

Chapter 2 - ADMINISTRATION

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ARTICLE I. - IN GENERAL

Sec. 2-1. - Exercise of powers.
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Sec. 2-1. - Exercise of powers.

The powers of the city may be exercised, as provided by the Charter, by the city, and by the parties with whom the city contracts for municipal services.

Secs. 2-2—2-20. - Reserved.

ARTICLE II. - CITY COUNCIL

DIVISION 1. - GENERALLY
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DIVISION 1. - GENERALLY

Sec. 2-21. - Subpoenas.
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Sec. 2-21. - Subpoenas.

(a) The city council, when sitting as a judicial or quasi-judicial body pursuant to public law, its Charter, or its ordinances, shall compel the attendance of witnesses by subpoena under the same rules as prevail in the superior courts, and any witness who shall fail to respond to the subpoena or who shall refuse to testify under oath, shall be guilty of contempt.

(b) The subpoenas authorized in subsection (a) of this section and section 2.15 of the Charter shall bear witness in the name of the mayor; shall be issued by the city clerk; and shall be served by the

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chief of police, any police officer, or by such other person as the mayor may designate.

(c) Should any person fail to respond to a subpoena of the city council, after having been lawfully served, without good cause, or should the person refuse to testify under oath, then the city council shall hold the person in contempt, and, in their discretion, punish the person by the imposition of a fine according to the maximum allowed by state law. Each of the failures or refusals herein described shall constitute a separate contempt.

Sec. 2-22. - Reimbursement and travel.

(a) *Travel outside the city.* The mayor and councilmembers shall be reimbursed for their own reasonable travel expenses incurred in connection with city business related to travel outside the city, and those cities that share borders with the city.

(b) *Overnight travel.* The city shall reimburse the mayor or councilmembers for actual expenses of meals incurred in connection with overnight travel, lodging, ground transportation and incidental expenses incurred in connection with city business.

(c) *Expense reports.* Within 60 days after incurring the aforementioned expenditures, the mayor or councilmembers shall file with the city manager a signed travel expense form setting forth the reasonable expenses incurred for which city payment is sought. Original receipts documenting each expense must accompany the form, except for reasonable and customary out-of-pocket expenses such as tolls, valet services, gratuities, and mileage. If a travel expense form has not been filed within 60 days after incurring an expenditure, the city shall not reimburse such expenses.

Secs. 2-23—2-41. - Reserved.

DIVISION 2. - MEETINGS AND PUBLIC HEARINGS; RULES AND PROCEDURE

Sec. 2-42. - Meetings.

Sec. 2-43. - Compliance with state law.

Secs. 2-44—2-61. - Reserved.

Sec. 2-42. - Meetings.

(a) The city council shall meet at least once per month. Regular meetings shall be held pursuant to an annual meeting calendar adopted by the city council by ordinance. The annual meeting calendar for the following calendar year shall be adopted no later than the month of December for the then current calendar year. Regular meetings shall be held in the city council chambers. The city council may designate alternative meeting times, dates or locations so long as notice of such alternative time, date or location is provided as required by state law.

(b) If the regular meeting falls on a federal or city holiday, the city council may reschedule the meeting to another date certain and publish the date change as described in subsection (a) of this section.

(c) Special meetings may be called in accordance with section 2.18 of the Charter.

(d) Any meeting of the city council may be continued or adjourned from day to day or for more than one day, but no adjournment shall be for a longer period than until the next regular meeting thereafter.

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(e) All meetings of the mayor and city council shall be held in accordance with the provisions of O.C.G.A. title 50, ch. 14 (O.C.G.A. § 50-14-1 et seq.). The public shall be afforded access to meetings other than executive sessions, in compliance with state law. Only executive sessions held in accordance with state law may be closed to the public.

(f) Rules and procedures for city council meetings and public hearings may be further defined by adoption of a resolution of the city council.

Sec. 2-43. - Compliance with state law.

(a) All meetings shall be held in accordance with the Georgia Open and Public Meetings Act (O.C.G.A. § 50-14-1 et seq.).

(b) All city records subject to the Georgia Open Records Act (O.C.G.A. 50-18-70 et seq.) shall be available to the public. The city clerk shall comply with any valid requests under the Georgia Open Records Act and prepare any materials requested.

Secs. 2-44—2-61. - Reserved.

ARTICLE III. - OFFICERS AND EMPLOYEES ^[4]

⁽⁴⁾ **State Law reference**— Public officers and employees, O.C.G.A. § 45-1-1 et seq.

Sec. 2-62. - Personnel manual.
Sec. 2-63. - Employees.
Sec. 2-64. - Job descriptions.
Sec. 2-65. - Benefits.
Sec. 2-66. - Records.
Secs. 2-67—2-85. - Reserved.

Sec. 2-62. - Personnel manual.

The city manager shall establish a personnel manual for all municipal employees. In addition to the sections deemed necessary by the city manager, the manual shall include policies regarding equal employment opportunity, nondiscrimination, and sexual harassment. The manual will be updated from time to time as required by federal and state laws.

Sec. 2-63. - Employees.

(a) *Generally.* Municipal employees shall be categorized as fulltime, parttime or by terms decided by contract with the city.

(b) *Municipal employees.* Fulltime employees will be paid an hourly salary, weekly salary or some other pay rate; parttime employees will work at irregular intervals on a shortterm basis, and temporary workers will be hired to fill a temporary need for a specified period of time.

(c) *Contract employees.* The city manager shall have the authority to propose contractual employment relationships between the city and third parties. The terms of these third-party contracts

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will be established by the contract at the time of hiring. The city council must approve a contract worth more than \$25,000.00. Issues of liability and scope of agency are to be defined by the contract.

Sec. 2-64. - Job descriptions.

The city shall maintain a job specification for each position held by a municipal employee. The city may provide a job specification for contracted positions. Such specification shall describe the duties of the position, the qualifications necessary, licenses required, to whom such employee reports, expected salary range, and such other information as is necessary to recruit for such position effectively. Such specifications may be amended from time to time by the city manager.

Sec. 2-65. - Benefits.

It shall be the policy of the city to attract and retain a qualified workforce through the provision of a comprehensive package of benefits. To that end, the city shall be authorized to contract with benefits providers for the purpose of providing insurance, retirement, pension plans and other benefits deemed necessary by the city council upon approval of the benefit program by the city council. Eligibility for benefits and the cost to employees shall be specified in the personnel manual.

Sec. 2-66. - Records.

The city shall keep such records and make such reports as may be required by applicable state or federal laws or regulations.

Secs. 2-67—2-85. - Reserved.

ARTICLE IV. - DEPARTMENTS

Sec. 2-86. - Authorization.

Sec. 2-87. - Right of contract.

Sec. 2-88. - Oversight.

Secs. 2-89—2-107. - Reserved.

Sec. 2-86. - Authorization.

The following departments may be established by the city council:

- (1) Administration.
- (2) Finance.
- (3) Community development.

Sec. 2-87. - Right of contract.

The city may contract with third parties to provide all or portions of the functions of any municipal department.

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Sec. 2-88. - Oversight.

There shall be a director of each department or agency who shall be its principal officer. Each director shall, subject to the direction and supervision of the city manager, be responsible for the administration and direction of the affairs and operations of the director's department or agency.

Secs. 2-89—2-107. - Reserved.

ARTICLE V. - BOARDS, COMMISSIONS AND ADVISORY COMMITTEES

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DIVISION 3. - ADVISORY COMMITTEES

DIVISION 1. - GENERALLY

Secs. 2-108—2-126. - Reserved.

Secs. 2-108—2-126. - Reserved.

DIVISION 2. - BOARDS AND COMMISSIONS

Sec. 2-127. - Creation.
Sec. 2-128. - Composition.
Sec. 2-129. - Membership.
Sec. 2-130. - Terms.
Sec. 2-131. - Quorum.
Sec. 2-132. - Procedure.
Sec. 2-133. - Training
Sec. 2-134. - Additional guidelines of planning commission.
Secs. 2-135—2-152. - Reserved.

Sec. 2-127. - Creation.

There may be created a board of zoning appeals, a design review board, a historic preservation board, a planning commission, a construction board of appeals, and an alcohol licensing and appeals board, which shall have the powers and duties and, be subject to and governed by, the regulations set forth in this article and Code. The duties of each board are defined in the corresponding section.

Sec. 2-128. - Composition.

Except as provided by intergovernmental agreement, all board members must be appointed by the mayor and the city council.

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Sec. 2-129. - Membership.

(a) Except as provided in subsection (b) of this section, the mayor and city council shall establish qualifications for members of each board. Each board member shall be appointed by the mayor and the city council, except as provided by intergovernmental agreement. The mayor and city council shall determine if and at what amount board members will be compensated.

(b) Except as provided by intergovernmental agreement, each board member must be a resident of the city. Should the board member move out of the city, he may remain active until the mayor and city council appoint his replacement.

(c) Except as provided by intergovernmental agreement, members must attend two-thirds of the meetings in a calendar year. Failure to do so warrants removal from the board.

Sec. 2-130. - Terms.

(a) Except as provided by intergovernmental agreement, each board member shall serve a specified term of not more than four years. Consecutive terms are permissible. Each board member, except the mayor and councilmembers that may serve on a board, shall have equal terms of an amount to be specified by the mayor.

(b) Neither the mayor nor the councilmembers may serve on a board unless otherwise provided by law.

(c) Members filling vacancies shall serve the remainder of the term to which they were appointed. A consecutive appointment is permissible.

(d) Except as provided by intergovernmental agreement, any member may be removed for cause by the mayor and a majority of the city council.

Sec. 2-131. - Quorum.

Except as provided by intergovernmental agreement, a majority of actual board members establishes a quorum. Any action taken requires a majority of affirmative votes of the quorum present.

Sec. 2-132. - Procedure.

(a) Each of the boards shall make its rules of procedure and determine its time of meetings. The date and time of each meeting, as well as agenda items to be considered, shall be publicized in the same manner as meetings of the city council.

(b) Each of the boards shall elect, annually, one of its members to serve as chair.

(c) All meetings at which official action is taken shall be open to the public and all records maintained by the committee shall be public records, unless expressly excepted by a provision of the O.C.G.A. title 50, ch. 18, art. 4 (O.C.G.A. § 50-18-70 et seq.), and the Georgia Open Records Act. The boards shall keep minutes of their formal proceedings, showing the vote of each member upon each question; and records of their examinations and other official actions, all of which shall be filed in the office of the city clerk. Copies of the minutes shall be sent to the mayor and each member of the city council. The minutes of the meetings shall be a public record. This section shall not be construed as prohibiting closed sessions when permitted by the O.C.G.A. title 50, ch. 14 (O.C.G.A. § 50-14-1 et seq.), the Georgia Open Meetings Act and O.C.G.A. title 50, ch. 18, art. 4 (O.C.G.A. § 50-18-70 et seq.), the

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Georgia Open Records Act.

(d) Notwithstanding subsections (a), (b) and (c), all board action on behalf of the city under an intergovernmental agreement shall act under the lawful procedures under which they were constituted.

Sec. 2-133. - Training

The council may establish a mandatory training program for board members.

Sec. 2-134. - Additional guidelines of planning commission.

(a) The planning commission established pursuant to [section 2-127] of this article shall consist of seven members, who shall be appointed pursuant to the procedures established in [sections 2-128, 2-129] of this article and who shall conduct the meetings of the commission pursuant to [section 2-132] of this article, as well as the requirements.

(b) The appointed members of the planning commission shall elect a chair and vice-chair. Elections of such positions shall occur annually. The vice-chair may be appointed to the duties of the chair when deemed necessary by emergency or when the chair is no longer able to perform those duties assigned, as determined by the mayor. The duty of the chair shall be to conduct the meetings in accordance with the procedures set forth by the planning commission, and the vice-chair shall conduct the meetings in the chair's absence.

(c) Members shall serve a two-year term, except as otherwise provided herein, which terms shall be staggered, and may be reappointed following the same procedures as outlined in this article. In order to stagger the terms of office for the planning commission, members of the planning commission will be appointed to identifiable posts. Members of posts A, B, and C shall be appointed to initial terms of office beginning immediately after their effective appointment and expiring on January 15, 2014. Members of posts D, E, F and G shall be appointed to initial terms of office beginning immediately after their effective appointment and expiring on January 15, 2015. Thereafter, for successive terms of office, such terms shall be for two years. The planning commission serves at the pleasure of the mayor and the city council and may be removed as provided in the city charter, as amended from time to time. Any vacancy in the membership shall be filled for the unexpired term of such vacancy in the same manner as the original appointment with said appointment serving the remainder of the unexpired term.

(d) The planning commission may receive reimbursement for customary expenses incurred in conjunction with any authorized activity of the planning commission.

(e) The planning commission shall meet monthly in accordance with an established schedule of meetings as prepared by the city department of community development.

(f) It shall be the function and duty of the planning commission to review and make a recommendation(s) for action by the mayor and city council on the following: all applications for annexation where there is an associated change in zoning, rezoning, concurrent variances, applications for use permits, amendments to the text of the city zoning ordinance, the city comprehensive plan, the future land use/development map, and the zoning map. Nothing contained herein shall prevent the mayor and city council from hereafter assigning other duties or remanding a case back to the planning commission.

(g) At the close of each public hearing, the chair of the planning commission shall call the members to order for consideration and a vote on the issue currently before them. The vote of the planning

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commission shall be nonbinding and shall be made in the form of a recommendation to the mayor and city council from the following list:

- (1) Approval as recommended by staff with recommended conditions;
- (2) Approval as recommended by staff with revised conditions as presented by the planning commission;
- (3) Denial.

(h) The planning commission must render a recommendation pursuant to subsection (g), except that the planning commission may defer an issue for no more than one month if requested by the applicant/owner, if a new site plan is received less than seven days prior to the meeting, or in order to receive additional information necessary to make a recommendation to the mayor and city council at the time of a deferral motion, the specific reason for the deferral and the specific materials or information requested as necessary to render a recommendation shall be stated.

(i) Section [2-130] of this article ("terms") shall not apply to the planning commission and instead the provisions shall control.

Secs. 2-135—2-152. - Reserved.

DIVISION 3. - ADVISORY COMMITTEES

- Sec. 2-153. - Authorization.
- Sec. 2-154. - Membership.
- Sec. 2-155. - Terms.
- Sec. 2-156. - Compensation.
- Sec. 2-157. - Quorum.
- Sec. 2-158. - Procedure.
- Sec. 2-159. - Duties.
- Sec. 2-160. - Training.
- Secs. 2-161—2-179. - Reserved.

Sec. 2-153. - Authorization.

The mayor may establish advisory committees. Each committee may have one or more city council members. The mayor is an ex-officio member of every committee. The city manager or a designee shall oversee the meetings of each committee and is an ex-officio, nonvoting, member of each.

Sec. 2-154. - Membership.

(a) Except as provided in subsection (b) of this section, the mayor shall establish qualifications for members of each committee. Each committee person shall be nominated by the mayor and approved by the city council.

(b) Each committee member must be a resident of the city. Should the committee member move out of the city, he may remain active until the mayor and city council appoint his replacement.

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Sec. 2-155. - Terms.

- (a) Each committee member shall serve a specified term of not more than four years. Consecutive terms are permissible. Each committee member, except the mayor and councilmembers serving thereon, shall have staggered terms of an amount to be specified by the mayor.
- (b) The mayor and councilmembers on each committee shall serve on that committee so long as they remain elected to office. A former councilmember or mayor may serve on a committee, but such person shall not take the place of the elected member.
- (c) Members filling vacancies shall serve the remainder of the term to which they were appointed. A consecutive appointment is permissible.
- (d) Any member may be removed with or without cause by the mayor.

Sec. 2-156. - Compensation.

Committee members may serve without compensation. Reasonable expenses for travel may be reimbursed and committee members may be compensated pursuant to a policy to be established by the city manager and approved by the city council.

Sec. 2-157. - Quorum.

A majority of actual committee members establishes a quorum. Any action taken requires a majority of affirmative votes of the quorum present.

Sec. 2-158. - Procedure.

- (a) Each of the committees shall make its rules of procedure and determine its time of meetings. The date and time of each meeting as well as agenda items to be considered shall be publicized in the same manner as meetings of the city council.
- (b) All meetings at which official action is taken shall be open to the public and all records maintained by the committee shall be public records, unless expressly excepted by a provision of the O.C.G.A. title 50, ch. 18 (O.C.G.A. § 50-18-70 et seq.), and the Georgia Open Records Act. The committees shall keep minutes of their formal proceedings, showing the vote of each member upon each question; and records of their examinations and other official actions, all of which shall be filed in the office of the city clerk. Copies of the minutes shall be sent to the mayor and each member of the city council. The minutes of the meetings shall be a public record. This section shall not be construed as prohibiting closed sessions when permitted by O.C.G.A. title 50, ch. 14 (O.C.G.A. § 50-14-1 et seq.), the Georgia Open Meetings Act and O.C.G.A. title 50, ch. 18, art. 4 (O.C.G.A. § 50-18-70 et seq.), the Georgia Open Records Act.
- (c) Expenditures of the committees, if any, shall be within the amounts appropriated for the purpose intended by the city council during the annual budgeting process.

Sec. 2-159. - Duties.

- (a) Each committee shall, from time to time, propose policies and ordinances to the city council in the subjects germane to the committee.
- (b) This section shall not be interpreted to require committee approval for a measure to be heard

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before the city council.

(c) Members must attend two-thirds of meetings in a calendar year. Failure to do so warrants removal from the committee.

Sec. 2-160. - Training.

The mayor may establish a mandatory training program for committee members.

Secs. 2-161—2-179. - Reserved.

ARTICLE VI. - FINANCE

Sec. 2-180. - City accountant.
Sec. 2-181. - City tax collector.
Secs. 2-182—2-210. - Reserved.

Sec. 2-180. - City accountant.

(a) The mayor shall nominate a city accountant, subject to ratification by the city council. The city accountant may also serve as the city treasurer, city tax collector, and city finance director. Unless otherwise specified, the terms "city accountant," "city treasurer," and "city tax collector" are used interchangeably in this Code.

(b) The city may contract with a third party to serve as city accountant.

(c) The city accountant shall perform at least the following duties. The city council may require the city accountant to perform other duties.

- (1) Managing, planning, directing, and maintaining the city's financial operations, including serving as chair of the finance department, if such a department is established;
- (2) Directing and supervising the work of personnel involved in performing the accounting, utility billing, property tax, payroll, and purchasing functions for the city; and
- (3) Providing technical leadership in budgeting, overseeing and directing investment opportunities and debt administration, as well as ensuring proper record retention policies are strictly followed.

Sec. 2-181. - City tax collector.

(a) The mayor shall nominate a city tax collector, subject to ratification by the council. The city tax collector also may serve as the city treasurer, city accountant, and city finance director.

(b) The city may contract with a third party, including the tax commissioner of Gwinnett County, Georgia, to serve as the city tax collector.

(c) The city tax collector shall perform at least the following duties. The city council may require the city tax collector to perform other duties:

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- (1) Managing, planning, and directing the collection of all city taxes; and
- (2) Notifying delinquent taxpayers of their status in accordance with state law.

Secs. 2-182—2-210. - Reserved.

ARTICLE VII. - PUBLIC RECORDS

Sec. 2-211. - Document retention.

Sec. 2-212. - Fees.

Secs. 2-213—2-231. - Reserved.

Sec. 2-211. - Document retention.

Pursuant to the Georgia Records Act (O.C.G.A. § 50-18-90 et seq.), the city adopts the records management plan and record retention schedules recommended by the state secretary of state as amended from time to time by future resolutions of the city council. The city clerk shall coordinate all records management for the city including, storage, archiving, and destruction of records. Records shall be maintained according to approved retention schedules. All requests made under O.C.G.A. title 50, ch. 18, art. 4 (O.C.G.A. § 50-18-70 et seq.), the Georgia Open Records Act, excepting standardized routine requests of the city municipal court shall be made to the city clerk. No record shall be destroyed, except as provided in the approved retention schedule; provided, however, a written record may be destroyed if it is otherwise preserved by means of microfiche, scanning, or other reliable photographic or digital means as permitted by law. Changes to the retention schedules shall be adopted by resolution of the city council.

Sec. 2-212. - Fees.

The city clerk shall charge the full amount permitted by state law to copy the records subject to O.C.G.A. title 50, ch. 18, art. 4, (O.C.G.A. § 50-18-70 et seq.), the Georgia Open Records Act. If compilation and replication of such documents takes more than 15 minutes, the city clerk may charge an additional reasonable administrative charge.

Secs. 2-213—2-231. - Reserved.

ARTICLE VIII. - PURCHASING

Sec. 2-232. - Definitions.

Sec. 2-233. - Purchasing agent.

Sec. 2-234. - General procurement efforts.

Sec. 2-235. - Pre-audit clearance.

Sec. 2-236. - Small purchases.

Sec. 2-237. - Emergency purchases.

Sec. 2-238. - Informal purchases.

Sec. 2-239. - Formal purchases.

Sec. 2-240. - Competitive bidding.

Sec. 2-241. - Competitive sealed proposals.

Sec. 2-242. - Multistep competitive sealed procurement.

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Sec. 2-243. - City surplus property.

Sec. 2-244. - Bid protests and appeals.

Secs. 2-245—2-260. - Reserved.

Sec. 2-232. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City finance director means the city accountant, his agent, or the chair of the city finance department, if such a department is created, or is in existence.

Construction means the process of building, altering, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term "construction" does not include the routine operation, repair and maintenance of existing structures, building, or real property.

Contract means any city agreement, regardless of form or title, for the procurement or disposition of goods, commodities, and services.

Employee means an individual drawing a salary or wage from the city whether on a fulltime or parttime basis. The term "employee" means and includes all members of the governing authority without regard to whether or not such individual is compensated.

Gifts or favors means anything or any service of value.

Goods or commodities means supplies, apparatus, materials, equipment, and other forms of tangible personal property.

Governing authority means the city entity responsible for the contract.

Purchase order means the document used by the city to obtain supplies, goods, commodities and services from vendors.

Purchasing agent means the principal purchasing official of the city pursuant to section 2-233.

Sec. 2-233. - Purchasing agent.

(a) *Appointment.* The mayor may appoint the city manager or his agent to serve as the purchasing agent for the city, or the mayor may contract with an independent third party to serve as the purchasing agent. The city manager, upon appointment by the mayor, may serve as the purchasing agent or select a designee.

(b) *Duties.* The purchasing agent shall have the following duties and powers:

(1) Arrange and negotiate the purchase or contract for all equipment, supplies and contractual services for the city or any using agency; arrange and negotiate for the sale or otherwise dispose of all surplus equipment and supplies or real estate of the city or any using agency;

(2) Maintain a perpetual or periodic inventory record of all materials, supplies, or equipment stored in city storerooms, warehouses, and elsewhere, including monthly reports that provide:

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- a. The titles of all requests for proposals and the method of source selections to be used;
- b. All contracts authorized by the city council, the method of source selections to be used, and the total dollar amount;
- c. All emergency contracts awarded pursuant to this article;
- d. All change orders of contract modifications authorized by the city council, the dollar amount, and the reason;
- e. All change orders or contract modifications authorized by the purchasing agent, the dollar amount and the reason;
- f. An explanation of any changes, and the costs involved, in the scope of services made between the time a contract is awarded and the time that a resolution authorizing the contract is sent to the city council for adoption.

(3) Control and supervise all city storerooms and warehouses, unless otherwise provided in this Code;

(4) Develop and maintain a purchasing policy and procedure manual which will be updated by the purchasing agent periodically;

(5) Direct efforts to procure services through advertisements of bids as required by this article and state law;

(6) Require bonds, insurance and other forms of protection for the city on the process of procuring goods and services for the city;

(7) Terminate solicitations for bids for any goods or services when, in the opinion of the purchasing agent, it is in the city's best interest to do so. This includes termination for breach of contract or anticipated breach of contract;

(8) Reject any and all bids, when in the opinion of the purchasing agent, it is in the city's best interest to do so; and

(9) Consult with the city attorney if a contracting party breaches or is reasonably anticipated to breach its contract with the city.

Sec. 2-234. - General procurement efforts.

(a) *Nondiscrimination.* To the extent not required by federal law, the city shall not consider race, gender, national origin, or religion when evaluating bids for city contracts or the disposition of city property. To the greatest extent practicable, the bids submitted to the city will not convey the race or gender of the submitting party or the majority of shareholders in the submitting corporation.

(b) *City council final policy maker.* The city council remains the final policy maker for all decisions of the purchasing agent, as further defined in the administrative purchasing policy.

(c) *Procurement of goods.* The city may procure goods or services through:

- (1) Emergency purchases;

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- (2) Informal purchases; or
- (3) Formal purchases.

Unless otherwise specified, competitive bidding shall apply to informal and formal purchases.

(d) *Exceptions.* Competitive bidding shall not apply in the following instances:

- (1) A good is available from only one source or supply, or when standardization or compatibility is the overriding consideration.
- (2) The purchase is pursuant to a contract with:
 - a. The United States of America or an agency thereof; or
 - b. Any government unit or agency thereof within the United States for the purchase, lease, or other acquisition of goods.
- (3) The purchase is for:
 - a. Works of art for public places;
 - b. Printed copyright material including published books, maps, periodicals, and technical pamphlets, but not including software for computer systems, except where a greater savings can be realized by a quantity purchase;
 - c. Real property, real estate brokerage and appraising, abstract of titles for real property, title insurance for real property, and other related costs of acquiring real property;
 - d. Subscriptions, dues, memberships, and board member fees;
 - e. Services provided directly to individual citizens and employees including reimbursements and other miscellaneous payments;
 - f. Utilities including, but not limited to, electricity and telephone service;
 - g. Licensed health professions;
 - h. Training, travel, and lodging or meal expenses;
 - i. Items for resale that require a particular manufacturer to enhance their marketability;
 - j. Legal advertisements;
 - k. Repair of equipment;
 - l. Repair of buildings where the extent of the project cannot be predetermined; and
 - m. Professional services not covered in this article.

Sec. 2-235. - Pre-audit clearance.

The purchasing agent shall not approve any contract for goods or services until the city director of finance or the city accountant certifies, after pre-audit, that there is to the credit of the using

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department, a sufficient unencumbered appropriation balance in excess of all unpaid obligations, to defray the amount of such contract. Subject to the approval of the city manager, city finance director or city accountant, the purchasing agent may issue operating rules to verify compliance with this section.

Sec. 2-236. - Small purchases.

The purchasing agent shall establish procedures for purchasing goods or services for less than \$5,000.00. These procedures must include quotations from as many competitive sources as reasonably practical.

Sec. 2-237. - Emergency purchases.

(a) Notwithstanding any other section of this Code, when the city manager determines that an emergency exists, the purchasing agent may make or authorize others to make emergency procurements for supplies, services, construction items, or professional or consultant services. The city manager shall make such determination when there exists a threat to public health, welfare, or safety under emergency conditions. Such emergency procurements shall be made with as much competition as is practicable under the circumstances.

(b) A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the item procured under the contract, and the identification number of the contract file.

(c) If an emergency should arise after office hours which requires immediate action on the part of the agency involved for the protection of the city's best interest or if a like situation arises on a Sunday or holiday and when it is not possible or convenient to reach the purchasing agency, any purchase necessary shall be made by the official in charge of such agency, and such purchase reported to the purchasing agent within 24 hours.

Sec. 2-238. - Informal purchases.

(a) All contracts for the purchase of goods and services involving the estimated expenditure of \$5,000.00 or more of public money, but not more than \$50,000.00, except those described in section 2-234(d) shall be made after informal bids are secured.

(b) In addition to the normal publication of bids, the purchasing agent may directly solicit informal bids from no less than three businesses. The purchasing agent shall keep a record of all bids submitted and the record shall be available for public inspection after the contract is awarded, in the manner provided by law.

(c) The purchasing agent shall develop written procedures for implementing the provisions of this section, which shall be subject to the approval of the city manager and city finance director. Such procedures shall be made publicly available.

Sec. 2-239. - Formal purchases.

Except as otherwise provided in this article, no contract for the purchase of goods and services involving the estimated expenditure of not more than \$50,000.00 of public money shall be awarded, unless the provisions of this section are followed. The purchasing agent, subject to approval of the city administrator and city finance director, shall make the determination of the method of procurement.

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Sec. 2-240. - Competitive bidding.

(a) All purchases of, and contracts or agreements for supplies and contractual services, having an approved budget estimate greater than \$50,000.00, except as otherwise provided herein, shall be based wherever reasonably possible on three or more sealed competitive bids after publishing notice of request for bids as set forth herein.

(b) Sealed bid procedure.

(1) Bids shall be invited by advertisement in a newspaper having general circulation in the city. The advertisement shall state the time and place where specifications may be obtained, and the time and place for opening of bids, unless otherwise directed by the city council. At least 14 full days must pass between the day the advertisement appears and the day of the bid opening. The advertisement shall state that the city reserves the right to reject any or all of the bids and to make award that is in the city's best interest.

(2) The purchasing agent may require that bid deposits be submitted with each bid. If bid deposits are required, they shall be in an amount equal to five percent of the amount of the bid and may be submitted in the form of a bid bond signed by a surety company authorized to do business in the state, cashier's check, certified check issued by a bank or trust company insured by the Federal Deposit Insurance Corporation, or any other form of bid security deemed sufficient by the city attorney or his designee. The bid deposit requirement, including the form in which the bid security may be submitted, shall be included in the specifications.

(3) Bids shall be sealed. All bids shall be publicly opened and the purchasing agent shall make or oversee the making of a record of the bids received. The record and the bids received shall be subject to public inspection, after the bid opening, in the manner prescribed by law.

(4) As provided in the invitation for bids, the purchasing agent may require the successful bidder to furnish a payment and performance bond to secure the faithful performance of all of the terms of the contract. The payment and performance bond shall be in a form approved by the city attorney and the form of the bonds shall be included in the specifications.

(5) All contracts of more than \$50,000.00, excluding commodity purchases, to which this section applies shall be in writing and shall be approved by the city council. The city council may reject any and all bids.

(c) The lowest bid for purchases shall be accepted by the purchasing agent or, if the purchasing agent, relevant department, or other contracting authority finds that the lowest bid is not in the city's best interest, whereupon the purchasing agent may accept another bid or may call for additional bids. The city reserves the right to reject all bids. If the purchasing agent finds that the lowest bid is not in the city's best interest, he must file reasons for that finding with the city council before the next scheduled meeting.

(d) In addition to price on all bids or quotations, the following shall be considered, but not limited to, in determining responsiveness:

(1) The ability, capacity, and skill of the person or firm offering the bid or quotation to perform the contract or provide the service required;

(2) Whether the person or firm can perform the contract or provide the service promptly, or within

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the time specified, without delay or interference;

- (3) The quality of performance on previous contracts or services with the city or others;
- (4) The previous and existing compliance by the person or firm with laws and ordinances relating to the contractual service or supplies;
- (5) The sufficiency of the financial resources and ability of the person or firm to perform the contract or provide the service;
- (6) The quality, availability, and adaptability of the supplies, or contractual services to the particular use required;
- (7) The ability of the person or firm to provide future maintenance and service for the use of the subject of the contract;
- (8) The number and scope of conditions attached to the bid or quotation;
- (9) The above requirements shall not apply to any projects for which the city receives aid from any federal agency, state agency, or foundations, when unit prices have been established by such other agency. The contractor shall be selected from contractors certified by the agency supplying the funds for the project. In addition, the purchasing agent shall further ascertain that existing and future procurement procedures are in accord with applicable federal guidelines regulating procurement procedures for recipients of federal funds; and
- (10) The above requirements shall not apply in sole source procurements where there is only one vendor capable of providing particular goods or services as determined by the purchasing agent.

Sec. 2-241. - Competitive sealed proposals.

- (a) When the purchasing agent determines, in writing, that the use of the competitive sealed bid is either not practical or not advantageous to the city, a contract may be entered into by use of the competitive sealed proposal. Use of the proposal is dependent upon such factors as:
 - (1) When the quality, availability, or capability is overriding in relation to price in procurement of technical supplies or services;
 - (2) When the initial installation needs to be evaluated together with subsequent maintenance and service capabilities and what priorities should be given these requirements in the city's best interest;
 - (3) If a fixed price or cost type contract is more advantageous; or
 - (4) Whether the market place will respond better to a solicitation permitting not only a range of alternative proposals, but evaluation and discussion of them before making the award.
- (b) Procedure.
 - (1) Proposals shall be requested by advertisement in a newspaper having general circulation in the city. The advertisement shall state the time and place where specifications may be obtained, and the time and place for deadline for receipt of the proposals, unless otherwise directed by the city council. At least 14 full days must pass between the day the advertisement appears and the

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day of the deadline for receipt of proposals. The advertisement shall state that the city reserves the right to reject any or all of the proposals.

(2) Proposals shall be sealed. All proposals shall be received in public and the purchasing manager shall make or oversee the making of a record of the proposals received. The name of each proposer shall be announced but no other information shall be disclosed, nor shall the proposals be considered an open record until a contract is awarded. The record of the proposals received shall be subject to public inspection after the deadline for receipt in the manner prescribed by law.

(3) Award of contract shall be made to the proposer that submits the proposal deemed in the city's best interest, taking into account the evaluation factors outlined in the proposal documents. A team consisting of not less than three persons shall conduct evaluation of proposals. This team shall include the purchasing agent, and the head of the user department.

(4) As provided in the invitation for proposals, the purchasing agent may require the successful proposer to furnish a performance bond to secure the faithful performance of all of the terms of the contract. The performance bond shall be in a form approved by the city attorney and the form of the bond shall be included in the specifications. The city council may reject the bond of any proposer if they find it to be unacceptable.

(5) All contracts of \$50,001.00 or more to which this section applies shall be in writing and shall be approved by the city council. The city council may reject any and all proposals.

Sec. 2-242. - Multistep competitive sealed procurement.

The multistep competitive sealed procurement method may be used when the city desires to award a contract not necessarily based on price, and when specifications may not be readily available or when technical qualifications are essential for the decision making process. This type shall take the form of request for proposals or request for information and shall follow the following format. If time is of the essence, the two steps can be combined with the priced offer submitted in a separate sealed envelope at the time of submission of the technical offer. The pricing data is to remain unopened until evaluation of technical offers is complete.

(1) The solicitation shall be advertised in a newspaper having general circulation in the city. The advertisement shall state the time and place where documents may be obtained, and the time and place for deadline for receipt of the proposal, unless otherwise directed by the city council. At least 14 full days must pass between the day the advertisement appears and the day of the deadline for receipt of documents. The advertisement shall state that the city reserves the right to reject any or all documents received.

(2) The initial step shall consist of solicitation of technical offers with no costs or prices included. Unweighted evaluation criteria shall be included in the solicitation documents. A team consisting of not less than three persons shall evaluate the results of this solicitation. This team shall include the purchasing agent, the head of the user department, and an additional representative of the user department selected by the respective department head. Evaluation shall follow the same criteria as under request for proposals.

(3) In the second step, those who submitted technical offers deemed responsible and responsive in the initial step are then asked to submit price bids.

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(4) Proposals shall be sealed. All proposals shall be publicly opened and the purchasing agent shall make or oversee the making of a record of the proposals received. The record and the proposals received shall be subject to public inspection after the proposal opening in the manner prescribed by law.

(5) Award of proposal shall be made to the bidder that submits the lowest responsible and responsive proposal that meets the specifications contained in the proposal documents and is in the city's best interest. The city reserves the right to make award if a single proposal is received.

(6) If required by the soliciting documents, the purchasing agent may require the successful contracting party to furnish a payment and performance bond to secure the faithful performance of all of the terms of the contract. The payment and performance bond shall be in a form approved by the city attorney and the form of the bond shall be included in the specifications.

(7) All contracts of \$25,000.00 or more to which this section applies shall be in writing and shall be approved by the city council. The city council may reject any and all bids.

Sec. 2-243. - City surplus property.

(a) All using agencies shall submit to the purchasing agent, at such times and in such form as he shall prescribe, reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out or scrapped.

(b) The purchasing agent shall have the authority to transfer surplus stock to other using agencies.

(c) The purchasing agent shall have the authority to sell all supplies which have become unsuitable for public use, or to exchange the same for, or trade in the same on, new supplies, upon approval of the city manager.

(d) The purchasing agent may dispose of all personal property of the city in a manner consistent with this section and the city's adopted purchasing policy. Competitive bids shall be encouraged to the extent possible.

Sec. 2-244. - Bid protests and appeals.

(a) Any party that submits a bid pursuant to this article and has a good faith basis to protest the bid, must prepare a formal complaint to be filed with the city manager. The complaint shall specify the alleged act or omission by the city that provides the basis for the complaint.

(b) Upon the filing of a complaint, within three working days, the city manager shall request a response from the city purchasing agent within 30 days. Failure of the city purchasing director to file a response may be considered as evidence by the city manager.

(c) If requested by either party, the city manager or his designee shall have a hearing on the complaint and decide the merits of the claim. The city manager is empowered to decide that the contract at issue be voided, upheld, or whatever other relief may be necessary. The city council shall approve or reject the city manager's decision.

(d) If the party bringing the complaint disagrees with the conclusions of the city manager and council, the decision may be appealed to the county superior court.

Secs. 2-245—2-260. - Reserved.

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Sec. 2-261. - Definitions.

Sec. 2-262. - Prohibitions.

Sec. 2-263. - Receipt of complaints.

Sec. 2-264. - Appointment of hearing officer, service of complaint, burden of proof.

Sec. 2-265. - Hearing.

Sec. 2-266. - Report to mayor and council.

Sec. 2-267. - Right to appeal.

Sec. 2-261. - Definitions.

Appointee shall be any person appointed to a city board, committee or commission by the city council or mayor.

City councilmember shall be any person who is a city councilmember, including the mayor of the city.

City staff shall be any person who is a full-time or part-time employee of the city, as well as any full-time or part-time employee of any independent contractor contracted to perform specific duties for, and on behalf of, the city.

Family member means the spouse, mother, father, brother, sister, son or daughter of a city councilmember or an appointee or the mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of a city councilmember or an appointee.

Financial interest means all direct ownership interests of the total assets or capital stock of a business entity where such ownership interest is ten percent or more.

Government or *city* shall be construed to mean the City of Peachtree Corners, Georgia, government.

Member shall include city councilmembers and appointees.

Substantial interest means the following:

- (1) Funds received by the member 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; or
- (2) The member is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000.00 or more.

Sec. 2-262. - Prohibitions.

All members shall meet the following standards:

- (a) *Compliance with the law.* Members shall comply with all laws of the United States, the State of

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Georgia, and the city in the performance of their public duties. These laws include, but are not limited to: the United States and Georgia constitutions; laws pertaining to conflicts of interest, elections, campaigns, financial disclosures, employer responsibilities, and open processes of government; and city ordinances and written policies.

(b) *Policy role of members.* Members shall respect and adhere to the structure of government of the city as outlined in the city's charter and policies and procedures. In this structure, the city council determines the policies of the city with the advice, information and analysis provided by the public, boards, committees, commissions, and city staff. Members shall not direct the activities of city staff, interfere with the day-to-day administrative functions of the city or the professional duties of the city staff, nor impair the ability of city staff to implement city council policy decisions.

(c) *Independence of boards, committees and commissions.* Because of the value of the independent advice of boards, committees and commissions to the public decision-making process, city councilmembers shall refrain from using their position to influence unduly the deliberations or outcomes of board, committee and commission proceedings of which they are not members. Members shall also refrain from appearing or speaking on behalf of themselves or third parties in front of any board, committee or commission of the city; however, this prohibition shall not prevent:

(1) A councilmember from appearing or speaking on behalf of the city in front of an independent authority or commission of the city created by the general assembly as its own political subdivision;

(2) Members from speaking on behalf of the city board, committee, commission or council on which they serve when such city board, committee, commission or council has expressly authorized and appointed such member to speak on its behalf; or

(3) A member from serving on more than one board, committee or commission of the city.

(d) *Acceptance of gifts, benefits or remuneration.*

(1) Members shall not solicit or accept directly or indirectly anything of value from any person, corporation, or group which:

a. Has, or is seeking to obtain, contractual or other business or financial relationships with the city, unless: a member's contractual relationship with such person, corporation, or group existed prior to the city's contractual relationship or prior to the member's election or appointment to office; the member, if in office at the time the contractual, business or financial relationship came before the city for consideration, disclosed such relationship or, if not in office at such time, has immediately disclosed the relationship to the city after being elected or appointed to office and becoming aware of the city's relationship with such person, corporation or group; the member abstained from discussion of the city's consideration of entering a contract with such person, corporation, or group or competing vendor; the member abstained from voting on any matter related to the relationship between such person, corporation, or group or the subject contract or services; and the member did not make personal use of any official non-public information, as prohibited by subsection (k) hereof;

b. In exchange for the thing of value, seeks to have a member exercise a matter of discretion in his or her favor; or

c. In exchange for the thing of value, seeks to have interests which may be affected by the

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performance or nonperformance of the official duty of the member.

(2) Members shall not directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, benefit or thing of value for him/herself or another person if:

a. It could reasonably be considered to influence the member in the future, and the member is involved in any official act or action which results in a pecuniary benefit for the donor or lender which is not available to the public at large; or

b. It could reasonably be considered to influence, benefit or reward the member, and the member recently has been, or is now or within six months in the future, involved in any official act or action which results in a pecuniary benefit for the donor or lender which is not available to the public at large.

(3) The above prohibitions shall not apply in the case of:

a. Occasional nonpecuniary gift of insignificant trinkets or gifts such as a calendar, memento or pen received in the normal course of business with a value of less than \$100.00 and admission to and or consumption of food and beverages at a breakfast, lunch, dinner, function or event;

b. Award publicly presented in recognition of public service;

c. Transaction authorized by and performed in accordance with O.C.G.A. § 16-10-6 as now or hereafter amended;

d. 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 loan or financial transaction; or

e. Campaign contributions made and reported in accordance with Georgia laws;

f. Any gift, loan, favor, promise or thing of value from a family member.

(e) *Conflict of interest.*

(1) A member 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 member has a substantial interest.

(2) A member 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.

(3) Where the interest of a member in the subject matter of a vote or decision is remote or incidental, the member may participate in the vote or decision and need not disclose the interest.

(f) *Use of public property.* A member shall not use city property of any kind for other than officially approved activities, nor shall he or she direct city staff to use such property for these purposes.

(g) *Coercion by members.* A member 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 him or her or a family member, or those with whom a member has a financial interest.

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(h) *Voting in matters of personal interest.* A member shall not vote on an ordinance or amendment for a specific item in a city council meeting that would directly affect his or her private business. Provided, however, that in the event of an ordinance of general application or a matter of city-wide application, or in the event such vote would be proper under the city charter such member shall disclose such interest and, following such disclosure, shall be allowed to vote on such matter and such vote shall not constitute a violation of these rules and shall not be the subject matter of an ethics complaint hereunder.

(i) *Unauthorized use of city staff.* A member shall not use his or her superior position to unduly pressure or request or otherwise require a member of the city staff to:

- (1) Do clerical work on behalf of a family member, business, social, church or fraternal interests;
- (2) Purchase goods and services to be used for personal, business or political purposes; and
- (3) Work for him or her personally without offering him or her just compensation.

(j) *Restrictions on contracts with former members.* The city shall not enter into any contract with any person or business represented by such person, who has been within the preceding 12-month period a member, unless the contract is awarded by a competitive bid or a committee selection process.

(k) *Improper use of official non-public information.* Members shall not directly or indirectly make use of, or permit others to make use of, official information, which at the time of its disclosure is not subject to being made available to the general public, for the purpose of furthering a private interest regardless of whether the private interest belongs to the member or a third party.

(l) *Unauthorized attempts to bind the city.* Members shall not order any goods and services for the city without prior official authorization for such an expenditure, nor shall members attempt to obligate the city nor give the impression of obligating the city without proper prior authorization to purchase or otherwise be liable for any goods, services or property.

(m) *Improper influence in city judicial matters.* No member shall attempt to unduly influence the outcome of a case before the city municipal court nor shall any member engage in ex parte communication with a city municipal court judge on any matter pending before the city municipal court.

(n) *Retaliatory action against city employees.* No member shall attempt to influence or take any adverse employment action against a city employee due to such city employee's provision of truthful information about such member or any other member, including any information that forms a part of a complaint or answer submitted under this code of ethics or which is provided pursuant to an investigation or hearing conducted in accordance with this code of ethics.

Sec. 2-263. - Receipt of complaints.

(a) All complaints against members shall be filed with the city clerk, provided, however, to discourage the filing of ethics complaints solely for political purposes, complaints will not be accepted against a person seeking election as a member, whether currently serving as a member 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.

(b) No action may be taken on any complaint which is filed later than one year after a violation of this code of ethics is alleged to have occurred, and a complaint alleging a violation must be filed within six

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months from the date the complainant knew or should have known of the action alleged to be a violation; such limitation periods to be measured from the date of the last act occurring in furtherance of such violation. No proceedings under this article shall be instituted or prosecuted after the earlier of:

- (1) The expiration of the term of office of the person complained against; or
- (2) The resignation, death, vacancy, disqualification or withdrawal from office of the person against whom a complaint is filed.

(c) No action may be taken on any complaint which arises out of substantially the same facts or circumstance which have previously served as the basis for a complaint pursuant to this article.

(d) A separate complaint shall be filed for each person alleged to have engaged in any activity violating this article even if the allegations arise from the same factual basis. Each complaint shall state:

- (1) A separate count for each alleged violation;
- (2) The specific section of state law, the city charter, or this ethics article alleged to be violated for each count;
- (3) With specificity, the facts which are alleged to constitute the violation; and
- (4) The documentary evidence which the charging party possesses. Copies of said documentary evidence shall be attached to the complaint as exhibits.

(e) All complaints shall contain an oath that the facts set forth therein are true and correct to the best of the complainant's knowledge in substantially the following form:

"STATE OF GEORGIA
COUNTY OF GWINNETT
AFFIDAVIT

Personally appeared before the undersigned officer duly authorized to administer oaths, (Name of person filing complaint), who on oath deposes that the statements in the foregoing Complaint are true and correct to the best of his/her knowledge and belief. The affiant further acknowledges that false statements made in this application may result in a prosecution against them for false swearing, a felony under O.C.G.A. 16-10-71.

(Signature of person filing complaint)

Sworn to and subscribed

before me this ;#rule; day of ;#rule;, 20;yrrule;.

Notary Public"

(f) Upon receipt of a complaint, the city clerk will deliver a copy of the complaint to the city manager.

Sec. 2-264. - Appointment of hearing officer, service of complaint, burden of proof.

- (a) All complaints filed hereunder shall be heard before a hearing officer who:
- (1) Shall be a competent attorney at law of good standing in his or her profession,
 - (2) Shall have at least five years' experience in the practice of law, and
 - (3) Shall not maintain an office within a ten-mile radius of the city.

The city clerk shall maintain a listing of no less than five qualified attorneys to serve as a hearing officer pursuant to this section. Upon receipt of a properly verified complaint, the city clerk shall draw names randomly from the listing of qualified hearing officers and appoint the first one who is available to serve in the matter. Once a hearing officer is appointed, no member shall communicate with or otherwise contact the hearing officer, except as authorized herein, unless such member is the complainant or the member charged in the complaint; however, no party to a complaint shall engage in ex parte communications with the hearing officer.

(b) Original pleadings shall be filed with the city clerk and the city clerk shall cause the complaint to be served on the member charged as soon as practicable but in no event later than seven calendar days after receipt of a verified complaint. Service may be by personal service, by certified mail, return receipt requested or by statutory overnight delivery.

(c) In all proceedings under this section, the burden of proof shall be on the complaining party. Further, the quantum of proof required to establish a violation under this article shall be beyond a reasonable doubt.

Sec. 2-265. - Hearing.

(a) The member charged in the complaint shall have 15 days to file an answer to the complaint provided; however, the member charged shall have no obligation to file an answer to any complaint.

(b) Upon the expiration of the 15-day answer period, the hearing officer shall review the complaint and answer, if any, to determine:

- (1) Whether the complaint is in conformity of the requirements of section 2-263 above;
- (2) Whether upon consideration of the complaint and answer, the complaint is unjustified, frivolous, patently unfounded; or
- (3) Whether upon consideration of the complaint and answer, the complaint demonstrates facts sufficient to invoke disciplinary jurisdiction as set forth in this article.

(c) If the complaint fails based upon the requirements of the foregoing subsection (b), the complaint shall be dismissed stating the basis for said dismissal. If the dismissal is based upon the failure to comply with subsections 2-263(d) or (e), the complaining party shall have 15 days to refile the complaint correcting the defect. If the corrected complaint is not filed within said 15-day period, the provisions of subsection 2-263(c) shall apply to the complaint. If the complaint otherwise fails, the provisions of subsection 2-263(c) shall apply to the complaint.

(d) Upon a determination that the complaint should not be dismissed pursuant to the foregoing subsection (c), the hearing officer shall be empowered to collect evidence and information concerning

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any complaint and to add the findings and results of its investigations to the file containing such complaint. In furtherance of this investigation, the hearing officer may:

(1) First, seek such further information from the complainant or the member charged through inquiry or written questions, provided, however the member charged shall have no obligation to answer any inquiries; and make a further determination as to whether the complaint demonstrates facts sufficient to invoke disciplinary jurisdiction as set forth in this article in accordance with subsection (b) above. If it is determined that the complaint should not be dismissed pursuant to this subsection, then the provisions of subsection (d)(2) below shall apply; or

(2) Conduct a hearing in accordance with the administrative hearing procedures, as adopted by resolution by council, regarding the allegations set forth in the complaint. At any hearing, the member who is the subject of inquiry shall have the right:

- a. To representation by counsel at all stages of these proceedings;
- b. To written notice of the hearing at least ten calendar days before the first hearing;
- c. To hear and examine the evidence and witnesses;
- d. To not testify; and
- e. To submit evidence and call witnesses to oppose or mitigate the allegations. In all hearings held under this section, the rules of evidence applicable in civil cases shall apply.

(e) All investigations under this section shall be completed within 45 days of the filing of the complaint. Should the investigation not be completed in said period, the complaint will be deemed dismissed as a failure to state facts sufficient to invoke the disciplinary jurisdiction of the city council. Within seven days of the completion of the investigation, the hearing officer shall:

(1) Dismiss the complaint on the grounds that it is unjustified, frivolous, patently unfounded, or that it fails to state facts sufficient to invoke the disciplinary jurisdiction of the city council; or

(2) Prepare a report of findings and recommendations to the mayor and city council.

(3) Should the hearing officer determine to submit a report in the matter, the report shall consist of:

- a. A written finding of facts;
- b. A determination that the complaint establishes beyond a reasonable doubt that a violation has been committed, and if so, the specific violation and evidence supporting the same; and
- c. A recommendation regarding the punishment for such violation.

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

- a. Public or private reprimand or censure by the city council.
- b. Request for resignation by the city council.
- c. Removal from office in accordance with all applicable state and local laws.

PART II - CODE OF ORDINANCES
Chapter 2 - ADMINISTRATION
ARTICLE IX. - CODE OF ETHICS

(5) The hearing officer's written determination of findings and recommendations shall be delivered to the city clerk who shall provide a copy to the city manager and the mayor and council and serve a copy on the complainant and member charged by personal service, by certified mail, return receipt requested or by statutory overnight delivery. Such findings shall not be final until approved by vote of the city council, as provided in section 2-266

Sec. 2-266. - Report to mayor and council.

(a) Upon receipt of findings and recommendations from the hearing officer, the mayor and council may:

- (1) By simple majority accept the findings and recommendations of the hearing officer.
- (2) By simple majority accept the findings of fact and reject the recommended discipline, instead substituting its own discipline.
- (3) By a supermajority consisting of a majority of those present forming a quorum, plus one, reject the findings and recommendations and either:
 - a. Dismiss the complaint; or
 - b. Conduct its own hearing in accordance with section 2-265 hereof. Upon the completion of such hearing, the findings and recommendations of the mayor and council shall be binding.

(b) If the subject of the complaint is the mayor or any city councilmember, he or she will not be allowed to vote pursuant to this section or participate in any hearing held pursuant to this section other than as set forth and allowable by the member charged, nor shall such position be counted for the purposes of establishing a quorum.

(c) Upon a final judgment and certification of the minutes of the meeting disposing of the matter, the city clerk shall serve the respondent with a copy of the certified minutes and findings and recommendations by personal service, certified mail (return receipt requested) or by Federal Express or other overnight delivery service.

Sec. 2-267. - Right to appeal.

(a) Any member or complainant adversely affected by the findings or recommendations of the city council 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 county superior court within 30 days after the final action on a complaint pursuant to this article. The filing of such application shall act as supersedeas.

To the extent this (Ordinance/Chapter) is identical to the provisions of the Code of Gwinnett County Georgia, this (Ordinance/Chapter) hereby incorporates by reference any amendments made to such (Ordinance/Chapter) by Gwinnett County from the date of the last codification supplement to the date of the adoption of this (Ordinance/Chapter) by the Mayor and City Council.

This Ordinance hereby repeals any ordinance or provision in conflict therewith.

