount of the investment if the investment was made within the reporting period, and
  - c. Any profit or loss from a sale of the investment made during the reporting period; and
- (F) The total debt owed on the last day of the reporting period.<sup>119</sup>

The disclosure requirements make no distinction between in-kind and monetary contributions. Therefore, items such as food and beverages provided at a reception sponsored by a candidate's supporters should be reported as a contribution, provided the total value of such items is at least equal to the \$100.00 statutory minimum. Similarly, the donation of mailing lists would not have to be reported unless the value of such lists exceeded the statutory amount. The Attorney General has indicated that elected officials are not required to report the estimated value of his or her appearance at a publicly or privately sponsored event as a campaign contribution where the purpose of their appearance at that event is not designed to bring about nomination or election.<sup>120</sup> Expenditures made independently of a candidate, including those made in support or opposition of a candidate, are also subject to certain dollar limitations and reporting and registration requirements in the Ethics in Government Act.<sup>121</sup>

Georgia has moved to an almost exclusively electronic reporting system. Candidates seeking election to county or municipal offices must use electronic means to file their campaign contribution disclosure reports with the appropriate official upon having raised or spent a minimum of \$20,000.00 in an election cycle.<sup>123</sup> Political action committees, independent committees, and other persons required to file must file electronically upon having raised or spent \$5,000 in an election cycle. However, all filers are encouraged to file electronically to ensure that their reports are received in a timely fashion by the Commission.

Campaign financing disclosure reports are to be filed by all candidates 45 days and 15 days before the primary election, 10 days after the primary election, 15 days before the general

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<sup>119</sup> O.C.G.A. § 21-5-34(b)(1).

<sup>120</sup> 1997 Op. Att'y Gen. U97-1.

<sup>121</sup> O.C.G.A. § 21-5-34(f).

<sup>123</sup> O.C.G.A. § 21-5-34.1(c).

or special election, and finally, not later than December 31 of the year in which the election occurs.<sup>127</sup> If a candidate is unopposed in a primary or general election and receives no contribution for more than \$100, the candidate is only required to make the initial and final reports.<sup>128</sup> The responsibility to file these reports falls upon the chairman or treasurer of the campaign committee, as well as the candidate.<sup>129</sup> A candidate should remember that any personal funds, whether used by the candidate himself or given to the committee, must be reported as well.<sup>130</sup>

All public officers and candidates for public office are required to file a financial disclosure statement for the previous calendar year with the Georgia Government Transparency and Campaign Finance Commission no later than July 1 of each year.<sup>131</sup> This statement shall identify

- (1) All monetary fees and honorarium the filer has accepted, with a statement identifying the person from whom it was accepted;
- (2) All fiduciary positions held by the filer, listing the title of each position, the name and address of the business entity, and the principal activity of the business entity;
- (3) The name, address, and principal activity and office held by the filer in any business or investment in which the officer has a direct ownership interest in either 5% of the total ownership of such business, or if such ownership interest has a net fair market value of \$5,000.00 or more;
- (4) Each tract of real property the filer or filer's spouse has a direct ownership interest in that has a net fair market value of \$5,000.00 or more, including the county and state, a general description of the property, and whether the fair market value is between \$5,000.00 and \$100,000.00, between \$100,000.01 and \$200,000.00, or over \$200,000.00; and
- (5) All annual payments in excess of \$10,000.00 received by the public officer or any business entity described in paragraph 3 above;
- (6) The name occupation, employer, and the principal activity and address of the employer for the filer and filer's spouse; and
- (7) The name of any business, subsidiary, or investment known to the filer and exclusive of the filer's individual stocks, bonds, and mutual funds in which the filer's spouse or dependant children own a direct interest that is more than 5 percent of the entire value of the business or investment, that is valued over \$10,000.00, or in which the spouse or dependant child serves as an officer, director, equitable partner, or trustee.<sup>132</sup>

Failure to file a timely and complete campaign finance report can subject a candidate to significant penalties. Unless the only flaw is a technical defect, which will be discussed later, the candidate is subject to the following penalties:

- (1) \$125.00 late fee if the report is filed late,

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<sup>127</sup> O.C.G.A. § 21-5-34(c).

<sup>128</sup> O.C.G.A. § 21-5-34(d).

<sup>129</sup> O.C.G.A. § 21-5-30.

<sup>130</sup> Kaler v. Common Cause of Georgia, 244 Ga. 838, 262 S.E.2d 132 (1979).

<sup>131</sup> O.C.G.A. § 21-5-50.

<sup>132</sup> O.C.G.A. § 21-5-50(b).

- (2) \$250.00 late fee if the report is not filed by the fifteenth day after the due date,
- (3) \$1,000.00 late fee if the report is not filed by the forty-fifth day after the due date,<sup>133</sup>
- (4) Up to \$1,000.00 for every violation in the report,
- (5) Up to \$10,000.00 for a second violation of the same provisions, and
- (6) Up to \$25,000.00 for each third or subsequent violation.<sup>134</sup>

If a candidate files a report that is only inaccurate due to a technical defect, the candidate has 30 days from the date of the complaint to correct the filing, and the complaint will be disposed of without filing or penalty. Technical defects include errors such as an incorrect or missing date, an incorrect or missing contributor's occupation, an incorrect or missing address or email address, an incorrect or missing employer, accounting errors, or any similar defects. In addition, the Georgia Government Transparency and Campaign Finance Commission may waive fees or penalties, if the imposition of such fee or penalties would impose an undue hardship on the person required to pay the penalty or fee.<sup>135</sup>

The value of personal services performed by persons who serve with compensation from another source are to be considered as contributions, and must be disclosed accordingly.<sup>136</sup> However, services for which the volunteer receives no compensation, from any source, are not subject to the reporting and disclosure requirements. This distinction takes on special significance when the services are provided by public employees or employees of regulated utilities. These persons can volunteer on their own time to a political campaign, but they cannot volunteer their services to a campaign for the time when they are simultaneously receiving compensation from their employer.

A potentially troublesome situation exists where a supporter tells a candidate that he is going to contribute some money to the candidate's campaign, but rather than doing it directly he is going to give the money to two or three people and let them make the contribution to the candidate on his behalf. Expenditures made on behalf of a candidate by an individual must be aggregated and disclosed as contributions, regardless of whether those expenditures are given directly to the candidate.<sup>137</sup> Accordingly, a supporter cannot do an end run around the disclosure laws by disbursing campaign contributions through multiple donors.

The disclosure of all sources of campaign financing is an important step in informing the public as to who may be possible sources of influence on the candidate once he or she takes office. This process is instrumental in building confidence in public officials, and candidates for public office should eagerly comply with both the spirit and the letter of all such provisions. Campaign

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<sup>133</sup> O.C.G.A. §§ 21-5-34(k) and 21-5-50(f).

<sup>134</sup> O.C.G.A. § 21-5-6(b)(14)(C)(i).

<sup>135</sup> O.C.G.A. § 21-5-6(b)(14)(C)(i).

<sup>136</sup> 1983 Op. Att'y Gen. No. 83-1 (indicating that the value of any services performed by employees of a regulated public utility corporation on behalf of a campaign would constitute prohibited contributions, if those employees are performing such services on company time, while they are on duty, drawing or eligible for their salary or hourly pay). See also 2000 Op. Att'y Gen. U00-4 (indicating that any special treatment of public officials by such public utilities may need to be disclosed under the Ethics in Government Act and failure to do so could subject the recipients to legal action).

<sup>137</sup> O.C.G.A. § 21-5-31.

financing is a popular topic of concern for political reformers today, and the premise behind open government depends on this information being made available to the public. The public official who displays complete candor in this area is doing a favor to both herself and to her constituency.

**For additional information regarding campaign finance please contact the Elections Division of the Secretary of State and the Georgia Government Transparency and Campaign Finance Commission. Their respective websites are [www.sos.state.ga.us/elections](http://www.sos.state.ga.us/elections) and [www.ethics.state.ga.us/](http://www.ethics.state.ga.us/).**



## **Lobbying, Improper Influence, & Abuse of Office**

### **Lobbying**

Many people consider “lobbying” to be one of the most infamous activities in politics today.<sup>138</sup> However, “lobbying” may also be one of the least understood and most misused terms in our political vocabulary. Most of the misunderstanding may be due, at least in part, to negative publicity focused upon lobbyists at the federal level by some in the national media and others from outside the political system. Lobbying actually has a rich tradition in our nation’s history, and if it is exercised within reasonable guidelines it has the potential to render very important functions for our political process.

Lobbying is defined by Webster’s New Collegiate Dictionary as “attempting to influence or sway a public official toward a desired action.” At first glance, this does not seem to indicate anything evil or sinister. However, many individuals who are unfamiliar with the political process feel that “lobbying” implies something that is dishonest and possibly harmful to their best interests. While in a majority of cases lobbying may actually facilitate action that is in the public’s best interests, both lobbyists and government officials must take exceptional care to conduct themselves according to the highest ethical standards in order to maintain the public’s trust.

Lobbying has a long and colorful history in Georgia. Due to the detrimental economic effects of Reconstruction and the corresponding widespread opportunities for political abuse available at the time, lobbying was made a crime in the Georgia Constitution of 1877.<sup>139</sup> This prohibition was retained until the extensive 1983 constitutional revisions deleted that provision and designated it for legislative treatment. The General Assembly responded to this in 1992 by enacting legislation to provide for the comprehensive regulation of the conduct of public officials and lobbyists.<sup>140</sup> Compliance with these laws is mandatory, but they provide merely a starting point for the public official who is truly concerned with providing honest and effective leadership to all of his or her constituents.

The state law provides that anyone acting as a lobbyist must register with the state and is required to comply with all ensuing restrictions.<sup>141</sup> In the common vernacular, the word lobbyist usually implies a person who is paid to approach the government and argue towards specific political goals or in support of specific causes. Georgia’s statutory definition of a lobbyist is a great deal broader. Under Georgia law, lobbyists include any natural persons who either undertake for compensation to promote or oppose the passage of or spend more than \$250.00 per calendar year (excluding certain personal expenses) to promote or oppose the passage of any legislation by the General Assembly or any committee thereof, the approval or veto of legislation

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<sup>138</sup> See McVay and Stubbs II, Governmental Ethics and Conflicts of Interest in Georgia, The Michie Company (1988), p.150.

<sup>139</sup> Ga. Const. Art.I, Sec.II., Par.V.

<sup>140</sup> O.C.G.A. §§ 21-5-1 et. seq, 28-7-3 et. seq.

<sup>141</sup> O.C.G.A. § 21-5-71.

by the Governor, the passage of any ordinance or resolution by an elected county or municipal official, any committee of such officers, or an elected member of a local board of education, including, in limited circumstances, employees of the state executive and judicial branches.<sup>142</sup> This definition applies to any officers who participate in this type of activity on behalf of their own personal interests, but municipal elected officers who lobby as part of their official duties are not considered “lobbyists.”<sup>143</sup> Note that in order for a person to be a “lobbyist” under the statutory definition he or she must spend more than \$250.00 in the lobbying effort itself or must receive compensation for approaching the government.<sup>144</sup> Thus, should a city official want to lobby for a favorite charity or cause free of charge, they should be able to do so without registering if they do not spend more than \$250.00.

### **Improper Influence**

Much of the turmoil concerning lobbying stems from the public’s confusion as to how lobbying differs from improperly influencing legislation. This distinction, between what is lawful and what is abominable can be unclear at times, although the penalties provided for violation of these laws should provide adequate incentive to both lobbyists and public officials to carefully observe these statutes. State law prohibits any public officer from using or offering to use his influence to procure or attempt to procure the passage or defeat of legislation, in exchange for something of value to which he is not legally entitled. Improperly influencing legislation is punishable by a fine of not more than \$100,000, imprisonment varying from one to five years, or both.<sup>145</sup> The legitimate operation of representative democracy demands that public officers serve their entire constituency with complete loyalty and impartiality, and this statute facilitates the achievement of this goal. The public will not trust officers whose loyalty is for sale, and the officer who exchanges governmental influence for personal benefits has irreparably violated his or her fiduciary duty.

### **Bribery**

Bribery is closely related to the offense of improperly influencing legislation, though it is proscribed by a statute that carries much stiffer penalties.<sup>146</sup> The offense of bribery covers any action in which a public officer requests and/or receives something of value in exchange for the performance of any act related to the functions of that office. The public has every right to try to influence their public officers through legal means of petition and protest, promises of support and threats of electoral defeat; they do not, however, have the right to buy the official actions of a public officer.<sup>147</sup> The means employed in attempting to influence the officer are where lobbying and bribery differ; lobbying is the use of legitimate and honest means, whereas bribery involves reprehensible actions motivated by greed and corruption. Bribery carries with it a fine of up to \$5,000.00 and imprisonment varying from one to twenty years.<sup>148</sup>

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<sup>142</sup> O.C.G.A. § 21-5-70.

<sup>143</sup> O.C.G.A. § 21-5-71(i)(7).

<sup>144</sup> O.C.G.A. § 21-5-70(5).

<sup>145</sup> Whitworth v. State, 275 Ga. App.790, 622 S.E.2d 21 (Ga. App. 2005); O.C.G.A. § 16-10-4.

<sup>146</sup> O.C.G.A. § 16-10-2.

<sup>147</sup> State v. Agan, 259 Ga. 541, 384 S.E.2d 863 (1989), cert. den. 494 U.S. 1057, 110 S.Ct. `526, 108 L.Ed. 765 (1990).

<sup>148</sup> O.C.G.A. § 16-10-2(b).

The harm caused by bribery does not always stem directly from the harm caused by the actions taken by the public officer, for the fact that a public officer would have taken the same action regardless of the bribe does not lessen the criminality of the bribe itself. It does not even matter if the issue for which the public officer accepts compensation concerns matters over which the officer has no authority to act. It is the acceptance or request of illicit compensation, and not the subsequent action, that will bring criminal sanctions upon the public officer.<sup>149</sup>

Under the bribery statute a public officer is allowed to receive items such as:

- (A) Food or beverage consumed at a single meal or event;
- (B) Legitimate salary, benefits, fees, commissions, or expenses associated with a recipient's nonpublic business, employment, trade, or profession;
- (C) An award, plaque, certificate, memento, or similar item given in recognition of the recipient's civic, charitable, political, professional, or public service;
- (D) Food, beverages, and registration at group events to which all members of an agency, as defined in paragraph (1) of subsection (a) of Code Section 21-5-30.2, are invited. An agency shall include the Georgia House of Representatives, the Georgia Senate, committees and subcommittees of such bodies, and the governing body of each political subdivision of this state;
- (E) Actual and reasonable expenses for food, beverages, travel, lodging, and registration for a meeting which are provided to permit participation or speaking at the meeting;
- (F) A commercially reasonable loan made in the ordinary course of business;
- (G) Any gift with a value less than \$100.00;
- (H) Promotional items generally distributed to the general public or to public officers;
- (I) A gift from a member of the public officer's immediate family; or
- (J) Food, beverage, or expenses afforded public officers, members of their immediate families, or others that are associated with normal and customary business or social functions or activities<sup>150</sup>

These exceptions to the offense of bribery represent a compromise intended to allow public officers to perform their duties without bearing undue personal expense, while at the same time preventing the exercise of undue influence by individuals who have ample resources and access to those officers. The receiving, accepting, or agreeing to receive an item not covered in the forgoing list does not create a presumption that the offense of bribery has been committed.<sup>151</sup> However, some of the items will still need to be disclosed, so officials need to keep track of current disclosure requirements.

While the distinction between properly and improperly influencing legislation can be very narrow at times, it is a crucial one. No government can operate effectively if its elected officials can be bought and sold, and it is just as important for public officials to safeguard against the appearance of this as well. The public will only give the necessary trust to public

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<sup>149</sup> See York v. State, 42 Ga. App.453, 156 S.E. 733 (1931) (reflecting the general rule that official acts need not be enforceable to render public officers liable for bribery, but must instead be "official in form" and done under color of office).

<sup>150</sup> O.C.G.A. § 16-10-2(a)(2).

<sup>151</sup> Id.

officials who consider all citizens to be equal before government, not to those who favor certain individuals according to the depth of their assets.<sup>152</sup> In describing how the acceptance of favors can have a detrimental effect upon the efficiency of a public officer, it has been argued:

What happens is a gradual shifting of a man's loyalties from the community to those who have been doing him favors. His final decisions are, therefore, made in response to his private friendships and loyalties rather than to the public good. Throughout this whole process the official will claim – and may indeed believe – that there is no causal connection between the favors he has received and the decisions that he makes. He will assert that the favors were given and received on the basis of pure friendship and unsullied by worldly considerations. He will claim that the decisions, on the other hand, will have been made on the basis of justice and the equity of the particular case. The two series of acts will be alleged to be as separate as the east is from the west. Moreover the whole process may be so subtle as not to be detected by the official himself.<sup>153</sup>

This dramatic portrayal of the corrupting process illustrates just how fragile protecting the public interest can be. Although the public interest is no more than the aggregation of each individual's special interests, the public official must take care not to regard one person's interests to be more important than anyone else's.

Public officials need to be wary of accepting questionable gifts from lobbyists. For example, Bob Nay, former Congressman from Ohio, was convicted on corruption charges and sentenced to 30 months in prison for accepting bribes, including campaign contributions, expensive gifts, and a trip to Scotland, from Jack Abramoff.<sup>154</sup>

The mere fact that a campaign contribution has been disclosed in accordance with Georgia law does not eliminate its potential criminal nature if it ultimately results in some sort of "political pay-off." Money given to an office holder that is reported as a campaign contribution can still qualify as a bribe. Thus, the Ethics in Government Act's campaign disclosure and finance requirements (discussed in a previous portion of this publication) have in no way altered application of the bribery statute.<sup>155</sup>

## **Extortion**

Closely related to bribery is the crime of extortion. Extortion by a public officer can be defined as the unlawful demanding and receiving by an officer, under color of office, of money

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<sup>152</sup> Cox, Ethics in Government: The Cornerstone of Public Trust, 94 W. Va. L. Rev. 281, 289, Winter 1991/1992.

<sup>153</sup> Douglas, Ethics in Government, p. 44 (1952).

<sup>154</sup> United States Department of Justice, "Former Lobbyist Jack Abramoff Pleads Guilty to Charges Involving Corruption, Fraud Conspiracy, and Tax Evasion," Press Release: January 3, 2006.

<sup>155</sup> See e.g. Agan, supra note 134, at 863 (a transfer that is a bribe as defined by the bribery statute may also come within the definition of campaign "contribution" in the Ethics in Government Act, and the fact that such a transfer must be reported does not change its character as a bribe).

or other things of value that are not due him.<sup>156</sup> The key elements of the offense consist of the officer's demanding or accepting compensation contrary to what that officer is legally entitled to receive for the performance or nonperformance of a lawful duty. The requirement that the demanding must occur under color of office basically means that it must be done under the pretense that the officer was entitled to the payment by virtue of his or her office. Extortion involves the oppressive misuse of official power by the exaction of money or other compensation. Therefore, where an officer reasonably believes he has the right to accept a cash bond, he is not guilty of extortion because intent to commit the crime is a required element of the crime.<sup>157</sup> Nevertheless, the officer's belief that the payment is not illegal must truly be rational. An officer found guilty of extortion must be removed from office.<sup>158</sup>

Extortion is a very serious crime, and public officials need to avoid extortion charges at all costs. For example, Rod Blagojevich is facing up to twenty years for attempting to solicit a bribe in exchange for appointment to fill a vacant Senate seat.<sup>159</sup>

### **Violation of Oath of Office**

Black's legal dictionary defines an oath as "a solemn declaration, accompanied by a swearing to God or a revered person or thing, that one's statement is true or that one will be bound to a promise."<sup>160</sup> Many public offices require the elected or appointed official to swear to an oath upon taking office, by which the elected or appointed person promises to perform the duties of that office in good faith.<sup>161</sup>

In Georgia the taking of an oath is considered highly important; as a solemn promise, an officer is bound by their oath of office to perform the duties of their office both in good faith and to the best of their ability. This conviction is supported by several statutes in Georgia. Any public officer who willfully and intentionally violates the terms of his oath of office as prescribed by law shall be punished, upon conviction, by imprisonment varying from one to five years.<sup>162</sup> Violation of an oath of office can be considered a lesser-included offense to bribery whenever circumstances indicate that an act of bribery would necessarily have included a violation of the public officer's oath of office.<sup>163</sup> A related infraction occurs when a public officer authorized to administer oaths knowingly makes a false acknowledgement, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person.<sup>164</sup> The actions proscribed by these statutes are clearly contrary to the public official's

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<sup>156</sup> O.C.G.A. § 45-11-5.

<sup>157</sup> See Holt v. State, 11 Ga. App. 34, 74 S.E.2d 560 (1912).

<sup>158</sup> O.C.G.A. § 45-11-5.

<sup>159</sup> "Blagojevich indicted on 16 federal felony charges," CNN, April 2, 2009.

<sup>160</sup> Blacks at 1099.

<sup>161</sup> See e.g. O.C.G.A. § 45-3-1 (mandating that all public officers shall take certain oaths). The Georgia Supreme Court has determined that this code section applies only to officers commissioned by the Governor, and not to municipal officers not commissioned by the Governor unless there is a city charter or some other statute that requires an oath. Brewer v. Johnson, 184 Ga. 806, 193 S.E. 778 (1937).

<sup>162</sup> O.C.G.A. § 16-10-1.

<sup>163</sup> See Nave v. State, 171 Ga. App. 165, 318 S.E.2d 753 (1984).

<sup>164</sup> O.C.G.A. § 16-10-7.

fiduciary duties, and the conscientious public official would not violate either the letter or the spirit of these laws even if they were not codified.

### **Additional State Criminal Sanctions**

It is unlawful for a public official to coerce or attempt to coerce, directly or indirectly, any other public official or employee to pay, lend, or contribute any sum of money or anything else of value to any person, organization, or party for political purposes.<sup>165</sup> A person engaging in coercion is guilty of a misdemeanor.<sup>166</sup>

Conspiracy to defraud the state or any political subdivision has long been prohibited by statute in Georgia.<sup>167</sup> To conspire is defined by Webster's New Collegiate Dictionary as "to join in a secret agreement to do an unlawful or wrongful act or to use such means to accomplish an unlawful end," and conspiracy is "the act of conspiring together." Conspiracy to defraud can be committed by a municipal elected official if the official were to conspire with another person to steal property belonging to a municipality or under the control of an officer or employee thereof. Conviction calls for imprisonment ranging from one to five years.<sup>168</sup> The statutory definition of property has been determined to include money;<sup>169</sup> thus, it can safely be assumed that a conspiracy to steal municipal funds would violate this statute as well. Because conspiracy statutes can be violated regardless of how attenuated the relationship is between the alleged conspirator and the associated criminal activity, careful discretion should be exercised in handling situations that appear to be even slightly questionable from a legal standpoint.

The Georgia Constitution prohibits contracts and agreements that seek to defeat or lessen competition or encourage monopoly.<sup>170</sup> There is also a related statutory provision prohibiting conspiracies in restraint of free and open competition in transactions with the state or political subdivisions.<sup>171</sup> While these provisions ordinarily apply to bid-rigging schemes involving contractors and other private entities, they could presumably be utilized against public officers involved in such conspiracies as well. A public officer's involvement in a conspiracy to restrain competition would appear to be directly in conflict with the public's interest in honest and efficient government, and this activity could also lead to problems with federal antitrust law.

There are several statutes forbidding the misappropriation of public funds by city officials. A city official who receives, takes, or contracts to receive or take, either directly or indirectly, any part of the pay or profit arising out of any public works construction contract is guilty of a misdemeanor.<sup>172</sup> Furthermore, Georgia law forbids the expenditure of public funds to influence the outcome of an election.<sup>173</sup> Articles in a city newsletter that could be construed as attempts to influence the way citizens vote on an upcoming referendum question can violate this

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<sup>165</sup> O.C.G.A. § 45-11-10.

<sup>166</sup> Id.

<sup>167</sup> O.C.G.A. § 16-10-21.

<sup>168</sup> Id.

<sup>169</sup> Cadle v. State, 101 Ga. App. 175, 113 S.E.2d 180 (1960).

<sup>170</sup> Ga. Const. Art.III, Sec.VI, Par.V.

<sup>171</sup> O.C.G.A. § 16-10-22.

<sup>172</sup> O.C.G.A. § 36-91-21(f).

<sup>173</sup> O.C.G.A. § 21-5-30.2.

law. Only campaign committees that have registered and filed financial reports as required by the Ethics in Government Act may expend private funds to influence voters on a referendum question.

A public officer or any other person who steals, alters, forges, defaces, or falsifies any records or documents, including minutes or digital records, shall be guilty of a felony if convicted and shall be subject to imprisonment for 2 to 10 years.<sup>174</sup> Thus travel expense reports and requests for reimbursement must be accurate.<sup>175</sup> Under this statute, willfully removing public records from the premises of the public office is considered stealing the public records.<sup>176</sup> The statute applies to **any** record belonging to a public office in Georgia,<sup>177</sup> implying that expense and travel reports must be kept on premises. As technology improves, it will be interesting to see how this statute affects public officials and employees who choose to telecommute or even take work home over the weekend.

State law also addresses malfeasance, partiality, and demanding more cost than that to which a public officer is entitled.<sup>178</sup> Any local elected official charged with the foregoing may be indicted by the grand jury. If a true bill is returned by the grand jury and the public officer is found guilty in a criminal proceeding, the official will be subject to fine, imprisonment, or both, at the discretion of the court. In addition, the official will be removed from the office.<sup>179</sup>

### **Federal Laws**

There are several means by which federal law enforcement agencies address criminal acts of public officials. They can be grouped into three basic categories: criminal action statutes, corrupt act statutes, and honest services statutes.<sup>180</sup> Criminal action statutes refer to general criminal laws that define and prohibit behavior as criminal. They are not designed specifically to address actions by public officials. Any citizen, including public officials and employees, may be charged with their violation. Examples would include embezzlement, drug dealing, tax evasion, and fraud.<sup>181</sup>

Extortion or bribery involving public officials may be prosecuted under federal law. Two of the core corrupt act statutes employed to address state and local corruption are the Hobbs Act and the Program Fraud statute.<sup>182</sup>

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<sup>174</sup> O.C.G.A. § 45-11-1.

<sup>175</sup> For more information please see GMA's 2003 guide on travel policies, [A Road Map to Travel Policies for Municipal Officials](#), available at [www.gmanet.com](http://www.gmanet.com).

<sup>176</sup> Id.

<sup>177</sup> Brunsnighan v. State, 86 Ga. App. 340, 71 S.E.2d 698 (1952).

<sup>178</sup> O.C.G.A. § 45-11-4.

<sup>179</sup> Id.

<sup>180</sup> Gabriel, Charles D.. "The Role of the FBI in State and Local Government Corruption," Institute for City and County Attorneys (Athens: Institute of Continuing Legal Education in Georgia, University of Georgia, 2001), 5.

<sup>181</sup> Id. at 6.

<sup>182</sup> Id. at 9.

The Hobbs Act penalizes activities that interfere or attempt to interfere with the operation of commerce, and included among its prohibitions is “the obtaining of property from another, with his consent, under color of official right,”<sup>183</sup> which is punishable by a substantial fine and up to twenty years imprisonment.<sup>184</sup> The Hobbs Act is construed very broadly by the courts in order to encompass a broad range of activities that need be only minimally associated with commerce. Therefore, many actions taken by a local governing authority could fall under the Hobbs Act even though they do not actually affect commerce, so long as they might potentially pertain to commerce. Passive acceptance is sufficient for a Hobbs Act violation so long as the public official knows that he or she is being offered the payment in exchange for a requested exercise of official power.<sup>185</sup>

The case of Evans v. United States<sup>186</sup> is illustrative of how local officials can be affected by the Hobbs Act. In that case, which involved a DeKalb County Commissioner, the United States Supreme Court held that in order to prosecute for extortion “under color of official right,” the government merely needs to show that the official has obtained a payment to which the official is not entitled, knowing that the payment was made in return for official acts;<sup>187</sup> it is not essential that the public official initiate or demand the payment. The proscribed conduct in Evans involved the commissioner’s acceptance of a campaign contribution from an FBI agent posing as a real estate developer in exchange for the commissioner’s assistance in an effort to rezone a tract of land. Conflict of interest in zoning laws issues as well as campaign finance laws, both discussed previously in this publication, are represented in this case. In essence, the Hobbs Act, with its potentially wide-ranging applications, represents one more potent weapon to be employed in the fight against unethical public officials.

Honest services convictions can carry extremely long prison sentences. Duke Cunningham, former Congressman from California, was sentenced to eight years and four months in prison for violating the honest services laws. The sentence is the longest sentence ever handed down to a former congressman, which shows how seriously courts take these laws.

The federal Program Fraud statute addresses the actions of those who are responsible for federal funds. At a minimum, jurisdiction is triggered when an organization such as a city or an authority receives federal benefits in excess of \$10,000 involving some kind of federal assistance during a 12-month period prior to or following the act in question. The statute prohibits the following: (1) embezzling, stealing, defrauding or misappropriating property valued at \$5,000 or more; (2) soliciting or accepting bribes relating to some matter involving \$5,000 or more; and (3) giving, offering, or agreeing to give anything of value to influence or reward action in connection with some transaction valued at \$5,000 or more.<sup>188</sup> For example, a chief deputy in a jail that housed federal prisoners in exchange for federal funds well in excess of \$10,000 in value was indicted and convicted for accepting a bribe from a prisoner in exchange for special treatment from the deputy.<sup>189</sup>

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<sup>183</sup> 18 U.S.C.A. § 1951(b)(2).

<sup>184</sup> 18 U.S.C.A. § 1951(a).

<sup>185</sup> Evans v. United States, 112 S.Ct. 1881, 119 L.Ed.2d 57 (1992).

<sup>186</sup> Id.

<sup>187</sup> Id.

<sup>188</sup> Gabriel, supra note 165, at 14-15; 18 U.S.C.A. § 666.

<sup>189</sup> Gabriel, supra note 165, at 15-16; Salinas v. United States, 522 U.S. 52, 56-57 (1997).



Honest services statutes are available when there are no federal program funds involved, where there is no immediately identifiable quid pro quo, or when there is only one actor. The 2010 Supreme Court decision in Skilling v. United States limits the applicability of the honest services statutes to bribery and kickback schemes and not conflicts of interest or other “amorphous” cases.<sup>190</sup> Using this tool, federal prosecutors must prove the use of either the U.S. mail, an interstate wire communication facility such as a phone or the Internet, or an interstate common carrier such as FedEx or UPS to execute a bribery or kickback scheme.<sup>191</sup>

One final federal statute that bears mentioning is the False Claims Act (FCA). There are both civil and criminal penalties under the False Claims Act.<sup>192</sup> The FCA is violated when a false, fictitious or fraudulent claim is presented to the federal government that the person presenting it knows to be false through actual knowledge, deliberate ignorance, or reckless disregard. In addition to individuals, local governments are considered persons that can be held liable under the FCA.<sup>193</sup> One of the most important aspects of the FCA is that it allows private parties, called relators, to sue in the name of the federal government in lawsuits known as qui tam actions. The damages that can be levied and collected in a FCA action include civil penalties of \$5,000-\$10,000 per violation, with each false statement serving as a separate claim, and treble damages.<sup>194</sup> The federal government may intervene in the case or not, but the relator is allowed to collect a bounty of up to 25% of the recovery if the government intervenes and 30% if the government does not. The potential for treble damages and up to 30% of the recovery provides relators with a strong incentive to locate false claims and pursue these actions.

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<sup>190</sup> Skilling v. United States, --- S.Ct. ----, 28-29, 2010 WL 2518587 (2010).

<sup>191</sup> Gabriel, supra note 165, at 18-19; 18 U.S.C.A. §§ 1341, 1343, 1346.

<sup>192</sup> 31 U.S.C.A. §§ 3729-3733; 18 U.S.C.A. § 287.

<sup>193</sup> Cook County, Ill. V. United State ex. rel. Chandler, 123 S.Ct. 1239 (2003).

<sup>194</sup> 31 U.S.C.A. § 3728(a)(7).

## Codes of Ethics

A local ethics law should focus less on punishment than on prevention, less on prohibition than on disclosure and recusal. It must also be easy and inexpensive to administer and enforce. It must establish an independent ethics board that, while possessing the power to investigate and punish, views its primary mandate as giving quick advice and providing comprehensive ethics training and education.<sup>195</sup>

In surveying some of the various codes of ethics now in place in municipalities across the state, it becomes apparent that many of the same themes and provisions are repeated throughout. This is due to the fact that the purposes behind these codes are shared by all democratic governments – to insure that public officials be independent, impartial, and responsible to the people they represent, that governmental decisions and policies be made within the proper channels of the governmental structure, that public office not be used for personal gain, and, especially, that the public have confidence in the integrity of its government and its officials.<sup>196</sup> While these goals may sometimes be stated differently, and sometimes expanded or contracted, the basic principles remain the same. Effective government demands public officials who will be held accountable to those whom they serve, and a code of ethics seeks to protect both the public and elected officials from the problems that occasionally surface in the administration of governmental affairs.

### **Statement of Purpose/Declaration of Intent**

A common feature among ethics codes is a preamble stating the broader purposes of the legislation. The City of Jefferson Code of Ethics for City Officials has a preamble, which reads as follows:

The public judges its government by the way public officials and employees conduct themselves in the posts to which they are elected or appointed.

All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them. Ga. Const. Art. 1, Sec. 2, Paragraph 1.

The people of this state have the inherent right of regulating their internal government. Government is instituted for the protection, security, and benefit of the people; and at all times they have the right to alter or reform the same whenever the public good may require it. Ga. Const. Art. 1, Sec. 2, Paragraph 2.

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<sup>195</sup> Davies, Mark. “Sources of Local Government Ethics Laws,” Ethical Standards in the Public Sector: A Guide for Government Lawyers, Clients, and Public Officials. (Salkin, Patricia E., ed.), p.129.

<sup>196</sup> City of Snellville Code, Article I.

Such confidence and respect can best be promoted if every public official, whether paid or unpaid, and whether elected or appointed, will uniformly: (a) treat all citizens with courtesy, impartiality, fairness, and equality under the law; and (b) avoid conflicts between their private self-interest and the public interest.<sup>197</sup>

This and other similar statements serve to illustrate some of the motivations behind the formulation of the code.

The declaration of intent is another common feature. This is found in most ethics codes, although it may sometimes be called a “declaration of policy,” or “purpose.” The declaration is generally a brief outline of the legislation that serves as a summary of its goals as well. A good example can be found in the City of Cairo Code of Ethics, which reads:

It is the intent of this Code of Ethics that the Mayor or member of City Council 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, members of the Mayor and Council 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 those who conduct the affairs and business of the City of Cairo.<sup>198</sup>

This declaration of intent is geared specifically towards governing the Mayor and Council; other statements of intent implicate the “Governing Authority” of the city. A good example of this is the City of Commerce, whose intent section reads as follows:

It is essential to the proper administration and operation of the City of Commerce that the members of its Governing Authority be, and give the appearance of being, independent and impartial; that public office not be used for private gain; and that there be public confidence in the integrity of the Governing Authority. The Governing Authority finds that the public interest requires that they protect against such conflicts of interest by establishing appropriate ethical standards with respect to the conduct of the members of the Governing Authority in situations where a conflict may exist.<sup>199</sup>

More examples could be easily provided; suffice it to say that a declaration of policy is a helpful tool for later enforcement of the ethics code and should at least touch on these common themes: impartiality, independence, responsibility, public confidence in government integrity, and proper use of public office.

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<sup>197</sup> City of Jefferson Code of Ethics, Preamble. See also City of Jesup Code § 2-221, Article X.

<sup>198</sup> City of Cairo Code, § 1, Division B, Section I.

<sup>199</sup> City of Commerce Code § 2-4.

## Definitions

Another common feature of many ethics codes is the definitions section. This section is quite broad in some ordinances, with numerous definitions offered in detail; in other codes this section may be much less meticulous, relying more on the common usage of the words. The definition of certain words commonly used throughout the code, such as “interest,” can have great relevance upon the applicability of the code to certain situations. For example the City of Roswell has a fairly broad definition of interest:

“Interest” means any direct pecuniary benefit, which is not a remote interest held by or accruing to a member of the Governing Authority as a result of a contract or transaction which is or may be the subject of an official act or action by or with the City. A member of the Governing Authority shall be deemed to have an interest in transactions involving:

1. Any person in the member’s immediate family;
2. Any person with whom a contractual relationship exists whereby the member may receive any payment or other benefits unless the member is receiving a benefit for goods or services in the normal course of business for which the member has paid a commercially reasonable rate;
3. Any business in which the member is a director, officer, employee, or shareholder, except as otherwise provided herein; or
4. Any person of whom the member is a creditor, where secured or unsecured.<sup>201</sup>

Compare this to the City of Jesup, which employs three (3) categorical definitions of interest as follows:

Remote interest means an interest of a person or entity, including a city official, who would be affected in the same way as the general public. The interest of a council member in the property tax rate, general city fees, city utility charges, or a comprehensive zoning ordinance or similar decisions is deemed remote to the extent that the council member would be affected in common with the general public.

Incidental interest means an interest in a person, entity or property which is not a substantial interest and which has insignificant value.

Substantial interest means a known interest, either directly or through a member of the immediate family, in another person or entity [if]:

- (1) the interest is ownership of 5% of more of the voting stock, shares or equity of the entity or ownership of \$5,000 or more of the equity or market value of the entity; or
- (2) funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000 in salary, bonuses, commissions, or professional fees or \$5,000 in payment for goods, products, or nonprofessional services, or ten percent of the recipient’s gross income during that period, whichever is less; or

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<sup>201</sup> City of Roswell Code of Ordinances Part II, Chapter 2, Article VI § 2. See also City of Commerce Code § 2-5.

- (3) the person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity other than a corporate entity owned or created by the City Council; or
- (4) the person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000 or more. Substantial interest in real property means an interest in real property which is an equitable or legal ownership with a market value of \$5,000 or more.<sup>202</sup>

The definition of interest employed by the City of Roswell is fairly broad so that it covers a wide range of potential activities. The City of Jesup Code is drawn more narrowly, specifically allowing for certain situations to be exempted (perhaps because Jesup is a smaller community and in need of greater flexibility). This is a matter of discretion to be exercised by the individual municipality, but it should be noted that an ethics code will likely be more effective in direct proportion to the number of transactions it covers. For examples of other commonly defined terms in ethics ordinances see the GMA Sample Ethics Ordinance, available at Appendix A or online at [www.gmanet.com](http://www.gmanet.com).

### **Prohibitions & Exceptions**

There are many different approaches employed by ethics codes to illustrate what types of conduct are acceptable and what types are prohibited. The City of Roswell Code of Ethics contains a section for “Prohibitions” which contains specific guidelines for conduct concerning topics such as gifts and private employment,<sup>203</sup> whereas the City of Peachtree City Code of Ethics provides several separate sections containing strict prohibitions regarding gifts, public contracts, and the use of publicly-owned property for private advantage (among others).<sup>204</sup> Drafting these provisions can sometimes pose dilemmas for local governments. If they are drawn too narrowly, they may not cover all of the activities that the ethics code was intended to address; if drawn too broadly, there is a danger that some resourceful officials may be able to find “loopholes” allowing them to circumvent the intent of some provisions. Flexible construction will insure that the ethics code achieves its intended result by providing enforceable guidelines that are adaptable to numerous situations.

Conflicts of interest are an item of major concern in every ethics code. While most codes contain a separate section dealing with the issue, the significance of the matter dictates that it be dealt with to some extent throughout the entire code. Different approaches utilized in codifying a conflicts policy include the City of Cairo’s combination of prohibitions against conflicting direct or indirect financial interests and broad sections regarding disclosure and disqualifications,<sup>205</sup> the City of Marietta’s expansive prohibition against current and future conflicts of interests and broad disclosure requirements,<sup>206</sup> and finally, the City of Commerce’s detailed requirements for disclosure of interests and disqualification from acting upon any matters in which the official has an interest.<sup>207</sup> The City of Columbus Code of Ethics contains

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<sup>202</sup> City of Jesup Code § 2-224.

<sup>203</sup> City of Roswell Code of Ordinances Part II, Chapter 2, Article VI § 3.

<sup>204</sup> City of Peachtree City Code §§ 62-74, 62-82, 62-86.

<sup>205</sup> City of Cairo Code Division C. § II, and Division D. §§ I, II, and III.

<sup>206</sup> City of Marietta Code of Ethics §§ 1.9, 4-1064.

<sup>207</sup> City of Commerce Code of Ethics §§ 2-7, 2-8.

strict prohibitions against most activities likely to result in conflicts, and contains broad disclosure requirements as well.<sup>208</sup> Debate in the Atlanta City Council over income disclosure laws illustrates the relevance of this issue in the political arena. Despite reluctance on the behalf of the Council, Atlanta requires most employees in decision-making roles to file disclosure.<sup>209</sup> Most existing codes contain similar combinations of both disclosure<sup>210</sup> and disqualification provisions in response to conflicts of interest, and a number of municipalities that do not have separate codes of ethics do provide legislation dealing with the issue.<sup>211</sup>

## **Boards of Ethics**

The formation of an ethics board can be an essential step in implementing a comprehensive code of ethics. While some ethics codes provide for a separate board, others rely on the existing governmental authority and the courts to enforce their ethics laws. Providing the other board with sufficient powers to perform its duties (such as granting subpoena power where such delegation of power is available) may help instill confidence that the public interest is being safeguarded. Adding the additional stipulation that no member of the board may be a member of any other board, authority, commission, or committee of the city can help to insure that the members of the city's ethics board do not encounter their own conflicts of interest.

The City of Marietta Code of Ethics provides a good example of an existing board of ethics. It provides for the formation of a committee made up of three citizens, one appointed by the mayor, one appointed by the council, and the third appointed by the previous two members.<sup>215</sup> This committee is empowered to investigate complaints, to take evidence, and to conduct hearings concerning alleged violations of the ethics code.<sup>216</sup> These powers increase the ability of the board to fulfill its duties and provide assurance to the public that their complaints will be impartially evaluated.

The City of Roswell ordinance contains another good example of an existing board of ethics. Their board is composed of five residents of the city chosen by persons specifically appointed by the mayor and council members from a pool of fourteen qualified individuals who have consented to serve on the ethics boards for a period of two years.<sup>217</sup> The members of the ethics board are only chosen from the pool of volunteers in the event that a city investigating committee<sup>218</sup> determines that an ethics complaint warrants a hearing before such board. The board is empowered to hold hearings, to prescribe disclosure forms, to receive and hear complaints of ethical violations, and to investigate, respond to, and rule on complaints.<sup>219</sup> This

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<sup>208</sup> City of Columbus Charter.

<sup>209</sup> City of Atlanta Code § 2-814.

<sup>210</sup> See e.g., Town of Thunderbolt Code §§ 2-102.4, 2-102.5; City of Vienna Code §§ 36-4, 36-5.

<sup>211</sup> See e.g., Athens-Clarke County Code §§ 1-3-54, 1-9-29(c).

<sup>215</sup> City of Marietta Code § 1-6021.

<sup>216</sup> *Id.*, § 1-6022(d).

<sup>217</sup> City of Roswell Code of Ethics § 9.

<sup>218</sup> See City of Roswell Code of Ethics § 8. A city investigating committee is a panel consisting of three council-members and the city attorney; the members are appointed by either the Mayor or the Mayor Pro-Tem upon the filing of a written, verified complaint setting forth the particular facts and circumstances which constitute an alleged violation against the Governing Authority.

<sup>219</sup> *Id.*

allows the board to enforce the ethics code efficiently and in doing so bolsters the public's trust in their local government.

The City of Atlanta Code of Ethics provides for a seven-member board of ethics; the ordinance states that all of the members chosen “shall be known for their personal integrity and ... shall be residents of and domiciled in the city.”<sup>220</sup> It further stipulates that “the members of the board of ethics shall reflect the diversity of the City with regard to race, color, creed, religion, gender, marital status, parental status, familial status, sexual orientation, national origin, gender identity, age and disability.”<sup>221</sup> Each member of the board of ethics is appointed by a specific organization or group of organizations within the city. The Atlanta provisions are obviously tailored specifically for that city, taking into account its size and diversity as well as the various influential political bodies within the area. This may make the specific language used in it unworkable for other cities and towns; however, some of the principles emphasized in the Atlanta Code are helpful to point out. For example, the Atlanta code of ethics provides a “for cause” removal mechanism whereby members of the board of ethics can be ousted due to bad behavior. Furthermore, the Atlanta Code prohibits members from making campaign contributions to candidates in city elections and engaging in city election political activities during their terms as board members. The City of Atlanta is also unique in that they have created the position of an Ethics Officer.<sup>222</sup> The Ethics Officer works with the Board of Ethics to enforce the City of Atlanta's ethics code. Unlike the members of the ethics board, the Atlanta Ethics Officer occupies a full-time, salaried position.

While it may seem that the most obvious power to put in the hands of the ethics board would be that of removal from office, Georgia law is unclear on whether or not a city council would have the legal authority to take such actions upon the recommendation of the board. If this power is not established in the charter, it cannot be created in a city ordinance.<sup>223</sup> Such a change to the city's charter requires a Local Act of the General Assembly. Thus, providing removal power or other similar sanctions might render the ethics ordinance establishing the board invalid. An alternative is to empower the board of ethics to write advisory opinions and to recommend sanctions such as public reprimand or censure to the governing authority of the municipality if the board determines that a violation has occurred. Furthermore, an ethics ordinance should work in conjunction with any pre-existing remedies at law should such a violation arise. City councils, for example, are often empowered to hold inquiries and investigations into city affairs and the conduct of all agencies, officers, and departments.<sup>224</sup>

Another power that several cities have attempted to give their ethics boards is the power to fine offending officers. Although this punishment might seem obvious and even fitting given that the ethics board polices conflicts of interest and misappropriation, such sanctions may be beyond the legal authority of the board. The more prudent position may be to provide for public reprimand but stop short of allowing for fines; that said, this issue is unresolved, and Certified Cities of Ethics fall on both sides of the line. The GMA Ethics Certification Committee continues to have concerns about the legal enforceability of monetary fines for violation of an

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<sup>220</sup> City of Atlanta Code § 2-804.

<sup>221</sup> Id.

<sup>222</sup> City of Atlanta Code § 2-805.

<sup>223</sup> O.C.G.A. § 36-35-6.

<sup>224</sup> City of Woodstock Code § 2.14.

ethics ordinance; those cities that choose to empower their boards in this manner may encounter problems in the future.

### **Other Common Features**

Other common features of ethics codes include the following: statements that actions taken by public officials prior to passage of the code shall not be affected by the code's enactment; a severability clause stating that if any provisions shall be held invalid or unlawful in a court of law, the decision of the court shall not effect the legitimacy of the remaining portions; and a repealer clause which does away with conflicting ordinances on the matter. These features help to ensure that the ethics code meets legal requirements, so that the code can function to achieve its worthy objectives of protecting the public against unethical behavior by its elected officials.

The importance of the principles contained in a code of ethics cannot be over-emphasized, and the adoption of such legislation provides concrete proof to a community that their elected officials are interested in honest government. Both the public and its elected officials stand to gain from this endeavor.

Things to keep in mind while drafting an ethics ordinance:<sup>225</sup>

- The city charter – does it allow for adoption of an ethics ordinance? Is the ordinance consistent with provisions in the charter on removal from office and other such issues?
- Due process – officials charged with violations have a right to notice of the charges, representation by legal counsel, and an adequate opportunity to respond to the charges – does the ordinance provide for these things procedurally?
- Penalties – are monetary fines used as penalties in your ordinance? The GMA Ethics Certification Committee continues to have concerns about the legal enforceability of monetary fines for violation of an ethics ordinance.
- Free Speech – are you going too far in an attempt to avoid even an appearance of impropriety and consequently quashing the free speech rights of city officials?
- Conflicts of interest – are you making exceptions for things that are not actually legal? A contract can be invalidated on the ground that it violates good public policy and the constitutional principles of public trusteeship even if it is technically “ethical” in the eyes of the municipality.
- Incompatible offices – are you drafting this section too narrowly? Although it's important to avoid conflicts of interest and making sure that no one holds incompatible offices is an important part of that, in areas with smaller populations there may only be so many individuals both qualified and willing to run for office and serve their community. For that reason some ethics ordinances exclude licensed professionals from the application of this provision in order to allow qualified persons to hold office.

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<sup>225</sup> Carothers, Richard. Establishing, Following Ethics Rules Raises the Level of Trust. See Appendix C.





## Use and Implementation of the Sample Ethics Ordinance

The 2008 GMA Ethics Task Force put together a sample ethics ordinance incorporating elements of several successful ethics ordinances. The provisions in the GMA sample ordinance meet the ordinance requirements to be a "Certified City of Ethics." This ordinance is designed as a framework, and cities must make a few important decisions before adopting the ordinance because several provisions in the sample ordinance provide for a few alternatives. City officials and attorneys should evaluate the choices and see which option best fits the specific circumstances of the city. Any city should feel free to modify the ordinance or write its own ordinance from scratch, so long as it satisfies the "Certified City of Ethics" program requirements. Regardless of whether the city is adopting the ordinance in whole, in part, or not at all, the city officials need to consult with their city attorney to ensure that the ordinance will be legal and effective. As always, the GMA sample ordinance is provided purely for informational purposes and should not be treated as legal advice.

The model ordinance contains provisions that allow the city to choose between several options. The city first should choose a board of ethics structure that suits the needs of the city. Alternatives A, B, and C create an ethics board, while Alternative D places ethics proceedings under the control of the municipal court. Alternatives A and B are fairly simple and similar. The only difference is that Alternative B requires one board member to be an attorney in good standing. Alternative C randomly draws board members from a pool of willing citizens. Under Alternative C, the ethics board will change for every complaint. This approach will involve more citizens and involve them for less time.

If the city adopts Alternative A, B, or C, it should also adopt subsections (b) – (j) relating to the operation of the board. If the city adopts Alternative D, it should not adopt these sections, as it will not have a board of ethics. The city should set whatever terms of office it desires for board members in subsection (c). Cities that choose to establish a board of ethics will also need to choose between two possible subsection (j)'s. One allows board members to be removed by vote; the other only allows removal for cause. The city may pick whichever option it feels best serves the city.

The city should adopt the Receipt of Complaint section that corresponds to the alternative selected above. The city must choose the corresponding alternative because they are tailored for the specific board composition. Once again, cities that adopt Alternative A, B, or C, but not Alternative D, should also adopt subsections (b) – (g).

The last choice presented in the model ordinance relates to ethics complaints during election season. In order to prevent politically motivated ethics complaints, the city can choose Alternative A, which states that the city will not accept or process ethics complaints against persons seeking election, Alternative B, which states that the city will accept, but not process, complaints against persons seeking election, or neither. As with all provisions, the city can also draft its own section, so long as it conforms to the Cities of Ethics requirements.

Cities should not feel bound by any provision of the model ordinance. The model ordinance was created to provide a starting point for an ethics ordinance and to get cities thinking

about formal ethics procedures, not to provide a “one size fits all” uniform ordinance. City governments should ensure that the city attorney is involved in the process, and that the final ordinance contains definitions, prohibitions, due process, and penalties.

## **Closing Thoughts**

Our hope is that this publication has demonstrated the potential benefits and pitfalls of establishing a comprehensive, tailored code of ethics and shed additional light on matters to consider in that process. Establishing a code that deals with ethics violations up front provides notice to officials as to what kinds of behavior will be allowed within the municipality.

The duties of city officials may seem complex at first glance, but in reality they boil down to a single idea – fair representation of the public interest. The goal of all ethics codes is to insure that the public is fairly represented by a person whom they have freely chosen to govern. This is both an honor and burden, as ethics codes tend to constrain the personal actions of elected officials in many ways. Optimally, ethics codes should be unique as the cities that enact them. A careful balance must be struck to encourage qualified individuals to serve in public office without generating conflicts of interest. The problem of finding qualified citizens to hold office is exacerbated when the city or town in question is of a particularly small size. However, a well-drafted code of ethics can allow for the optimal conflict-free action in the personal financial life of the official while protecting the city from potential misuse of office.

Additionally, the creation of a local ethics ordinance allows citizens to raise their concerns and participate in the ethics investigation process at the local level, where the voice and influence of the individual citizen is strongest. Preserving and encouraging local self-governance and accountability is critical to securing public participation in government and safeguarding our democratic institutions.

**Appendix A:  
GMA Sample Ethics Ordinance**

*This sample ethics ordinance is provided only for general informational purposes and to assist Georgia cities in identifying issues to address in a local ethics ordinance. The ordinance is not and should not be treated as legal advice. You should consult with your legal counsel before drafting or adopting any ordinance and before taking any action based on this sample.*

**SAMPLE ETHICS ORDINANCE**

**City of \_\_\_\_\_**

**State of Georgia**

**ORDINANCE No. \_\_\_\_\_**

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF \_\_\_\_\_, GEORGIA TO PROVIDE A NEW CODE SECTION \_\_\_\_\_, ETHICS; TO PROVIDE FOR PENALTIES; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the duly elected governing authority of the City of \_\_\_\_\_, Georgia is authorized by O.C.G.A. § 36-35-3 to adopt ordinances relating to its property, affairs and local government; and

WHEREAS, the duly elected governing authority of the City of \_\_\_\_\_, Georgia is the Mayor and Council thereof; and

WHEREAS, the governing authority deems it essential to the proper operation of democratic government that the public officials be, and give the appearance of being, independent, impartial, and responsible to the people; that governmental decisions and policies be made in the proper channels of the governmental structure; and that public office not be used for personal gain; and

WHEREAS such measures are necessary to provide the public with confidence in the integrity of its government.

NOW THEREFORE it is the policy of the city that its officials, employees, appointees, and volunteers conducting official city business:

- Serve others and not themselves;
- Be independent, impartial and responsible;
- Use resources with efficiency and economy;

Treat all people fairly;  
Use the power of their position for the well being of their constituents; and  
Create an environment of honesty, openness and integrity.

NOW THEREFORE BE IT AND IT IS HEREBY ORDAINED:

Section 1.

That the Code of Ordinances of the City of \_\_\_\_\_, Georgia is hereby amended by adding sections to be numbered \_\_\_\_\_, Code of Ethics, which said sections read as follows:

**“Sec. \_\_\_\_\_ PURPOSE**

The purpose of this code of ethics is to:

- (a) Encourage high ethical standards in official conduct by city officials;
- (b) Establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the interest of the city;
- (c) Require disclosure by such officials of private financial or other interest in matters affecting the city; and
- (d) Serve as a basis for disciplining those who refuse to abide by its terms.

**Sec. \_\_\_\_\_ SCOPE**

The provisions of this code of ethics shall be applicable to all elected or appointed city officials.

Notwithstanding anything herein to the contrary, state law and the charter of the city shall be controlling in the event of an actual conflict with the provisions of this code of ethics. This ordinance shall be interpreted to supplement, and not replace, said provisions of state law and the charter.

**Sec. \_\_\_\_\_ DEFINITIONS**

Solely for the purpose of this code of ethics:

- (a) *City official* or *official*, unless otherwise expressly defined does not include city employees but does mean the mayor, members of the city council, municipal court judges (including substitute judges), city manager, city clerk, city attorney, and all other persons holding positions designated by the city charter, as amended. The term “city official” also includes all individuals, including city employees, appointed by the mayor and/or city council as appropriate to city authorities, commissions, committees, boards, task forces, or other bodies which can or may vote or take formal action or make official recommendations to the mayor and/or city council.

- (b) *Decision* means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the city council or other city board or commission, as well as the discussions or deliberations of the council, board, or commission which can or may lead to a vote or formal action by that body.
- (c) *Employee* means any person who is a full-time or part-time employee of the city.
- (d) *Immediate family* means the spouse, mother, father, grandparent, brother, sister, son or daughter of any city official related by blood, adoption or marriage. The relationship by marriage shall include in-laws.
- (e) *Incidental interest* means an interest in a person, entity or property which is not a substantial interest as defined herein and which has insignificant value.
- (f) *Remote interest* means an interest of a person or entity, including a city official, which would be affected in the same way as the general public. For example, the interest of an official in the property tax rate, general city fees, city utility charges or a comprehensive zoning ordinance or similar matters is deemed remote to the extent that the official would be affected in common with the general public.
- (g) *Substantial interest* means an interest, either directly or through a member of the immediate family, in another person or entity, where:
  - (1) the interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000.00 or more of the equity or market value of the entity; or
  - (2) the funds received by the person from the other person or entity during the previous 12 months either equal or exceed (a) \$5,000.00 in salary, bonuses, commissions or professional fees, or \$5,000.00 in payment for goods, products or services, or (b) ten percent of the recipient's gross income during that period, whichever is less;
  - (3) the person serves as a corporate officer or member of the board of directors or other governing board of a for-profit entity other than a corporate entity owned or created by the city council; or
  - (4) the person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000.00 or more.

**Sec. \_\_\_\_ PROHIBITIONS**

- (a) No city official shall use such position to secure special privileges or exemptions for himself or herself or others, or to secure confidential information for any purpose other than official duties on behalf of the city.
- (b) No city official, in any matter before the council or other city body, relating to a person or entity in which the official has a substantial interest, shall fail to disclose for the record such interest prior to any discussion or vote or fail to recuse himself/herself from such discussion or vote as applicable.

- (c) No city official shall act as an agent or attorney for another in any matter before the city council or other city body.
- (d) No city official shall directly or indirectly receive, or agree to receive, any compensation, gift, reward, or gratuity in any matter or proceeding connected with, or related to, the duties of his office except as may be provided by law.
- (e) No city official shall enter into any contract with, or have any interest in, either directly or indirectly, the city except as authorized by state law.
  - (i) This prohibition shall not be applicable to the professional activities of the city attorney in his or her work as an independent contractor and legal advisor on behalf of the city.
  - (ii) This prohibition shall not be applicable to an otherwise valid employment contract between the city and a city official who is not elected (such as, by way of example, a city manager, city administrator or chief of police).
  - (iii) Any official who has a proprietary interest in an agency doing business with the city shall make that interest known in writing to the city council and the city clerk.
- (f) All public funds shall be used for the general welfare of the people and not for personal economic gain.
- (g) Public property shall be disposed of in accordance with state law.
- (h) No city official shall solicit or accept other employment to be performed, or compensation to be received, while still a city official if the employment or compensation could reasonably be expected to impair such official's judgment or performance of city duties.
- (i) If a city official accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official might reasonably be expected to act, investigate, advise, or make a recommendation, the official shall disclose the fact to the city council and shall recuse himself/herself and take no further action on matters regarding the potential future employer.
- (j) No city official shall use city facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.
- (k) No city official shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large.



- (l) A city official shall not directly or indirectly make use of, or permit others to make use of, official information not made available to the general public for the purpose of furthering a private interest.
- (m) A city official shall not use his or her position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to such official or persons within the official's immediate family, or those with whom the official has business or financial ties amounting to a substantial interest.
- (n) A city official shall not order any goods and services for the city without prior official authorization for such an expenditure. No city official shall attempt to obligate the city nor give the impression of obligating the city without proper prior authorization.
- (o) No city official shall draw travel funds or per diem from the city for attendance at meetings, seminars, training or other educational events and fail to attend such events without promptly reimbursing the city therefore.
- (p) No city official shall attempt to unduly influence the outcome of a case before the Municipal Court of the City of \_\_\_\_\_ nor shall any city official engage in ex parte communication with a municipal court judge of the City of \_\_\_\_\_ on any matter pending before the Municipal Court of the City of \_\_\_\_\_.

**Sec. \_\_\_\_ CONFLICT OF INTEREST**

- (a) A city official may not participate in a vote or decision on a matter affecting an immediate family member or any person, entity, or property in which the official has a substantial interest.
- (b) A city official who serves as a corporate officer or member of the board of directors of a nonprofit entity must disclose their interest in said entity to the mayor and council prior to participating in a vote or decision regarding funding of the entity by or through the city.
- (c) Where the interest of a city official in the subject matter of a vote or decision is remote or incidental, the city official may participate in the vote or decision and need not disclose the interest.

**Sec. \_\_\_\_ BOARD OF ETHICS**

**Select Alternative A, B, C or D or draft another suitable alternative. If Alternative D is chosen, subsections (b) through (f) may be omitted. Alternative D can also be used in conjunction with one of the other alternatives to hear complaints against any member of the Board of Ethics or when the Board of Ethics cannot convene because appointed members of the Board of Ethics have conflicts of interest in hearing the matter.**

*Alternative A*

- (a) The Board of Ethics of the City shall consist of three (3) residents of the City, one appointed by the mayor, one appointed by the city council, and the third appointed by the mayor and approved by a majority of the city council.

*Alternative B*

- (a) The Board of Ethics shall consist of three (3) residents of the City, one appointed by the mayor, one appointed by the council, and the third appointed by the two named Board members and approved by a majority of the city council. The third member of the Board of Ethics shall be a member in good standing of the State Bar of Georgia.

*Alternative C*

- (a) The Board of Ethics of the City shall be composed of three (3) residents of the City to be appointed as follows: the mayor and councilmembers shall each designate one (1) qualified citizen to provide a pool of \_\_\_ number of individuals who have consented to serve as a member of such Board of Ethics and who will be available for a period of two (2) years to be called upon to serve in the event a Board of Ethics is appointed. The City Clerk shall maintain a listing of these qualified citizens. Upon receipt of a properly verified complaint and timely forwarding of that complaint to the city official charged in the complaint, the Mayor and Council, at the next regularly scheduled public meeting or at a specially called public meeting, shall draw names randomly from the listing of qualified citizens until three (3) members of the Board of Ethics have been appointed. Such Board will elect one of its members to serve as chair.

*Alternative D*

- (a) The Municipal Court of the City of \_\_\_\_\_ shall hear and render decisions on all proper verified complaints filed under this ordinance.  
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- (b) All members of the Board of Ethics shall be residents of the city for at least one (1) year immediately preceding the date of taking office and shall remain a resident while serving on the Board.
- (c) All members of the Board of Ethics shall serve a \_\_\_-year term.
- (d) No person shall serve as a member of the Board of Ethics if the person has, or has had within the preceding one (1) year period, any interest in any contract or contracting opportunity with the city or has been employed by the City.
- (e) Members of the Board of Ethics with any permit or rezoning application pending before the city, or any pending or potential litigation against the city or any city official charged in the complaint shall be disqualified from serving on the Board

of Ethics for that complaint. An alternate member of the Board of Ethics shall be selected in the same manner as the disqualified individual.

- (f) The members of the Board of Ethics shall serve without compensation. The city council shall provide meeting space for the Board of Ethics and, subject to budgetary procedures and requirements of the City, such supplies and equipment as may be reasonably necessary for the Board to perform its duties and responsibilities.
- (g) No person shall serve on the Board of Ethics who has been convicted of a felony involving moral turpitude in this state or any other state, unless such person's civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude.
- (h) No person shall serve on the Board of Ethics who is less than 21 years of age, who holds a public elective office, who is physically or mentally unable to discharge the duties of a member of the Board of Ethics, or who is not qualified to be a registered voter in the City of \_\_\_\_\_.
- (i) Upon appointment, members of the Board of Ethics shall sign an affidavit attesting to their qualification to serve as a member of the Board of Ethics.
- (j) Members of the Board of Ethics may be removed by majority vote of the city governing authority.

**OR**

- (j) Members of the Board of Ethics may be removed by majority vote of the city governing authority for cause including, but not limited to, failure to maintain any requirement for qualification to serve on the Board of Ethics.

**Sec. \_\_\_\_ RECEIPT OF COMPLAINTS**

**Select Alternative A, B, C or D or draft another suitable alternative. If Alternative D is chosen, conform the language in the following sections by substituting “municipal court” for “board.”**

*Alternatives A & B*

- (a) All complaints against city officials shall be filed with the Board of Ethics, who may require that oral complaints, and complaints illegibly or informally drawn, be reduced to a memorandum of complaint in such form as may be prescribed by the city council or the Board of Ethics. Upon receipt of a complaint in proper form, the chair of the Board of Ethics shall forward a copy of the complaint to the city official or officials charged in the complaint within no more than seven (7) calendar days.

*Alternative C*

- (a) All complaints against city officials shall be filed with the city clerk, who will give it to the Mayor and Council. The Mayor and Council may require that oral complaints, and complaints illegibly or informally drawn, be reduced to a memorandum of complaint in such form as may be prescribed by the city council. Upon receipt of a complaint in proper form, the city clerk or the clerk's designee shall forward a copy of the complaint to the city official or officials charged in the complaint within no more than seven (7) calendar days.

*Alternative D*

- (a) All complaints against city officials shall be filed with the clerk of the Municipal Court of the City of \_\_\_\_\_. Upon receipt of a complaint in proper form, the municipal court clerk shall forward a copy of the complaint to the city official or officials charged in the complaint within no more than seven (7) calendar days.
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- (b) All complaints shall be submitted and signed under oath, shall be legibly drawn and shall clearly address matters within the scope of this ordinance.
- (c) Upon receipt of a complaint in proper form, the Board shall review it to determine whether the complaint is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary jurisdiction of the City Council. The Board of Ethics is empowered to dismiss in writing complaints that it determines are unjustified, frivolous, patently unfounded or fail to state facts sufficient to invoke the disciplinary jurisdiction of the City Council; provided, however, that a rejection of such complaint by the Board of Ethics shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official. For complaints that are not dismissed, the Board of Ethics is empowered to collect evidence and information concerning any complaint and add the findings and results of its investigations to the file containing such complaint.
- (d) Upon completion of its investigation of a complaint, the Board of Ethics is empowered to dismiss in writing those complaints which it determines are unjustified, frivolous, patently unfounded or which fail to state facts sufficient to invoke the disciplinary jurisdiction of the City Council; provided, however, that a rejection of such complaint by the Board of Ethics shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official.
- (e) The Board of Ethics is empowered to conduct investigations, to take evidence, and to hold hearings to address the subject matter of a complaint.
- (f) The Board of Ethics is empowered to adopt forms for formal complaints, notices, and any other necessary or desirable documents within its jurisdiction where the city council has not prescribed such forms.

- (g) Findings of the Board of Ethics shall be submitted to the City Council for action.

**Some elected officials raised concerns about potential misuse of the ethics complaint process for political purposes. The governing authority may elect to remain silent on this issue and allow local ethics complaints to be filed and processed at any time or the governing authority may consider Alternative A or B below or draft another suitable alternative.**

*Alternative A*

- (h) To discourage the filing of ethics complaints solely for political purposes, complaints will not be accepted against a person seeking election as a city official, whether currently serving as a city official or not, from the date qualifying opens for the elected office at issue through the date the election results for that office are certified. The time for filing complaints will not run during this period. Properly filed complaints will be accepted and processed after the election results have been certified.

*Alternative B*

- (h) To discourage the filing of ethics complaints solely for political purposes, ethics complaints against a person seeking election as a city official, whether currently serving as a city official or not, which are filed between the date of qualifying for municipal office and the date of certification of the election results will be held and will not be processed until the election results for that office have been certified.

**Sec. \_\_\_\_ SERVICE OF COMPLAINT**

The city clerk or Board of Ethics as appointed herein set forth shall cause the complaint to be served on the city official charged as soon as practicable but in no event later than seven (7) calendar days after receipt of a proper, verified complaint. Service may be by personal service, by certified mail, return receipt requested or by statutory overnight delivery. A hearing shall be held within sixty (60) calendar days after filing of the complaint. The Board of Ethics shall conduct hearings in accordance with the procedures and regulations it establishes but, in all circumstances, at least one hearing shall include the taking of testimony and the cross-examination of available witnesses. The decision of the Board of Ethics shall be rendered to Mayor and Council within seven (7) calendar days after completion of the final hearing. At any hearing held by the Board of Ethics, the city official who is the subject of inquiry shall have the right to written notice of the hearing and the allegations at least seven (7) calendar days before the first hearing, to be represented by counsel, to hear and examine the evidence and witnesses and, to oppose or try to mitigate the allegations. The city official subject to the inquiry shall have also have the right but not the obligation of submitting evidence and calling witnesses. Failure to comply with any of time deadlines in this section of the ordinance shall not invalidate any otherwise valid complaint or in any way affect the power or jurisdiction of the Board of Ethics or the city council to act upon any complaint.

**Sec. \_\_\_\_ RIGHT TO APPEAL**

- (a) Any city official or complainant adversely affected by the findings or recommendations of the Board of Ethics may obtain judicial review of such decision as provided in this Section.
- (b) An action for judicial review may be commenced by filing an application for a writ of certiorari in the Superior Court of X County within thirty (30) days after the decision of the Board of Ethics. The filing of such application shall act as supersedeas.

**Sec. \_\_\_\_ PENALTY**

Any person violating any provision of this article is subject to:

- (a) Public reprimand or censure by the city council; or
- (b) Request for resignation by the city council.”

Section 2.

The sections, subsections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any section, subsection, paragraph, sentence, clause or phrase shall be declared illegal by the valid judgment or decree of any court of competent jurisdiction, such illegality shall not affect any of the remaining section, subsections, paragraphs, sentences, clauses and phrases of this ordinance.

Section 3.

All ordinances and parts of ordinances in conflict herewith are expressly repealed.

Section 4.

The adoption date of this ordinance is \_\_\_\_\_ and the effective date of this ordinance shall be \_\_\_\_\_.

ORDAINED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

City of \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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City Attorney.

**Appendix B:**  
**Letter from the Attorney General**

March 31, 1997

Honorable Robert S. Reeves  
Chairman, Board of Commissioners  
Emanuel County  
P.O. Box 787  
Swainsboro, GA 30401

RE: Inquiry regarding Conflict of Interest.

Dear Mr. Reeves:

This letter is in response to your inquiry of December 18, 1996, in which you asked about potential conflicts of interest involving a member of the Emanuel County Board of Commissioners. Your county attorney has already advised you that under the facts you have provided me there is a conflict of interest in the situation described.

Your outline of the relevant facts shows that one of the Emanuel County commissioners is a minority stock holder, a member of the board of directors, and also the attorney for a bank with which the county does business. The commissioner's law partner is a member of the advisory board of and the attorney for another bank with which the county does business. The business the county conducts with these banks includes depositing general operating funds in four different banks in the county on a rotating basis and depositing surplus funds in the bank with the highest rate of return. You informed me that both of the relevant banks currently have significant amounts of county funds on deposit.

In light of your attorney's advice that there is a conflict of interest in these situations, you have asked me to answer the following questions:

Can Emanuel County continue to deposit operational funds in the two relevant banks on a rotational basis?

Can Emanuel County continue to deposit surplus funds in the two relevant banks, either the commissioner in question not participating in the discussion or the vote?

The answer to these questions under the current circumstances is no.

My analysis begins with the proposition that “[p]ublic officers are the trustees and servants of the people and are at all times amenable to them.” Ga. Const. 1983, Art. I, Sec. II., Para. I. More specifically, “county commissioners [are] the trustees of the citizens of the counties they serve[] and as such [are] required ‘to exercise the utmost good faith, fidelity and integrity’ in their positions of trust.” Op. Att’y Gen. 82-82, p. 165 (quoting Malcolm v. Webb, 211 Ga. 449 (1955)). “The trustee’s duty of loyalty requires that he administer his trust solely for his beneficiary with undivided loyalty.” Id. (citing Fulton National Bank v. Tate, 363 F.2d 562 (5<sup>th</sup>



Cir. 1966)). This means that a member of the county commission serves in a fiduciary capacity and owes a duty of undivided loyalty to the county.

I have previously opined that:

A public trustee may not place himself in a position in which his interest or the interest of private parties he represents may conflict with the public interest and he has the opportunity and temptation to sacrifice the public interests to his interests or those of third parties. This rule is not limited to instances where a public official's interest is directly involved in the transaction. It also applies when a public official has a financial interest in, or fiduciary to, a private entity involved in a transaction with the state.

Id. at p. 171. The question in these circumstances then becomes whether a county commissioner is in a position where he has actually or potentially divided loyalties and responsibilities which create an unacceptable conflict of interest which cannot be cured even by recusal of the commissioner.

The Georgia Supreme Court confronted a somewhat similar situation in Montgomery v. City of Atlanta, 162 Ga. 534 (1926), where a city councilman was a large stockholder in a corporation which sought to contract with the city. The Court held that the corporation could not contract with the city even if the councilman did not vote on the contract or attempt to influence other votes, the contract was fair, and the rest of the city council ratified the contract. Id.

Although I realize the commissioner in Emanuel County holds only a small amount of stock, his interests are otherwise extensively tied to the bank's because he sits on the board of directors and is the bank's lawyer. As a result, the logic of the Montgomery decision would seem to apply to the current situation. In addition, I have previously opined that "[i]t is clear that a corporation, which has as one of its directors . . . the member of a State Board, could not contract with the state agency governed by the board." Op. Att'y Gen. 82-82, p. 174 (citing People v. Board of Supervisors of Schenectady County, 151 N.Y.S. 1012 (1915)). This logic would also seem to apply to the current situation.

More recently, the Georgia Supreme Court dealt with the issue of public officials' conflicts of interest in Richmond County Hospital Authority v. Richmond County, 255 Ga. 183 (1985). There, the Court held, in part, that an impermissible conflict of interest exists where a member of a state board who also serves on the board of a corporation with whom the state board does business "is permitted to obtain any financial benefit, either directly through compensation or indirectly through dealing with the corporations." Id. at 189 (citing City of Macon v. Huff, 60 Ga. 221 (1878)).<sup>226</sup> See also Op. Att'y Gen. U95-11.

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<sup>226</sup> Although the Court found no conflict of interest under the facts of Richmond County Hosp. Auth., the facts of that case are distinguishable from the instant situation in that the members of the hospital authority who also served as members of the board of the corporations with whom the authority did business, did so only for the purpose of "ensur[ing] that the hospital [was] operated in accordance with the lease [between the authority and the corporation] and to ensure benefit to the public." Id. at 189.

Although the Emanuel County commissioner in question might not receive any direct financial benefit from the county's dealings with the bank, he surely would receive indirect benefits from bank deposits in his roles as director and attorney and, to a lesser extent, as minority shareholder. Additionally, the commissioner has a fiduciary duty to the bank because of his service as a director. See e.g., Cheney v. Moore, 193 Ga. App.312, 313 (1989).

Given the dual fiduciary duties that the commissioner has to both the county and the bank and the potential for conflicts in the interests of these entities, I must agree with your attorney's opinion that this creates a conflict of interest. Because the conflict is inherent in the dual loyalties and responsibilities, and in light of the law cited above, I do not believe the conflict can be resolved by recusal.

The same would seem to be true in regard to deposits in the bank whose local counsel and advisory board members is the commissioner's law partner. "If [a] lawyer is required to decline employment, no partners or associates of his firm may accept such employment, because a lawyer may legitimately disclose and discuss the affairs of a client with his partners or associates of his firm, unless the client otherwise directs, and a lawyer is required to avoid even the appearance of impropriety." Dick v. Williams, 215 Ga. App.629, 631 (1994) (quoting Summerlin v. Johnson, 176 Ga. App.336 (1985)). See also Directory Rule 5-105(D), Ga. Code of Professional Responsibility; Billings v. State, 212 Ga. App.125, 129 (1994). Therefore, because the commissioner cannot accept employment with the bank while in office, his law partner also cannot.

Based on the facts as you have presented them, and without knowledge of any particular local ordinances or policies on this point, I agree with the county attorney that a conflict of interest exists where a county deposits funds in a bank whose attorney, board of directors member, and minority shareholder is a county commissioner and in a bank where the county commissioner's law partner is a member of the advisory board and local counsel.

Sincerely,

MICHAEL J. BOWERS  
Attorney General

**Appendix C:**  
**Article by Richard A. Carothers**

**Establishing, Following Ethics Rules Raises the Level of Trust**  
**Richard Carothers, GMA City Attorneys Section President (2003-2004)**  
*Posted March 2, 2004*

**"All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are trustees and servants of the people and are at all times amenable to them."**

These words in Article 1, Section 2, Paragraph 1 of the Georgia Constitution set the tone for ethical conduct for public officials at the state and local level. They remind public officers that they are held to a higher level of conduct and accountability. Mere honesty is not enough. Public officials as trustees must act solely in the interest of the beneficiaries of that trust. The beneficiaries are the voters, taxpayers and public at large. It is their welfare that must be promoted by the actions of the public official. Also, as servants of the people, public officials are reminded that they have a duty to meet the needs of the people. However, this duty is met not merely by blowing with the political winds or following the whims of the people; it is carried out by responsible and educated leadership.

GMA appointed an Ethics Task Force in 1998 to address concerns after a study showed a trend toward less confidence in public officials. While GMA believes that the overwhelming majority of municipal elected officials are honest and ethical, it was determined necessary to address the public's perception. The Ethics Task Force was comprised of municipal elected officials, community and industry leaders and academics. The result of their work was the publication of a "Model Code of Ethics for Georgia City Officials" in September 1999 and the implementation of GMA's Certified City of Ethics program.

The GMA Certified City of Ethics program requires that cities adopt a resolution acknowledging and subscribing to five ethics principles as well as an ordinance to govern the conduct of elected officials. The five ethics principles included in the resolution are as follows:

- Serve Others, Not Ourselves
- Use Resources with Efficiency and Economy
- Treat All People Fairly
- Use the Power of Our Position for the Well Being of Our Constituents
- Create an Environment of Honesty, Openness and Integrity

The ethics ordinance adopted by the city must contain, at a minimum, definitions, an enumeration of permissible and impermissible activities by elected officials, due process procedures for elected officials charged with a violation of the ethics ordinance and punishment provisions for those officials who violate the ethics ordinance.

The resolution and ordinance are then reviewed by the GMA Ethics Certification Committee,

which determines if the ethics materials submitted by the city meet the standards for certification as a City of Ethics. Through review of city ethics ordinances the GMA Ethics Certification Committee has become aware of common shortcomings in local ordinances.

### **Don't Conflict with the Charter**

First, the governing authority needs to ensure that their city charter allows adoption of an ethics ordinance and does not conflict with or preempt it. Because the charter takes precedence over any ordinance, it is important that the charter and ethics ordinance work together, not at cross-purposes. For instance, the charter may contain provisions on removal from office and the standards for removal that are inconsistent with the ethics ordinance. One simple way to clarify any uncertainty your city may have about the authority to have an ethics ordinance is to amend the city's charter under your Home Rule powers found at O.C.G.A. Section 36-35-3 to specifically authorize your ethics ordinance. This is a process that needs to be guided by the city attorney.

### **Due Process**

Second, the ethics ordinance should contain a provision that specifies the procedure that should be followed in filing a complaint, specifies how a Board of Ethics is selected and conducts its affairs and acknowledges the right of an official charged with a violation to notice of the charges, representation by legal counsel and an adequate opportunity to respond to the charges. You may want to look at the procedures in the Marietta or Roswell ordinances in the GMA publication, "Model Code of Ethics for Georgia City Officials."

### **Penalties**

Third, many local ethics ordinances contain monetary fines in addition to sanctions such as public censure or reprimand and a request to resign from office. The members of the GMA Ethics Certification Committee continue to have concerns about the legal enforceability of monetary fines for violation of an ethics ordinance. Again, this is a matter to be discussed with the city attorney.

### **Free Speech**

Fourth, although it is laudable to make every effort to avoid even an appearance of impropriety, some ethics ordinances may go too far in restricting the ability of elected officials to also act as individuals within the community affected by the actions of the city. While an elected official may have a conflict of interest and be ineligible to vote on a matter in which they are financially interested, attempting to prevent council members from speaking to other members of the city council as a city resident rather than an elected official may in certain contexts unduly infringe on that person's right to free speech and right to petition their government for redress of grievances. Additionally, some local ethics ordinances attempt to regulate the conduct of candidates for office or those elected who have not yet taken office. It is not clear that local ordinances can regulate this conduct. Again, the city attorney should be consulted for guidance in these areas.

### **Conflicts of Interest**

Fifth, it is important to remember that just because an activity is free from criminal sanction or does not violate the city's ethics ordinance does not necessarily mean that it is ethical or legal. This concern particularly arises where ethics ordinances attempt to define the nature and limits of

a "personal interest" prohibiting an elected official from voting on that matter. Although such definitions can be useful, a contract may be invalidated on the ground that it violates good public policy and the constitutional principles of public trusteeship. The courts may view a transaction as a common law conflict of interest even though no statute or ordinance was violated.

A number of ethics ordinances also contain a provision prohibiting local officials from engaging in any employment or rendering of service that is adverse to and incompatible with the proper discharge of official duties. Some of these ordinances exclude licensed professionals from the application of this prohibition. City officials should never engage in an activity which is incompatible with the proper discharge of official duties. These are also areas to be reviewed with the city attorney.

GMA has supported and promoted the use of a local ethics ordinance as they allow citizens to raise their concerns and participate in the ethics investigation process at the local level, where the voice and influence of the individual citizen is strongest. Local ethics ordinances also provide an opportunity for local elected officials to win the trust of the people they serve by voluntarily holding themselves to high levels of ethical conduct.

In addition to the City of Ethics program, GMA also offers training on ethics through the Municipal Training Institute and at the Newly Elected Officials Institute. For more information on the Certified City of Ethics or the Certified Organization of Ethics program, contact Kelly Shields at GMA at 678-686-6204.

## **Appendix D: Procedure for Becoming a “Certified City of Ethics”**

To earn a "Certified City of Ethics" designation, a city must take two actions.

### **Adopt a resolution establishing the five ethics principles for the conduct of your city's officials.**

These principals are designed to guide the elected officials as individuals and as a governing body. These principals are:

- Serve others, not ourselves  
Use resources with efficiency and economy
- Treat all people fairly
- Use the power of our position for the well being of our constituents
- Create an environment of honesty, openness and integrity

The adopted resolution must include or at least reference the definitions of these principles. A sample resolution is available from GMA. A majority of the city's elected governing body must sign the resolution.

### **Adopt an ethics ordinance that meets minimum standards approved by the GMA Board.**

The ordinance must contain definitions, an enumeration of permissible and impermissible activities by elected officials, due process procedures for elected officials charged with a violation of the ordinance and punishment provisions for those elected officials found in violation of the ordinance.

City officials should consult GMA's publication, "Ethics in Government: Charting the Right Course", when considering the process of developing and enacting a comprehensive codes of ethics and in facing ethical dilemmas on a day-to-day basis. "Establishing, Following Ethics Rules Raises the Level of Trust" by Richard Carothers is also an excellent resource to reference when drafting an ethics ordinance. GMA also makes available a sample ethics ordinance for cities to use as a starting point in drafting their own ordinance. Cities should consult with their city attorney on any proposed ethics ordinance well in advance of drafting and adoption.

Following their adoption, the resolution and ordinance should be mailed to:

Georgia Municipal Association  
Attention: Legal Department  
201 Pryor Street, SW  
Atlanta, Georgia 30303

The resolution and ordinance will be forwarded to the GMA Ethics Certification Committee, which is comprised of the Executive Committee of the GMA City Attorneys Section, for their review. If this panel of attorneys determines that both items meet the established requirements, the city will be designated as a "Certified City of Ethics."

## City of Ethics FAQ

### **How did the Cities of Ethics Program get its start?**

GMA appointed an Ethics Task Force in 1998 to address concerns over a trend toward less confidence in public officials. The Ethics Task Force included municipal elected officials, community and industry leaders, and academics. The result of their work was the publication of a "Model Code of Ethics for Georgia City Officials" in September 1999 and the implementation of GMA's Certified Cities of Ethics program. In February 2005, GMA completed an updated handbook that was a compilation of the "Model Code of Ethics" and a prior GMA publication, "Ethics in Government: Finding the Right Course," which was written in 1993. This publication was titled, "Ethics in Government: Charting the Right Course."

In 2008 a new Ethics Task Force was appointed to evaluate the existing Certified Cities of Ethics program and make recommendations on ways to improve the program and ensure its effectiveness. In January 2009 the GMA Board adopted the recommendations of the Ethics Task Force and instituted a requirement of re-certification every four years and approved a new sample ordinance.

### **What is the purpose of the Cities of Ethics Program?**

Certification under this program is a way to recognize cities that have adopted principles and procedures that offer guidance on ethical issues, along with a mechanism to resolve complaints at the local level. The program is not in any way an attempt to sanction past or present conduct by the city or any city official. Rather, it is an attempt to raise awareness about ethics issues at the local level and provide a local forum for the airing and resolution of legitimate concerns. The use of a local ethics ordinance allows citizens to raise their concerns and participate in the ethics investigation process at the local level, where the voice and influence of the individual citizen is strongest.

### **What is the process for becoming a City of Ethics?**

Two steps are required prior to becoming a certified City of Ethics. First, the city and every member of its governing authority must adopt a resolution acknowledging and subscribing to five ethics principles to govern the conduct of elected officials. The ethics principals to be included in the resolution are:

- Serve others, not ourselves
- Use resources with efficiency and economy
- Treat all people fairly
- Use the power of our position for the well being of our constituents
- Create an environment of honesty, openness and integrity

The adopted resolution must include or at least reference the definitions of these principles. A sample resolution is available on the GMA website. A majority of the city's elected governing body must sign the resolution.

Second, cities must also adopt an ethics ordinance that meets minimum standards approved by the GMA Board. The ordinance must contain definitions, an enumeration of permissible and

impermissible activities by elected officials, due process procedures for elected officials charged with a violation of the ordinance and punishment provisions for elected officials who have been found in violation of the ordinance.

**Who decides whether a city has qualified to become a Certified City of Ethics?**

GMA encourages all cities to apply for the City of Ethics program, but city officials should be aware that approval is not automatic. Ordinances and resolutions submitted by each city are reviewed by the GMA Ethics Certification Committee, which is comprised of the Executive Committee of the GMA City Attorneys' Section. This committee compares materials submitted by cities with the recommendations of the GMA Board. If this panel of attorneys determines that both the ordinance and resolution submitted by each city meet the established requirements, then the city's application for certification as a City of Ethics will be approved.

**Once a city adopts an ethics ordinance and qualifies as a City of Ethics, does GMA enforce the ordinance?**

No, GMA does not act as an enforcement or regulating agency. Ultimately, it is the local electorate that determines the acceptable level of ethical conduct by the character of those elected to and retained in office.

**Is periodic recertification required to maintain the City of Ethics designation?**

Beginning January 1, 2009 certification and re-certification will be good for four years. To remain a Certified City of Ethics, prior to the expiration of the four year period the organization must submit to GMA for review a resolution re-adopting the five ethics principles and acknowledging that the members of the organization's governing body have read and understand the organization's ethics requirements in statute and in by-laws.

Cities that have been certified for more than four years as of January 1, 2009 will be required to re-certify on schedule reflecting the order in which they were originally certified and thereafter they will be required to re-certify every four years.

GMA encourages each Certified City of Ethics to periodically train new and existing members of the city's governing body on the ethics principles and the ethics requirements imposed on the organization by federal, state and local law and ordinance.

**What recognition do cities receive for achieving Cities of Ethics certification?**

Each city designated as a Certified City of Ethics will receive a plaque and a logo which can be incorporated into city stationery, road signs and other materials at the city's discretion. In addition, GMA will send press releases to the local media notifying them that the city has earned this designation.

**Which cities are already certified as Cities of Ethics?**

There is a complete list of certified Cities of Ethics, Certified Counties of Ethics, and Certified Organizations of Ethics available on the GMA website.

**Is there also a Counties of Ethics program in Georgia?**

Yea. Counties in Georgia are eligible to apply for certification under GMA's program and, if certified, will be designated a "Certified County of Ethics."



**What role does the Georgia Government Transparency and Campaign Finance Commission play in monitoring local government ethics violations?**

The State Ethics Commission was created in 1987 and renamed the Georgia Government Transparency and Campaign Finance Commission in 2010. It is responsible for enforcing Georgia's Ethics in Government Act. The Commission is governed by five members and is responsible for investigating, reporting on, and prosecuting violations of the Ethics in Government Act, as well as for maintaining and publishing annual reports on lobbyist spending and campaign financing. All state and local officials are required to comply with the provisions in the Act, including filing annual campaign financing disclosure statements. More information on the requirements of the Act can be found in GMA's publication "Ethics in Government: Charting the Right Course" and on the website of the Commission.

**Who can I contact at GMA for more information on this issue?**

For more information about the City of Ethics program, contact Kelly Shields of the GMA staff at 678-686-6204. For information about the GMA training programs that focus on ethics, please contact Janice Eidson at 678-686-6256.

**Appendix E:**  
**Sample Resolution for Participation in the**  
**“Certified City Of Ethics” Program**

WHEREAS the Board of Directors of the Georgia Municipal Association has established a Certified City of Ethics program; and,

WHEREAS the City of \_\_\_\_\_, wishes to be certified as a Certified City of Ethics under the GMA Program; and,

WHEREAS part of the certification process requires the Mayor and Council to subscribe to the ethics principles approved by the GMA Board;

NOW THEREFORE BE IT RESOLVED by the governing authority of the City of \_\_\_\_\_, Georgia, that as a group and as individuals, the governing authority subscribes to the following ethics principles and pledges to conduct its affairs accordingly:

- \* Serve Others, Not Ourselves
- \* Use Resources With Efficiency and Economy
- \* Treat All People Fairly
- \* Use The Power of Our Position For The Well Being Of Our Constituents
- \* Create An Environment Of Honesty, Openness And Integrity

RESOLVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
ATTEST

## **Appendix F: Procedure for Becoming a “Certified Organization of Ethics”**

### **Who Can be a Certified Organization of Ethics**

Participation in this program is limited to organizations who have as their mission enhancing the quality of life, the provision of public services or economic development within their community. An organization must also be:

- A public corporation or authority created under a general or local act of the Georgia General Assembly;
- An authority or instrumentality of a Georgia local government;
- Exempt from federal income taxation as a not for profit civic league or association under Section 501(c)(4) of the Internal Revenue Code and headquartered in Georgia; or
- Exempt from federal income taxation as a not for profit business league or chamber of commerce under Section 501(c)(6) of the Internal Revenue Code and headquartered in Georgia.

GMA reserves the right to accept or reject any organization for participation in this program for any reason.

### **How to Become a Certified Organization of Ethics**

To earn a "Certified Organization of Ethics" designation, an organization must adopt a resolution containing two elements:

#### **(1) Establishing the five ethics principles for the conduct of your organization's officials.**

These principals are designed to guide the officials as individuals and as a governing body.

These principals are:

- Serve others, not ourselves.
- Use resources with efficiency and economy.
- Treat all people fairly.
- Use the power of our position for the well being of our constituents and our community as a whole.

- Create an environment of honesty, openness and integrity.

The adopted resolution must include or at least reference the definitions of these principles. A sample resolution is available from GMA. A majority of the officials comprising the organization's governing body are required to sign the resolution.

**(2) Amending the organization's by-laws to enact clear ethics provisions that meet minimum standards approved by the GMA Board.** The resolution must contain definitions, an enumeration of permissible and impermissible activities by organization officials, due process procedures for officials charged with a violation of the ethics by-laws, punishment provisions for those officials found in violation of the ethics by-laws and enforcement provisions.

GMA recommends that organizations review the GMA sample ethics ordinance when drafting their by-law amendment. A copy of this ordinance is available on the GMA website. Another helpful resource is the model ethics ordinance crafted by the International Municipal Lawyers Association (IMLA). Copies of this ordinance may be obtained by contacting the GMA Legal Department at (404) 688-0472.

To the extent that state or federal law impose additional ethical duties on an organization or its officials, these additional duties must be disclosed to GMA and referenced or incorporated into the organization's by-laws.

Following adoption, the resolution establishing the ethics principles and amending the organization's by-laws should be mailed to:

Georgia Municipal Association  
Attention: Legal Department  
201 Pryor Street, SW  
Atlanta, Georgia 30303

In addition to the resolution, the organization will be required to complete and submit a form explaining the organization's mission and governing structure and identifying a contact person with the organization.

The resolution and completed form will be forwarded to the Ethics Certification Committee, which is comprised of the Executive Committee of the GMA City Attorneys Section, for their review. If this panel of attorneys determines that the organization and resolution meet the established requirements, the organization will be designated as a "Certified Organization of Ethics."

### **Recognition for Certified Organizations of Ethics**

Each organization designated as a Certified Organization of Ethics will receive a plaque and a logo which can be incorporated into organization stationery and other materials at the organization's discretion. In addition, GMA will send press releases to the local media notifying them that the organization has earned this designation.

### **Recertification**

Beginning in January 1, 2009 certification and re-certification will be good for four years. To remain a Certified Organization of Ethics, prior to the expiration of the four year period the

organization must submit to GMA for review a resolution re-adopting the five ethics principles and acknowledging that the members of the organization's governing body have read and understand the organization's ethics requirements in statute and in by-laws.

Organizations that have been certified for more than four years as of January 1, 2009 will be required to re-certify on schedule reflecting the order in which they were originally certified and thereafter they will be required to re-certify every four years.

GMA encourages each Certified Organization of Ethics to periodically train new and existing members of the organization's governing body on the ethics principles and the ethics requirements imposed on the organization by law and through the organization's by-laws

## **Appendix G: Procedure for Becoming a “Certified County of Ethics”**

To earn a "Certified County of Ethics" designation, a county must take two actions.

### **Adopt a resolution establishing the five ethics principles for the conduct of your county's officials.**

These principles are designed to guide the elected officials as individuals and as a governing body. These principles are:

- Serve others, not ourselves
- Use resources with efficiency and economy
- Treat all people fairly
- Use the power of our position for the well being of our constituents
- Create an environment of honesty, openness and integrity

The adopted resolution must include or at least reference the definitions of these principles. A sample resolution is available from GMA. A majority of the county's elected governing body must sign the resolution.

### **Adopt an ethics ordinance that meets minimum standards approved by the GMA Board.**

The ordinance must contain definitions, an enumeration of permissible and impermissible activities by elected officials, due process procedures for elected officials charged with a violation of the ordinance and punishment provisions for those elected officials found in violation of the ordinance.

County officials should consult GMA's Sample Ethics Ordinance (see link at right) when considering provisions to include in a comprehensive codes of ethics. This document is the most recent and most accurately reflects the types of provisions essential to a local ethics ordinance. County officials may also consider reviewing [Paulding County's ethics ordinance](#). For general guidance in facing ethical dilemmas on a day-to-day basis and on state ethics laws, see GMA's publication "Ethics in Government: Charting the Right Course." Following their adoption, the resolution, ordinance and a \$85 application fee should be mailed to:

Georgia Municipal Association  
Attention: Legal Department  
201 Pryor Street, SW  
Atlanta, Georgia 30303

The resolution and ordinance will be forwarded to the GMA Ethics Certification Committee, which is comprised of the Executive Committee of the GMA City Attorneys Section, for their

review. If this panel of attorneys determines that both items meet the established requirements, the county will be designated as a "Certified County of Ethics."

*This sample ethics ordinance is provided only for general informational purposes and to assist Georgia cities in identifying issues to address in a local ethics ordinance. The ordinance is not and should not be treated as legal advice. You should consult with your legal counsel before drafting or adopting any ordinance and before taking any action based on this sample.*

## **SAMPLE ETHICS ORDINANCE**

**City of \_\_\_\_\_**

**State of Georgia**

**ORDINANCE No. \_\_\_\_\_**

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF \_\_\_\_\_, GEORGIA TO PROVIDE A NEW CODE SECTION \_\_\_\_\_, ETHICS; TO PROVIDE FOR PENALTIES; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the duly elected governing authority of the City of \_\_\_\_\_, Georgia is authorized by O.C.G.A. § 36-35-3 to adopt ordinances relating to its property, affairs and local government; and

WHEREAS, the duly elected governing authority of the City of \_\_\_\_\_, Georgia is the Mayor and Council thereof; and

WHEREAS, the governing authority deems it essential to the proper operation of democratic government that the public officials be, and give the appearance of being, independent, impartial, and responsible to the people; that governmental decisions and policies be made in the proper channels of the governmental structure; and that public office not be used for personal gain; and

WHEREAS such measures are necessary to provide the public with confidence in the integrity of its government.

NOW THEREFORE it is the policy of the city that its officials, employees, appointees, and volunteers conducting official city business:

- Serve others and not themselves;
- Be independent, impartial and responsible;
- Use resources with efficiency and economy;
- Treat all people fairly;
- Use the power of their position for the well being of their constituents; and



Create an environment of honesty, openness and integrity.

NOW THEREFORE BE IT AND IT IS HEREBY ORDAINED:

Section 1.

That the Code of Ordinances of the City of \_\_\_\_\_, Georgia is hereby amended by adding sections to be numbered \_\_\_\_\_, Code of Ethics, which said sections read as follows:

**“Sec. \_\_\_\_\_ PURPOSE**

The purpose of this code of ethics is to:

- (a) Encourage high ethical standards in official conduct by city officials;
- (b) Establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the interest of the city;
- (c) Require disclosure by such officials of private financial or other interest in matters affecting the city; and
- (d) Serve as a basis for disciplining those who refuse to abide by its terms.

**Sec. \_\_\_\_\_ SCOPE**

The provisions of this code of ethics shall be applicable to all elected or appointed city officials.

Notwithstanding anything herein to the contrary, state law and the charter of the city shall be controlling in the event of an actual conflict with the provisions of this code of ethics. This ordinance shall be interpreted to supplement, and not replace, said provisions of state law and the charter.

**Sec. \_\_\_\_\_ DEFINITIONS**

Solely for the purpose of this code of ethics:

- (a) *City official or official*, unless otherwise expressly defined does not include city employees but does mean the mayor, members of the city council, municipal court judges (including substitute judges), city manager, city clerk, city attorney, and all other persons holding positions designated by the city charter, as amended. The term “city official” also includes all individuals, including city employees, appointed by the mayor and/or city council as appropriate to city authorities, commissions, committees, boards, task forces, or other bodies which can or may vote or take formal action or make official recommendations to the mayor and/or city council.

- (b) *Decision* means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the city council or other city board or commission, as well as the discussions or deliberations of the council, board, or commission which can or may lead to a vote or formal action by that body.
- (c) *Employee* means any person who is a full-time or part-time employee of the city.
- (d) *Immediate family* means the spouse, mother, father, grandparent, brother, sister, son or daughter of any city official related by blood, adoption or marriage. The relationship by marriage shall include in-laws.
- (e) *Incidental interest* means an interest in a person, entity or property which is not a substantial interest as defined herein and which has insignificant value.
- (f) *Remote interest* means an interest of a person or entity, including a city official, which would be affected in the same way as the general public. For example, the interest of an official in the property tax rate, general city fees, city utility charges or a comprehensive zoning ordinance or similar matters is deemed remote to the extent that the official would be affected in common with the general public.
- (g) *Substantial interest* means an interest, either directly or through a member of the immediate family, in another person or entity, where:
  - (1) the interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000.00 or more of the equity or market value of the entity; or
  - (2) the funds received by the person from the other person or entity during the previous 12 months either equal or exceed (a) \$5,000.00 in salary, bonuses, commissions or professional fees, or \$5,000.00 in payment for goods, products or services, or (b) ten percent of the recipient's gross income during that period, whichever is less;
  - (3) the person serves as a corporate officer or member of the board of directors or other governing board of a for-profit entity other than a corporate entity owned or created by the city council; or
  - (4) the person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000.00 or more.

Sec. \_\_\_\_ **PROHIBITIONS**

- (a) No city official shall use such position to secure special privileges or exemptions for himself or herself or others, or to secure confidential information for any purpose other than official duties on behalf of the city.
- (b) No city official, in any matter before the council or other city body, relating to a person or entity in which the official has a substantial interest, shall fail to disclose for the record such interest prior to any discussion or vote or fail to recuse himself/herself from such discussion or vote as applicable.
- (c) No city official shall act as an agent or attorney for another in any matter before the city council or other city body.
- (d) No city official shall directly or indirectly receive, or agree to receive, any compensation, gift, reward, or gratuity in any matter or proceeding connected with, or related to, the duties of his office except as may be provided by law.
- (e) No city official shall enter into any contract with, or have any interest in, either directly or indirectly, the city except as authorized by state law.
  - (i) This prohibition shall not be applicable to the professional activities of the city attorney in his or her work as an independent contractor and legal advisor on behalf of the city.
  - (ii) This prohibition shall not be applicable to an otherwise valid employment contract between the city and a city official who is not elected (such as, by way of example, a city manager, city administrator or chief of police).
  - (iii) Any official who has a proprietary interest in an agency doing business with the city shall make that interest known in writing to the city council and the city clerk.
- (f) All public funds shall be used for the general welfare of the people and not for personal economic gain.
- (g) Public property shall be disposed of in accordance with state law.
- (h) No city official shall solicit or accept other employment to be performed, or compensation to be received, while still a city official if the employment or compensation could reasonably be expected to impair such official's judgment or performance of city duties.

- (i) If a city official accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official might reasonably be expected to act, investigate, advise, or make a recommendation, the official shall disclose the fact to the city council and shall recuse himself/herself and take no further action on matters regarding the potential future employer.
- (j) No city official shall use city facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.
- (k) No city official shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large.
- (l) A city official shall not directly or indirectly make use of, or permit others to make use of, official information not made available to the general public for the purpose of furthering a private interest.
- (m) A city official shall not use his or her position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to such official or persons within the official's immediate family, or those with whom the official has business or financial ties amounting to a substantial interest.
- (n) A city official shall not order any goods and services for the city without prior official authorization for such an expenditure. No city official shall attempt to obligate the city nor give the impression of obligating the city without proper prior authorization.
- (o) No city official shall draw travel funds or per diem from the city for attendance at meetings, seminars, training or other educational events and fail to attend such events without promptly reimbursing the city therefore.
- (p) No city official shall attempt to unduly influence the outcome of a case before the Municipal Court of the City of \_\_\_\_\_ nor shall any city official engage in ex parte communication with a municipal court judge of the City of \_\_\_\_\_ on any matter pending before the Municipal Court of the City of \_\_\_\_\_.

**Sec. \_\_\_\_ CONFLICT OF INTEREST**

- (a) A city official may not participate in a vote or decision on a matter affecting an immediate family member or any person, entity, or property in which the official has a substantial interest.
- (b) A city official who serves as a corporate officer or member of the board of directors of a nonprofit entity must disclose their interest in said entity to the mayor and council prior to participating in a vote or decision regarding funding of the entity by or through the city.
- (c) Where the interest of a city official in the subject matter of a vote or decision is remote or incidental, the city official may participate in the vote or decision and need not disclose the interest.

Sec. \_\_\_\_ **BOARD OF ETHICS**

**Select Alternative A, B, C or D or draft another suitable alternative. If Alternative D is chosen, subsections (b) through (f) may be omitted. Alternative D can also be used in conjunction with one of the other alternatives to hear complaints against any member of the Board of Ethics or when the Board of Ethics cannot convene because appointed members of the Board of Ethics have conflicts of interest in hearing the matter.**

*Alternative A*

- (a) The Board of Ethics of the City shall consist of three (3) residents of the City, one appointed by the mayor, one appointed by the city council, and the third appointed by the mayor and approved by a majority of the city council.

*Alternative B*

- (a) The Board of Ethics shall consist of three (3) residents of the City, one appointed by the mayor, one appointed by the council, and the third appointed by the two named Board members and approved by a majority of the city council. The third member of the Board of Ethics shall be a member in good standing of the State Bar of Georgia.

*Alternative C*

- (a) The Board of Ethics of the City shall be composed of three (3) residents of the City to be appointed as follows: the mayor and councilmembers shall each designate one (1) qualified citizen to provide a pool of \_\_\_\_ number of individuals who have consented to serve as a member of such Board of Ethics and who will be available for a period of two (2) years to be called upon to serve in the event a Board of Ethics is appointed. The City Clerk

shall maintain a listing of these qualified citizens. Upon receipt of a properly verified complaint and timely forwarding of that complaint to the city official charged in the complaint, the Mayor and Council, at the next regularly scheduled public meeting or at a specially called public meeting, shall draw names randomly from the listing of qualified citizens until three (3) members of the Board of Ethics have been appointed. Such Board will elect one of its members to serve as chair.

*Alternative D*

- (a) The Municipal Court of the City of \_\_\_\_\_ shall hear and render decisions on all proper verified complaints filed under this ordinance.  
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- (b) All members of the Board of Ethics shall be residents of the city for at least one (1) year immediately preceding the date of taking office and shall remain a resident while serving on the Board.
- (c) All members of the Board of Ethics shall serve a \_\_\_\_-year term.
- (d) No person shall serve as a member of the Board of Ethics if the person has, or has had within the preceding one (1) year period, any interest in any contract or contracting opportunity with the city or has been employed by the City.
- (e) Members of the Board of Ethics with any permit or rezoning application pending before the city, or any pending or potential litigation against the city or any city official charged in the complaint shall be disqualified from serving on the Board of Ethics for that complaint. An alternate member of the Board of Ethics shall be selected in the same manner as the disqualified individual.
- (f) The members of the Board of Ethics shall serve without compensation. The city council shall provide meeting space for the Board of Ethics and, subject to budgetary procedures and requirements of the City, such supplies and equipment as may be reasonably necessary for the Board to perform its duties and responsibilities.
- (g) No person shall serve on the Board of Ethics who has been convicted of a felony involving moral turpitude in this state or any other state, unless such person's civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude.
- (h) No person shall serve on the Board of Ethics who is less than 21 years of age, who holds a public elective office, who is physically or mentally

unable to discharge the duties of a member of the Board of Ethics, or who is not qualified to be a registered voter in the City of \_\_\_\_\_.

- (i) Upon appointment, members of the Board of Ethics shall sign an affidavit attesting to their qualification to serve as a member of the Board of Ethics.
- (j) Members of the Board of Ethics may be removed by majority vote of the city governing authority.

**OR**

- (j) Members of the Board of Ethics may be removed by majority vote of the city governing authority for cause including, but not limited to, failure to maintain any requirement for qualification to serve on the Board of Ethics.

**Sec. \_\_\_\_ RECEIPT OF COMPLAINTS**

**Select Alternative A, B, C or D or draft another suitable alternative. If Alternative D is chosen, conform the language in the following sections by substituting “municipal court” for “board.”**

*Alternatives A & B*

- (a) All complaints against city officials shall be filed with the Board of Ethics, who may require that oral complaints, and complaints illegibly or informally drawn, be reduced to a memorandum of complaint in such form as may be prescribed by the city council or the Board of Ethics. Upon receipt of a complaint in proper form, the chair of the Board of Ethics shall forward a copy of the complaint to the city official or officials charged in the complaint within no more than seven (7) calendar days.

*Alternative C*

- (a) All complaints against city officials shall be filed with the city clerk, who will give it to the Mayor and Council. The Mayor and Council may require that oral complaints, and complaints illegibly or informally drawn, be reduced to a memorandum of complaint in such form as may be prescribed by the city council. Upon receipt of a complaint in proper form, the city clerk or the clerk’s designee shall forward a copy of the complaint to the city official or officials charged in the complaint within no more than seven (7) calendar days.

*Alternative D*

- (a) All complaints against city officials shall be filed with the clerk of the Municipal Court of the City of \_\_\_\_\_. Upon receipt of a complaint in proper form, the municipal court clerk shall forward a copy of the

complaint to the city official or officials charged in the complaint within no more than seven (7) calendar days.

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- (b) All complaints shall be submitted and signed under oath, shall be legibly drawn and shall clearly address matters within the scope of this ordinance.
- (c) Upon receipt of a complaint in proper form, the Board shall review it to determine whether the complaint is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary jurisdiction of the City Council. The Board of Ethics is empowered to dismiss in writing complaints that it determines are unjustified, frivolous, patently unfounded or fail to state facts sufficient to invoke the disciplinary jurisdiction of the City Council; provided, however, that a rejection of such complaint by the Board of Ethics shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official. For complaints that are not dismissed, the Board of Ethics is empowered to collect evidence and information concerning any complaint and add the findings and results of its investigations to the file containing such complaint.
- (d) Upon completion of its investigation of a complaint, the Board of Ethics is empowered to dismiss in writing those complaints which it determines are unjustified, frivolous, patently unfounded or which fail to state facts sufficient to invoke the disciplinary jurisdiction of the City Council; provided, however, that a rejection of such complaint by the Board of Ethics shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official.
- (e) The Board of Ethics is empowered to conduct investigations, to take evidence, and to hold hearings to address the subject matter of a complaint.
- (f) The Board of Ethics is empowered to adopt forms for formal complaints, notices, and any other necessary or desirable documents within its jurisdiction where the city council has not prescribed such forms.
- (g) Findings of the Board of Ethics shall be submitted to the City Council for action.

**Some elected officials raised concerns about potential misuse of the ethics complaint process for political purposes. The governing authority may elect to remain silent on this issue and allow local ethics complaints to be filed and processed at any time or the governing authority may consider Alternative A or B below or draft another suitable alternative.**



*Alternative A*

- (h) To discourage the filing of ethics complaints solely for political purposes, complaints will not be accepted against a person seeking election as a city official, whether currently serving as a city official or not, from the date qualifying opens for the elected office at issue through the date the election results for that office are certified. The time for filing complaints will not run during this period. Properly filed complaints will be accepted and processed after the election results have been certified.

*Alternative B*

- (h) To discourage the filing of ethics complaints solely for political purposes, ethics complaints against a person seeking election as a city official, whether currently serving as a city official or not, which are filed between the date of qualifying for municipal office and the date of certification of the election results will be held and will not be processed until the election results for that office have been certified.

**Sec. \_\_\_\_ SERVICE OF COMPLAINT**

The city clerk or Board of Ethics as appointed herein set forth shall cause the complaint to be served on the city official charged as soon as practicable but in no event later than seven (7) calendar days after receipt of a proper, verified complaint. Service may be by personal service, by certified mail, return receipt requested or by statutory overnight delivery. A hearing shall be held within sixty (60) calendar days after filing of the complaint. The Board of Ethics shall conduct hearings in accordance with the procedures and regulations it establishes but, in all circumstances, at least one hearing shall include the taking of testimony and the cross-examination of available witnesses. The decision of the Board of Ethics shall be rendered to Mayor and Council within seven (7) calendar days after completion of the final hearing. At any hearing held by the Board of Ethics, the city official who is the subject of inquiry shall have the right to written notice of the hearing and the allegations at least seven (7) calendar days before the first hearing, to be represented by counsel, to hear and examine the evidence and witnesses and, to oppose or try to mitigate the allegations. The city official subject to the inquiry shall have also have the right but not the obligation of submitting evidence and calling witnesses. Failure to comply with any of time deadlines in this section of the ordinance shall not invalidate any otherwise valid complaint or in any way affect the power or jurisdiction of the Board of Ethics or the city council to act upon any complaint.

**Sec. \_\_\_\_ RIGHT TO APPEAL**

- (a) Any city official or complainant adversely affected by the findings or recommendations of the Board of Ethics may obtain judicial review of such decision as provided in this Section.
- (b) An action for judicial review may be commenced by filing an application for a writ of certiorari in the Superior Court of X County within thirty (30) days after the decision of the Board of Ethics. The filing of such application shall act as supersedeas.

**Sec. \_\_\_\_ PENALTY**

Any person violating any provision of this article is subject to:

- (a) Public reprimand or censure by the city council; or
- (b) Request for resignation by the city council.”

Section 2.

The sections, subsections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any section, subsection, paragraph, sentence, clause or phrase shall be declared illegal by the valid judgment or decree of any court of competent jurisdiction, such illegality shall not affect any of the remaining section, subsections, paragraphs, sentences, clauses and phrases of this ordinance.

Section 3.

All ordinances and parts of ordinances in conflict herewith are expressly repealed.

Section 4.

The adoption date of this ordinance is \_\_\_\_\_ and the effective date of this ordinance shall be \_\_\_\_\_.

ORDAINED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

City of \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney.

**RESOLUTION**

**WHEREAS** the Board of Directors of the Georgia Municipal Association has established a Certified City of Ethics program; and,

**WHEREAS** the City of \_\_\_\_\_, wishes to be certified as a Certified City of Ethics under the GMA Program; and,

**WHEREAS** part of the certification process requires the Mayor and Council to subscribe to the ethics principles approved by the GMA Board;

**NOW THEREFORE BE IT RESOLVED** by the governing authority of the City of \_\_\_\_\_, Georgia, that as a group and as individuals, the governing authority subscribes to the following ethics principles and pledges to conduct its affairs accordingly:

- \* Serve Others, Not Ourselves
- \* Use Resources With Efficiency and Economy
- \* Treat All People Fairly
- \* Use The Power of Our Position For The Well Being Of Our Constituents
- \* Create An Environment Of Honesty, Openness And Integrity

**RESOLVED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
Councilmember

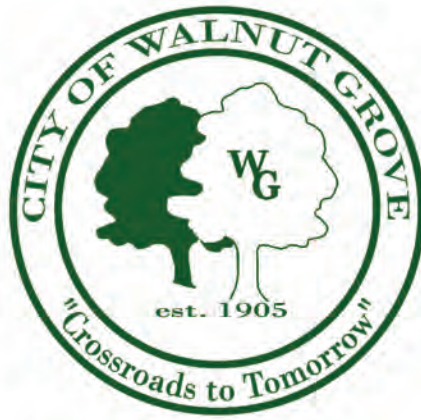
\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
ATTEST:

**Note:** A copy of the approved resolution and ordinance by cities who desire to participate in the GMA "Certified City of Ethics" program should be submitted to GMA, Attention: Legal Department, 201 Pryor Street, SW, Atlanta, Georgia 30303



**STATE AND FEDERAL  
VIEWS  
ON  
NEPOTISM**

# COMMITTEE ON ETHICS



## Nepotism

Below is a condensed version of this topic. For complete guidance please refer to the *House Ethics Manual* (</sites/ethics.house.gov/files/documents/2022/House-Ethics-Manual-2022-Print.pdf>), Chapter 7 on staff rights and duties.

Federal law, at 5 U.S.C. § 3110, generally prohibits a federal official, including a Member of Congress, from appointing, promoting, or recommending for appointment or promotion any “relative” of the official to any agency or department over which the official exercises authority or control. The statute defines a relative, for these purposes, as "an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister."

The law bans the employment only of these specifically named relatives.<sup>15</sup> It does not prohibit a Member from employing two individuals who are related to each other but not to the Member. In addition, the 107th Congress amended the Code of Official Conduct (House Rule 23, clause 8(c)(1)) to prohibit a Member from retaining a spouse in a paid position, and to prohibit a House employee from accepting compensation for work on a committee on which the spouse serves as a member.<sup>16</sup>

The employing Member or committee and subcommittee chairman must certify, on the monthly payroll authorizations, each employee’s relationship (or lack thereof) to **any** Members of Congress. The anti-nepotism law, as applied in the House, thus prohibits the hiring of a relative of a Member on that Member’s staff or on the staff of a committee or subcommittee that the Member chairs. The prohibition, however, does not apply “in the case of a spouse whose pertinent employment predates the One Hundred Seventh Congress” (House Rule 23, clause 8(c)(2)).

If a House employee becomes related to the employing Member through marriage (*e.g.*, an employee in the Member’s congressional office marries a relative of the Member), the employee may remain on the Member’s personal or committee staff, **unless** the employee is the spouse of the employing Member or works for a committee on which the Member serves. Similarly, if a Member becomes the supervisor of a relative (other than a spouse) who was hired by someone else (*e.g.*, the Member ascends to the

chairmanship of a committee or subcommittee for which the relative is already working), the relative may remain on the payroll. However, the Member may **not** then give that individual further promotions or raises, other than cost-of-living or other across-the-board adjustments. Changing an employee's status from part-time to full-time would not be considered a raise or promotion and, therefore, would be permitted under 5 U.S.C. § 3110.

Similarly, regulations issued by the Committee on House Administration prohibit the use of committee funds for the benefit of a Member or relative of a Member by way of a contract or otherwise. Specifically, those regulations state that “[u]nless specifically provided by federal laws, House rules, or Committee on House Administration regulations, no Member, relative of the Member, or anyone with whom the Member has a professional or legal relationship may directly benefit from the expenditure” of either the clerk hire or the official expenses allowance.<sup>17</sup> A comparable provision applies to House committees. The anti-nepotism restrictions apply only to employees on the Member's or a committee's official payroll. Campaign workers are not covered.

**Example 5.** Member D would like to hire his uncle by marriage to work in his congressional office. Member D would be in violation of House Rule 23 by hiring a specifically named relative.

**Example 6.** Employee F has been a caseworker in Member E's district office for two years, and she later marries Member E's son. Employee F may remain on Member E's payroll.

**Example 7.** Employee G works on Member F's committee, and Employee G and Member F get married. Employee G may no longer receive compensation from the committee on which Member F serves.

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<sup>15</sup> See *Lee v. Blount*, 345 F. Supp. 585, 588 (N.D. Cal. 1972).

<sup>16</sup> See H. Res. 5, 107th Cong., 1st Sess. (147 *Cong. Rec.* H6-10, H8 (Jan. 3, 2001)).

<sup>17</sup> *Members' Handbook*, *supra* note 6.



# THE STATE OF GEORGIA

## EXECUTIVE ORDER

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BY THE GOVERNOR:

**ESTABLISHING A CODE OF ETHICS  
FOR EXECUTIVE BRANCH OFFICERS AND EMPLOYEES**

**WHEREAS:** In order to maintain the public trust, it is essential that the government function in a manner consistent with the highest ethical standards; and

**WHEREAS:** In carrying out their official duties and obligations, all officers and employees of state government must work solely for the public good, striving vigilantly to avoid even the appearance that their actions are motivated by private or personal interest; and

**WHEREAS:** It is in the best interests of the State of Georgia that consistent policies on ethics be applied to all executive officers and employees; and

**WHEREAS:** State employees should use their powers and resources to further the public interest and not for any financial or other personal benefit, other than salaried compensation and employer-provided benefits; and

**WHEREAS:** State employees must safeguard their ability to make objective, fair, and impartial decisions and therefore should not accept benefits of any sort under circumstances in which it could be inferred by a reasonable observer that the benefit was intended to influence a pending or future decision or to reward a past decision; and

**WHEREAS:** State employees must avoid any conduct, whether in the context of business, financial, or social relationships, which might undermine the public trust, whether that conduct is unethical or lends itself to the appearance of ethical impropriety.

**NOW, THEREFORE, BY THE POWER VESTED IN ME AS GOVERNOR OF THE STATE OF GEORGIA, IT IS HEREBY**

**ORDERED:** That the Executive Order establishing a Code of Ethics for Executive Branch Officers and Employees of March 30, 2017, is hereby renewed and the following ethics policies shall remain in effect



**Section 1. Persons Subject to this Executive Order**

a. The following persons are subject to this Executive Order:

- (i) All employees in the Governor's Office and the Office of the Governor.
- (ii) The heads of all State agencies who are appointed by the Governor.
- (iii) Any other employees of Executive Branch officials, departments, boards, bureaus, agencies, commissions, councils, authorities, corporations, entities or instrumentalities of any kind, and others as may be designated by the Governor, to the extent that such designation does not conflict with Georgia law.

b. As used in this Order the term:

- (i) "Agency" means any Executive Branch department, board, bureau, agency, commission, council, authority, corporation, entity, or instrumentality of any kind, and others as may be designated by the Governor, to the extent that such designation does not conflict with Georgia law.
- (ii) "Agency head" means the executive head of an agency.
- (iii) "Charitable organization" shall have the meaning defined in O.C.G.A. Section 45-20-51.
- (iv) "Employee" shall mean any employee in the Office of the Governor, including the Governor, and any employee of any agency as defined herein.
- (v) "Family member" means a spouse, parent, grandparent, child, brother, sister, uncle, aunt, nephew, niece, first cousin, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister.
- (vi) "Gift" means anything of value exceeding \$75, including lodging, transportation, personal services, gratuities, subscriptions, memberships, trips, loans, extensions of credit, forgiveness of debts, or advances or deposits of money, or anything that retains values after acceptance.
- (vii) "Lobbyist" shall have the meaning defined in O.C.G.A. Section 21-5-70(6).

- (viii) "Officer" means the Governor and the heads of all State agencies who are appointed by the Governor. For purposes of this Order, all "officers" are also "employees" as that term is defined herein.
- (ix) "Person" means an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of individuals.
- (x) "Value" means the actual retail price or cost attributable to a gift, less applicable taxes and gratuities or a reasonable estimate based upon customary charges for like goods or services in the locality. A series of tickets to sporting, entertainment, or similar events shall be valued as one gift. Entrance fees, admission fees, or other tickets shall be valued at the face value of the ticket or fee, excluding any portion attributable to a charitable contribution, if provided by a charitable organization.

## **Section 2. Ethics Officer**

- a. Each agency, as well as the Office of the Governor, shall designate an Ethics Officer. The Ethics Officer shall take appropriate measures to ensure that the agency's employees become familiar with applicable ethics law and policies, including the policies set forth in this Order.
- b. The Executive Counsel is hereby designated the Ethics Officer of the Office of the Governor.

## **Section 3. Conflicts of Interest**

- a. An employee of the Executive Branch of the State shall make every effort to avoid even the appearance of a conflict of interest. An appearance of conflict exists when a reasonable person would conclude from the circumstance that the employee's ability to protect the public interest, or perform public duties, is compromised by personal interests. An appearance of conflict could exist even in the absence of a true conflict of interest.
- b. An employee of the Executive Branch of the State shall recuse himself or herself from any proceeding in which the employee's impartiality might reasonably be questioned due to the employee's personal or financial relationship with a participant in the proceeding. A "participant" includes, but is not limited to, an owner, shareholder, partner, employee, or agent of a business entity involved in the proceeding. If the employee is uncertain whether the relationship justifies recusal, then the employee shall disclose the relationship to the person presiding over the proceeding. The presiding officer shall determine the extent to which, if any, the employee will be permitted to participate. If the affected employee is the person presiding, then the vice chair or such other substitute presiding officer shall make the determination.

- c. An employee shall not be employed outside of his or her state employment or serve as a corporate officer or director of any organization if such employment or service conflicts with his or her duties as an employee of the state.

#### **Section 4. Gifts**

- a. Except as provided in paragraph “b” below, no employee, nor any person on his or her behalf, shall accept, directly or indirectly, any gift from any person with whom the employee interacts on official state business, including, without limitation, lobbyists and state vendors. If a gift has been accepted, it must be either returned to the donor or transferred to a charitable organization.
- b. Where appropriate for purposes of tradition, ceremony, or inter-governmental relations, or when acting as a representative of the Office of the Governor or an agency, an employee may accept a gift on behalf of an agency or the Office of the Governor.

#### **Section 5. Honoraria**

No employee may accept any honoraria whatsoever.

#### **Section 6. Expenses**

An employee on whose behalf actual and reasonable expenses for food, beverages, travel, lodging, and registration are paid to permit the employee’s participation in a meeting related to official or professional duties of the employee shall file a report no later than the 30 days after such expenses are paid. The report shall be filed with the designated Ethics Officer. The report must contain a description of each expense, and the purpose, date, and location of the meeting. Notwithstanding this provision, the preferred practice is for agencies and not third parties to pay such expenses.

#### **Section 7. Nepotism**

An employee shall not advocate for or cause the advancement, appointment, employment, promotion, or transfer of a family member to an office or position with an agency or with the Office of the Governor.

#### **Section 8. Lobbying**

- a. The use of lobbyists will not be required or preferred as a way to obtain access to employees. Employees will strongly encourage any lobbyist wishing to meet

with the Governor or his staff regarding his or her client and/or principal to bring a principal of his or her client to such meeting.

- b. Former employees should not use their former positions for financial or other personal gain or to influence legislation or procurement decisions. Employees shall decline to communicate on official government matters with any lobbyist who was an officer within the preceding one-year period.
- c. No agency shall be permitted to contract with any person to provide lobbying, as that term is defined in O.C.G.A. Section 21-5-70(5), services on behalf of that agency.
- d. Employees who promote or oppose the passage of any legislation by the General Assembly, or any committee thereof, shall coordinate all such activities with the Office of the Governor.

#### **SECTION 9. JUDICIAL APPOINTMENTS**

The following persons shall not be eligible for appointment by the Governor to fill a vacancy on the Supreme Court, the Court of Appeals, the superior courts, or the state courts: (a) any person who has made a contribution to, or expenditure on behalf of, the Governor or the Governor's campaign committee at any time after the vacancy occurs; or (b) any person who has made a contribution to, or expenditure on behalf of, the Governor or the Governor's campaign committee within the 30 days preceding the vacancy, unless such person requests and is granted a refund of such contribution or reimbursement of such expenditure.

#### **SECTION 10. FAIR AND EQUAL ACCESS**

Employees are required to afford all constituents fair and equal opportunity to express their concerns and ideas regarding State programs and policies without regard to their political affiliation, sophistication, or affluence. Recommendations and decisions made by employees in the performance of their duties shall be made without bias.

#### **SECTION 11. POLITICAL ACTIVITIES**

- a. Employees wishing to take part in political activities are responsible for complying with applicable federal and state law.
- b. Employees are prohibited from soliciting or knowingly accepting any campaign contribution in a governmental building or office. "Accept" means to receive a contribution by personal hand-delivery from a contributor or his agent. This does not apply when a government-owned building or any portion thereof is rented for the specific purpose of holding a campaign fundraiser.

- c. Employees are permitted to express their opinions on political subjects and candidates and to take an active part in political campaigns outside of working hours, including the wearing of badges or buttons and displaying of bumper stickers and posters. Employees are encouraged to vote.
- d. Employees who wish to seek office must comply with applicable federal and state laws. Employees must notify the designated Ethics Officer prior to announcing or qualifying for any elected position or office.

**Section 12. Personal Use of Telephone and Internet Access**

- a. Personal long-distance calls shall not be charged to State telephones. Employees must use their personal long-distance credit card or other personal resource for this purpose.
- b. State-provided internet access is intended for public business. Employee use of the internet may be recorded and monitored. No employee is permitted to use or access the internet for pornographic, obscene, or other improper purposes.

**Section 13. Miscellaneous**

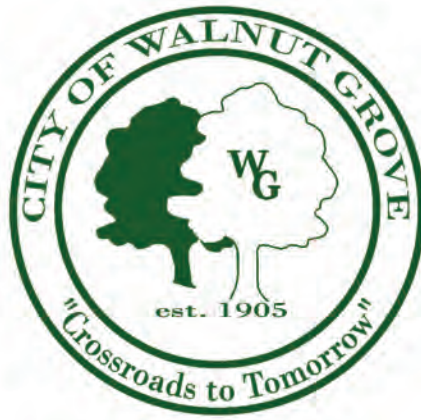
There may be unique or compelling circumstances warranting exceptions to or waivers from these policies in certain individual cases. In those instances, approval of the Executive Counsel to the Governor is required.

**Section 14. Sanctions**

Each agency head shall make a copy of this Order available to all employees and shall institute procedures for its enforcement consistent with all applicable Georgia laws. Employees who violate this Order are subject to disciplinary action, including termination of employment, subject to review by the Executive Counsel. The agency head of each agency shall be responsible to the Office of the Governor for the faithful enforcement of this Order, and shall report all alleged violations to the Inspector General.

This 14<sup>TH</sup> day of January, 2019.

  
GOVERNOR



**CITY OF WALNUT GROVE**  
**ETHICS ORDINANCE**  
**AND**  
**SAMPLE ORDINANCE**

**ORDINANCE # 2007- 01**

**AN ORDINANCE TO ESTABLISH A REVISED CODE OR ETHICS FOR CITY OF WALNUT GROVE, GEORGIA.**

NOW COMES the City of Walnut Grove and hereby supplements and amends **Chapter 3: Administration, Sections 3-102 and 3-1401** as follows.

1) By striking the current language of Chapter 3: Administration, Section 3-102 in its entirety.

2) By striking the current language of Chapter 3: Administration, Section 3-1401 in its entirety.

3) By adding the following language:

**Section 3-102            Ethics**  
**Paragraphs:**

1.            **Intent.**
2.            **Definitions.**
3.            **Prohibitions.**
4.            **Disclosure of Conflicts of Interest.**
5.            **Disqualification.**
6.            **Prohibited Contracts.**
7.            **Restrictions on Contracts with Former Members of the Governing Authority.**
8.            **Complaints.**
9.            **Board of Ethics.**
10.           **Service of Complaint; Hearings and Disposition of Complaints; Member Rights.**
11.           **Penalty.**
12.           **Appeals.**

1.            **Intent.**

It is essential to the proper administration and operation of the City of Walnut Grove that the members of its Governing Authority be, and give the appearance of being, independent and impartial; that public office not be used for private gain; and that there be public confidence in the integrity of the Governing Authority. The Governing Authority finds that the public interest requires that they protect against such conflicts of interest by establishing appropriate ethical standards with respect to the conduct of the members of the Governing Authority in situations where a conflict may exist.

## 2. Definitions.

used in this Ordinance, the term:

(b) "Complaint" means a written sworn statement filed with the Mayor or Mayor-Pro-Tem containing specific allegations of misconduct by a member; provided, however, such allegations must be filed within six (6) months of discovery of the alleged misconduct.

(c) "Interest" means any direct pecuniary benefit, which is not a remote interest held by or accruing to a member of the Governing Authority 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. A member of the Governing Authority shall be deemed to have an interest in transactions involving:

(4) Any person in the member's immediate family;

(5) Any person with whom a contractual relationship exists whereby the member may receive any payment or other benefits unless the member is receiving a benefit for goods or services in the normal course of business for which the member has paid a commercially reasonable rate;

(6) Any business in which the member is a director, officer, employee, agent, or shareholder, except as otherwise provided herein; or

(7) Any person of whom the member is a creditor, whether secured or unsecured.

(c) "Governing Authority" or "member of the Governing Authority" means the Mayor or any Councilmember of the City and any member appointed to any Board or Commission of the City.

## 3. Prohibitions.

No member of the Governing Authority shall:

(a) By conduct give reasonable basis that any person can improperly influence him/her or unduly enjoy his/her favor in the performance of official acts;

(b) Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, or thing of value for him/herself or another person if it could reasonably be considered to influence the member in the discharge of official duties; \*

(c) Disclose or otherwise use confidential information acquired by virtue of his/her official position for his/her or another person's private gain;

(d) Use his/her official position to attempt to secure privileges that are not available to the general public;

(e) Engage in, accept employment with, or render services for any private business or professional activity when such employment or rendering of services is in direct conflict with the proper discharge of official duties; \*\*

(f) Engage in any activity or transaction that is prohibited by law now existing or hereafter enacted which is applicable to him/her by virtue of being a member of the Governing Authority;

(g) Use his/her position to request or require an employee to:

(8) 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;

(9) Perform any work outside the employee's normal course of municipal



employment;

(10) Purchase goods or services to be used for personal, business, or political purposes; and

(11) Work for the member personally without paying the employee just compensation;

(h) Use government property of any kind for other than officially approved activities, nor shall he/she direct employees to use such property for any purposes other than those officially approved;

(xiii) Use his/her position in any way to coerce another person to provide any financial benefit to himself/herself or persons having an interest.

\* Prohibition (b) of this

Section shall not apply in the case of:

(1) An occasional non-pecuniary gift of insignificant value;

(2) An award publicly presented in recognition of public service;

(3) A commercially reasonable loan or other financial transaction made in the ordinary course of business by an institution or individual authorized by the laws of Georgia to engage in the making of such a loan or financial transaction;

(4) Campaign contributions made and reported in accordance with Georgia law.

\*\* Prohibition (e) of this section shall not apply to a member of the Governing Authority who is a licensed professional and appears on behalf of any applicant in such professional capacity so long as disclosures required by Paragraph 4 are made to the Board or Commission Chairperson 30 days prior to any action being taken, and the member is associated with the project at the time the initial application is filed.

#### **4. Disclosure of Conflicts of Interest.**

An appointed member of the Governing Authority who has an interest that he/she

has reason to believe may be affected by his/her official acts or actions or by the official acts or actions of the Governing Authority shall disclose the precise nature of such interest by written or verbal statement 30 days prior to the Governing Authority's taking official action on a matter affecting such interest and abstain from discussion and voting. An elected member of the Governing Authority shall disclose the nature of any interest he/she has at the time such matter is presented to Mayor and Council for discussion. Such written or verbal statements shall be recorded into the minutes of the meeting and thus become part of the public record. Following any disclosure made pursuant to this section, the member shall refrain from all ex-parte communications with other members regarding the application in which he/she has an interest.

#### **5. Disqualification.**

A member of the Governing Authority shall disqualify himself/herself from participating in any official act or action of the City which results in a pecuniary benefit to the member or a business or activity in which he/she has an interest, when such benefit is not available to the public at large.

#### **6. Prohibited Contracts.**

The City shall not enter into any contract involving services or property with  
a  
member of the Governing Authority or with a business in which a member of the Governing Authority has an interest. This section shall not apply in the case of:

(a) The designation of a bank or trust company as a depository for City funds;  
(b) The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest in the community for such loan;  
(c) Contracts entered into in accordance with the Official Code of Georgia Annotated, §16-10-6.

(d) Contracts entered into under circumstances that constitute an emergency situation, provided that the Mayor prepares a written record explaining the emergency.

(e) Contracts entered into with a Member of the Governing Authority, or with a business in which a member of the governing authority has an interest, provided that such contract is the result of a competitive bid, disclosure of the nature of such member's interest is made prior to the time any bid is submitted, and a waiver of the prohibition contemplated by this section is issued by the City Attorney following disclosure.

**7. Restrictions on Contracts with Former Members of the Governing Authority.**

The City shall not enter into any contract with any person or business represented by such person, who has been within the preceding twelve-month (12) period a member of the Governing Authority, unless the contract is awarded by a competitive bid or a committee selection process.

**8. Complaints.**

Any person having a complaint against any member of the Governing Authority for an alleged ethics violation shall file in writing a verified complaint setting forth the particular facts and circumstances which constitute the alleged violation against the Governing Authority. The complaint shall be filed with the Mayor, or in the event the complaint regards the Mayor, shall be filed with the Mayor-Pro-Tem. Upon receipt of a complaint, the Mayor, or in the event the complaint regards the Mayor, the Mayor-Pro-Tem shall appoint three members of Council, who, along with the City Attorney, acting ex-officio, shall constitute an investigating committee to determine whether the complaint sets forth significant facts and circumstances so as to warrant a hearing before the Board of Ethics. In the event the complaint does not set forth sufficient facts to constitute an alleged violation and is found unjustified, frivolous or patently unfounded, it shall be dismissed and the complainant notified immediately. In the event the complaint is found to state sufficient facts to warrant a hearing before the Board of Ethics, the Board shall be appointed as provided herein.

**9. Board of Ethics.**

(a) Composition of the Board of Ethics:

The Board of Ethics of the City shall be composed of three (3) residents of the City to be appointed as provided in paragraphs 2 and 3 of this subsection. 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. No person shall serve as a member of the Board of Ethics if the person has, or has had within the preceding one (1) year period, any interest in any contract, transaction, or official action of the City.

(i) The Mayor and Councilmembers shall each designate one (1) qualified citizen to provide a pool of five (5) individuals who have consented to serve as a member of such Board of Ethics and who will be available for a period of two (2) years to be called upon to serve in the event a Board of Ethics is appointed.

(ii) The City Clerk shall maintain a listing of these five (5) qualified citizens. Should the investigating committee determine a complaint warrants a hearing before the Board of Ethics, the Mayor and Council, at the first public meeting after such determination, shall draw names randomly from the listing of qualified citizens until the specified three (3) members of the Board of Ethics have been appointed. Such Board will elect one of its members to serve as Chairman.

(iii) The members of the Board of Ethics shall serve without compensation. The Governing Authority of the City 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 for it to perform its duties and responsibilities.

(b) The constituted Board of Ethics shall have the following duties and powers:

(iv) To establish procedures, rules and regulations governing its internal organization and conduct of its affairs;

(v) To hold a hearing within sixty (60) days after the receipt of complaint. Failure to hold a hearing within the specified time shall result in dismissal of the complaint as to the transaction and shall prevent refile if a complaint arises in the same incident for at least a period of six (6) months;

(vi) To prescribe forms, approved by the City Attorney, for the disclosure required in this Ordinance and to make available to the public information disclosed as provided in this section;

(vii) To receive and hear complaints of violations of the standards required by this ordinance;

(viii) To make such investigation and response to a complaint as it deems necessary to determine whether any person has violated any provisions of this Ordinance.

(ix) To hold such hearings and make such inquiries as deemed necessary to investigate and rule upon complaints;

(x) To report its findings to the Governing Authority for such action as the Governing Authority deems appropriate.

#### **10. Service of Complaint; Hearings and Disposition of Complaints; Member Rights.**

The Board of Ethics as appointed herein set forth shall cause the complaint to be

served on the member of the Governing Authority charged as soon as practicable. Service may be by personal service or by certified mail, return receipt requested. A hearing shall be held within sixty (60) days after filing of the complaint. The Board of Ethics shall conduct the hearing in accordance with the procedures and regulations it establishes but, in all circumstances, the hearing shall include the taking of testimony and the cross-examination of witnesses. The decision of the Board of Ethics shall be rendered to Mayor and Council within five (5) days after completion of the hearing. At any hearing held by the Board of Ethics, the member of the Governing Authority who is the subject of inquiry shall have the right to written notice of the allegations at least 10 business days before a hearing, to be represented by counsel, to hear and examine the evidence and witnesses in opposition or in extenuation.

**11. Penalty.**

Any member of the Governing Authority who knowingly violates any provision of the Code of Ethics provided in this Ordinance shall be subject to public reprimand or censure by the Governing Authority of the City.

**12. Appeals.**

(a) Any member of the Governing Authority or the Complainant adversely affected by these findings of the Board of Ethics may obtain judicial review of such decision as provided in this Section.

(b) An action for judicial review may be commenced by filing an application for a writ of certiorari in the Superior Court of Walton County within thirty (30) days after the decision of the Board of Ethics. The filing of such application shall act as supersedes.

**EFFECTIVITY.** This Ordinance shall become effective on the 9<sup>th</sup> day of May, 2007.

**VALIDITY.** If any section, paragraph, clause, phrase, or provision of this Ordinance shall be adjudged invalid or held unconstitutional, such decisions shall not effect the remaining portions of this Ordinance.

So Ordained and Approved this 8<sup>th</sup> day of May, 2007.

**CITY OF WALNUT GROVE, GEORGIA**

By:  (SEAL)  
Don Cannon, Mayor

Attest: Laura M. Henderson (SEAL)  
Laura Henderson, City Clerk

Lamar Lee  
Mayor Pro-Tem

Wayne R. ...  
Council member

\_\_\_\_\_  
Council member

[Signature]  
Council member



# Pages From City of Walnut Grove Code of Ordinances 2013

## Section 3-102

## Code of Ethics

1. **Intent.** It is essential to the proper administration and operation of the City of Walnut Grove that the members of its Governing Authority be, and give the appearance of being, independent and impartial; that public office not be used for private gain; and that there be public confidence in the integrity of the Governing Authority. The Governing Authority finds that the public interest requires that they protect against such conflicts of interest by establishing appropriate ethical standards with respect to the conduct of the members of the Governing Authority in situations where a conflict may exist.
2. **Definitions.** In this Ordinance, the term:
  - A. **Complaint** means a written sworn statement filed with the Mayor or Mayor-Pro-Tem containing specific allegations of misconduct by a member; provided, however, such allegations must be filed within six (6) months of discovery of the alleged misconduct.
  - B. **Interest** means any direct pecuniary benefit, which is not a remote interest held by or accruing to a member of the Governing Authority 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. A member of the Governing Authority shall be deemed to have an interest in transactions involving:
    - (1) Any person in the member's immediate family;
    - (2) Any person with whom a contractual relationship exists whereby the member may receive any payment or other benefits unless the member is receiving a benefit for goods or services in the normal course of business for which the member has paid a commercially reasonable rate;
    - (3) Any business in which the member is a director, officer, employee, agent, or shareholder, except as otherwise provided herein; or
    - (4) Any person of whom the member is a creditor, whether secured or unsecured.
  - C. **Governing Authority or Member of the Governing Authority** means the Mayor or any Councilmember of the City and any member appointed to any Board or Commission of the City.
3. **Prohibitions.** No member of the Governing Authority shall:
  - A. By conduct give reasonable basis that any person can improperly influence him/her or unduly enjoy his/her favor in the performance of official acts;
  - B. Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, or thing of value for him/herself or another person if it could reasonably be considered to influence the member in the discharge of official duties;
  - C. Disclose or otherwise use confidential information acquired by virtue of his/her official position for his/her or another person's private gain;
  - D. Use his/her official position to attempt to secure privileges that are not available to the general public;
  - E. Engage in, accept employment with, or render services for any private business or professional activity when such employment or rendering of services is in direct conflict with the proper discharge of official duties;
  - F. Engage in any activity or transaction that is prohibited by law now existing or hereafter enacted which is applicable to him/her by virtue of being a member of the Governing Authority;
  - G. Use his/her position to request or require an employee to:
    - (1) 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;
    - (2) Perform any work outside the employee's normal course of municipal employment;
    - (3) Purchase goods or services to be used for personal, business, or political purposes; and
    - (4) Work for the member personally without paying the employee just compensation;
  - H. Use government property of any kind for other than officially approved activities, nor shall he/she direct employees to use such property for any purposes other than those officially approved;
  - I. Use his/her position in any way to coerce another person to provide any financial benefit to himself/herself or persons having an interest.
  - J. Prohibition (B) of this Section shall not apply in the case of:
    - (1) An occasional non-pecuniary gift of insignificant value;
    - (2) An award publicly presented in recognition of public service;
    - (3) A commercially reasonable loan or other financial transaction made in the ordinary course of business by an institution or individual authorized by the laws of Georgia to engage in the making of such a loan or financial transaction;

- (4) Campaign contributions made and reported in accordance with Georgia law.
- K. Prohibition (E) of this section shall not apply to a member of the Governing Authority who is a licensed professional and appears on behalf of any applicant in such professional capacity so long as disclosures required by Paragraph 4 are made to the Board or Commission Chairperson thirty (30) days prior to any action being taken, and the member is associated with the project at the time the initial application is filed.
4. **Disclosure of Conflicts of Interest.** An appointed member of the Governing Authority who has an interest that he/she has reason to believe may be affected by his/her official acts or actions or by the official acts or actions of the Governing Authority shall disclose the precise nature of such interest by written or verbal statement thirty (30) days prior to the Governing Authority's taking official action on a matter affecting such interest and abstain from discussion and voting. An elected member of the Governing Authority shall disclose the nature of any interest he/she has at the time such matter is presented to Mayor and Council for discussion. Such written or verbal statements shall be recorded into the minutes of the meeting and thus become part of the public record. Following any disclosure made pursuant to this section, the member shall refrain from all ex-parte communications with other members regarding the application in which he/she has an interest.
5. **Disqualification.** A member of the Governing Authority shall disqualify himself/herself from participating in any official act or action of the City which results in a pecuniary benefit to the member or a business or activity in which he/she has an interest, when such benefit is not available to the public at large.
6. **Prohibited Contracts.** The City shall not enter into any contract involving services or property with a member of the Governing Authority or with a business in which a member of the Governing Authority has an interest- This section shall not apply in the case of:
- A. The designation of a bank or trust company as a depository for City funds;
- B. The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest in the community for such loan;
- C. Contracts entered into in accordance with the Official Code of Georgia Annotated, §16-10-6.
- D. Contracts entered into under circumstances that constitute an emergency situation, provided that the Mayor prepares a written record explaining the emergency.
- E. Contracts entered into with a Member of the Governing Authority, or with a business in which a member of the governing authority has an interest, provided that such contract is the result of a competitive bid, disclosure of the nature of such member's interest is made prior to the time any bid is submitted, and a waiver of the prohibition contemplated by this section is issued by the City Attorney following disclosure.
7. **Restrictions on Contracts with Former Members of the Governing Authority.** The City shall not enter into any contract with any person or business represented by such person, who has been within the preceding twelve-month (12) period a member of the Governing Authority, unless the contract is awarded by a competitive bid or a committee selection process.
8. **Complaints.** Any person having a complaint against any member of the Governing Authority for an alleged ethics violation shall file in writing a verified complaint setting forth the particular acts and circumstances which constitute the alleged violation against the Governing Authority. The complaint shall be filed with the Mayor, or in the event the complaint regarding the Mayor, shall be filed with the Mayor-Pro-Tem. Upon receipt of a complaint, the Mayor, or in the event the complaint regarding the Mayor, the Mayor-Pro-Tem shall appoint three members of Council, who, along with the City Attorney, acting ex-officio, shall constitute an investigating committee to determine whether the complaint sets forth significant facts and circumstances so as to warrant a hearing before the Board of Ethics. In the event the complaint does not set forth sufficient facts to constitute an alleged violation and is found unjustified, frivolous or patently unfounded, it shall be dismissed and the complainant notified immediately. In the event the complaint is found to state sufficient facts to warrant a hearing before the Board of Ethics, the Board shall be appointed as provided herein
9. **Board of Ethics.**
- A. **Composition of the Board of Ethics:** The Board of Ethics of the City shall be composed of three (3) residents of the City to be appointed as provided in paragraphs 2 and 3 of this subsection. 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. No person shall serve as a member of the Board of Ethics if the person has, or has had within, the preceding one (1) year period, any interest in any contract, transaction, or official action of the City.
- B. **Designation of Members.**
- (1) The Mayor and Councilmembers shall each designate one (1) qualified citizen to provide a pool of five (5) individuals who have consented to serve as a member of such Board of Ethics and who will be available for a period of two (2) years to be called upon to serve in the event a Board of Ethics is appointed.

- (2) The City Clerk shall maintain a listing of these five (5) qualified citizens. Should the investigating committee determine a complaint warrants a hearing before the Board of Ethics, the Mayor and Council, at the first public meeting after such determination, shall draw names randomly from the listing of qualified citizens until the specified three (3) members of the Board of Ethics have been appointed. Such Board will elect one of its members to serve as Chairman.

**C. Compensation.**

- (1) The members of the Board of Ethics shall serve without compensation. The Governing Authority of the City 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 for it to perform its duties and responsibilities.

**D. Board Powers and Duties.**

- (1) The constituted Board of Ethics shall have the following duties and powers:
  - (a) To establish procedures, rules and regulations governing its internal organization and conduct of its affairs;
  - (b) To hold a hearing within sixty (60) days after the receipt of complaint. Failure to hold a hearing within the specified time shall result in dismissal of the complaint as to the transaction and shall prevent refiling if a complaint arises in the same incident for at least a period of six (6) months;
  - (c) To prescribe forms, approved by the City Attorney, for the disclosure required in this Ordinance and to make available to the public information disclosed as provided in this section;
  - (d) To receive and hear complaints of violations of the standards required by this ordinance;
  - (e) To make such investigation and response to a complaint as it deems necessary to determine whether any person has violated any provisions of this Ordinance.
  - (f) To hold such hearings and make such inquiries as deemed necessary to investigate and rule upon complaints;
  - (g) To report its findings to the Governing Authority for such action as the Governing Authority deems appropriate,

**10. Service of Complaint; Hearings and Disposition of Complaints; Member Rights.** The Board of Ethics as appointed herein set forth shall cause the complaint to be served on the member of the Governing Authority charged as soon as practicable. Service may be by personal service or by certified mail, return receipt requested. A hearing shall be held within sixty (60) days after filing of the complaint. The Board of Ethics shall conduct the hearing in accordance with the procedures and regulations it establishes but, in all circumstances, the hearing shall include the taking of testimony and the cross-examination of witnesses. The decision of the Board of Ethics shall be rendered to Mayor and Council within five (5) days after completion of the hearing. At any hearing held by the Board of Ethics, the member of the Governing Authority who is the subject of inquiry shall have the right to written notice of the allegations at least ten (10) business days before a hearing, to be represented by counsel, to hear and examine the evidence and witnesses in opposition or in extenuation.

**11. Penalty.** Any member of the Governing Authority who knowingly violates any provision of the Code of Ethics provided in this Ordinance shall be subject to public reprimand or censure by the Governing Authority of the City.

**12. Appeals.** Any member of the Governing Authority or the Complainant adversely affected by these findings of the Board of Ethics may obtain judicial review of such decision as provided in this Section.

- A.** An action for judicial review may be commenced by filing an application for a writ of certiorari in the Superior Court of Walton County within thirty (30) days after the decision of the Board of Ethics. The filing of such application shall act as supersedes.

*(Effective 5/9/07)*



**ORDINANCE NO \_\_\_\_\_**

**AN ORDINANCE TO DELETE CHAPTER 3-002 OF THE CODE OF ORDINANCES, CITY OF WALNUT GROVE, GEORGIA; AND CREATE A NEW ORDINANCE TO BE DESIGNATED AS "CODE OF ETHICS" TO PROVIDE A NEW CODE OF ETHICS AND CONDUCT TO GOVERN THE ETHICS OF ELECTED AND APPOINTED OFFICIALS OF THE CITY; TO PROVIDE FOR PENALTIES; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**WHEREAS** the duly elected governing authority of the City of Walnut Grove, Georgia is authorized by O.C.G.A. § 36-35-3 to adopt ordinances relating to its property, affairs and local government; and

**WHEREAS**, the duly elected governing authority of the City of Walnut Grove, Georgia is the Mayor and Council thereof; and

**WHERE AS**, the governing authority deems it essential to the proper operation of democratic government that the public officials be, and give the appearance of being, independent, impartial, and responsible to the people; those governmental decisions and policies be made in the proper channels of the governmental structure; and that public office not be used for personal gain; and

**WHEREAS** such measures are necessary to provide the public with confidence in the integrity of its government.

**WHEREAS** it is the policy of the city that its elected officials, commission, board and authority appointees, and its appointed officials while conducting city business guide their ethics and conduct to achieve the following standards:

1. Serve others and not themselves;
2. Be independent, impartial and responsible;
3. Use resources with efficiency and economy;
4. Treat all people fairly;
5. Use the power of their position for the well-being of their constituents; and
6. Create an environment of honesty, openness, and integrity.

**NOW THEREFORE BE IT AND IT IS HEREBY ORDAINED BY THE GOVERNING AUTHORITY THAT A NEW CODE OF ETHICS AND CONDUCT IS APPROVED AND ADOPTED TO HAVE THE FOLLOWING TERMS AND PROVISIONS:**

**SECTION 1.** That the Code of Ordinances of the City of Walnut Grove, Georgia is hereby amended by deleting the existing Code of Ethics as contained in the General Code of the City of Walnut Grove Section 3-002 and in its place, adopts and ordains the following provision:

**SECTION ONE - CODE OF ETHICS**

1. **Principal policies.** 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 or position to unethically improve his or her own private standing. The principal policies that form the foundation of this code of ethics are as follows:

- (A) The trust of citizens in their government is cultivated when individual public servants act with integrity and when the public is aware that its servants act with integrity.
- (B) The constitutions, laws and regulations of the United States and the State of Georgia and ordinances of the City of Walnut Grove should be upheld as a minimum standard of conduct.
- (C) The most effective way to eradicate unethical practices is consistently to act with the highest moral principles and react appropriately to the ethical decisions of others.
- (D) City of Walnut Grove officials should exercise sound judgment and apply ethical principles in making decisions that in any manner reflect upon their elected office.
- (E) All citizens should be treated with courtesy, impartiality, and equality.

2. **Intent.**

It is the intent of this code of ethics that City of Walnut Grove officials shall not knowingly engage in any activity that is incompatible with the proper discharge of their official duties or which would tend to impair their judgment or actions in the performance of their official duties. Furthermore, City of Walnut Grove officials should avoid any action that might result in or create the appearance of,

- (A) Using public office or position in an unethical manner for private gain,

- (B) Impeding City of Walnut Grove efficiency or economy, or
- (C) Affecting adversely the confidence of the public in the integrity of those who conduct the affairs and business of the City of Walnut Grove.

3. **Definitions.**

As used in this section, the following words shall have the meaning ascribed to them below (unless otherwise required by context):

- (A) Benefit means anything of monetary value that a reasonably prudent person would recognize as being likely to be intended to influence a City of Walnut Grove official or employee in the performance or non-performance of an official action.
- (B) Immediate family : means spouse, child, parent or sibling of a City of Walnut Grove official
- (C) City of Walnut Grove official means the mayor, city council members, appointed officials, members of appointed boards, commissions and authorities.
- (D) Incidental interest means an interest in a person, entity or property which is not a substantial interest as defined herein and which has insignificant value.
- (E) Remote interest means an interest of a person or entity, including a city official, which would be affected in the same way as the general public. For example, the interest of an official in the property tax rate, general city fees, city utility charges or a comprehensive zoning ordinance or similar matters is deemed remote to the extent that the official would be affected in common with the general public.
- (F) Substantial interest means an interest, either directly or through a member of the immediate family, in another person or entity, where:
  - 1. the interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000.00 or more of the equity or market value of the entity; or
  - 11. the funds received by the person from the other person or entity during the previous 12 months either equal or exceed
    - (a) \$5,000.00 in salary, bonuses, commissions or professional fees, or \$5,000.00 in payment for goods, products or services, or
    - (b) ten percent of the recipient's gross income during that period, whichever is less;

(c) the person serves as a corporate officer or member of the board of directors or other governing board of a for-profit entity other than a corporate entity owned or created by the mayor and city council; or

(d) the person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000.00 or more.

(G) **Acceptance of gifts.** City of Walnut Grove officials shall not solicit or accept, directly or indirectly, any benefit or payment from any person, corporation or group that has, or is seeking to obtain, a contractual or other business or financial relationship with the City of Walnut Grove.

(H) **Substantial interests.** City of Walnut Grove officials may not:

1. Have a substantial interest that conflicts with their responsibilities and duties as trustees of the public good, or
- ii. Directly or indirectly engage in financial transactions as a result of, or primarily relying upon, confidential information obtained in the course of their office or received due to their position.

(I) **Use of public property.** A City of Walnut Grove official shall not use City of Walnut Grove property of any kind for other than officially approved activities, nor shall he or she direct a City of Walnut Grove employee to use such property for other than official purposes.

(J) **Use of confidential information.** A City of Walnut Grove official shall not directly make use of, or permit others to make use of, for the purpose of furthering a private interest, City of Walnut Grove information not made available to the general public.

(K) **Coercion.** A City of Walnut Grove official shall not use his or her position in any way to coerce, or give the appearance of coercing:

1. Another person to provide any benefits to him or her or to his or her immediate family as defined herein, or
11. A City of Walnut Grove employee, an appointed official of the City of Walnut Grove, or a contract employee to provide any benefit to him or her or to his or her immediate family as defined herein, or
111. Any judge in the outcome of matters before the court.

(L) **Purchases.** A City of Walnut Grove official shall not order any goods or services for the City of Walnut Grove or on behalf of City of Walnut Grove without proper authorization in compliance with the City of Walnut Grove Code.

- (M) **Conflicts of interest.** In accordance with the Charter, no elected official, appointed officer, or employee of the City of Walnut Grove or any authority or agency to which the Charter applies shall represent private interests, other than his or her own, in any action or proceeding against City of Walnut Grove or any portion of its government; or vote or otherwise actively participate in the negotiation or the making of any contract between the City of Walnut Grove government and any business or entity in which he or she has a substantial interest. No city official shall enter into any contract with, or have any interest in, either directly or indirectly, the city except as authorized by state law.
- I. This prohibition shall not be applicable to the professional activities of the city attorney in his or her work as an independent contractor and legal advisor on behalf of the city.
  - 11. This prohibition shall not be applicable to an otherwise valid employment contract between the city and a city official who is not elected (such as, by way of example, a city manager or chief of police).
  - III. Any official who has a proprietary interest in an agency doing business with the city shall make that interest known in writing to the city council and the city clerk.
- (N) **City of Walnut Grove employees.** A City of Walnut Grove official shall not use a City of Walnut Grove employee for personal or private business during regular business hours or during the employee's scheduled shift.
- (O) **Travel expenses.** A City of Walnut Grove official shall not draw per diem or expense money from City of Walnut Grove to attend a seminar, convention, conference or similar meeting and then fail to attend the seminar, conference, convention or similar meeting.
- (P) **Commitments.** A City of Walnut Grove official shall not act or create the appearance of acting on behalf of the City of Walnut Grove by promising to authorize or prevent any future official action of any nature, without proper authorization.
- (Q) **False statements.** No City of Walnut Grove official shall make a false or materially misleading statement or in any manner commit fraud in relation to any City of Walnut Grove or public business.
- (R) **Disclosure.** A City of Walnut Grove official or employee shall disclose the nature of any substantial interest he or she has in a matter at the time such matter is presented to the mayor and council for discussion and/or action. Such disclosure shall be recorded into the minutes of the meeting and become part of the public record.
- (S) **Deliberation and vote prohibited.** No City of Walnut Grove official shall participate in a City of Walnut Grove Council Committee or Council meeting during 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 substantial interest. Provided, however, that such elected official shall not be precluded from addressing a council committee or the mayor and council during the discussion of any agenda item or any official act or action in the same manner as a member of the general public. Where the interest of a city official in the subject matter of a vote or decision is remote or incidental, the city official may participate in the vote or decision and need not disclose the interest.

- (T) **Duty to leave meeting.** To avoid the appearance of impropriety, after any member of the commission is determined to have a financial interest or a potential financial interest in any matter, they shall leave their regular seat as a member of the mayor and city council or council committee and not return to it until deliberation and action on the matter is completed. Provided, however, that such elected official shall not be precluded from addressing a council committee or the mayor and council during the discussion of any agenda item or any official act or action in the same manner as a member of the general public.
- (U) **Ethics hearing officer.** The chief judge of municipal court, or in his absence his designee who shall be another municipal court judge or if no municipal court judge is available, the city attorney, is hereby designated as the ethics hearing officer. The ethics hearing officer shall serve without compensation and may be removed for cause by a majority vote of the mayor and city council. If the hearing officer is removed for cause, the next most senior municipal court judge or the city attorney shall serve as hearing officer.
- (V) **Receipt of complaints.** All complaints against a City of Walnut Grove official shall be filed in writing with the city clerk to be referred to the ethics hearing officer in such form as may be prescribed by the ethics hearing officer. Upon receipt of a complaint in proper form, the ethics hearing officer shall:
- I. Review it to determine whether the complaint is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke disciplinary action or is to be considered for further investigation.
  - II. Be empowered to dismiss those complaints that are unjustified, frivolous, patently unfounded or that fail to state facts sufficient to constitute a violation of this article; provided, however, that a rejection of such complaint by the ethics hearing officer shall not deprive the complaining party of any action he or she might otherwise have at law or in equity against the City of Walnut Grove official;
  - III. Be empowered to collect evidence and information concerning any complaint and to add to the findings and results of its investigation to the file containing such complaint;

- 1v. Be empowered to conduct probable cause investigations, to take evidence and hold hearings. The ethics hearing officer shall give the City of Walnut Grove official notice and an opportunity for a hearing;
  - v. Be empowered to recommend to the mayor and city council that any City of Walnut Grove official found to have violated any provision of this article receive a reprimand, censure or be requested to resign his or her office.
  - v1. Be empowered to refer a complaint to the sheriff of City of Walnut Grove or other law enforcement agency for investigation and possible prosecution;
  - v11. Take action within 60 days of receipt of the complaint. The decision by the ethics hearing officer shall be reduced to writing and served upon all parties at interest within five days of reaching a decision.
  - v111. The ethics hearing officer shall in a public hearing before the mayor and city council present argument and evidence to justify the recommendation contained in paragraph (5) above and make a recommendation of the proper penalty to be imposed. The mayor and council shall have the final authority to act on or reject the recommendation within 30 days of the presentation by the hearing officer.
- (W) **Penalties.** Upon majority vote of the mayor and council, any violation of this code of ethics shall subject the offender to disciplinary action including reprimand, censure, or a request to the offending City of Walnut Grove official that he or she resign their office.
- (X) **Right to appeal.** Any City of Walnut Grove official adversely affected by a disciplinary action taken by the mayor and council may appeal the decision to the Walton County Superior Court in accordance with the laws of the State of Georgia. Provided, however, that no action of a decision maker refusing or failing to take action pursuant to this code of ethics shall be reviewable by the superior court.
- (Y) **Election tolling.** To discourage the filing of ethics complaints solely for political purposes, complaints will not be accepted against a person seeking election as a city official, whether currently serving as a city official or not, from the date qualifying opens for the elected office at issue through the date the election results for that office are certified. The time for filing complaints will not run during this period.

Properly filed complaints will be accepted and processed after the election results have been certified.

**SECTION 2.** Except as provided otherwise herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**SECTION 3.** Pursuant to the Section 2.25 of the City Charter, authority is hereby delegated to the City Clerk to cause this Ordinance to be numbered and codified in the City Code of Walnut Grove, Georgia, in such a way as to place this Ordinance in the Code in an organized and orderly sequence to maximize the organization of the Code. The City Clerk is authorized to designate to the City Attorney or to such other Mayor and Council approved contractors to assist in the effort to codify this provision provided the decision of the City Clerk is final as to the placement of this Ordinance within the City Code of Walnut Grove, Georgia. The goal of this authorization is to codify and number this Ordinance in the Code in such a way as to be clear and orderly.

**SECTION 4.** This ordinance shall become effective immediately upon its adoption by the Mayor and Council of the City of Walnut Grove, Georgia.

SO ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Mark Moore, Mayor

*ATTEST:*

\_\_\_\_\_  
Dawn Lummus, City Clerk

*APPROVED AS TO FORM:*

\_\_\_\_\_  
Anthony O. L. Powell, City  
Attorney Webb, Tanner &  
Powell P.C.

Adopted by the City Council at a regular called meeting on \_\_\_\_\_

\_\_\_\_\_ Council members voting in favor

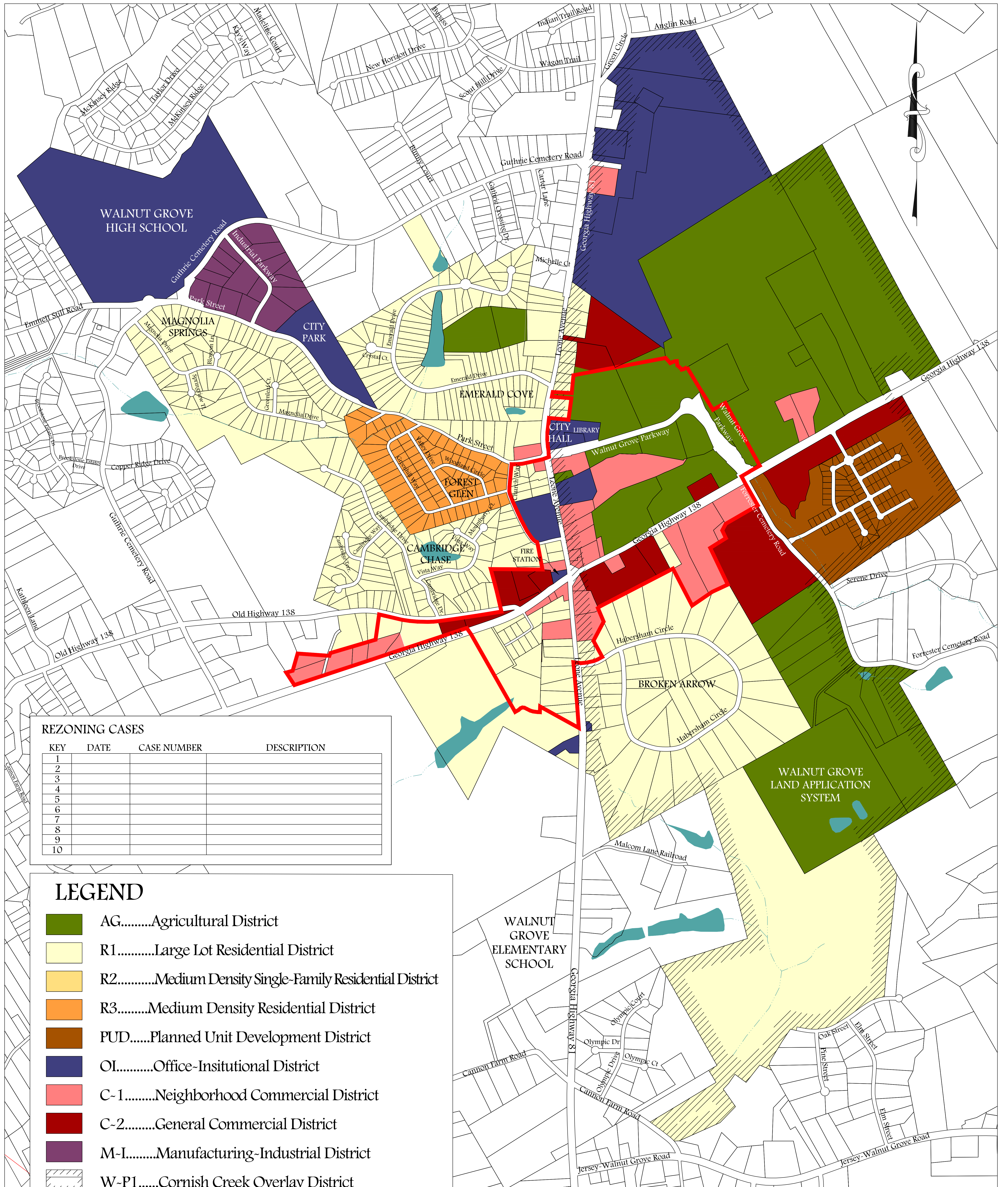
\_\_\_\_\_ Council members voting against

\_\_\_\_\_ Council members abstaining









**REZONING CASES**

KEY	DATE	CASE NUMBER	DESCRIPTION
1			
2			
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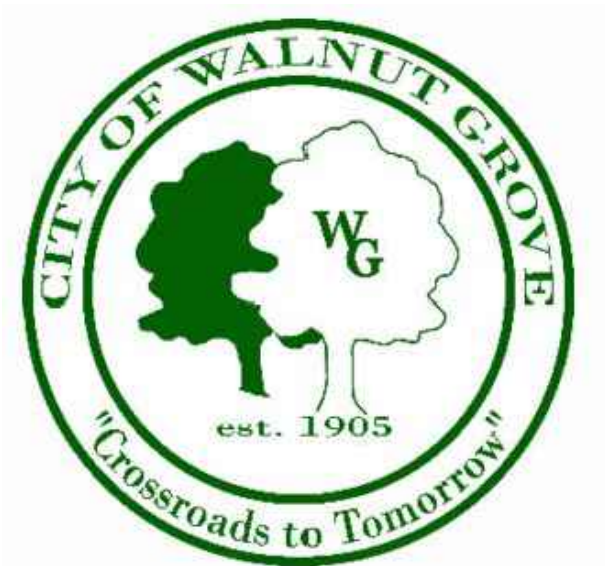
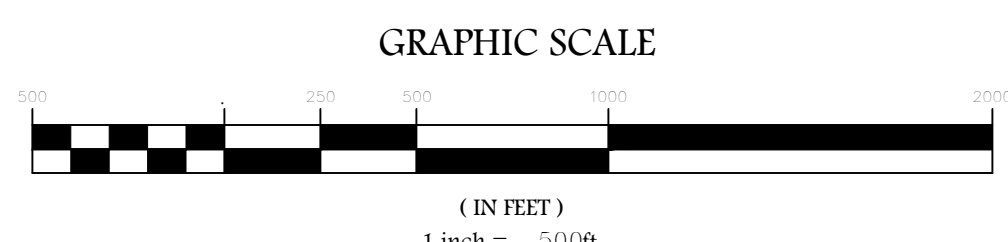
**LEGEND**

- AG.....Agricultural District
- R1.....Large Lot Residential District
- R2.....Medium Density Single-Family Residential District
- R3.....Medium Density Residential District
- PUD.....Planned Unit Development District
- OI.....Office-Institutional District
- C-1.....Neighborhood Commercial District
- C-2.....General Commercial District
- M-I.....Manufacturing-Industrial District
- W-P1.....Cornish Creek Overlay District
- Downtown Overlay District

This map is based upon Walton County, Georgia Tax Assessor mapping data.

Adopted: August 18, 2016  
Revised: May 11, 2023

W:\sdsproj\04299\dwg\Zoning Map-Updated 2016.dwg



"I certify that this is the Official Zoning District Map, adopted August 18, 2016, referred to in Article IV of the 2012 Zoning Ordinance for the City of Walnut Grove.

\_\_\_\_\_  
Mayor, City of Walnut Grove      Date

\_\_\_\_\_  
Attest      Date

# The Official Zoning District Map for Walnut Grove, Georgia



Senate Bill 213

By: Senators Burns of the 23rd, Goodman of the 8th, Payne of the 54th, Watson of the 11th,  
Dixon of the 45th and others

**AS PASSED**

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 66 of Title 36 of the Official Code of Georgia Annotated, relating to  
2 zoning procedures, so as to prohibit local governments from preventing the continuance of  
3 lawful nonconforming use of property when a preexisting manufactured home or mobile  
4 home is replaced with another such home; to provide for exceptions; to provide for  
5 definitions; to provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 style="text-align:center">**SECTION 1.**

8 Chapter 66 of Title 36 of the Official Code of Georgia Annotated, relating to zoning  
9 procedures, is amended by adding a new Code section to read as follows:

10 "36-66-7.

11 (a) As used in this Code section, the term:

12 (1) 'Manufactured home' has the same meaning as provided in Code Section 8-2-131.

13 (2) 'Mobile home' has the same meaning as provided in Code Section 8-2-131.

14 (3) 'New home' means a manufactured home or mobile home that is purchased from  
15 either the original manufacturer or a dealer in the ordinary course of such dealer's  
16 business and has never been titled or previously occupied.

17 (4) 'Single-family dwelling' means a manufactured home or mobile home used as a  
18 single-family residence.

19 (b) Notwithstanding any other provision of this chapter, when there is a replacement of a  
20 preexisting manufactured home or mobile home with a new home within a manufactured  
21 home community or mobile home park, or on any other residential land, a local  
22 government shall not adopt or enforce any zoning decision or zoning ordinance, or any  
23 other regulation or restriction, or impose any conditions on the new home, the property  
24 upon which the home sits, or the owner's property that were not required of the preexisting  
25 home, home site, or property, that would prevent the continuance of the property owner's  
26 lawful nonconforming use that had existed relating to the preexisting home, the property  
27 upon which the home sat, or the owner's property.

28 (c) The provisions of subsection (b) of this Code section shall not apply if:

29 (1) A discontinuance is necessary for the safety of life or property;

30 (2) The nonconforming use has been discontinued for the period of time established by  
31 ordinance which shall not be less than 12 months, unless such discontinuance is caused  
32 by circumstances outside the control of the property owner;

33 (3) The replacement home would result in a change from the lawful nonconforming use  
34 as a single-family dwelling to any other type of dwelling; or

35 (4) The replacement home results in an obstruction to a shared driveway or shared  
36 sidewalk providing vehicular or pedestrian access to other homes and uses, unless the  
37 property owner makes modifications to such shared driveway or shared sidewalk that  
38 extinguishes such obstruction or the effects of such obstruction."

39 **SECTION 2.**

40 All laws and parts of laws in conflict with this Act are repealed.

# POST AGENDA - BUSINESS ITEMS

## AGENDA

CITY OF WALNUT GROVE

PLANNING COMMISSION

MAY 18, 2023

7:00 P.M.

MUNICIPAL BUILDING – 1021 PARK ST.

- I. CALL TO ORDER
- II. INVOCATION
- III. PLEDGE OF ALLEGIANCE
- IV. APPROVAL OF AGENDA
- V. PUBLIC HEARINGS –

### CASE #WGRZ-23-02

PUBLIC HEARING – KIPPY CLARK C/O J. ALEXANDER BROCK, APPLICANT; WILLIAM PAUL JONES, JR AND TOBEY L. JONES, OWNERS

PARCELS #WG010024 AND WG010025 – 1071/0 WALNUT GROVE PARKWAY

REQUEST IS TO REZONE 9.4 ACRES FROM AG TO PUD FOR A MIXED-USE DEVELOPMENT

ADJOURN HEARING

DISCUSSION/DECISION

TABLED TO JUNE 15TH - TRAFFIC STUDY REQUESTED; ALSO PLANNING COMM TO CHECK WITH CITY ATTORNEY ON PUD LIMITATIONS RELATED TO THE CURRENT REQUEST.

### CASE #WGV-23-02

PUBLIC HEARING – APPLICANT: RELIANT HOMES, LLC; OWNER 81 INVESTMENT COMPANY, LLC

ADDRESS: OAK LANE/CANNON FARM ROAD

PARCEL #WG010265A00

VARIANCE REQUEST: VARIANCE FROM SECTION 501.6. (C) (2) OF THE WALNUT GROVE LAND DEVELOPMENT ORDINANCE (CONNECTION TO PUBLIC SEWER)

ADJOURN HEARING

DISCUSSION/DECISION

RECOMMENDED APPROVAL WITH CONDITIONS AS LISTED ON APPLICANT'S PRESENTATION (ATTACHED).

PROPOSED AMENDMENTS TO THE 2012 ZONING ORDINANCE FOR THE CITY OF WALNUT GROVE RELATED TO ARTICLE IX (TABLE OF USES)

RECOMMENDED APPROVAL AS PRESENTED

TEXT AMENDMENT TO ARTICLE 5 OF THE *LAND DEVELOPMENT ORDINANCE* TO AMEND THE DEFINITION OF AN "EQUIVALENT RESIDENTIAL UNIT" FROM 250 GPD FOR THE PURPOSE OF DETERMING DEMAND.

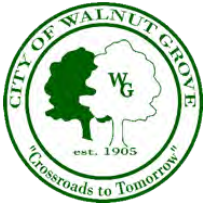
RECOMMENDED APPROVAL AS PRESENTED

### CALL TO ORDER - REGULAR MEETING

- VI. APPROVAL OF MINUTES – MEETING MARCH 16, MAY 1, AND MAY 10, 2023.
- VII. PUBLIC COMMENT
- VIII. ZONING ADMINISTRATOR'S REPORT – JOE WALTER
  
- IX. OLD BUSINESS:
  - A. CITY - MASTER PLAN PROPOSAL REVIEW
  - B. VISIONING COMMITTEE INITIAL MEETING


- X. **NEW BUSINESS**  
**CASE #RZ-18-03 ENCLAVE AT DIAL FARM PUD (COMMERCIAL)**  
**REQUEST TO APPROVE EXTERIOR ARCHITECTURAL EXTERIOR ELEVATIONS FOR PROPOSED**  
**GAS STATION (COMPLY WITH ZONING CONDITION #7)**  
**1091 HWY 138**  
**PRESENTATION OF ELEVATIONS**  
**DISCUSSION/DECISION**  

RECOMMENDED APPROVAL - APPLICANT TO PRESENT UPDATED RENDERING WITH LARGER WINDOWS.
---
- XI. **DISCUSSION ITEMS:**
- XII. **COMMISSIONER'S COMMENTS**
- XIII. **ADJOURN**



5/18/23 - PLANNING COMMISSION  
RECOMMENDED APPROVAL WITH APPLICANT'S  
CONDITIONS - SEE ATTACHED

**Variance Report Case #WGV-23-02**

Report by: Joe Walter, Zoning Administrator   
Date: April 18, 2023

**Hearing**

Walnut Grove Planning Commission:  
Walnut Grove City Council:

**Date**

April 20, 2023  
May 11, 2023 (tentative)

New Hearing Date May 18, 2023
----------------------------------

**General Information**

**Applicant:**..... **Reliant Homes, LLC**  
**Owner:**..... **81 Investment Company, LLC**  
**Size:**..... **170.63 acres**  
**Location:**..... **Oak Street/Cannon Farm Road**  
**Tax Parcel #**WG010265A00  
**Existing Zoning:**..... **R-1**  
**Proposed Development:** **92 single family residential uses on individual septic systems**  
**Requested Variance:** **Relief from the requirements of Section 501.6.B of the *Walnut Grove Land Development Ordinance*.**

**Background**

In 2021, the City of Walnut Grove amended the *Land Development Ordinance* to include several new sections related to the sewer system (Ordinance #2021-09, Sections 501.6 through 501.9). Section 501.6.A requires that new residential, commercial, industrial or other structures for human habitation must connect to the sewer system unless they are exempted by one of the criteria in Section 501.6.B. The City may grant an exemption permit from the public sewer system if two conditions are met:

1. The applicant provides evidence of an Approved Alternative Method for treatment of sewage; and
2. The structures(s) to be built are located farther away from a sewer main or the sewer plant than the distances listed in the Table in Section 501.6.B (Table attached as an exhibit).

The subject property was reviewed and approved for a single family subdivision in 2006, but I do want to point out that any approvals would have been granted under the previous *subdivision ordinance* and *1997 Zoning Ordinance* and that the plans have not been reviewed under the current *2007 Land Development Ordinance* and the *2012 Zoning Ordinance*. The applicant cannot complete the design plans for the property until this variance has been addressed because the sewage disposal method must be accounted for in the arrangement of streets, lots and utilities. No approvals will be given for any development on the site until all of the plans have been approved and all fees paid to the various agencies.

**Applicant's Intent**

The applicant is representing an LLC that owns a 170.63 acre tract located in Walnut Grove that has frontage on two public streets (Oak Lane and Cannon Farm Road/Old Hwy 81) and abuts the Walnut Grove Wastewater Treatment Facility. The subject property was previously submitted and approved for permitting as the Diamond Creek Subdivision in 2007, but was never developed. The applicant has approached the City about resubmitting the project for review and approval. In the course of the discussions, the applicant was made aware of the changes to the City's *Land Development Ordinance* regarding connecting to the sewer system. The Applicant has submitted an application to request relief

from the requirements of Section 501.6.B. The subject property abuts the Walnut Grove Wastewater Treatment Facility; and, therefore would be required to connect to the sewer system.

Section 501.6.C provides two avenues to request a variance from the connection requirement; one (1), subdivide a property into nine or fewer lots of five acres or more, as was the case with the Highland Properties lots on Forrester Cemetery Road; or two (2), claim a "Substantial Hardship" by presenting clear and convincing evidence of meeting one of three criteria regarding sewer availability and costs, which will be outlined in the following section.

### **Variance Criteria**

From Section 501.6 C. Variance From the Sewer Connection Requirement.

*This mandatory connection requirement may be waived by official action of the Mayor and City Council of the City of Walnut Grove by the granting of a variance provided the applicant is able to meet all the following conditions:*

1. *When a property is a single lot or a parcel subdivided into nine (9) or fewer lots, a variance may be granted if the following criteria are followed:*
  - a. *The requirement to connect to the city sewer systems creates a substantial hardship on the applicant;*
  - b. *The applicant agrees to build residential homes which have a minimum of 3,000 square feet of heated floor space;*
  - c. *The applicant for a variance agrees to develop the property with lots of at least 5 acres of land per lot; and*
  - d. *The owner demonstrates that an Approved Alternative Method of sanitary sewage disposal is effective.*
2. *A variance may also be granted by the Mayor and City Council if the applicant is able to demonstrate a "Substantial Hardship". To prove a Substantial Hardship, the owner must demonstrate that the owner's property will support an Approved Alternative Method of sanitary sewage disposal. In addition to supporting an approved alternate method of sanitary sewage disposal, the owner must demonstrate by clear and convincing evidence one of the following:*
  - a. *The cost of constructing the sanitary sewer connection exceeds the average cost of a connection by a factor of 10 times, or*
  - b. *the City has no available sewer treatment capacity in the Walnut Grove sewer system,*
  - c. *or no available sewer taps which have not been pledged to binding reserve capacity agreements with other third parties.*

*If no sewer taps are available, no variance shall be granted to any applicant until the applicant has exercised all rights in any reserve sewer capacity or reserve sewer tap agreements with the City of Walnut Grove, Georgia.*

### **Analysis of Variance Request**

The applicant has submitted evidence in the attached application to demonstrate that they are of the opinion that they meet one or more of the criteria listed in the "Substantial Hardship" category. The applicant has submitted information from the Walton County Environmental Health Department



indicating that the Approved Alternative Method of sanitary sewage disposal has been approved on the subject property in the past AND that the City does not have available sewer capacity (Criteria #2b from above). The letter from Walton County EHD is dated December 2, 2005 gave preliminary approval for the development with a number of lots needing additional study. However, this is typical for this type of development. There are several sets of correspondence presented between the applicant and the City regarding sewer capacity and the timing of the City's expansion of the system. In the application package, the applicant also included some additional information about budgeting and scheduling regarding the sewer system expansion.

The applicant has also made the case that to wait until the city has developed sufficient capacity would cause a significant delay in the development cycle, with a corresponding increase in the costs. The more expensive the lot development cost, the more expense the final product will be for future buyers. The applicant has also indicated that it would be in the City's best interest to save the sewer capacity for commercial development in the town center areas. The applicant's letter of intent contains more detail about the costs of development and waiting to develop.

Finally, the applicant discussed the practical difficulties of installing sewer on the property due to a pump station and force main being need to lift the sewage to the City's treatment facility, combined with the likelihood of rock in the area making sewage line installation more difficult (and more expensive). The layout of the property, with a creek bisecting the land does make it impossible to gravity flow sewage to the city's pump station. Although not mentioned in the application, sewered lots are usually much smaller than 40,000 square feet in size. To make the cost of development work with sewer, the property would have to be rezoned to a zoning district that would permit much smaller lot sizes and a higher density, which would introduce many more lots into the area and would have a significant impact on the adjacent roadways, school system, utilities, etc.

## **Conclusion**

The applicant has stated their intent to develop the subject property into a residential subdivision with approximately 92 lots. The plans were previously approved in 2006 with individual septic tanks to treat sewage. Any approvals given in 2006/2007 are null and void and any development on this property would have to be reviewed and approved under the current City ordinances. One of those new ordinances indicates that development must connect to their sewage system if certain conditions exist and the subject property abuts the wastewater treatment facility, which triggers the connection requirement. The applicant did not elaborate on why they did not pursue obtaining a permit prior to the adoption of the new sewage connection requirements.

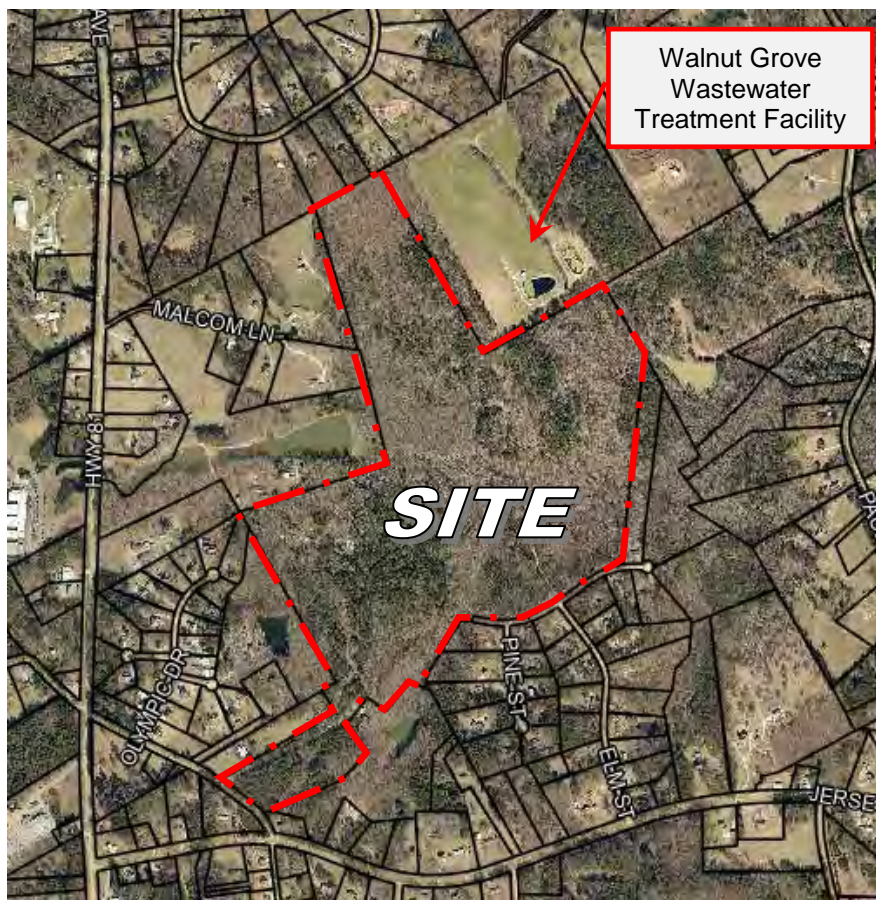
The City is in the process of expanding the sewer system and knows that more capacity is needed due to the anticipated demand in the Town Center area. There are plans being developed to expand beyond 0.1 MGD to 0.5 MGD, but time is needed to obtain permits and secure funding needed to construct the improvements. The applicant has submitted compelling information that a "Substantial Hardship" does exist, given the location of the property being below the elevation of the treatment facility and the length of time needed to wait upon sewer capacity.

Any variance approved on the subject property should include these conditions (Note - when Applicant is used, the term shall mean the current applicant or any successors in title):

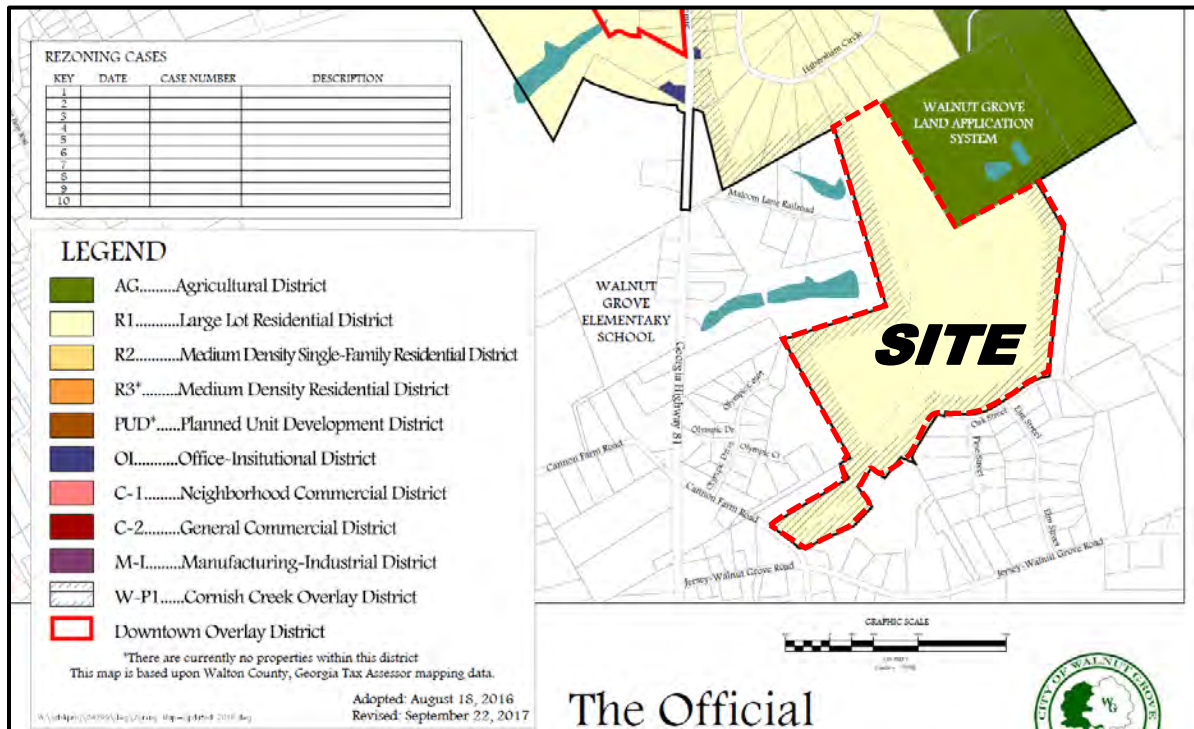
1. Applicant must submit all required subdivision development plans to the City of Walnut Grove and other agencies for approval within one (1) year of the date of approval of the variance.

2. Applicant's plans should include a transitional zoning buffer of 25 feet between any lots that abut the Walnut Grove Wastewater Treatment Facility. No land disturbance will be allowed in the 25 foot buffer except for perpendicular utility crossings as needed.
3. Any amenity area proposed for the subdivision must be built with the first phase of the development, if multiple phases are proposed.
4. Applicant must obtain approval from Walton County for access onto Cannon Farm Road/Old 81 and will fund any improvements required by the County to improve the roadway along the property frontage and to the intersection of Youth Jersey Road and/or Hwy 81.
5. Applicant shall dedicate a 25' wide utility easement to extend from the common property line with the Walnut Grove Wastewater Treatment Facility to the nearest public street within the development for future use. The location of the easement will be decided at the time of the submission of subdivision development (preliminary plans).
6. The submitted plans will include a 20' wide no access easement along all lots that abut Oak Lane.
7. Subdivision development plans must show compliance with the requirements of the Cornish Creek Watershed Protection Overlay District WP-1.

**Aerial View of the Site**



**Excerpt from the Zoning Map**

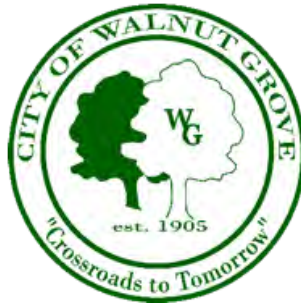


CASE #WGV-23-02 CONDITIONS AS RECOMMENDED BY PLANNING COMMISSION - SEE CASE REPORT FOR STAFF CONDITIONS.

## CONDITIONS ACCEPTABLE TO APPLICANT

- Applicant agrees to Conditions 1, 2, 3, 6, and 7
- Applicant requests the following updates to Conditions 4 and 5
  - Condition 4: clarify that the Applicant will fund, if necessary, the County ROW improvements (not GDOT improvements)
  - Condition 5: Applicant would like further clarification on the purpose of the 25-foot sewer easement and the proposed location. Applicant is not opposed to granting an easement in a mutually agreeable location.





5/18/23 - PLANNING COMMISSION  
RECOMMENDED APPROVAL AS  
PRESENTED

April 17, 2023

Walnut Grove Planning Commission  
c/o Mr. Don Cannon, Chairman  
2581 Leone Avenue  
Walnut Grove, Ga 30052

**Re: Proposed Amendments to the 2012 Zoning Ordinance for the City of Walnut Grove related to Article IX (Table of Uses)**

Commission Members:

At the last Planning Commission meeting, one of the action items for me to prepare was a text amendment to the Zoning Ordinance that addressed the Bed and Breakfast Use and the allowable zoning districts. The City has received a Business License application for a bed and breakfast use for a property in the AG district. Currently, Bed and Breakfast Uses are not permitted in the AG zoning district per Article IX (Table of Permitted and Conditional Uses). I have included a snippet from the Table of Permitted and Conditional Uses below:

Uses	Supl. Use Sids.	AG	R1	R2	R3	O1	C-1	C-2	M-1
<b>Commercial and Retail Uses</b>									
Automobile Brokerage	Y							C*	P*
Automobile Customization, Modification and Rebuilding								C*	P*
Automobile Parts Store (with Installation)								P	P
Automobile Parts Store (without Installation)								P	P
Automobile Repair Shop, Lubrication and Tire Store							C*	P*	P*
Automobile Sales and Related Service								P*	P*
Accessory Uses and Structures		A	A	A	A	A	A	A	A
Bed and Breakfast Inn	Y				C	C	C	P	
Bicycle Shop								P	

Based upon the discussion at the previous meeting, and based upon a recent meeting with Chairman Cannon and Mayor Moore, I am presenting several changes to Article IX for your consideration:

Note: **Bold, highlighted** text indicates proposed additions to the text. ~~Strikethrough text~~ indicates proposed text to be deleted from the Ordinance.

1. Changes to the Commercial and Retail Uses portion of the Table of Permitted and Conditional Uses relating to Bed and Breakfast Inns:

Uses	Suppl. Use Stds.	AG	R1	R2	R3	O1	C-1	C-2	M-1
<b>Commercial and Retail Uses</b>									
Bed and Breakfast Inn	Y	<b>P</b>			€	C	C	P	

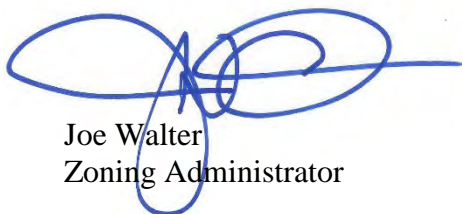
*This proposed change would permit Bed and Breakfast Inns as a use by right in the AG district if the use/parcel can meet the supplemental standards. The change would also remove Bed and Breakfast Inns as a Conditional Use from the R3 district, with the reasoning that the only R-3 zoned parcels in the City would not meet the supplemental.*

2. Several Housekeeping changes to correct the terminology in Article IX relating to Conditional Uses (i.e., the term Special Use is used incorrectly; it should be Conditional Use).

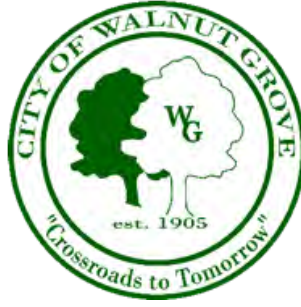
*Wherever the term “~~Special~~” is listed in relation to a use required and additional zoning review, the term shall be changed to “**Conditional**” to more accurately reflect the correct terms.*

These amendments will be discussed in a public hearing setting and formally recommended to the City Council at your May 18, 2023 meeting. Please let me know if you have any questions.

Sincerely,



Joe Walter  
Zoning Administrator



5/18/23 - PLANNING COMMISSION  
RECOMMENDED APPROVAL AS  
PRESENTED

April 17, 2023

Walnut Grove Planning Commission  
c/o Mr. Don Cannon, Chairman  
2581 Leone Avenue  
Walnut Grove, Ga 30052

**Re: Proposed Amendments to the 2007 Comprehensive Land Development Ordinance for the City of Walnut Grove related to Section 501.8 (Sewer Use Ordinance).**

Chairman Cannon and Commission Members:

The Mayor has requested that the City Council consider an amendment to Section 501.8 (Sewer Use Ordinance) Section I Definitions – Definition (T) “Equivalent Residential Unit (ERU),” contained in the *Land Development Ordinance for the City of Walnut Grove*. The proposed amendment is listed below:

Note: **Bold, highlighted** text indicates proposed additions to the text. ~~Strikethrough text~~ indicates proposed text to be deleted from the Ordinance.

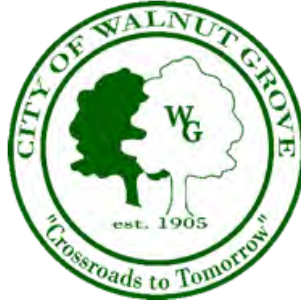
(T) “Equivalent Residential Unit (ERU)” shall mean a volume of water equal to the average daily usage of a typical single family residence of ~~250~~ **210** gallons.

The request to lower the ERU calculation would free up additional residential sewer connections and allow additional customers to be connected to the City’s system. The proposed ERU of 210 gallons (per day) is greater than the average residential daily flow at the City’s wastewater treatment facility. More information will be provided ahead of the meeting regarding the reasoning behind the request and other technical data.

This amendment will be discussed in a public hearing setting and formally recommended to the City Council at your May 18, 2023 meeting. Please let me know if you have any questions.

Sincerely,

Joe Walter  
Zoning Administrator



5/18/23 - PLANNING COMMISSION  
RECOMMENDED APPROVAL WITH  
UPDATED RENDERING SHOWING  
MORE GLASS.

April 20, 2023

Walnut Grove Planning Commission  
1121 Park Street  
Loganville GA 30052

**Re: Architectural Elevation of Commercial Exterior – Condition #7 of RZ-18-03**

Members:

The attached information from Sawtooth Construction has been submitted for Planning Commission and Council review to satisfy Condition #7 of #RZ-18-03 (Enclave PUD Commercial Acreage).

Sincerely,

Joe Walter  
Zoning Administrator

Attachments: Information from Sawtooth Construction  
#RZ-18-03 Rezoning Conditions





EXTERIOR ELEVATION OF WALNUT GROVE GAS  
STATION - MAYOR AND COUNCIL APPROVAL NEEDED  
TO SATISFY CONDITION #7 OF ZONING #RZ-18-03

Proposal to prepare the

# Walnut Grove City Master Plan



City of Walnut Grove, Georgia  
March 22, 2023  
Proposal Presented by:





March 22, 2023

Don Cannon  
Walnut Grove Planning Commission  
The City of Walnut Grove  
2581 Leone Avenue  
Loganville, GA 30052

Dear Mr. Cannon

Thank you for working with me to put together this scope for the Walnut Grove's Master Plan. I enjoyed talking with you and learning more about your city. I love working for communities that are close to home. I live and work up the road in Oconee County and greatly enjoy my ongoing work with the City of Monroe as they implement their ambitious work program. Our part of Georgia is experiencing considerable growth pressure and I am honored to be part of helping prepare our communities for growth. As such, I am delighted to submit this qualifications packet to complete the Master Plan for the City of Walnut Grove.

My name is Marilyn Hall. In 2005, I left a large consulting firm and started Hall Consulting, Inc. so that I could focus on planning for a small cities and rural areas. If selected I would be your project manager and primary contact. Bobby Sills, AICP, EIT is the founder of Nelsnick Enterprises, Inc. Mr. Sills specializes in Transportation Planning, Capital Improvements, Public Finance and GIS. The Hall and Nelsnick Team has more than fifteen years of working together creating great plans. In 2008, our plan for Moreland, Georgia won the American Planning Association's John Keller Award for Outstanding Planning Initiative for a Small Town or Rural Area.

We are thrilled to welcome the Maypop Collaborative (Maypop) to our planning team for the City of Walnut Grove's Master Plan. Melinda (Mel) Cochran Davis, founder of Maypop, is excited to bring her experience to the project. She brings a wealth of experience in trails and park planning and innovative public outreach to our team. Our project team offers a wide scope of planning experience in stakeholder engagement, strategic and capital planning, quantitative research and analysis, and mapping.

With the Hall-Nelsnick-Maypop Team you will be working directly with the owners of the companies, providing the highest level of efficiency and accountability. Also, because of our devotion to a smaller number of select clients, your plan would be among our highest priority. We are excited about working with you.

Sincerely,

Marilyn P. Hall  
President  
Hall Consulting, Inc.



**MAYPOP**  
Collaborative

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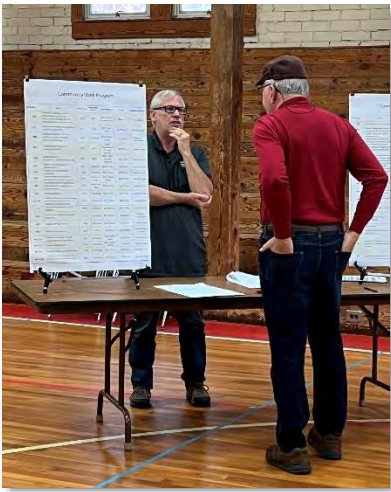


# 1. QUALIFICATIONS

Making a plan that works for a local government requires some understanding of how a local government works and what it actually needs. Our team boasts extensive public service across an array of governmental services, including parks and recreation, planning and zoning, and public utilities. We draw upon those professional experiences as we collaborate with municipal clients, ensuring a final plan that is reflective of their unique needs and goals, and creative in its approach to solving problems with often-limited resources.

We have a wide scope of planning experience related to master planning, including stakeholder engagement, capital planning, quantitative research and analysis, policy development, and web-based interactive mapping. With the Hall, Nelsnick, and Maypop Team the City of Walnut Grove will be working directly with the owners of the companies, providing the highest level of efficiency and accountability. Also, because of our devotion to a smaller number of select clients, the City's plan would be among our highest. The combined experience of the three firms is substantial and includes dozens of Comprehensive Plans, multi-use trail network plans, parks and recreation master plans, capital improvements plans, public engagement initiatives, operational assessments, and strategic plans.

Members of the Hall, Maypop, and Nelsnick Team began developing plans together in the early 2000s. Hall and Nelsnick developed the nationally award-winning Comprehensive Plan for the City of Moreland, winning the 2008 John Keller Award for Outstanding Planning Initiative for a Small Town or Rural Area. Maypop's Mel Cochran Davis and Marilyn Hall worked together for more than a decade on capital planning, collaborative project implementation, community engagement, and SPLOST project proposal development for Athens-Clarke County.





CONTACT:

HALL CONSULTING, INC

Ms. Marilyn Hall  
Owner & President  
1051 Windbrooke Ct., Suite 4  
Watkinsville, GA 30677  
706.621.2036  
[Mhall@hallplanning.com](mailto:Mhall@hallplanning.com)

Years in business: 18

*Demonstrating a commitment to a small number of select clients, Hall Consulting has helped 7 clients make great plans in the last 5 years.*

SAMPLE LIST OF FORMER  
AND/OR CURRENT MUNICIPAL  
& COUNTY CLIENTS:

Madison County, GA  
City of Monroe, GA  
City of Columbus/Muscogee  
County, GA  
City of Albany, GA  
City of Dothan, AL  
Athens-Clarke County, GA  
Morgan County, GA  
Cities of Jefferson, Talmo, and  
Arcade, GA  
Ware County and the City of  
Waycross, GA  
City of Moreland, GA  
City of Sharpsburg, GA

## HALL CONSULTING, INC.

Incorporated in the State of Georgia in 2005, Hall Consulting delivers expert planning and analysis, customized strategic plans, and award-winning comprehensive plans to municipal and county leaders in search of lasting community improvements on behalf of the families they serve. Hall Consulting's experience includes working in rural, suburban, and urban settings, with single jurisdictions, consolidated governments, and multi-jurisdictional bodies.

Hall Consulting offers a variety of products and services to government and utility professionals including urban planning studies and assessments, comprehensive planning services, master planning, capital improvements planning, and expert stakeholder engagement and community involvement activities. Our consulting engagements have included comprehensive plans, housing studies, expert witness testimony, annexation studies, conservation subdivision policies, strategic plans, and ordinance review designed to guide local jurisdictions with decision making.

Hall Consulting has a track record of building successful consulting teams. Team-members are specifically selected to meet the needs of individual clients. The team will be expertly managed. About our team one of our clients proclaimed, "This was the best handled and managed project the Town has contracted for the five years I have been here." (Robin Spradlin, Town of Sharpsburg, GA)

KEY LEADERSHIP:

**Marilyn P. Hall, AICP**

Ms. Hall has worked in comprehensive and environmental planning since 1997. She developed the award-winning Comprehensive Plan for the City of Moreland, GA. and has been recognized by the American Planning Association as an expert in drought planning and management. Her recent efforts have focused on project management, Comprehensive Planning, capital improvements, ensuring local policies and ordinances are consistent with State and federal requirements, and public engagement and outreach.

As Water Resources Planner for Athens-Clarke County, GA she created and implemented a new innovative water reuse program and helped negotiate the purchase of the Rock Hill Quarry as a future water storage reservoir. She also prepared the utility's long-term capital improvements program totaling \$400M.



**CONTACT:**

Maypop Collaborative  
Mel Cochran Davis  
PO Box 1453  
Commerce, GA  
706-658-7778

mel@Maypopcollaborative  
Maypopcollaborative.com



**PROJECT HIGHLIGHTS**

Athens-Clarke County Leisure Services 2021-2025 Strategic Plan

Leisure Services Listens – A comprehensive online engagement tool.

Developed Athens-Community Corps job readiness program

Secured over \$675,000 in grant funds from state and foundation based grant agencies

**MAYPOP COLLABORATIVE**

Maypop Collaborative is committed to serving local governments. Our team consists of talented local government veterans who understand its day-to-day challenges: staffing shortages, tough decisions, budget constraints, public outcries, operational challenges, and whatever other obstacles the day brings. In addition, we realize how much influence consultants hold over long-term community decisions, and we are here to make sure you and your community are heard. We approach projects with flexibility and adaptability. We have been there, we understand the value of a community-informed product with longevity, and we are eager to put our knowledge into service. Together, we can do better.

As a boutique consulting firm, we build customized project teams to fit the needs of the work at hand. Our principal and founder, Mel C. Davis has an established reputation for building “dream teams” of high achievers driven by strong public service motivation and long histories of community engagement, collaboration, and problem solving. The Maypop model allows each member to work to their strengths and provide superior deliverables to our clients. As others that have collaborated with us in the past have said “Where there’s a Mel, there’s a way.”

**KEY LEADERSHIP:**

Melinda Cochran Davis is a "Double Dawg" with a bachelor’s degree in Landscape Architecture and a master’s degree in Public Administration from the University of Georgia. While a part of the Athens-Clarke County Unified Government (ACCGov), Melinda directed the Planning, Project Management, Budgeting, Maintenance, Marketing, and Development functions of the Leisure Services Department, a multi-year winner of Georgia Recreation and Park Association’s Agency of the Year award. During her tenure with Leisure Services, she led multiple planning efforts, including the department’s first Strategic Plan, Greenway Network Plan, Park Improvements Plan, and multiple Park Master Plans. She also led the development of new enhanced digital in person community engagement initiatives that became the model for the rest of ACCGov. Her leadership and collaboration with community members and local appointed boards resulted in Leisure Services securing over \$69 Million of SPLOST funds for improvements and expansion of parks, facilities, and multi-use trails.



NELSNICK ENTERPRISES  
Mr. Robert Sills, AICP  
196 Alps Road, Suite 2-232  
Athens, GA 30606  
706.340.5479 (p)

[bsills@nelsnick.com](mailto:bsills@nelsnick.com)  
[www.nelsnick.com](http://www.nelsnick.com)

Years in business: 18

**SAMPLE LIST OF FORMER  
AND/OR CURRENT MUNICIPAL  
CLIENTS:**

City of Gainesville, GA  
Roane County, TN  
Athens-Clarke County, GA  
City of Winder, GA

*Collaborative work with  
Hall Consulting:*

City of Monroe, GA  
Madison County, GA  
Morgan County and the  
Cities of Buckhead, Bostwick,  
and Rutledge, GA  
State of Texas General Land  
Office  
Ware County and the City of  
Waycross, GA  
Cities of Talmo, Arcade and  
Jefferson in Jackson County, GA  
City of Moreland, GA  
City of Sharpsburg, GA  
Sandy Springs, GA

## NELSNICK ENTERPRISES

Incorporated in the State of Georgia in 2003, Nelsnick Enterprises is a woman-owned small business that provides planning services and instructional solutions for local governments and educational institutions. Nelsnick Enterprises provides consultation services for comprehensive, capital improvement, and financial planning; specific products include comprehensive plans, cost of service and connection fee studies, and cost allocation and rate studies. Nelsnick Enterprises also offers services related to instructional design and is adept at developing public participation plans that educate the community about the comprehensive planning process while gathering meaningful input from residents. It is headquartered in Athens, Georgia and there are no regional offices. Nelsnick Enterprises is comprised of two full time employees, Mr. Robert W. Sills, AICP and Ms. Natasha Barreto, both located in Athens, Georgia and a part-time engineer who works out of a home office in Gainesville.

**KEY LEADERSHIP:**

**Ms. Natasha Barreto, President**

Ms. Barreto has served as the President of Nelsnick Enterprises since 2009. Ms. Barreto has extensive experience in analysis of learning needs and systematic development of instruction. She has developed over 100 courses in the areas of criminal justice, healthcare, college accounting, business, psychology, and general education. Ms. Barreto has a strong background in Web-based instructional delivery. Ms. Barreto is the majority owner of the firm and has a master's degree in Instructional Design from the University of Georgia.

**Mr. Robert W. Sills, AICP, Principal Planning Consultant**

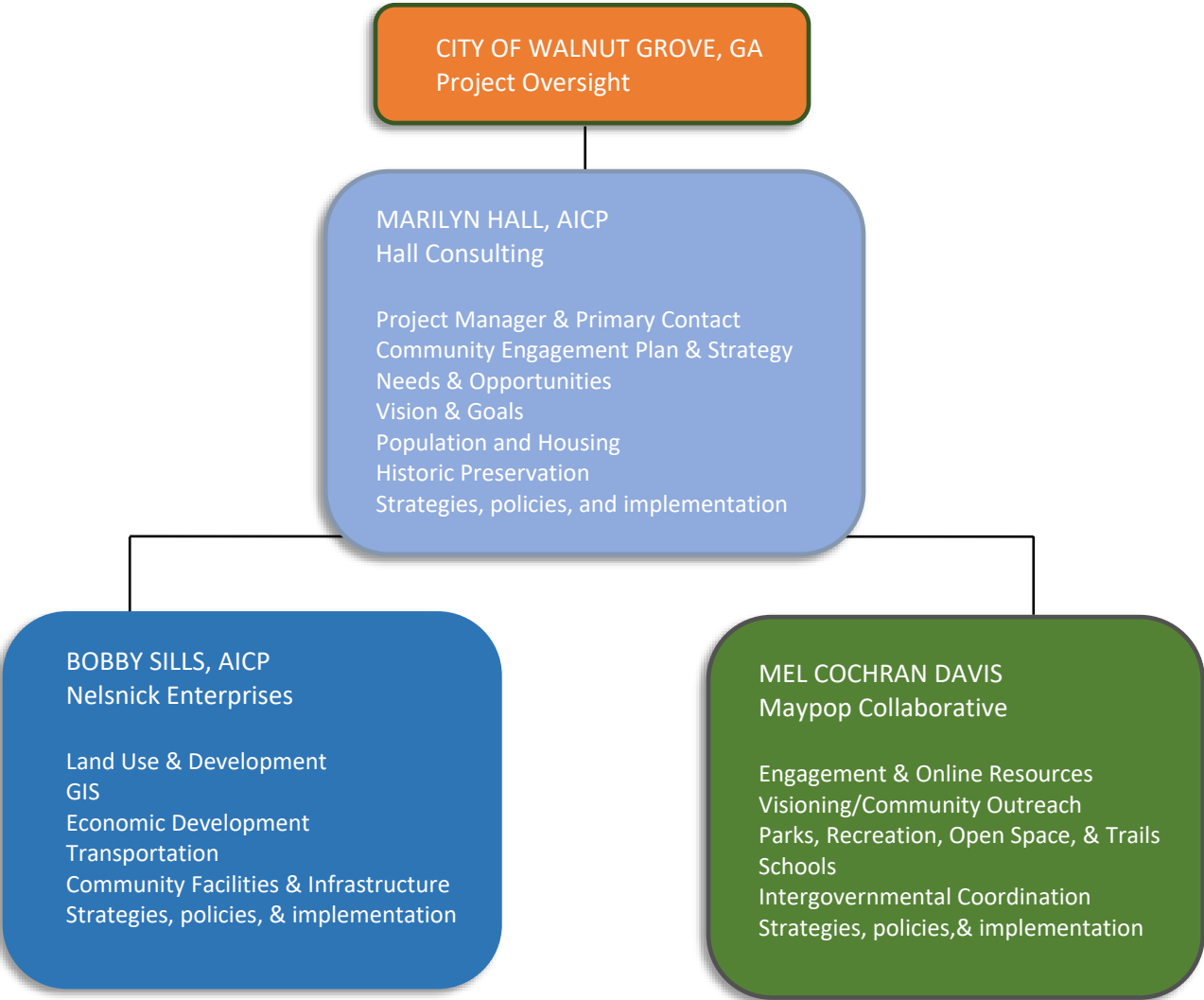
Mr. Sills has 26 years of professional planning experience, which includes collection and analysis of data for various city and public utility planning studies. These include comprehensive plans, storm water, water and sewer rate studies, capital improvements planning, impact fees calculations, revenue sufficiency analysis, water system business plans, connection fee calculations and development of financial planning models. Mr. Sills is a minority owner of the firm, is a certified planner from the American Institute of Certified Planners (AICP) with a master's degree from the School of Architecture and a master's degree from the School of Civil Engineering both from the Georgia Institute of Technology.



## 2. KEY TEAM MEMBERS AND THEIR ROLES

The Consulting Team consists of three firms that have successfully worked together on a variety of plans in Georgia. Marilyn Hall, AICP of Hall Consulting, Inc. would serve as the team’s primary point of contact and project manager. She has more than 20 years of planning and utilities experience throughout Georgia. Bobby Sills, AICP, EIT is the founder of Nelsnick Enterprises, Inc. Bobby specializes in transportation planning, capital improvements, public finance, and GIS. Mel Cochran Davis, with the Maypop Collaborative rounds out the team, bringing experience in planning and digital transformation.

With the Hall, Nelsnick, & Maypop Team we will provide a balanced, focused approach to delivering an implementable Master Plan to Walnut Grove. Our experts will review current conditions in Walnut Grove, Walton County, and the region utilizing their individual professional expertise to recommend strategies, policies, and implementation measures. Their expertise and expected roles are shown below.





## MARILYN P. HALL, AICP

Owner and Principal, Hall Consulting, Inc.

[marilynphall@hallplanning.com](mailto:marilynphall@hallplanning.com)

### NATIONAL AWARDS

Comprehensive Plan for Moreland, GA won the John Keller Award for Outstanding Planning Initiative for a Small Town or Rural Area (American Planning Association, 2008)

US EPA WaterSense Program 2013-2020 Sustained Excellence Award

City-County Communications & Marketing Association, 3CMA Savvy Awards in 2018 & 2019

### EDUCATION

Master of City Planning with emphasis in Environmental Planning Georgia Institute of Technology, Atlanta, Georgia, 1997

Bachelor of Arts in Economics Northwestern University, Evanston, Illinois, 1991

Ms. Hall will serve as project manager for Walnut Grove's Master Plan. She has worked in city and environmental planning since 1997. She is passionate about helping small cities and rural areas maintain their unique charm as they prepare for regional change and growth. Her recent efforts have focused on project management, comprehensive planning, environmental compliance, capital improvements, and public information and engagement. The following is a sampling of projects she has completed that demonstrate her planning expertise.

### **Projects**

- Historic Overlay District Plan, City of Bainbridge, GA
- Parks and Recreation Master Plan, Dublin, GA
- Principal consultant and project manager working on the Joint Comprehensive Plan for Madison County and the cities of Carlton, Colber, Comer, Danielsville, Hull, and Ila, Georgia.
- Form Based Codes Education, Monroe, GA
- Principal consultant and project manager working the Comprehensive Plan Monroe, GA.
- Completed \$400M Capital Improvements Plan for Athens, GA.
- Collaborated with Nelsnick Enterprises on the Comprehensive Plans for Morgan County and the cities of Bostwick, Buckhead, and Rutledge, Georgia.
- Completed the East Albany Neighborhood Revitalization Strategy Area Plan for the City of Albany, GA.
- Principal consultant and project manager working on the Comprehensive Plans for the Cities of Arcade, Jefferson, and Talmo in Jackson County, Georgia.
- Completed the South Columbus Revitalization Strategy for the City of Columbus, GA.
- Principal consultant and project manager for the Comprehensive Plans for the City of Waycross and Ware County, Georgia.
- Responsible for the Community Facilities Element of the Comprehensive Plan for the City of Columbus/Muscogee County, Georgia, and facilitation of several components of the Community Participation Program. (Under subcontract with another firm)
- Served as principal consultant and project manager for the Comprehensive Plan and Capital Improvements Program for the Sharpsburg, Georgia.

**Marilyn P. Hall, AICP (cont.)**

- Served as principal consultant and project manager for the Comprehensive Plan for the Town of Moreland, Georgia.
- Worked with Jordan, Jones, and Goulding, Inc. on the Comprehensive Plans for Newton County, Georgia and the Cities of Covington, Buford, and Snellville, Georgia.
- Worked with Jordan, Jones, and Goulding, Inc. to assist with the One Henry Comprehensive Plan in Henry County, Georgia. Responsible for writing population, community facilities, and natural and cultural resources components of Community Assessment. Also assisted with visioning and other elements of the Community Participation Program.



Employment History

**HALL CONSULTING, INC.**, Watkinsville, GA

Owner and principal planner. Planning project management, City master plans, comprehensive planning, urban and utility plans, housing studies, watershed planning, ordinance writing, demographic analysis, environmental program development and management, and outreach and public involvement. (2005 – Present)

**UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY**

Senior Water Resources Planner. Long-term strategist ensuring adequate water supplies: create and manage ACC’s innovative, new water reuse program, guide the utility's long term capital improvements program, manage research projects, assist with negotiations, manage the Water Conservation Office team, coordinate interdepartmental efforts, and implement special projects. (2017 – 2021)

**UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY**

Water Conservation Coordinator. Developed the nationally recognized ACC Water Conservation Office team. Created the WCO Internship Program. Planned and evaluated conservation programs. Coordinated efficiency efforts within the Utility and responsible for the Water Loss Program, the Watershed Protection Plan, and special projects. (2009 – 2017)

**JORDAN, JONES, & GOULDING**

City Planner and Water Utility Consultant Athens, GA  
(1997-2004)

LEADERSHIP

BOARD MEMBER | GA Planning Association | 2014 - Present

CLIMATE CHAMPION | American Planning Association | 2020 - Present

CHAIR | Integrated Master Planning Committee | Georgia Association of Water Professionals | July 2020 - Present

BOARD MEMBER | National Water Reuse Association | 2018 - 2021

FEATURE PUBLICATIONS

“Promoting Drought Resilience Through Plans and Codes”, Zoning Practice, American Planning Association April 2014

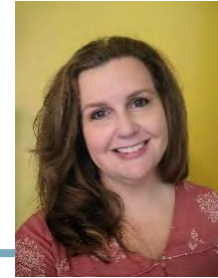
Planning and Drought (PAS 547) American Planning Association (contributor) October 2013

“The Cost of Apathy” The Georgia Operator, GAWP, Winter 2019, pg. 24-28



## MELINDA (MEL) COCHRAN DAVIS

Principal and Founder, MayPop Collaborative  
mel@Maypopcollaborative.com



### YEARS OF EXPERIENCE 19

**EDUCATION**  
Master of Public Administration  
University of Georgia  
Athens, Georgia, 2018

Bachelor of Landscape  
Architecture University of  
Georgia  
Athens, Georgia, 2003

**CERTIFICATIONS**  
Registered Landscape Architect  
Georgia LA 001541

Certified Inclusivity Assessor  
Inclusive Recreation Resource  
Center

Strategy Expert  
Engaging Local Government  
Leaders

**COMMUNITY LEADERSHIP**  
City of Commerce Planning  
Commission, Member 2017-  
Present

Cubmaster, Pack 35  
2020 -Present

Chair, Commerce Middle School  
Parent Teacher Organization  
2022-2023

Mel is an accomplished executive level leader, with extensive local government knowledge and experience. She will utilize her strong expertise in navigating government processes to help strategize a Master Plan that is implementable. She leads multi-disciplinary teams made up of government officials, residents, and stakeholders to positive outcomes. Highly organized and skilled at developing strategic approaches to resolving challenges to local governments with transparency and in a streamlined fashion. A proven relationship builder across diverse groups of public and private entities, establishing trust through collaboration.

### **Principal, Maypop Collaborative, Commerce, GA June 2022-Present**

Leading project teams for community planning and engagement efforts, including strategic plans master plans, accessibility transition plans, parks and recreation plans, digital transformation, and inclusive community engagement.

### **Assistant Director, Athens Clarke County Unified Government, Athens, GA, 2018-2022**

Leading a department of 74 full time, 95 part time, 147 seasonal, and 103 contract staff with a focus on leading administrative functions of the department with a team of 24 staff covering software administration, project management, planning, maintenance, safety and risk, contracts, management analysis, budgeting, community outreach, public relations, and marketing.

### **Division Administrator, Athens Clarke County Unified Government, Athens, GA, 2013-2018**

Leading the Park Services Division, including planning, maintenance, and project management. Responsible for streamlining operations, increasing transparency, and leading change while maintaining the foundation of department functions and operations.

### **Facility Supervisor, Athens-Clarke County Unified Government, Athens, GA 2008-2013**

Leading daily operations and guiding future development of Greenways and Riverside Parks within the Athens-Clarke County Leisure Services Department. Ensuring proper management and safety of trail and park facilities through collaboration with Athens-Clarke County agencies and community non-profits



Mel Cochran Davis (cont.)

**Planner II, Athens Clarke County Unified Government, Athens, GA 2006-2008**

Guiding architects, engineers, developers, and residents of Athens-Clarke County through plans review and permitting processes. Reviewing design submittals for conformance with zoning codes and ordinances. Providing written commentary and reports related to planning issues. Assisted Comprehensive Plan updates and zoning code revisions.

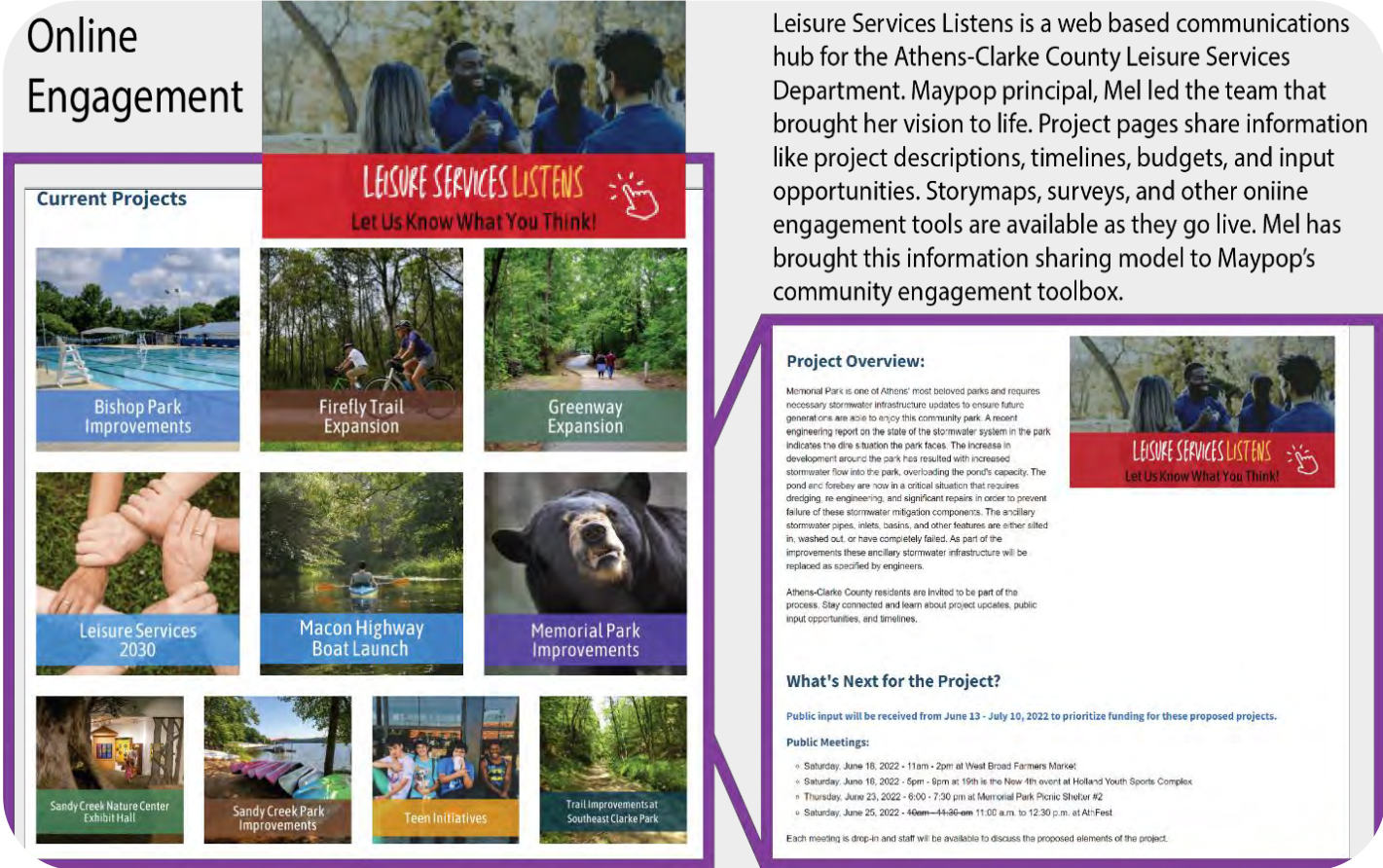
Developed and implemented ACCGov public engagement processes and tools for the SPLOST and TSPLOST programs

Responsible for Online Engagement for Leisure Services activities for ACCGov. See example below.

**Landscape Architect, USDA Forest Service, Gainesville, GA 2003-2006**

Developing and implementing professional designs for recreation areas and trails, including bid packages, construction observation, and final inspections. Assisted with development of the Forest Comprehensive Plan for health, accessibility, and recreation chapters. Served as a Type II Wildland Firefighter

## Online Engagement



The screenshot displays the 'Leisure Services Listens' website interface. At the top, there is a header with the logo and the tagline 'Let Us Know What You Think!'. Below this is a grid of project cards, each featuring a photograph and a title: Bishop Park Improvements, Firefly Trail Expansion, Greenway Expansion, Leisure Services 2030, Macon Highway Boat Launch, Memorial Park Improvements, Sandy Creek Nature Center Exhibit Hall, Sandy Creek Park Improvements, Teen Initiatives, and Trail Improvements at Southeast Clarke Park. To the right of the grid is a 'Project Overview' section for Memorial Park, which includes a detailed description of the stormwater infrastructure project, an invitation for public participation, and a list of upcoming public meetings with dates, times, and locations. A 'What's Next for the Project?' section follows, stating that public input will be received from June 13 to July 10, 2022, to prioritize funding for the proposed projects.



## ROBERT W. SILLS, AICP

Principal Planner, Nelsnick Enterprises

[bsills@nelsnick.com](mailto:bsills@nelsnick.com)



### EDUCATION

Master of Science  
School of Civil Engineering  
Georgia Institute of  
Technology  
Atlanta, Georgia, 1995

Master of City Planning  
School of Architecture  
Georgia Institute of  
Technology  
Atlanta, Georgia, 1995

Bachelor of Arts – Geography  
Minor Computer Science  
Rutgers College  
New Brunswick, New Jersey,  
1987

### CERTIFICATIONS/ AFFILIATIONS

- American Institute of Certified Planners
- Engineer-in-Training,
- American Planning Association,
- Georgia Planning Association,
- Georgia Association of Water Professionals

Mr. Sills has 26 years of professional experience, which includes collection and analysis of data for various city and public utility planning studies. He will lead the Capital Improvements and Infrastructure aspects of the Master Plan. These include comprehensive plans, storm water, water and sewer rate studies, capital improvements planning, impact fees calculations, revenue sufficiency analysis, water system business plans, connection fee calculations and development of financial planning models.

### Employment History

#### **Nelsnick Enterprises Incorporated**

Senior Planner  
September 2003 - Present

#### **Jordan, Jones & Goulding Inc.**

Urban Planner/Engineer/Project Manager  
July 1995 – September 2003

### Relevant Projects

- Comprehensive Plan for Monroe, Georgia – Project include attending public meetings, development of plan elements per DCA specifications and relevant mapping.
- Comprehensive Plan for Morgan County, Georgia – Project include separate stand-alone plans for the City of Rutledge, Bostwick and Buckhead. Project included complete planning process from Community Participation Program to adoption of plans.
- Developed Comprehensive Plans for the Quad City Planning Authority which included City of Talmo, City of Jefferson and City of Arcade, Georgia. Project included complete planning process from Community Participation Program to adoption of plans.
- Prepared Comprehensive Plan for the Town of Sharpsburg, Georgia and the Town of Moreland, Georgia.
- Developed a methodology for calculating school, water and sewer, and road impact fees, York County, South Carolina.

### Bobby Sills – Continued

- Prepared population projections, water and sewer consumption projections, and cost estimates for various water supply options for the Long-Term Water Resource Plan, Glynn County, Georgia.
- Completed a Concept Report for the City of Cartersville,
- Georgia Main Street Transportation Enhancement.
- Updated the Land Use element of the Cartersville Comprehensive Plan for the City of Cartersville, Georgia.
- Wrote ordinances and created a Land Use Plan for Roane County, Tennessee.
- Managed the data entry of over 50 miles of surveyed sewer trunk line. Developed data entry forms in Microsoft Access, converted data, created scripts in ArcView GIS Avenue for manipulation of graphic and attribute data, and provided reports and maps. Survey included a surface reconnaissance for delineating wetlands, stream crossing, general conditions of manholes, clearing requirements, and manhole raising requirements, Fulton County, Georgia.

### CONFERENCE/WORKSHOP SESSIONS

“Water Stewardship Act,”  
Valdosta, Georgia

“Rural Highway Bypass:  
Impacts and Mediation,”  
Savannah, Georgia

“Water Conservation  
Pricing,” Gwinnett County,  
Georgia

“Righteous Rate Making,”  
Tifton and Savannah,  
Georgia

“Water and Sewer Rate  
Setting,” Marietta, Georgia

“Capital Improvements  
Planning,” Madison,  
Wisconsin





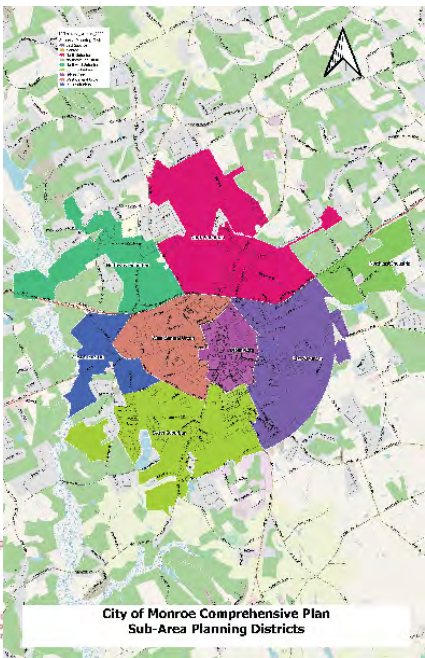
## EXPERIENCE WITH MUNICIPAL PLANS

*Comprehensive Plan for the City of Monroe, GA, Adopted June 2022*

Contact: Logan Propes, City Administrator  
Phone: 770-267-7536  
Email: [lpropes@monroega.gov](mailto:lpropes@monroega.gov)

The Hall and Nelsnick team recently completed the Comprehensive Plan for the City of Monroe, GA. The City of Monroe is located in Walton County, approximately 40 miles east of Atlanta along US 78. Walton County is a historically rural area that has experienced significant growth pressure from metropolitan Atlanta in recent years. As its county seat and its largest city, these pressures have begun to be felt in Monroe, especially along the city’s western side. Over the last decade the City of Monroe has developed and implemented a variety of plans. This Comprehensive Plan Update built upon those plans. Many of the plans being implemented by the city focus on downtown and adjacent areas. The *Town Center LCI* is perhaps the most important. It serves as the starting point for most of the City’s efforts to preserve and redevelop its central business district.

Public engagement and input were the cornerstone of the successful comprehensive planning process in Monroe. The City kicked off the process by laying out the foundation in a Community Engagement Plan. The plan was introduced to the City Council at a work session on December 7, 2021. The project website was launched at the project kick off and provided meeting content and planning documents to the public throughout the life of the project. The website housed the online survey, visual preference survey, and meeting materials. The online survey asked a series of questions about the community and the vision for the future. Almost 300 people completed the online survey. The Steering Committee distributed flyers for public meetings and the Consultant team provided social media content for the City to utilize.

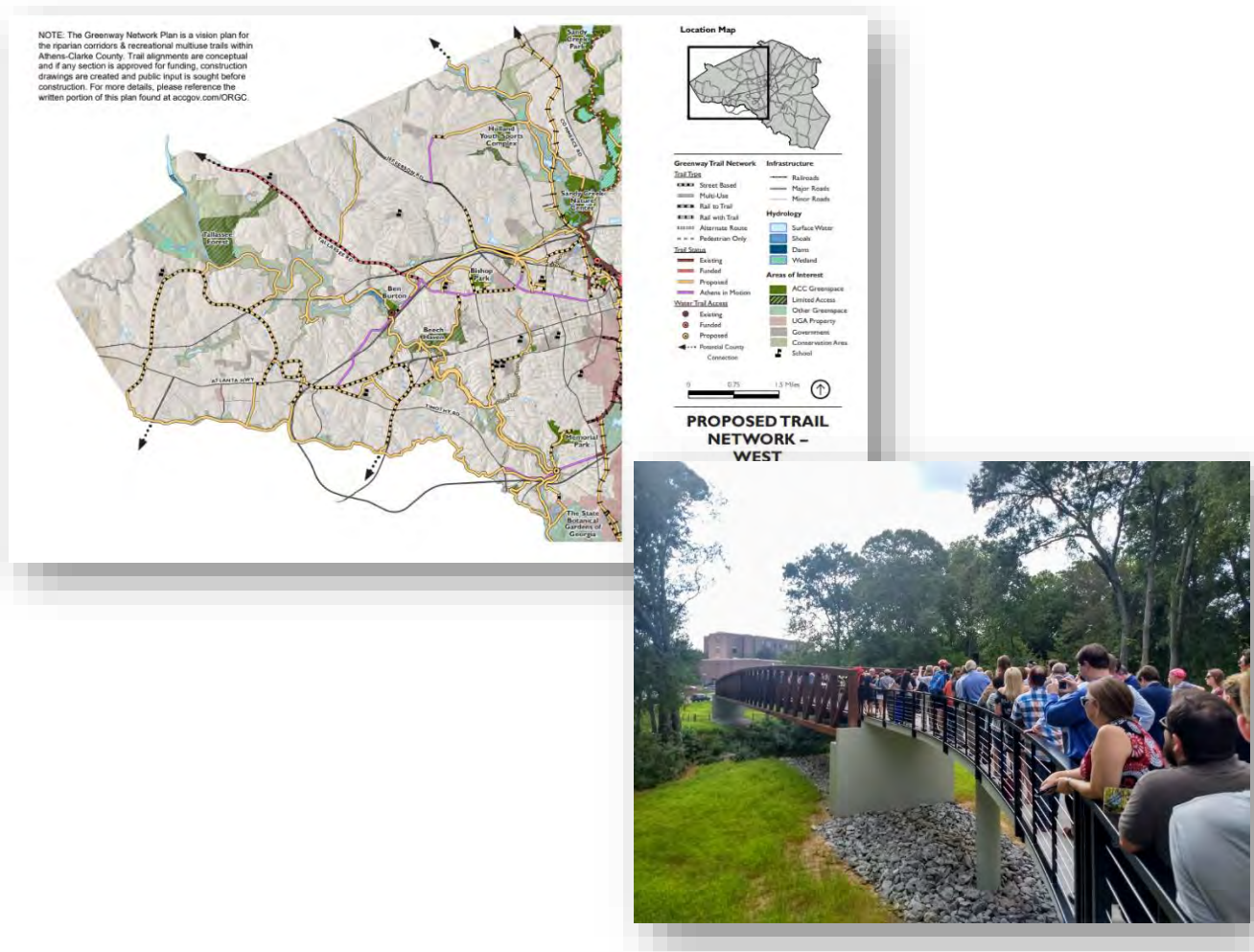




*Oconee Rivers Greenway Network Plan  
Athens-Clarke County, GA (2013-2022)*

Following years of incremental planning of segments of the Oconee Rivers Greenway system, Maypop's Mel Cochran Davis initiated a comprehensive update to those plans, drawing them together into a single vision for the county's trail system. The new plan resulted in a consistent approach to identifying corridors of interest in the watershed and prioritizing land acquisition and multi-use trail development. This framework has informed the construction of several miles of new trails, establishment of the first water trails on the Middle and North Oconee Rivers. To date, the plan has generated over \$45 million in SPLOST and TSPLOST funding as well as over \$300,000 in operational funds.

As Greenway Coordinator, and later Administrator for the Leisure Service Department's Park Services Division, Mel Cochran Davis led public engagement for the effort, which involved numerous public engagement sessions with citizens and landowners throughout the county, and consultation with local interest groups. The team also provided project management and design guidance on detailed development of various elements of the trail system and supporting park spaces.



Proposal to prepare the City Master Plan  
Walnut Grove, Georgia

*Madison County Joint Comprehensive Plan  
with the Cities of Carlton, Colbert, Danielsville, and Ila, Transmitted January, 2023*  
Contact: Todd Higdon, County Chairman  
Phone: 706-795-6300  
Email: thigdon@madisonco.us

In January of this year, the Hall Consulting Team completed the Joint Comprehensive Plan for Madison County and four of its cities. Madison County is experiencing considerable growth pressure from Athens to the south and from I-85 to the west. In addition to this pressure, the county is struggling to balance the needs of agriculture, multi-generational landowners, business owners, environmentalists, and new residents. The Hall team addressed these challenges through robust public engagement that included more than a dozen public engagement opportunities, a website, surveys, a citizen stakeholder committee, a dozen stakeholder interviews, presentations at public events, and civic group engagements.





*Comprehensive Plan for*

*Morgan County and the Cities of Buckhead, Bostwick, and Rutledge, adopted July 2017*

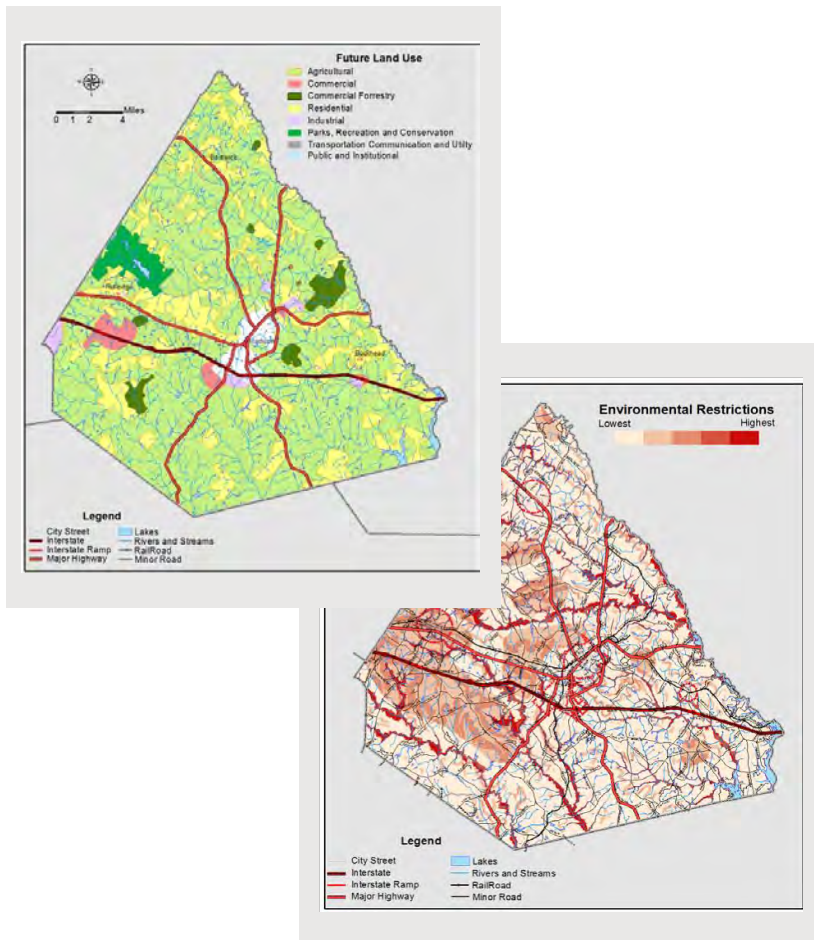
Contact: Chuck Jarrell, Planning & Development Director

Phone: 706-342-4373

Email address: [cjarrell@morganga.org](mailto:cjarrell@morganga.org)

Hall Consulting, Nelsnick Enterprises, and another firm collaborated to produce the Comprehensive Plan for Morgan County, Georgia, including the Cities of Rutledge, Bostwick, and Buckhead. The team developed a community participation plan that included four public kickoff meetings (one per jurisdiction), four visioning workshops, public presentations of drafts, a community-wide survey, stakeholder interviews and informal interviews with the public, steering committee meetings, and assistance with the adoption process in each jurisdiction.

The Consultant Team took an innovative approach for this Comprehensive Plan. Rather than look at the functions, the Plan evaluates the issues. Thus, when the citizens provide concern for retaining the rural beauty of the County or the small-town character of their city, the plan addressed solutions based on land use, community facilities, housing, and intergovernmental cooperation.



*The Hall Team goes to where the people are. This photo is of Marilyn Hall gathering public input at a 4th of July event in Madison, GA.*

## REFERENCES

### Reference 1

Name: City of Monroe, GA  
Website: <https://www.monroega.com/>  
Client contact person and title: Logan Propes  
Phone: 770-267-7536  
Email address: [lpropes@monroega.gov](mailto:lpropes@monroega.gov)

### Reference 2

Name: Cities of Jefferson, Arcade, and Talmo, Georgia  
Website: <https://www.cityofjeffersonga.com/>  
Client contact person and title: John Ward, Former City Manager for the City of Jefferson, GA  
Phone: 828-268-6200  
Email address: [John.ward@townofboone.net](mailto:John.ward@townofboone.net)

### Reference 3

Name: City of Albany, Georgia  
Website: <https://www.albanyga.gov/>  
Client contact person and title: Paul Forgey, Director of Planning & Development Services  
Phone: 229-302-1848  
Email address: [pforgey@albanyga.gov](mailto:pforgey@albanyga.gov)

### Reference 4

Name: Columbus/Muscogee County, Georgia  
Website: <https://www.columbusga.gov/planning/>  
Client contact person and title: Rick Jones, Planning Director  
Phone: 706-225-3936  
Email address: [rjones@columbusga.org](mailto:rjones@columbusga.org)

### Reference 5

Name: Morgan County, Georgia  
Website: <https://www.morganga.org/413/Comprehensive-Plan>  
Client contact person and title: Chuck Jarrell, Planning & Development Director  
Phone: 706-342-4373  
Email address: [cjarrell@morganga.org](mailto:cjarrell@morganga.org)

### 3. PROJECT UNDERSTANDING

The City of Walnut Grove is a small town located in Walton County with a population of around 1,500 people, covering an area of approximately 1.5 square miles. It lies at the crossroads of State Routes 138 and 81. There is significant development pressure for a variety of reasons and there are many changes in the works. The purpose of the Master Plan is to help the city prepare for these changes. The following are three examples of upcoming changes that the plan must address.

First, the Georgia Department of Transportation is expected to install a roundabout aimed at improving traffic flow, reducing congestion, and enhancing safety in the area. Roundabouts are becoming more common in Georgia as a way to manage traffic and reduce the severity of accidents. The roundabout will displace several businesses that provide a significant tax base for the city.



Second, Walton County is building a very large park adjacent to the City. The new park includes plans for a senior center, community center, tennis courts, skate park, etc. It will draw families from through Walton County.

Thirdly, the city has plans to develop a Town Center on some large parcels of land in the northeast corner of the Route 138 and 81 intersection. This is planned to be a new downtown with a mix of commercial uses and retail with multifamily residential and offices. Plans for the Town Center are being refined by the Northeast Georgia Regional Commission.





The new planned downtown, roundabout, and mega park will have a significant impact on the overall development and growth of the city. To prepare for the impact the Master Plan should address the following:

**Land Use:** The Master Plan must identify areas for residential, commercial, industrial, and recreational use. The DDA and city can work with developers to ensure that the land is used optimally and in accordance with the city's goals.

**Transportation:** The Georgia Department of Transportation has plans that will dramatically impact the city. The Master Plan will need to work with the GDOT changes and strive to improve mobility, reduce congestion and pollution, and enhance safety. The Plan could include improving public transportation in partnership with Walton County, pedestrian and bike paths, and roads.

**Housing:** Housing needs should be determined during the public engagement process. The Downtown Walnut Grove Concept Plan (2006) includes more than a thousand residential units. If the public engagement process calls for it, the Master Plan could focus on creating affordable housing options for low and middle-income residents. The DDA could work with developers to incentivize the construction of such housing.

**Economic Development:** The Plan must identify economic development opportunities, such as attracting new businesses, encouraging entrepreneurship, and creating jobs. The City and DDA can offer incentives to businesses that contribute to the city's growth and development.

**Infrastructure:** Walnut Grove must have the infrastructure to support the upcoming changes in land use and population growth. A primary purpose of this Master Plan is to prioritize capital improvements to accommodate change. The master plan can identify areas that require infrastructure improvements, such as water and sewage systems, public facilities, and green spaces.

**Community Engagement:** Engaging the community in the planning process is essential to ensure that their needs and priorities are addressed and the plan is implemented. The draft scope presented in the following pages elaborates the community engagement process.



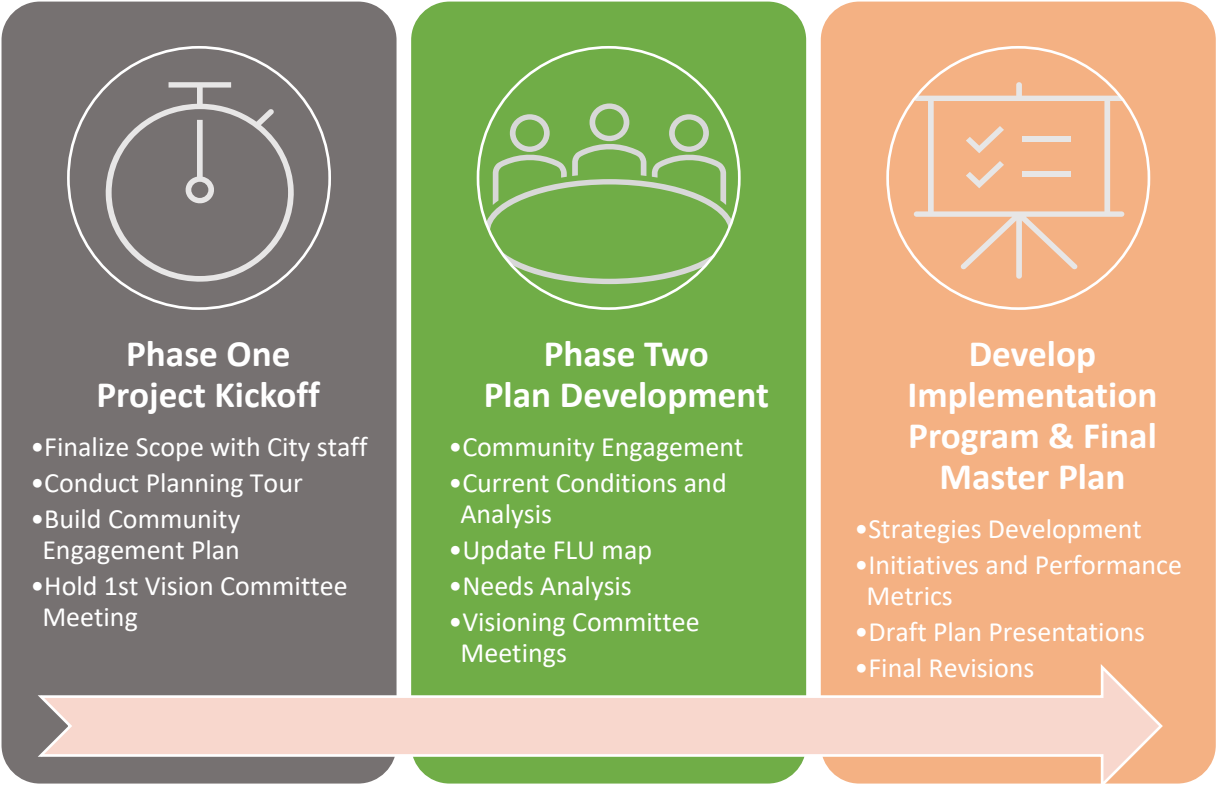
#### 4. PROJECT APPROACH AND PROPOSED SCOPE OF WORK

The Walnut Grove City Master Plan must be a partnership with Planning Commission, City Council, Downtown Development Authority (DDA), residents, business owners and other stakeholders. The most important aspect of a community vision is that it originates from the residents, business owners and elected leaders of the community. The consultant team’s role is to listen, provide educational opportunities of the process, listen more, present what we hear, and listen again. It is an extremely iterative process requiring significant public participation.

“ *Hall Consulting helped us achieve our goal of making our Comprehensive Plan viable and informative to our citizens. The professionalism of the planning team provided the confidence our plan needed for formulating future goals for our community.*”

– *Rick Jones, Planning Director, Columbus, Georgia*

The final approach and scope of work will be created in collaboration with the City of Walnut Grove. The proposed approach and scope of work on the following pages should be considered a recommended or draft scope.



## PHASE ONE: PROJECT KICKOFF

### Task 1.1 Initial Meeting:

The Hall team will meet with the local project team, including staff from the City of Walnut Grove, to finalize project expectations, scope of work, and timeline. During this meeting, we will also review and finalize the list of data needs.

**Task 1.1 Deliverables:**                      **1) Final Data Needs List**  
**2) Final Scope of Work and Timeline**

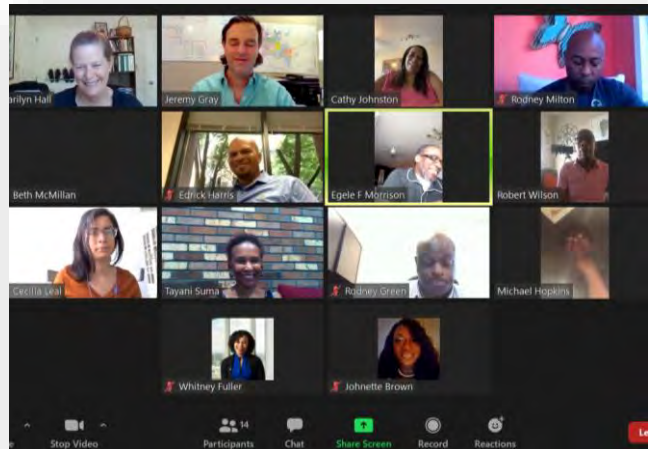
### Task 1.2 Community Tour:

The Hall team will tour the City with a local host to get further acquainted with the city and the local planning environment. This will include discussion with planning staff regarding existing local plans for the city, Walton County, and other entities, institutions, regional agencies, and significant public and private authorities with an impact on the larger planning effort.

**Task 1.2 Deliverables:**                      **1) Final Stakeholder List & Contact Information developed in collaboration with the city**

### Task 1.3 Community Engagement Plan:

The consulting team will develop a Community Engagement Plan (CEP) that outlines techniques and processes that will be used to gather public input. The CEP will include development of a visioning committee, key stakeholders to be contacted, number and schedule for community meetings/public hearings, and other key components for outreach throughout the project. The CEP will include a detailed schedule that includes dates, times, and locations for all participation opportunities, notification methods for outreach, engagement methods to reach diverse constituency, staffing plan, information collection and coordination methodology, steering committee role and strategy, and draft marketing and public presentation materials.



Although the Hall Consulting Team prefers to meet stakeholders in person, meetings can be virtual if needed. (Photo: Marilyn Hall hosts a virtual steering committee meeting in Atlanta, GA)



While specific elements of the CEP will be developed in coordination with the client, the consulting team anticipates a plan that includes the following public engagement opportunities:

- One (1) public project kick-off meeting/event outlining public engagement process;
- Two (2) public workshops to include identification of community vision, reformulation of community character area map and narrative, and strategic framework for implementation;
- Three (3) Visioning Committee meetings to be held early the project;
- One (1) Final presentation to the City Planning Commissioners
- One (1) Final presentation to City Council
- Virtual online engagement opportunities, and

To maximize the effect of public engagement we will combine innovative, industry-leading techniques from multiple disciplines into a methodology uniquely suited to the master planning process in Walnut Grove. The details of the public engagement strategy will be developed in collaboration with city staff. The CEP will be developed according to the principles of our Public Engagement Philosophy outlined on the following page.

**Task 1.3 Deliverables 1) Community Engagement Plan that includes education strategies, outreach strategies, workshop details, and timeline of all workshops and meetings.**



## Public Engagement Philosophy

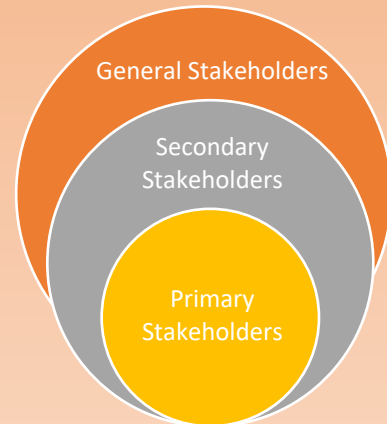
### Identify the Stakeholders

For a successful plan, one must have the right stakeholders at the table from the start, which is why one of our first steps in any client engagement is the identification of stakeholder groups. The stakeholders identified through this exercise are categorized as either primary, secondary, or general, which then determines their level of participation and the means used to reach out to them.

**Primary Stakeholders** – Essentially the project’s steering committee, this group includes all key decision-makers

**Secondary Stakeholders** – Persons or organizations with experience or perspectives that will provide crucial input into or feedback on the plans

**General Stakeholders** – Members of the public with a general interest in the project



### Public Participation

We understand some stakeholders may need education and other support to be able to participate fully and in a meaningful way. We tailor our public outreach and engagement in a way that facilitates informed discussion and that allows all voices to be heard. Because our process uses three feedback loops, there are opportunities for refinement and course correction throughout the process, rather than a single opening during the public comment period.



### Active Listening

When interacting with the public, our team employs active listening techniques to ensure greater accuracy and accountability in the collection of residents’ perceptions and comments. Active listening techniques also hold potential for conflict resolution and consensus-building.

### Collaborative Review

Before a draft is published for public comment, it is internally reviewed in a collaborative process involving certain key stakeholders. Verification of facts and research ensures the legitimacy of conclusions and findings and provides opportunities for corrections prior to public review.

## PHASE TWO: PLAN DEVELOPMENT

Task 2.1 Community Engagement Process: Based on the Community Engagement Plan, the consulting team will gather public input through in person workshops and online. Additional engagement opportunities may include written surveys administered online or in hard copy, focus groups, one-on-one interviews, and any other forms of outreach identified in the CEP. The consulting team will also hold Visioning Committee meetings as part of this Task. The Hall Team will prepare all materials for these meetings, including notices, flyers, and other advertisements, facilitate the meeting process and compile a written summary of each meeting for submission to the City.

**Task 2.1 Deliverables:**

- 1) All materials used in meetings**
- 2) Detailed notes from all meetings**

Task 2.2 Current Conditions and Analysis and FLU Update: Concurrently with Task 2.1, the consulting team will undertake a technical review of existing plans including the city’s Comprehensive Plan, water and sewer master plans, transportation plans, park plans, other local plans, and other relevant national, regional, and local data sources. This information will provide a background for the community visioning workshops and other public outreach efforts and may consider the following:

- Population and Demographics
- Land Use and Development Character
- Parks & Recreation, including trails
- Community Facilities and Services
- Health and Wellness
- Schools
- Economic Development
- Transportation
- Historic Preservation
- Intergovernmental Coordination
- Broadband Service
- Water and Sewer Service
- Housing

“

*This was the best handled and managed project the Town has contracted for the five years I have been here.”*

*- Hall and Nelsnick Planning Team Client*

An important part of this task will be to update the Future Land Use Map (FLU) so it is consistent with the plans for the new roundabout and other recent changes. The FLU update will be based on public engagement results, input from the Visioning Committee, review of current conditions, and future projections.

### Task 2.3 Needs Analysis

The consultant will combine the needs and concerns identified during the public engagement program and the results of Task 2.2. The Visioning Committee, the City, DDA, and others will assist the consultant in prioritizing the needs and concerns based on the vision and values articulated during the public engagement process. From this task, goals and strategies will be developed in Phase 3.

**Task 2.3 Deliverable: Community Snapshot and Context of Change Presentation**

- Analysis of data and information

- Summary of relevant existing plans
- Prioritization needs to be addressed

### PHASE 3: DEVELOP IMPLEMENTATION PLAN

Strategies, initiatives, and performance metrics for the goals articulated thus far will be developed in this task as defined below.

#### Task 3.1 Strategic Goal Setting

The consulting team will develop *Strategic Goals* for the community based on the needs prioritized in Task 2.3, community input, tours and site visits, quantitative research, and other findings. Evaluating and developing these goals will be an important assignment of the Visioning Committee.

*Strategic Goals are results oriented, focused on desired outcomes, quantitative with numbers and percentages, easy to interpret, and credible.*

#### Task 3.2 Initiatives and performance measures

The consultant will develop action statements that allocate resources to address goals and strategies from Task 3.1. Initiatives will include a scope, budget, timeline, and *Performance Metrics*. Performance metrics are quantitative indicators put in place to track the progress against stated strategies and initiatives. They are a useful tool for evaluating the success and effectiveness of the city's master plan. The specific measures that Walnut Grove will use will depend on the goals and objectives outlined in previous tasks. (See sidebar for examples)

**Task 3.2 Deliverables: Draft documentation of goals, initiatives, and performance metrics.**

Task 3.3 Draft Master Plan: The consulting team will hold a public workshop or event and will provide identical content online to present the content of the Draft Plan to residents, business owners, Planning Commission, City Council, and other stakeholders and solicit comments and feedback.

**Task 3.3 Deliverables: 1) PPT of Draft Plan Presentation  
2) All meeting materials**

Task 3.4 Approval and Adoption: After revising the Plan per the input received in Task 3.2, the consulting team will attend a meeting of the Walnut Grove City Council to present the final plan and respond to any questions.

## EXAMPLES OF COMMON PERFORMANCE METRICS

#### *Economic indicators*

job growth, business retention, and new business development

#### *Environmental indicators*

air quality, water quality, and the amount of open space or green infrastructure

#### *Social indicators*

public safety, health outcomes, and access to affordable housing

#### *Transportation indicators*

traffic congestion, public transit ridership, and the number of bike lanes or pedestrian paths.

#### *Land use indicators*

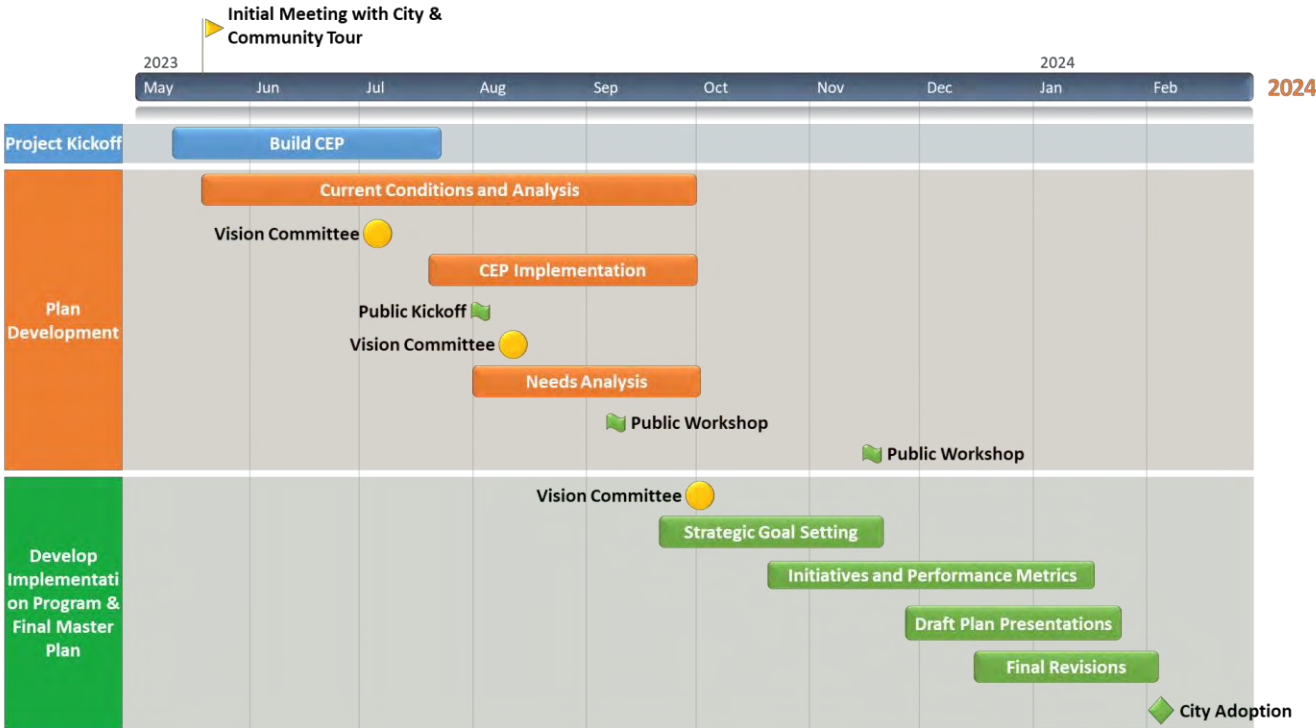
amount of land used for residential, commercial, or industrial purposes, as well as the availability of affordable housing.

#### *Civic engagement indicators*

voter turnout, participation in public meetings and forums, and the amount of community input gathered during the planning process.

Task 3.5 Submission of Documents: The consulting team will provide digital copies, in both editable format and pdf, and one loose reproducible original of the final plan and all other final printed materials including maps, charts, tables, and photographs.

### 5. PROJECT SCHEDULE



## 6. FEE PROPOSAL

The Hall Team proposes to complete the tasks presented above for a total of \$39,551. We propose two Add-Ons to the master plan. The first is a full update to the *Downtown Walnut Grove Master Concept Plan*. The second are detailed, small area character plans that include drawings and descriptions. These would help answer questions like, “What should the entrances to our new downtown look like?” and “How should we transition from the County’s mega park to our town?” The Add-On fees assume utilization of the public engagement efforts from Phases 1 and 2 of the Master Plan.

<b>Phase 1</b>	Project Kickoff	\$6,980
<b>Phase 2</b>	Plan Development	\$24,290
<b>Phase 3</b>	Implementation Plan	\$5,700
	Project Management	\$2,081
	Printing and Meeting Supplies	\$500
	<b>Total</b>	<b>\$39,551</b>
	<b>Add-Ons</b>	
	Full update to 2006 Walnut Grove Downtown Concept Plan	\$6,000
	Detail Character Studies with drawings	\$2,000 each