

## **CITY OF DULUTH**

### **CODE OF ETHICS ORDINANCE FOR CITY OFFICIALS**

#### **PREAMBLE**

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.

The people have a right to expect that every public official will conduct himself/herself in a manner that will tend to preserve public confidence in and respect for the government he/she represents.

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.

The Council of the City of Duluth, Georgia (hereinafter "City") ordains the following:

#### **PURPOSE**

#### **ARTICLE I.**

Declaration of policy. It is the policy of the City that the proper operation of democratic government requires that public officials be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a Code of Ethics Ordinance for all City officials is adopted.

This Code has the following purposes: (1) to encourage high ethical standards in official conduct by City officials; (2) to establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the best interest of the City; (3) to require disclosure by such officials of private financial or other interest in manners which affect the City; and (4) to serve as a basis for disciplining those who refuse to abide by its terms.

The provisions of this ordinance shall not apply to political contributions, loans, expenditures, reports or regulation of political campaigns or the conduct of candidates in such campaigns.

## **SCOPE OF PERSONS COVERED**

### **ARTICLE II.**

Scope of persons covered. The provisions of this Code of Ethics Ordinance shall be applicable to all members of the city council, planning and zoning commission, board of zoning appeals, all advisory commissions and committee members.

### **ARTICLE III.**

Definitions. As used in this ordinance, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

**City official or official**, unless other expressly defined, means the Mayor, members of the City Council, municipal court judges (including substitute judges), City Administrator, City Clerk, and Chief of Police, whether such person is salaried, hired or elected, and all other persons holding positions designated by the city charter, as it may be amended from time to time. City official, unless otherwise expressly defined, includes individuals appointed by the Mayor and City Council to all city commissions, committees, boards, task forces, or other city bodies unless specifically exempted from this ordinance by the City Council.

**Entity** means a sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, receivership, trust or any other entity recognized by law through which business may be conducted.

**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.

**Discretionary authority** means the power to exercise any judgment in a decision or action.

**Immediate family** means spouse, mother, father, brother, sister, son, or daughter of any City Official.

**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 incidental 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: (1) the interest is ownership of 5% 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) 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 \$5,000.00 in salary, bonuses, commissions or professional fees or \$5,000.00 in payment for goods, products or nonprofessional services, or 10% 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 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 \$5,000.00 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 \$5,000.00 or more.

## STANDARDS OF CONDUCT

### ARTICLE IV.

#### Standards of Conduct

- (a) No council member or member of any board or commission shall use such position to secure special privileges or exemptions for such person or others, or to secure confidential information for any purpose other than official responsibilities.
- (b) No council member or member of a board or commission, in any matter before the council, board or commission in which he has a substantial interest, shall fail to disclose for the common good for the record such interest prior to any discussion or vote.
- (c) No council member or member of a board or commission shall act as an agent or attorney for another in any matter before the city council or any board or commission.
- (d) No council member or commissioner 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 council member or member of any board or commission shall enter into any contract with the city except as specifically authorized by state statutes. Any council member or member of a board or commission who has a proprietary interest in an agency doing business with the city shall make known that interest 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 Georgia law.
- (h) No city official shall solicit or accept other employment to be performed or compensation to be received while still a city official or employee, if the employment or compensation could reasonably be expected to impair in 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 board or commission on which he serves or to his supervisor and shall 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 or employee shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant to make available to the public at large.

## **CONFLICT OF INTEREST**

### **ARTICLE V.**

Prohibition of conflict of interest. A city official may not participate in a vote or decision on a matter affecting a person, entity, or property in which the official or employee has a substantial interest; in addition, a city official or employee who serves as a corporate officer or member of the board of directors of a nonprofit entity may not participate in a vote or decision regarding funding by or through the city of the entity. Where the interest of a City official or employee in the subject matter of a vote or decision is remote or incidental, the City official or employee may participate in the vote or decision and need not disclose the interest.

## **EXEMPTIONS**

### **ARTICLE VI.**

Exemptions. This code shall not be construed to require the filing of any information relating to any person's connection with, or interest in, any professional society or any charitable, religious, social, fraternal, educational, recreational, public service, civil or political organization, or any similar organization not conducted as a business enterprise or governmental agency, and which is not engaged in the ownership or conduct of a business enterprise or governmental agency.

## **COMPLAINTS**

### **ARTICLE VII.**

**Complaints.** Any person having a complaint against a city official 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 city official. 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, 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. No member of Council or the Mayor shall investigate a complaint involving themselves.

### **ARTICLE VIII.**

(a) **Composition of the Board of Ethics:**

(1) The Board of Ethics of the City shall be composed of five (5) 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.

(2) The Mayor and Councilmembers shall each designate two (2) qualified citizens to provide a pool of twelve (12) 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. On the initial appointment, the Mayor or Councilmember shall designate one person for a one (1) year term and one person for a two (2) year term.

(3) The City Administrator shall maintain a listing of these twelve (12) 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 five (5) members of the Board of Ethics have been appointed. Such Board will elect one of its members to serve as Chairman.

(4) 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:

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

(2) 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.

(3) 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;

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

(5) 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;

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

(7) To report its findings to the City Council for such action as the City Council deems appropriate.

## **ARTICLE IX**

Service of Complaint; Hearings and Disposition of Complaints. The Board of Ethics as appointed herein set forth shall cause the complaint to be served on the city official 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 City Official 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 and to present evidence and witnesses in opposition or in extenuation.

## **APPEALS**

### **ARTICLE X**

- (a) Any City Official 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 Fulton County within thirty (3) days after the decision of the Board of Ethics. The filing of such application shall act as supersedes.

## **PENALTIES**

### **ARTICLE XI**

Any persons violating any provisions of this policy are subject to:

- (1) Written and oral reprimand by the City Council.
- (2) A fine greater than \$100.00 but less than \$500.00 to be imposed by the City Council.
- (3) Request for resignation by the City Council.

## **MISCELLANEOUS**

### **ARTICLE XII**

Severability. The provisions of this Ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provisions or application.

IT IS SO ORDAINED this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk