SANDY SPRINGS
GEORGIA

CITY COUNCIL AGENDA ITEM

TO: Mayor & City Council **DATE:** August 26, 2010

FROM: John McDonough, City Manager

AGENDA ITEM: A Resolution to Amend the City of Sandy Springs Planning Commission Bylaws

MEETING DATE: For Submission onto the September 7, 2010, City Council Work Session Meeting Agenda

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached:

Memorandum
Bylaws

APPROVAL BY CITY MANAGER: JTM *APPROVED*

_____ *NOT APPROVED*

PLACED ON AGENDA FOR: 9/7/10

CITY ATTORNEY APPROVAL REQUIRED: (✓) *YES* ( ) *NO*

CITY ATTORNEY APPROVAL: _____

REMARKS:

SANDY SPRINGS
GEORGIA

To: John McDonough, City Manager

From: Nancy J. Leathers, AICP, Director, Department of Community Development

Date: August 24, 2010 for Submission onto the September 7, 2010 Mayor and City Council Work Session

Subject: Proposed Amendment to the Bylaws of the City of Sandy Springs Planning Commission

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Please find enclosed a proposed amendment to the bylaws of the City of Sandy Springs Planning Commission with corresponding mark-up.

Background:
Staff has had issues arise regarding the disparities between the Board of Appeals, Planning Commission, and Design Review Board bylaws and the City's Ordinances. It has been determined that the bylaws of all City Boards should be amended to ameliorate these issues.

Discussion:
For instance, Article 5, Member Duties, is being unified in all bylaws by matching the article to Chapter 2, Article 5, Boards, Commissions, and Advisory Committees of the Code of the City of Sandy Springs, Georgia in reference to attendance requirements and to participation of board members or commissioners in the hearing, consideration, or decision/recommendation of any petition to which such member is a party or in which such member has a financial interest. In addition, other changes have been made in the bylaws to match the language of the Zoning Ordinance.

Alternatives:
The Planning Commission could choose to not recommend the changes prepared by staff.

Planning Commission Recommendation:
The Planning Commission heard the amendment at the August 19, 2010 meeting and recommended approval as presented by staff (5-0, Thatcher, Pond, Maziar, Rubenstein, and Tart for; Duncan not voting; Rupnow absent).

cc: Wendell K. Willard, City Attorney

Bylaws of the City of Sandy Springs Planning Commission
(Adopted September 21, 2010)

Article I
Establishment

Section 1: The Planning Commission is authorized by Part I, *Charter*, Article I, *Creation, Incorporation, Powers*, Section 1.03, *Powers and construction*, of the Code of the City of Sandy Springs.

Section 2: The Planning Commission is created by resolution of the Mayor and City Council pursuant to Part I, *Charter*, Article II, *Government Structure, Elections and Legislative Branch*, Sec. 2.13, *Boards, commissions, and authorities*, of the Code of the City of Sandy Springs.

Section 3: The Planning Commission is governed by Part II, *Code of Ordinances*, Chapter 2, *Administration*, Article V, *Boards, Commissions and Advisory Committees*, of the Code of the City of Sandy Springs and by Article XXVIII, *Rezoning and Other Amendment Procedures*, of the Sandy Springs Zoning Ordinance.

Article II
Purpose

Section 1: The Planning Commission is a 7-member board nominated by the Mayor and confirmed by the City Council charged with considering land use petitions and general amendments to the Zoning Ordinance, Zoning Map, Comprehensive Plan, and Future Land Use Map as outlined in Article XXVIII, *Rezoning and Other Amendment Procedures*, of the Sandy Springs Zoning Ordinance.

Article III
Election of Officers

Section 1: The Planning Commission shall elect officers pursuant to Part I, *Charter*, Article II, *Government Structure, Elections and Legislative Branch*, Sec. 2.13, *Boards, commissions, and authorities*, of the Code of the City of Sandy Springs as outlined below:

> (g) Except as otherwise provided by this Charter or by applicable state law, each board, commission, or authority of the city government shall elect one of its members as chairperson and one member as vice chairperson for terms of one year and may elect as its secretary one of its own members or may appoint as secretary an employee of the city. Each board, commission, or authority of the city government may establish such bylaws, rules, and regulations not inconsistent with this Charter, ordinances of the city, or applicable state law as it deems appropriate and necessary for the conduct of its affairs, copies of which shall be filed with the designated officer of the city.

Article IV
Member Duties

Section 1: Per Part II, *Code of Ordinances*, Chapter 2, *Administration*, Article V, *Boards, Commissions and Advisory Committees*, Section 2-247, *Membership*, of the Code of the City of Sandy

Springs, Board members must attend two-thirds of meetings in a calendar year. Failure to do so warrants removal from the board.

Section 2: Planning Commission members are "public servants" as defined in the Sandy Springs Ethics Ordinance (Ethics Ordinance). As public servants, Planning Commission members are subject to all provisions of the Ethics Ordinance, which is codified in Part II, *Code of Ordinances*, Chapter 2, *Administration*, Article III, *Officers and Employees,* Division 2, *Ethics*, of the Code of the City of Sandy Springs.

Article V
Meetings

Section 1: Regular meetings of the Planning Commission shall be held in accordance with the schedule adopted annually by the Mayor and City Council.

Section 2: Special Meetings of the Board may be called by the Chair, provided public notices are posted as required by law and all members are notified.

Section 3: A quorum of the Planning Commission shall be as outlined in Part I, *Charter*, Article II, *Government Structure, Elections and Legislative Branch*, Sec. 2.13, *Boards, commissions, and authorities*, of the Code of the City of Sandy Springs and Part II, *Code of Ordinances*, Chapter 2, *Administration*, Article V, *Boards, Commissions and Advisory Committees*, Section 2-249, *Quorum*, of the Code of the City of Sandy Springs.

Section 4: The Chair shall preside over the Planning Commission and shall not have the right to vote unless: (1) the Chair is necessary to meet the required number for a quorum to transact business, or (2) there is a tie vote of the other members.

Members Present	Votes to pass an action
7-5	Majority vote of the member present. In the case of a tie the Chair shall become a voting member to break the tie.
4	Four (4) members shall constitute a quorum. Three (3) votes are required to pass a motion. If the Chair makes the quorum, he/she shall become a voting member.
3-1	No quorum. Agenda items will be moved to the next meeting date or a special meeting will be called.

Section 5: All meetings shall be open to the public and shall be in accordance with Article XXVIII, *Rezoning and Other Amendment Procedures*, Section 28.3, *Public Hearing and Notice Requirements*, of the Sandy Springs Zoning Ordinance. Additionally, in the absence of applicable rules and procedures, which may from time to time be encountered during the public meetings, Robert's Rules of Order, Newly Revised, shall be followed pursuant Part II, *Code of Ordinances*, Chapter 2, *Administration*, Article

II, *City Council*, Section 2-62, *Robert's Rules of Order, Newly Revised*, of the Code of the City of Sandy Springs.

Article VI
Modification of Bylaws

Section 1: These Bylaws shall only be modified in accordance with Part II, *Code of Ordinances*, Chapter 2, *Administration*, Article V, *Boards, Commissions and Advisory Committees*, Section 2-250, *Procedures*, of the Code of the City of Sandy Springs.

BYLAWS SUPPORTING DOCUMENTS

Part I, Charter, Article I, Creation, Incorporation, Powers, Section 1.03, Powers and construction, of the Code of the City of Sandy Springs

Sec. 1.03. Powers and construction.

(a) This city shall have all powers possible for a city to have under the present or future Constitution and laws of this state as fully and completely as though they were specifically enumerated in this Act. This city shall have all the powers of self-government not otherwise prohibited by this Act or by general law.

(b) The powers of this city shall be construed liberally in favor of the city. The specific mention or failure to mention particular powers shall not be construed as limiting in any way the powers of this city. These powers shall include, but not be limited to, the following:

(1) *Animal regulations.* To regulate and license or to prohibit the keeping or running at-large of animals and fowl, and to provide for the impoundment of same if in violation of any ordinance or lawful order; to provide for the disposition by sale, gift, or humane destruction of animals and fowl when not redeemed as provided by ordinance; and to provide punishment for violation of ordinances enacted hereunder;

(2) *Appropriations and expenditures.* To make appropriations for the support of the government of the city; to authorize the expenditure of money for any purposes authorized by this Charter and for any purpose for which a municipality is authorized by the laws of the State of Georgia; and to provide for the payment of expenses of the city;

(3) *Building regulation.* To regulate and to license the erection and construction of buildings and all other structures; to adopt building, housing, plumbing, electrical, gas, and heating and air conditioning codes; and to regulate all housing, and building trades to the extent permitted by general law;

(4) *Business regulation and taxation.* To levy and to provide for the collection of regulatory fees and taxes on privileges, occupations, trades and professions as authorized by Title 48 of the O.C.G.A. [O.C.G.A. § 48-1-1 et seq.], or other such applicable laws as are or may hereafter be enacted; to permit and regulate the same; to provide for the manner and method of payment of such regulatory fees and taxes; and to revoke such permits after due process for failure to pay any city taxes or fees;

(5) *Condemnation.* To condemn property, inside or outside the corporate limits of the city, for present or future use and for any corporate purpose deemed necessary by the city council, utilizing procedures enumerated in Title 22 of the O.C.G.A. [O.C.G.A. § 22-1-1 et seq.], or such other applicable laws as are or may hereafter be enacted;

(6) *Contracts.* To enter into contracts and agreements with other governmental entities and with private persons, firms and corporations;

(7) *Emergencies.* To establish procedures for determining and proclaiming that an emergency situation exists within or without the city, and to make and carry out all reasonable provisions deemed necessary to deal with or meet such an emergency for the protection, safety, health or well-being of the citizens of the city;

(8) *Environmental protection.* To protect and preserve the natural resources, environment and vital areas of the city, the region, and the state through the preservation and improvement of air quality, the restoration and maintenance of water resources, the control of erosion and sedimentation, the management of stormwater and establishment of a stormwater utility, the management of solid and hazardous waste, and other necessary actions for the protection of the environment;

(9) *Ethics.* To adopt ethics ordinances and regulations governing the conduct of municipal elected officials, appointed officials, and employees, establishing procedures for ethics complaints and setting forth penalties for violations of such rules and procedures;

(10) *Fire regulations.* To fix and establish fire limits and from time to time to extend, enlarge, or restrict the same; to prescribe fire safety regulations not inconsistent with general law, relating to both fire prevention and detection and to fire fighting; and to prescribe penalties and punishment for violations thereof;

(11) *Garbage fees.* To levy, fix, assess, and collect a garbage, refuse, and trash collection and disposal, and other sanitary service charge, tax, or fee for such services as may be necessary in the operation of the city from all individuals, firms, and corporations residing in or doing business therein benefiting from such services; to enforce the payment of such charges, taxes or fees; and to provide for the manner and method of collecting such service charges;

(12) *General health, safety, and welfare.* To define, regulate, and prohibit any act, practice, conduct, or use of property which is detrimental to health, sanitation, cleanliness, welfare, and safety of the inhabitants of the city, and to provide for the enforcement of such standards;

(13) *Gifts.* To accept or refuse gifts, donations, bequests, or grants from any source for any purpose related to powers and duties of the city and the general welfare of its citizens, on such terms and conditions as the donor or grantor may impose;

(14) *Health and sanitation.* To prescribe standards of health and sanitation and to provide for the enforcement of such standards;

(15) *Jail sentences.* To provide that persons given jail sentences in the city's court may work out such sentences in any public works or on the streets, roads, drains, and other public property in the city, to provide for commitment of such persons to any jail, to provide for the use of pretrial diversion and any alternative sentencing allowed by law, or to provide for commitment of such persons to any county work camp or county jail by agreement with the appropriate county officials;

(16) *Motor vehicles.* To regulate the operation of motor vehicles and exercise control over all traffic, including parking upon or across the streets, roads, alleys, and walkways of the city;

(17) *Municipal agencies and delegation of power.* To create, alter, or abolish departments, boards, offices, commissions, and agencies of the city, and to confer upon such agencies the necessary and appropriate authority for carrying out all the powers conferred upon or delegated to the same;

(18) *Municipal debts.* To appropriate and borrow money for the payment of debts of the city and to issue bonds for the purpose of raising revenue to carry out any project, program, or venture authorized by this Charter or the laws of the State of Georgia;

(19) *Municipal property ownership.* To acquire, dispose of, lease, and hold in trust or otherwise any real, personal, or mixed property, in fee simple or lesser interest, inside or outside the property limits of the city;

(20) *Municipal property protection.* To provide for the preservation and protection of property and equipment of the city and the administration and use of same by the public; and to prescribe penalties and punishment for violations thereof;

(21) *Municipal utilities.* To acquire, lease, construct, operate, maintain, sell, and dispose of public utilities, including but not limited to a system of waterworks, sewers and drains, sewage disposal, stormwater management, gas works, electric light plants, cable television and other telecommunications, transportation facilities, public airports, and any other public utility; to fix the taxes, charges, rates, fares, fees, assessments, regulations, and penalties; and to provide for the withdrawal of service for refusal or failure to pay the same;

(22) *Nuisance.* To define a nuisance and provide for its abatement whether on public or private property;

(23) *Penalties.* To provide penalties for violation of any ordinances adopted pursuant to the authority of this Charter and the laws of the State of Georgia;

(24) *Planning and zoning.* To provide comprehensive city planning for development by zoning; and to provide subdivision regulation and the like as the city council deems necessary and reasonable to insure a safe, healthy, and aesthetically pleasing community;

(25) *Police and fire protection.* To exercise the power of arrest through duly appointed police officers, and to establish, operate, or contract for a police and a fire-fighting agency;

(26) *Public hazards: removal.* To provide for the destruction and removal of any building or other structure which is or may become dangerous or detrimental to the public;

(27) *Public improvements.* To provide for the acquisition, construction, building, operation, and maintenance of public ways, parks and playgrounds, recreational facilities, cemeteries, public buildings, libraries, public housing, parking facilities, or charitable, cultural, educational, recreational, conservation, sport, detentional, penal, and medical institutions, agencies, and facilities; and to provide any other public improvements, inside or outside the corporate limits of the city and to regulate the use of public improvements; and for such purposes, property may be acquired by condemnation under Title 22 of the O.C.G.A. [O.C.G.A. § 22-1-1 et seq.], or such other applicable laws as are or may hereafter be enacted;

(28) *Public peace.* To provide for the prevention and punishment of loitering, disorderly conduct, drunkenness, riots, and public disturbances;

(29) *Public transportation.* To organize and operate such public transportation systems as are deemed beneficial;

(30) *Public utilities and services.* To grant franchises or make contracts for, or impose taxes on, public utilities and public services, and to prescribe the rates, fares, regulations, and standards and conditions of service applicable to the service to be provided by the franchise grantee or contractor, insofar as not in conflict with valid regulations of the Public Service Commission;

(31) *Regulation of roadside areas.* To prohibit or regulate and control the erection, removal, and maintenance of signs, billboards, trees, shrubs, fences, buildings, and any and all other structures or obstructions upon or adjacent to the rights of way of streets and roads or within view thereof, within or abutting the corporate limits of the city; and to prescribe penalties and punishment for violation of such ordinances;

(32) *Retirement.* To provide and maintain a retirement plan for officers and employees of the city;

(33) *Roadways.* To lay out, open, extend, widen, narrow, establish or change the grade of, abandon or close, construct, pave, curb, gutter, adorn with shade trees, or otherwise improve, maintain, repair, clean, prevent erosion of, and light the roads, alleys, and walkways within the corporate limits of the city; to grant franchises and rights of way throughout the streets and roads and over the bridges and viaducts for the use of public utilities; and to require real estate owners to repair and maintain in a safe condition the sidewalks adjoining their lots or lands and to impose penalties for failure to do so;

(34) *Sewer fees.* To levy a fee, charge, or sewer tax as necessary to assure the acquiring, constructing, equipping, operating, maintaining, and extending of a sewage

disposal plant and sewerage system, and to levy on those to whom sewers and sewerage systems are made available a sewer service fee, charge, or sewer tax for the availability or use of the sewers; to provide for the manner and method of collecting such service charges and for enforcing payment of the same; and to charge, impose, and collect a sewer connection fee or fees to those connected with the system;

(35) *Solid waste disposal.* To provide for the collection and disposal of garbage, rubbish, and refuse and to regulate the collection and disposal of garbage, rubbish, and refuse by others; and to provide for the separate collection of glass, tin, aluminum, cardboard, paper, and other recyclable materials and to provide for the sale of such items;

(36) *Special assessments.* To levy and provide for the collection of special assessments to cover the costs for any public improvements;

(37) *Taxes: ad valorem.* To levy and provide for the assessment, valuation, revaluation, and collection of taxes on all property subject to taxation; provided, however, that:

(A) For all years, the millage rate imposed for ad valorem taxes on real property shall not exceed 4.731 unless a higher limit is recommended by resolution of the city council and approved by the qualified voters of the City of Sandy Springs;

(B) For all years, the fair market value of all property subject to taxation shall be determined according to the tax digest of Fulton County, as provided in Code section 48-5-352 of the O.C.G.A. [O.C.G.A. § 48-5-352]; and

(C) For all years, the billing date or dates and due date or due dates for municipal ad valorem taxes shall be the same as for Fulton County ad valorem taxes;

(38) *Taxes: other.* To levy and collect such other taxes as may be allowed now or in the future by law;

(39) *Taxicabs.* To regulate and license vehicles operated for hire in the city; to limit the number of such vehicles; to require the operators thereof to be licensed; to require public liability insurance on such vehicles in the amounts to be prescribed by ordinance; and to regulate the parking of such vehicles;

(40) *Urban redevelopment.* To organize and operate an urban redevelopment program;

(41) *Other powers.* To exercise and enjoy all other powers, functions, rights, privileges, and immunities necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, or general welfare of the city and its inhabitants; to exercise all implied powers necessary or desirable to carry into execution all powers granted in this Charter as fully and completely as if such powers were fully stated herein; and to exercise all powers now or in the future authorized to be exercised by other municipal governments under other laws of the State of Georgia; and any listing of particular powers in this Charter shall not be held to be exclusive of others or restrictive of general words and phrases granting powers, but shall be held to be in addition to such powers unless expressly prohibited to municipalities under the Constitution or applicable laws of the State of Georgia.

(Ord. No. 2008-04-18, 4-15-2008)

BYLAWS SUPPORTING DOCUMENTS

Part I, Charter, Article II, Government Structure, Elections and Legislative Branch, Sec. 2.13, Boards, commissions, and authorities

ARTICLE II. GOVERNMENT STRUCTURE, ELECTIONS AND LEGISLATIVE BRANCH

Sec. 2.01. City council creation; number; election.

(a) The legislative authority of the government of Sandy Springs, except as otherwise specifically provided in this Act, shall be vested in a city council to be composed of a mayor and six councilmembers.

(b) The mayor shall be elected by a majority vote of the qualified electors of the city at large voting at the elections of the city.

(c) Each councilmember shall be elected by a majority vote of the qualified electors of his or her respective council district voting at the elections of the city. For the purpose of electing the six councilmembers, there shall be six council districts, designated Council Districts 1 through 6, as described in appendix B of this Act and the accompanying Redistricting Plan Components Report, which are attached to and made a part of the Charter of the City of Sandy Springs. Each person desiring to offer as a candidate for councilmember shall designate the council district for which he or she is offering.

Sec. 2.02. Mayor and city councilmembers; election, terms, and qualifications for office.

(a) Except as otherwise provided in subsection (c) of this section, the mayor and members of the city council shall serve for terms of four years and until their respective successors are elected and qualified. No person shall be eligible to serve as mayor or councilmember unless that person shall have been a resident of the area comprising the corporate limits of the City of Sandy Springs for a continuous period of at least 12 months immediately prior to the date of the election for mayor or councilmember, shall continue to reside therein during that person's period of service, and shall continue to be registered and qualified to vote in municipal elections of the City of Sandy Springs. In addition to the above requirements, no person shall be eligible to serve as a councilmember representing a council district unless that person has been a resident of the district such person seeks to represent for a continuous period of at least six months immediately prior to the date of the election for councilmember and continues to reside in such district during that person's period of service.

(b) General municipal elections shall be held on the Tuesday next following the first Monday in November of 2005 and quadrennially thereafter.

(c) The first mayor and the initial councilmembers shall take office on December 1, 2005, and shall serve for terms which expire when their successors take office in January of 2010. Thereafter the mayor and councilmembers shall take office as provided in Code section 21-2-541.1 of the O.C.G.A. [O.C.G.A. § 21-2-541.1] and serve for terms of four years. The initial members and future members of the governing authority shall serve until their successors are elected and qualified.

Sec. 2.03. Vacancy; filling of vacancies; suspensions.

The office of mayor or councilmember shall become vacant upon the incumbent's death, resignation, forfeiture of office, or removal from office in any manner authorized by this Act or the general laws of the State of Georgia. A vacancy in the office of mayor or councilmember shall be filled for the remainder of the unexpired term by a special election if such vacancy occurs 12 months or more prior to the expiration of the term of that office. If such vacancy occurs within 12 months of the

expiration of the term of that office, the city council or those members remaining shall appoint a successor for the remainder of the term. This provision shall also apply to a temporary vacancy created by the suspension from office of the mayor or any councilmember.

Sec. 2.04. Nonpartisan elections.

Political parties shall not conduct primaries for city offices and all names of candidates for city offices shall be listed without party designation.

Sec. 2.05. Election by majority vote.

The candidates for mayor and councilmen who receive a majority of the votes cast in the applicable election shall be elected to a term of office. In the event no candidate receives a majority of the votes cast in said election, a run-off election shall be held between the two candidates receiving the highest number of votes. Such run-off shall be held at the time specified by state election law, unless such run-off date is postponed by court order.

Sec. 2.06. Applicability of general laws; qualifying; other provisions.

All primaries and elections shall be held and conducted in accordance with Chapter 2 of Title 21 of the O.C.G.A., the "Georgia Election Code", as now or hereafter amended [O.C.G.A. § 21-2-1 et seq.]. Except as otherwise provided by this Act, the city council shall, by ordinance or resolution, prescribe such rules and regulations as it deems appropriate, including but not limited to the establishment of qualifying fees, to fulfill any options and duties under Chapter 2 of Title 21 of the O.C.G.A., the "Georgia Election Code", as now or hereafter amended [O.C.G.A. § 21-2-1 et seq.].

Sec. 2.07. Compensation and expenses.

The annual salary of the mayor shall be $25,000.00 and the annual salary for each councilmember shall be $12,000.00. Such salary shall be paid from municipal funds in monthly installments. The city council may provide by ordinance for the provision of insurance, retirement, workers compensation, and other employee benefits to the mayor and members of the city council and may provide by ordinance for the reimbursement of expenses actually and necessarily incurred by the mayor and members of the city council in carrying out their official duties.

Sec. 2.08. Inquiries and investigations.

The city council may make inquiries and investigations into the affairs of the city and conduct of any department, office, or agency thereof and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the city council shall be punished as may be provided by ordinance.

Sec. 2.09. Meetings and mayor pro tempore.

(a) The city council shall meet on the first working day in January immediately following each regular municipal election. The meeting shall be called to order by the mayor-elect and the oath of office shall be administered to the newly elected mayor and councilmembers by a judicial

officer authorized to administer oaths. The oath shall, to the extent that it comports with federal and state law, be as follows:

"I do solemnly swear or affirm that I will faithfully execute the office of [councilmember or mayor as the case may be] of the City of Sandy Springs, and will to the best of my ability support and defend the Constitution of the United States, the Constitution of Georgia, and the Charter, ordinances, and regulations of the City of Sandy Springs. I am not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof. I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which I, by the laws of the State of Georgia, am prohibited from holding. I am otherwise qualified to hold said office according to the Constitution and laws of Georgia. I have been a resident of my district and the City of Sandy Springs for the time required by the Constitution and laws of this state and by the municipal Charter. I will perform the duties of my office in the best interest of the City of Sandy Springs to the best of my ability without fear, favor, affection, reward, or expectation thereof."

(b) Following the induction of the mayor and councilmembers, the city council, by a majority vote of the councilmembers, shall elect a councilmember to be mayor pro tempore, who shall serve for a term of four years and until a successor is elected and qualified. The mayor pro tempore shall assume the duties and powers of the mayor during the mayor's disability or absence, except that the mayor pro tempore shall continue to vote as a councilmember and may not exercise the mayor's prerogative to vote in the case of a tie. During the mayor's disability or absence, the mayor pro tempore may veto any action of council. If the mayor pro tempore is absent because of sickness or disqualification, any one of the remaining councilmembers, chosen by the members present, shall be clothed with all the rights and privileges of the mayor and shall perform the mayor's duties in the same manner as the mayor pro tempore.

(c) The city council shall, at least once a month, hold regular meetings at such times and places as prescribed by ordinance. The council may recess any regular meeting and continue such meeting on any weekday or hour it may fix and may transact any business at such continued meeting as may be transacted at any regular meeting.

(d) Special meetings of the council may be held on the call of the mayor or three members of the council. Notice of such special meetings shall be delivered to all members of the council and the mayor personally, by registered mail, or by electronic means, at least 24 hours in advance of the meeting. Such notice to councilmembers shall not be required if the mayor and all councilmembers are present when the special meeting is called. Such notice of any special meeting may be waived by the mayor or a councilmember in writing before or after such a meeting and attendance at the meeting shall also constitute a waiver of notice. The notice of such special meeting shall state what business is to be transacted at the special meeting. Only the business stated in the call may be transacted at the special meeting.

Sec. 2.10. Quorum; voting.

Four councilmembers shall constitute a quorum and shall be authorized to transact business for the council. Voting on the adoption of ordinances shall be taken by voice vote and the yeas and nays shall be recorded in the minutes, but on the request of any member there shall be a roll-call vote. In order for any ordinance, resolution, motion, or other action of the council to be adopted, the measure must receive at least three affirmative votes and must receive the affirmative votes of a majority of those voting. No member of the city council shall abstain from voting on any matter properly brought before the council for official action except when such member of council has a conflict of interest which is disclosed in writing prior to or at the meeting and made a part of the minutes. Any member of the city council present and eligible to vote on a matter and refusing to do so for any reason other than a properly disclosed and recorded conflict of interest shall be deemed to have acquiesced or concurred with the members of the majority who did vote on the question involved. The mayor shall vote only in

the case of a tie or in the case where his or her vote will provide the third affirmative vote required for approval of a matter.

Sec. 2.11. General power and authority of the council.

(a) Except as otherwise provided by law or by this Charter, the council shall be vested with all the powers of government of the City of Sandy Springs as provided by Article I of this Charter.

(b) In addition to all other powers conferred upon it by law, the council shall have the authority to adopt and provide for the execution of such ordinances, resolutions, rules, and regulations, not inconsistent with this Charter and the Constitution and the laws of the State of Georgia, which it shall deem necessary, expedient, or helpful for the peace, good order, protection of life and property, health, welfare, sanitation, comfort, convenience, prosperity, or well-being of the inhabitants of the City of Sandy Springs and may enforce such ordinances by imposing penalties for violation thereof.

Sec. 2.12. Administrative and service departments.

(a) Except for the office of city manager, the council, by ordinance, may establish, abolish, merge, or consolidate offices, positions of employment, departments, and agencies of the city as they shall deem necessary for the proper administration of the affairs and government of the city. The council shall prescribe the functions and duties of existing departments, offices, and agencies or of any departments, offices, and agencies hereinafter created or established; may provide that the same person shall fill any number of offices and positions of employment; and may transfer or change the functions and duties of offices, positions of employment, departments, and agencies of the city.

(b) The operations and responsibilities of each department now or hereafter established in the city shall be distributed among such divisions or bureaus as may be provided by ordinance of the council. Each department shall consist of such officers, employees, and positions as may be provided by this Charter or by ordinance and shall be subject to the general supervision and guidance of the mayor and council.

Sec. 2.13. Boards, commissions, and authorities.

(a) All members of boards, commissions, and authorities of the city shall be nominated by the mayor and be confirmed by the council for such terms of office and such manner of appointment as provided by ordinance, except where other appointing authority, term of office, or manner of appointment is prescribed by this Charter or by applicable state law.

(b) No member of any board, commission, or authority of the city shall hold any elective office in the city. Councilmembers and the mayor, however, may serve as ex officio members of such boards, commissions, or authorities, without a vote.

(c) Any vacancy in office of any member of a board, commission, or authority of the city shall be filled for the unexpired term in the manner prescribed for original appointment, except as otherwise provided by this Charter or any applicable state law.

(d) No member of any board, commission, or authority shall assume office until he or she shall have executed and filed with the designated officer of the city an oath obligating himself or herself to faithfully and impartially perform the duties of his or her office, such oath to be prescribed by ordinance of the council and administered by the mayor.

(e) Any member of a board, commission, or authority may be removed from office for cause by

a vote of a majority of the members of the council.

(f) Members of boards, commissions, and authorities may receive such compensation and expenses in the performance of their official duties as prescribed by ordinance.

(g) Except as otherwise provided by this Charter or by applicable state law, each board, commission, or authority of the city government shall elect one of its members as chairperson and one member as vice chairperson for terms of one year and may elect as its secretary one of its own members or may appoint as secretary an employee of the city. Each board, commission, or authority of the city government may establish such bylaws, rules, and regulations not inconsistent with this Charter, ordinances of the city, or applicable state law as it deems appropriate and necessary for the conduct of its affairs, copies of which shall be filed with the designated officer of the city.

Sec. 2.14. Ordinance form; procedures.

(a) Every proposed ordinance and resolution shall be introduced in writing, and the city council shall have the authority to approve, disapprove, or amend the same. After the title of any proposed resolution or ordinance is read at a city council meeting, it may be approved and passed at such time by the city council.

(b) The catchlines of sections of this charter or any ordinance printed in boldface type, italics, or otherwise, are intended as mere catchwords to indicate the contents of the section, and:

(1) Shall not be deemed or taken to be titles of such sections or as any part of the section; and

(2) Shall not be so deemed when any of such sections, including the catchlines, are amended or reenacted unless expressl y provided to the contrary.

Furthermore, the chapter, article, and section headings contained in this Act shall not be deemed to govern, limit, or modify or in any manner affect the scope, meaning, or intent of the provisions of any chapter, article, or section hereof.

(c) The city council may, by ordinance or resolution, adopt rules and bylaws to govern the conduct of its business, including procedures and penalties for compelling the attendance of absent members. Such rules may include punishment for contemptuous behavior conducted in the presence of the city council.

(Ord. No. 2006-09-73, 9-19-2006)

Sec. 2.15. Submission of ordinances to the mayor.

(a) Every ordinance, resolution, and other action adopted by the council shall be presented promptly to the mayor. Except for council approval of appointments to committees, boards, and commissions, the employment of any appointed officer, internal affairs, or matters which must be approved by the voters, the mayor may veto any action adopted by the city council.

(b) The veto must be exercised no later than the next regular city council meeting following the meeting at which the action was taken. If an action is disapproved, the mayor shall submit to the council a written statement of the reasons for the mayor's veto.

(c) An action vetoed by the mayor shall automatically be on the agenda at the next regular meeting of the city council for reconsideration. If the minimum number of councilmembers necessary to vote on overriding the veto are not present, the action may be continued until the next meeting at which the minimum number of councilmembers are present. Such action shall not become effective unless it is readopted by the affirmative votes of at least four members of

council within 60 days of the veto.

(d) The mayor may disapprove or reduce any item or items of appropriation in any ordinance or resolution. The approved part or parts of any ordinance or resolution making appropriations shall become law, and the part or parts disapproved or reduced shall not become law unless subsequently passed by the city council over the mayor's veto as provided in this Charter.

(e) If an ordinance or resolution has been signed by the mayor, it shall become effective. If an ordinance or resolution is neither approved nor disapproved by the next regular meeting of the city council, it shall become effective.

BYLAWS SUPPORTING DOCUMENTS

Part II, Code of Ordinances, Chapter 2, Administration, Article V, Boards, Commissions and Advisory Committees, of the Code of the City of Sandy Springs

ARTICLE V. BOARDS, COMMISSIONS AND ADVISORY COMMITTEES*

***Charter references:** Boards, commissions and authorities, § 2.13.

DIVISION 1. GENERALLY

Secs. 2-219--2-244. Reserved.

DIVISION 2. NONADVISORY BOARDS AND COMMISSIONS

Sec. 2-245. Creation.

Unless stated otherwise, the provisions of this article apply to the board of appeals, design review board, historic preservation board, planning board, construction board of appeals, hospitality board and 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 this Code. The duties of each board are defined in the corresponding section of this Code.

(Ord. No. 2006-12-94, § 1(ch. 2, art. 5, § 1), 12-19-2006; Ord. No. 2009-03-12, 3-17-2009)

Charter references: Authority to create departments, boards, offices, commissions, and agencies, § 1.03(b)(17).

Sec. 2-246. Appointment of members.

All board members must be nominated by the mayor and confirmed by the council except as otherwise mandated by state law. This section applies to all boards created by the city.

(Ord. No. 2006-12-94, § 1(ch. 2, art. 5, §§ 2, 3), 12-19-2006)

Charter references: Similar provisions, § 2.13(a).

Sec. 2-247. Membership.

(a) Members of boards may receive such compensation and expenses in the performance of their official duties as prescribed by ordinance.

(b) 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 council appoint his replacement.

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

(Ord. No. 2006-12-94, § 1(ch. 2, art. 5, §§ 2, 3), 12-19-2006)

Charter references: Compensation of members, § 2.13(f).

Sec. 2-248. Terms.

(a) Each board member shall serve a specified term of not more than four years. Consecutive terms are permissible. Each board member shall have equal terms of an amount to be specified by the council.

(b) No member of any board shall hold any elective office in the city. Councilmembers and the mayor, however, may serve as ex officio members of such boards, commissions, or authorities, without a vote.

(c) Any vacancy in office of any member of a board, commission, or authority of the city shall be filled for the unexpired term in the manner prescribed for original appointment, except as otherwise provided by the Charter or any applicable state law. A consecutive appointment is permissible.

(d) Any member may be removed from office for cause, by a vote of a majority of the members of the council.

(Ord. No. 2006-12-94, § 1(ch. 2, art. 5, § 4), 12-19-2006)

Charter references: Holding elective office by board members, § 2.13(b); vacancies on boards, § 2.13(c); removal of board members, § 2.13(e).

Sec. 2-249. Quorum.

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

(Ord. No. 2006-12-94, § 1(ch. 2, art. 5, § 5), 12-19-2006)

Sec. 2-250. 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 council.

(b) Each of the boards shall elect, annually, at its first meeting of the calendar year, one of its members to serve as chairperson.

(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 O.C.G.A. title 50, ch. 18, art. 4 (O.C.G.A. § 50-18-70 et seq.). 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 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 Georgia Open Meetings Act (O.C.G.A. title 50, ch. 14 (O.C.G.A. § 50-14-1 et seq.)) and Open Records Act (O.C.G.A. title 50, ch. 18, art. 4 (O.C.G.A. § 50-18-70 et seq.)).

(Ord. No. 2006-12-94, § 1(ch. 2, art. 5, § 6), 12-19-2006)

Charter references: Authority to enact rules and regulations, election of chairperson, § 2.13(g).

Secs. 2-251--2-278. Reserved.

DIVISION 3. ADVISORY COMMITTEES

Sec. 2-279. Authorization.

The council may establish advisory committees. 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.

(Ord. No. 2006-12-94, § 1(ch. 2, art. 3, § 1), 12-19-2006)

Sec. 2-280. Duties.

(a) Each committee shall, from time to time, propose policies and ordinances to the 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 before the council.

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

(Ord. No. 2006-12-94, § 1(ch. 2, art. 3, § 2), 12-19-2006)

Sec. 2-281. Membership.

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

(Ord. No. 2006-12-94, § 1(ch. 2, art. 3, § 3), 12-19-2006)

Sec. 2-282. Terms.

(a) Each committee member shall serve a specified term of not more than four years or until the committee completes its business. Consecutive terms are permissible.

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

(c) Any member may be removed with or without cause by the mayor and a majority of the councilmembers.

(Ord. No. 2006-12-94, § 1(ch. 2, art. 3, § 4), 12-19-2006)

Sec. 2-283. 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 council.

(Ord. No. 2006-12-94, § 1(ch. 2, art. 3, § 5), 12-19-2006)

Sec. 2-284. Quorum.

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

(Ord. No. 2006-12-94, § 1(ch. 2, art. 3, § 6), 12-19-2006)

Sec. 2-285. 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 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 Georgia Open Records Act, O.C.G.A. title 50, ch. 18, art. 4 (O.C.G.A. § 50-18-70 et seq.). 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.

(c) Expenditures of the committees, if any, shall be within the amounts appropriated for the purpose intended by the council during the annual budgeting process.

(Ord. No. 2006-12-94, § 1(ch. 2, art. 3, § 7), 12-19-2006)

Secs. 2-286--2-303. Reserved.

BYLAWS SUPPORTING DOCUMENTS

Part II, Code of Ordinances, Chapter 2, Administration, Article III, Officers and Employees, Division 2, Ethics, of the Code of the City of Sandy Springs

DIVISION 2. ETHICS*

***Editor's note:** Ord. No. 2009-02-06, adopted Feb. 17, 2009, amended art. III, div. 2, subdivs. I and II, in their entirety as set out herein. The former art. III, div. 2, subdivs. I and II pertained to similar subject matter and derived from Ord. No. 2006-10-14, § 1(ch. 6, app., §§ 1--25), 10-17-2006.

Charter references: Ethics ordinances authorized, § 3.01(b)(9).

Subdivision I. In General

Sec. 2-104. Definitions.

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

Associated, when used with reference to a business or an organization, includes any business or organization in which a public servant or a public servant's partner in interest is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least five percent of the outstanding equity, or any business or organization in which a public servant or a partner in interest has a personal interest.

Benefit means:

(1) Anything having a monetary value in excess of $100.00;

(2) Anything, regardless of its monetary value, perceived or intended by either the one who offers it or the one to whom it is offered to be sufficient in value to influence a public servant in the performance or nonperformance of an official action; or

(3) Anything, regardless of its monetary value, which, under the circumstances, a reasonably prudent person in the position of the public servant to whom the thing is or may be offered, would recognize as being likely to be intended to influence the public servant in the performance or nonperformance of an official action.

The term "benefit" includes, but is not limited to, a valuable act, advance, award, contract, compensation, contribution, deposit, emolument, employment, favor, fee, forbearance, fringe benefit, gift, gratuity, honorarium, loan, offer, payment, perquisite, privilege, promise, reward, remuneration, service, subscription, or the promise that any of these things will be conferred in the future. The term "benefit" shall not include food and beverage.

Board means the board of ethics established by the city to operate under the provisions of this division, unless the context clearly indicates otherwise; used generically, the term "board" may mean any voting body:

(1) Which is established to participate as a body in some manner in the conduct of the city government, including participation which is merely advisory, whether established by state law, city Charter, ordinance, contract, executive action or any other lawful means; and

(2) Any part of which its membership is appointed by the mayor or city council acting on behalf of the city; but the term "board" does not include a board, commission or committee which is the governing body of a separate political subdivision of the state, or

whose membership, after appointment, is not subject to any regulation by the city council; nor does it include any city administrative agency, bureau, department, division or office which is administered by individuals rather than by a body.

Business means an activity, association, commercial entity, corporation, enterprise, firm, franchise, holding company, joint stock company, organization, partnership, receivership, self-employed individual, sole proprietorship, trust or other legal entity established to earn or otherwise obtain money, whether for profit or nonprofit, excluding a municipal corporation or governmental entity.

Business with which a public servant is associated or *associated business* means a business in which any of the following applies:

(1) The public servant is an owner, partner, director, officer, employee or independent contractor in relation to the business;

(2) A public servant's partner in interest is an owner, partner, director or officer;

(3) The public servant or a partner in interest is a stockholder of close corporation stock which is worth at least $1,000.00 at fair market value or which represents more than a five percent equity interest;

(4) The public servant or a partner in interest is a stockholder of publicly traded stock which is worth at least $5,000.00 at fair market value or which represents more than five percent equity interest, other than publicly traded stock under a trading account if the public servant reports the name and address of the stockholder; or

(5) Any business, regardless of ownership or value, by whom or for whose benefit a decision maker is influenced to act in the hope or expectation of obtaining a personal benefit for the public servant or for a partner in interest of the public servant.

Candidate means an individual who is a candidate for an elective office in the city, as defined in the city Charter, or an applicant for city employment or for an appointive city position.

Child means a son or daughter, whether or not the son or daughter is the biological offspring of the legal parent or parents and whether or not the son or daughter is financially dependent on the parent or parents.

Compensation means any benefit conferred upon or received by any person in return for services rendered or to be rendered.

Complainant means the person who has filed a written complaint, signed and sworn alleging a violation of the ethics ordinance.

Confidential information means information which has been obtained in the course of holding public office, employment, an independent contract or otherwise acting as a public servant, and which information is not available to members of the public under the Georgia Open Records Act or other law or regulation and which the public servant is not authorized to disclose, including:

(1) Any written information that could lawfully be excepted from disclosure pursuant to state law, unless the public servant disclosing it is authorized to do so by state law, or pursuant to some other pertinent law, policy or procedure;

(2) Any other information which, if it were written, could be excepted from disclosure under state law, unless the public servant disclosing it is authorized to do so by the state law, or pursuant to some other pertinent law, policy or procedure; and

(3) Information which was obtained in the course of or by means of a record or oral report of a lawful executive or closed session, whether or not the disclosure of the information would violate state law, unless the public servant disclosing it is authorized by state law to do so, or unless the public servant disclosing it has been properly authorized to disclose it pursuant to an applicable law, policy or procedure; however, when such information is also available through channels which are open to the public,

this provision does not prohibit public servants from disclosing the availability of those channels.

Conflict of interest means not only a personal interest, as defined in this division, but also a professional or nonpecuniary interest, such as arises when the city attorney is precluded from representing one public servant because of the city attorney's preexisting attorney-client relationship with another public servant.

Decision maker means any public servant or group of public servants empowered to act in a discretionary manner on behalf of the city in any capacity whatsoever, including the making of recommendations. To the extent this division is applicable to them, any volunteer or independent contractor who is empowered to exercise any discretionary power which could influence a public servant in the performance or nonperformance of an official action. In this division, the term "decision maker" is used to represent any and every public servant who could take any discretionary action regarding a matter in which a public servant or a partner in interest has or may have a conflict of interest, or as a result of which a public servant might receive a personal benefit.

Decision making means the exercise of any discretionary public power in any capacity whatsoever, including the making of recommendations, by any public servant whose action pertains to a matter in which a public servant or a public servant's partner in interest has or may have a conflict of interest, or as a result of which a public servant might receive a personal benefit.

Disclose means, unless the context of this division indicates otherwise, to provide the city clerk with written notice of a conflict of interest or a potential conflict of interest, and any other pertinent information, including the nature and extent of the public servant's conflict of interest, the decision maker who may act on the matter, and the name and address of any person alleged to have a conflict of interest or a potential conflict of interest. Unless this division or a law which supersedes it requires or permits another procedure, information shall be deemed disclosed if any public servant within a reasonable time before any official action is to be taken by the decision maker provides the city clerk with written notice disclosing the conflict or potential conflict. For purposes of this provision, the phrase "within a reasonable time" means within adequate time to allow the city clerk, acting within the city's normal schedule and procedures for transmitting written documents, to forward the disclosure to the decision maker before whom the matter is pending or may be brought, and within adequate time to allow the decision maker to review the disclosure before taking any official action.

Employee means a person, other than an elected public officer, employed and paid a salary to work for the city, whether under civil service or not, whether full time, part-time, or on a contract basis, and including those officially selected but not yet serving.

Expenditure means a payment, distribution, loan, advance, deposit, or gift of money or anything of value.

Gift means any benefit or thing or act of monetary value which is conveyed to or performed for the benefit of a public servant or a partner in interest, including any advance, award, contract, contribution, deposit, employment, favor, forbearance, gift, gratuity, honorarium, loan, payment, service, subscription, or the promise that any of these things or acts of value will be conferred in the future, if such thing or act of value is conferred or performed without the lawful exchange of consideration which is at least equal in value to the thing or act conferred or performed.

Immediate family means:

(1) A public servant's spouse, children, grandchildren, parents, parents-in-law, grandparents, grandparents-in-law, sisters, sisters-in-law, brothers, brothers-in-law, sons-in-law, daughters-in-law, nieces, nephews, aunts, or uncles (whether by marriage, lineal descent or adoption);

(2) A public servant's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the public servant or from whom the public servant receives, directly or indirectly, more than one-half of his or her support; and

(3) An individual claimed by the public servant or the public servant's spouse as a dependent under the United States Internal Revenue Code.

Interest means any personal benefit accruing to a public servant or the public servant's partner in interest, whether in the public servant's own name or the name of any person or business from which the public servant is entitled to receive any personal benefit, as a result of a matter which is or which is expected to become the subject of an official action by or with the city.

Loan means a transfer of money, property or anything else of ascertainable monetary value in exchange for an obligation, conditional or not, to repay in whole or in part.

Matter means, unless the context of this division indicates otherwise, any act, action, agenda item, allegation, application, amendment, auction, bill, business, case, charge, claim, consideration, contract, controversy, decree, deed, deliberation, discussion, hearing, issue, lease, license, measure, offer, order, ordinance, permit, personnel action, petition, policy, presentation, procedure, privilege, proceeding, project, proposal, proposition, purchase, recommendation, regulation, rental, request, resolution, sale, subject, transaction, use, variance or other discretionary choice pending before a city decision maker when a public servant or a partner in interest has a personal interest in the outcome of the decision, or the decision may result in a personal benefit to a public servant or a partner in interest.

Ministerial action means a simple and definite action or function imposed by law where no exercise of discretion or judgment is required.

Negotiating concerning prospective employment means one or more discussions between a public servant and a potential employer other than the city concerning the possibility of the public servant or a partner in interest considering or accepting employment with the employer, in which discussion the public servant responds in a positive w ay.

Office means any of the following:

(1) An elective position within the government of the city; or

(2) An appointive city position that does not serve at the pleasure of the city council.

Officer means any person elected or appointed to hold an office, as defined in the Charter of the city.

Official action means any act, action, approval, decision, denial, directive, disapproval, inaction, order, performance, nonperformance, recommendation, vote, or other direct result of a public servant's exercise of discretionary authority in connection with the public servant's public position.

Official duty means any official action or ministerial action which a public servant is obligated or authorized to perform by virtue of being a public servant.

Organization means, unless the context indicates otherwise, any nonprofit business other than an individual or governm ental agency.

Partner in interest means, when used in this division in connection with a public servant, as in the phrase "a public servant or a partner in interest," any and all of the following:

(1) A member of the public servant's immediate family;

(2) A business with which the public servant or a member of the public servant's immediate family is associated;

(3) Any other person with whom the public servant or a member of his or her immediate family is in business, or is negotiating or has an agreement concerning future employment or the future conferring of any personal benefit, whether in the public servant's own name or the name of any business or person from whom the public servant is entitled, or expects to become entitled, to receive any personal benefit, as a result of a contract or transaction which is, or which is expected to become, the subject of an official action by or with the city. The term partner in interest does not imply or

require any form of legal partnership or formal agreement; or

(4) When used in the phrase "a public servant or a partner in interest," the term "partner in interest" refers only to a partner in interest of the public servant to whom reference is being made, and not to any other person's partner in interest.

Personal benefit means any benefit which is offered or received, or perceived to be offered or received, primarily for the purpose of influencing the manner in which a public servant performs or refrains from performing an official action, so that an attempt is made to induce the public servant, or the public servant is induced to act in favor of some interest other than the public interest on the basis of an expectation or hope that the public servant or a partner in interest of the public servant will obtain some private gain by acting against the public interest; provided, however, that the term "personal benefit" within the meaning of this division does not include any of the following, which, although they may benefit individual public servants, are deemed to be primarily public benefits rather than personal benefits:

(1) Payment by the city of salaries, compensation or employee benefits; or payment by an employer or business other than the city of salaries, compensation, employee benefits or pursuant to a contract, when the payment is unrelated to a public servant's status as a public servant and is not made for the purpose of influencing, directly or indirectly, the vote, official action or decision of a public servant;

(2) Fees, expenses, or income, including those resulting from outside employment, which are permitted and reported in accordance with the policies of the city;

(3) Authorized reimbursement of actual and necessary expenses;

(4) Admission, regardless of value, to events to which public servants are invited in their official, representative capacity as public servants;

(5) Campaign or political contributions which are made and reported in accordance with state law;

(6) Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official city business, if furnished by the sponsor of such public event; or in connection with speaking engagements, teaching or rendering other public assistance to an organization or another governmental entity; this provision applies only if the city does not also pay the person for the same activity;

(7) Awards publicly presented in recognition of public service, acts of heroism or for solving crimes;

(8) Anything of value, regardless of the value, when the thing of value is offered to the city, is accepted on behalf of the city, and is to remain the property of the city;

(9) Commercially reasonable loans made in the ordinary course of the lender's business in accordance with prevailing rates and terms, and which do not discriminate against or in favor of an individual who is a public servant because of such individual's status as a public servant;

(10) Complimentary copies of trade publications;

(11) Any unsolicited benefit conferred by any one person or business if the economic value totals less than $250.00 per calendar year, and if there is no express or implied understanding or agreement that a vote, official action or decision of a public servant will be influenced;

(12) Reasonable compensation for a published work which did not involve the use of the city's time, equipment, facilities, supplies, staff or other resources, if the payment is arranged or paid by the publisher of the work;

(13) Reasonable compensation for a published work which did involve the use of the city's time, equipment, facilities, supplies, staff or other resources, if the payment of the compensation to the public servant is lawfully authorized by a representative of the city who is empowered to authorize such compensation;

(14) Anything of value, if the payment, gift, or other transfer of value is unrelated to and does not arise from the recipient's holding or having held a public position, and if the activity or occasion for which it is given does not involve the use of the city's time, equipment, facilities, supplies, staff or other resources which is not available to the general public;

(15) Anything of value received as a devise, bequest or inheritance;

(16) A gift received from a relative within the third degree of consanguinity, under the civil law computation method, to the public servant, or the spouse of such a relative; or

(17) A gift received from a spouse of a public servant, or a spouse's relative within the third degree of consanguinity to the spouse, under the civil law computation method.

Personal interest means a direct or indirect interest having value peculiar to a particular individual or group, whether the value is pecuniary or nonpecuniary, which value may accrue to such individual or group or result in such individual or group deriving or potentially deriving a personal benefit as a result of the approval or denial of any ordinance, resolution, order or other official action, or the performance or nonperformance thereof, by a public servant, and which interest is not shared by the general public.

Public servant means the mayor, members of the city council, and municipal court judges. The term "public servant" includes all individuals 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.

Reasonable means fair, proper, equitable and just under the circumstances.

Records means any minutes, papers, documents, completed forms, or other records maintained by a public agent for the purpose of fulfilling the disclosure requirements of this division.

Relative means a person who is related to an official or employee (whether by marriage, lineal descent or adoption) as spouse, parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, parents-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law.

Respondent means the person against whom a complaint has been made alleging a violation of the ethics ordinance.

Volunteer means an individual who is permitted by the city, or by a person authorized to act on behalf of the city, to assist public servants in performing any kind of official duty or action without any expectation of receiving compensation.

Voting body means the city council and any other city authority, board, commission, committee, council or group, regardless of whether its function is legislative, administrative, quasi-administrative or quasi-judicial or any combination thereof, which must act as a body on the basis of a vote of some or all of its members.

(Ord. No. 2006-10-14, § 1(ch. 6, app.), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-105. Declaration of policy.

(a) The city government is a representative democracy. Those who are elected, appointed, hired, volunteer or campaign to serve the public as representatives accept a public trust, which they share with those whom they elect, appoint, hire or otherwise enlist to help them serve the

public. Public trust requires that acts which are contrary to the public interest be defined and prohibited; that there be an orderly procedure for raising and addressing ethical questions; that ethical behavior be encouraged and suitably rewarded; and that unethical behavior be discouraged and suitably disciplined through a process which is fundamentally fair.

(b) It is the responsibility of each public servant to act in a manner which contributes to cultivating public trust in the integrity of government and avoiding even lawful activity when the appearance of impropriety would lessen the public's confidence.

(c) In adopting this division, the city recognizes that:

(1) Public servants are also members of society and, therefore, share the same general personal and economic interests in the decisions and policies of government as all members of the community.

(2) Public servants retain their rights to publicly express their views on matters of general public interest, and to express their opinions on the effect of public actions on their personal or economic interests or rights.

(3) It is sound public policy for standards of ethical conduct for public servants to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are personal, material and avoidable.

(4) Public servants are entitled to engage in employment, professional or business activities, other than official duties, in order to support themselves and their families and to maintain a continuity of professional or business activity, and are entitled to maintain investments.

(d) This division provides the minimum standards below which a public servant's conduct cannot fall without the risk of penalty. The principal policy which forms the foundation of this section is to encourage internal commitment by establishing and maintaining a work environment which supports integrity with pride and enthusiasm. A work environment which supports integrity includes public servants who:

(1) Recognize with gratitude that the primary reason they hold a public position is to serve the public;

(2) Are motivated and committed to pursue ethical ideals which always exceed minimum standards and often achieve the highest standards;

(3) Encourage ethical practices which protect, advance and promote the public interest;

(4) Recognize that the most effective way to eradicate unethical practices is to consistently act ethically themselves, and to consistently react appropriately with respect to the ethical decisions of others;

(5) When they observe serious unethical practices, promptly disclose them to appropriate authorities, and encourage others to do the same;

(6) Ensure that those for whom they are responsible are aware of minimum standards of ethics below which their conduct cannot fall without the risk of disciplinary consequences; and

(7) When circumstances warrant, appropriately discipline those who are proven to have engaged in unethical behavior.

(Ord. No. 2006-10-14, § 1(ch. 6, § 1), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-106. Purposes of division.

This section, including the definitions set forth in section 2-104, is adopted to:

(1) Identify the minimum standards of ethical conduct which public servants must meet;

(2) Adequately educate public servants in the principles of ethics;

(3) Encourage public servants to pursue the highest ethical ideals which they can achieve;

(4) Provide a process by which public servants may identify and resolve ethical issues;

(5) Provide a process to ensure the prompt disclosure by public servants of serious unethical practices, and encourage others to do the same;

(6) Provide a fair and impartial process by which alleged violations of this division may be heard;

(7) Provide for a just and reasonable balance among the rights of all individuals who are directly affected by the operation of this division; and

(8) Establish penalties, as appropriate, for public servants who violate the public trust.

(Ord. No. 2006-10-14, § 1(ch. 6, § 2), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-107. Applicability of division.

This division applies to all public servants, as the term is defined in this division. It shall not apply to a municipal judge when the judge is acting in a judicial capacity.

(Ord. No. 2006-10-14, § 1(ch. 6, § 4), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-108. Exemptions.

(a) This division does not prevent any public servant from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her public duties, provided that the public servant complies with all applicable city requirements, including any requirements imposed by this division.

(b) No public servant shall be deemed to have a conflict of interest by virtue of carrying out any contract pursuant to which the public servant directly or indirectly received income or benefits in the form of compensation for the performance of official duties.

(c) A former public servant is not prohibited from entering into a contract to represent the city in any matter.

(d) No public servant shall be deemed to have a conflict of interest by virtue of sharing, directly or indirectly, in the benefit of a lawful city action when the benefit to the public servant is substantially the same as the benefit to the public at large or to a segment of the public to whom the benefit is provided in a nondiscriminatory manner.

(e) This division does not prohibit any public servant from taking any action to approve the lawful payment of salaries, employee benefits, reimbursements of actual and necessary expenses, or other lawful payments which are authorized in accordance with city policies.

(f) This division does not prohibit a public servant from taking any official action properly within the scope of his or her duties with respect to any proposal to enact or modify law or public policy.

(g) This division does not prohibit an elected official or other public servant from raising campaign contributions in any manner which is otherwise permitted by law.

(h) This division does not prohibit communication between an individual or organization and a candidate regarding the candidate's views, record or plans for future action regarding an issue or measure in an attempt to determine a candidate's viewpoints or how the candidate plans to act in the future, if such communication results in an endorsement of the candidate, a decision not to endorse the candidate, or a contribution or expenditure required to be recorded or reported under a state statute.

(i) Actions which might otherwise be alleged to constitute a conflict of interest shall be deemed to comply with this division and not to be a conflict of interest if:

(1) Before acting, the public servant requested and received a written opinion from the city attorney or a formal ethics opinion or a confidential advisory opinion from the board in accordance with the procedures established in this division;

(2) The material facts, as stated in the request for an opinion, are true and complete; and

(3) The actions taken were consistent with the opinion.

(Ord. No. 2006-10-14, § 1(ch. 6, § 3), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-109. Penalties.

Any violations of this division shall be punishable to the maximum extent permitted by law. Any disciplinary action shall be carried out in accordance with the provisions of this division, as well as any other laws, policies and procedures applicable to the position of the offender and the gravity of the offense. The board is permitted to take any action which it is otherwise lawfully permitted to take, including, but not limited to, any one or combination of the following which the board deems appropriate under the circumstances:

(1) *Letter of notification.* The board may issue a letter of notification when it finds that a violation of this division was clearly unintentional or inadvertent. The letter may advise the respondent of any steps to be taken to avoid future violations.

(2) *Letter of admonition.* The board may issue a letter of admonition when it finds that the violation of this division was minor and/or may have been unintentional or inadvertent.

(3) *Letter of reprimand.* The board may issue a letter of reprimand when it finds that the respondent has intentionally or knowingly violated this division.

(4) *Recommendations to city council.* When the board finds that the respondent has intentionally or knowingly violated this division, the board may make a recommendation to the mayor and city council, including, but not limited to, a recommendation for suspension, forfeiture of office or removal from office, and/or banning or temporarily suspending the respondent's (or respondent's associated businesses' or organizations') right to solicit, bid on or obtain a contract with or from the city, as allowed by applicable law.

(5) *Referral to ethics training.* Upon finding of violation of this division, the board may require that the respondent undergo ethics training in addition to or in lieu of any other penalties imposed upon the respondent.

(Ord. No. 2006-10-14, § 1(ch. 6, § 23), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-110. Penalties cumulative.

The penalties prescribed in this division shall be cumulative and not exclusive of each other or of any other penalties which may be imposed pursuant to any other laws or policies.

(Ord. No. 2006-10-14, § 1(ch. 6, § 24), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-111. Liberal construction of division.

The provisions of this division are to be construed liberally, to the end that the public interest be fully protected, and shall be construed in a manner consistent with all applicable federal and state laws and applicable provisions of this City Charter.

(Ord. No. 2006-10-14, § 1(ch. 6, § 25), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-112. Duties of public servant.

(a) No public servant or former public servant shall divulge any confidential information to any person who is not authorized to have it nor divulge to any unauthorized person confidential information acquired in the course of holding his or her position in advance of the time prescribed by the city council, administrators, or other applicable law for its release to the public.

(b) All public servants shall respond fully and truthfully to any inquiries by the city attorney or the board in connection with the investigation of an alleged or potential violation of this division. All public servants shall cooperate fully in any investigation by the city attorney or the board, and shall locate, compile and produce for them such information as they may request, unless the information requested is exempt from disclosure under this division or other applicable law.

(c) Except as set forth below in subsection (d), within a reasonable period of time, all public servants must report a violation of this division of which they have knowledge to the city clerk or the mayor, who shall forward such report to the board.

(d) Public servants are not, however, required to report a violation that has already been reported.

(e) In addition to being a violation of other laws, it is also a violation of this division for any public servant to:

(1) Be convicted of any felony or misdemeanor involving moral turpitude;

(2) Be found liable of violating any federal, state or city law prohibiting discrimination or sexual harassment;

(3) Be found liable of violating any federal, state or city laws prohibiting retaliation against public servants who assert a lawful claim of any nature or otherwise engage in lawfully protected activity; or

(4) Be found liable of violating any state laws governing lobbying activities or regulating political activity.

(Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-113. Conflict of interests and personal benefits prohibited.

(a) Except as otherwise permitted under applicable federal, state and city laws and policies, including the city's procurement policies, no public servant shall have a personal interest in any official action.

(b) No public servant shall accept or receive, directly or indirectly, from any person, including one whose identity is unknown to the public servant, any personal benefit under circumstances in which it can reasonably be inferred that the benefit is intended to influence the public servant or as a reward for any official action of the public servant.

(c) No person, including any vendor, contractor, business, or board of the city, shall offer or give any personal benefit to any public servant or any partner-in-interest of the public servant.

(d) No public servant or partner in interest of that public servant shall solicit from any person, directly or indirectly, any personal benefit, regardless of value, or the promise of receiving a personal benefit in the future, for the public servant.

(e) No current or former public servant shall intentionally use or disclose information gained in the course of, or by reason of, his or her official position or activities in any way that could result in the receipt of any personal benefit for the public servant, for a partner in interest of that public servant, or for any other person. This provision shall not:

(1) Prohibit the disclosure of public information;

(2) Prohibit the disclosure of information the public servant has been authorized to disclose;

(3) Prohibit the disclosure of any such information to incumbent public servants to whom the information may be pertinent;

(4) Prevent the disclosure of violations of this division or other illegal acts to the proper authorities; or

(5) Prohibit the disclosure of any such information the disclosure of which is required by law.

(Ord. No. 2006-10-14, § 1(ch. 6, § 6), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-114. Duty to leave meeting.

(a) To avoid the appearance of impropriety, after any public servant or a partner in interest is determined to have a conflict of interest or a potential conflict of interest in any matter, and once all questions relating to the conflict of interest have been answered to the satisfaction of the decision maker, the public servant shall immediately leave the meeting room, except that if the matter is being considered at a public meeting, the public servant may remain in the area of the room occupied by the general public.

(b) Nothing herein shall require members of voting bodies to leave their seats while action is taken regarding any item contained on a consent agenda on which there is no deliberation, the public servant's conflict has been disclosed, and the public servant abstains from voting on the item.

(Ord. No. 2006-10-14, § 1(ch. 6, § 7), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-115. Public contracts.

(a) The city is prohibited from entering into any contract with a business in which a public servant or a public servant's partner in interest has a controlling interest involving services or property of a value in excess of $2,500.00.

(b) Any public servant who has or may have a personal interest in any contract shall disclose such interest prior to the first of any of the following events:

(1) The solicitation of a contract;

(2) The bidding of a contract;

(3) The negotiation of a contract; or

(4) The approval of a contract by the city council.

(c) Any contract entered into in violation of this section may be voided by the city in an action commenced within three years of the date on which the board, or the department or officer acting for the city in regard to the allocation of funds from which such payment is derived, knew or should have known that a violation of this section occurred. This section does not affect the application of any state statute.

(d) Mandatory provision in volunteer agreements. Volunteers share in receiving the public's trust and in the responsibility to contribute to creating and maintaining an ethical work environment. Volunteers serve without the expectation of receiving any compensation from the city, and it is improper for any volunteer to seek any compensation. Volunteers, unless expressly authorized by a public servant empowered to grant such authorization, are prohibited from acting as volunteers in any matter in which they have a conflict of interest or a potential or alleged conflict of interest; or in any matter in which they hope to receive any personal benefit.

(Ord. No. 2006-10-14, § 1(ch. 6, § 8), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-116. Disclosure of conflict of interest or potential conflict of interest.

(a) A member of the city council who has or may have a conflict of interest in a matter which requires an official action by any decision maker shall, before the matter is decided, disclose the conflict of interest or the potential or alleged conflict of interest. If the member of the city council believes that no conflict of interest exists, or that despite any alleged or potential special interest, such city councilmember is nevertheless able to vote and otherwise participate fairly, objectively and in a manner consistent with the public interest, then the member shall so state in the written disclosure.

(b) If any member of the board has or may have a conflict of interest in any matter before the board, such member shall not appear before the board, discuss, debate, deliberate about, act upon, vote upon or otherwise participate in or influence the decision-making process pertaining to the matter in which the member has a conflict of interest.

(c) Any public servant who has or may have a conflict of interest shall disclose it. After receiving a disclosure, the city clerk shall:

(1) Maintain a record of such disclosure; and

(2) Promptly forward copies of the disclosure to any person named in the disclosure, the board and the city attorney.

(d) Any public servant who believes that any other public servant has a conflict of interest in any agenda item before a governmental body shall disclose such interest to the city clerk, and the city clerk shall forward copies of such disclosure to the person alleged to have a conflict of interest, the board and the city attorney.

(e) A public servant, in addition to disqualifying himself from participation in any decision regarding the pecuniary or employment interest of a partner in interest, shall make known the existence of the relationship and the interest by filing with the city clerk a written disclosure of the relationship and the nature and extent of the conflict of interest involved.

(Ord. No. 2006-10-14, § 1(ch. 6, § 9), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-117. Unauthorized outside employment.

(a) *Purpose of policy.* The purpose of the policy governing unauthorized outside employment is to prevent conflicts of interest and conflicts of loyalty; to prevent abuses regarding dual compensation, payment for work not done, or unlawful gifts of public funds; and to prevent excessive loss of efficiency in the performance of public service.

(b) *Conflict of interest.* A public servant shall not accept any employment, nor enter into any contract, nor perform any service for compensation that results in a financial conflict of interest or a conflict of loyalties which would affect the performance of the public servant's official duties.

(Ord. No. 2006-10-14, § 1(ch. 6, § 10), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-118. Prohibited conduct, and other abuses or misuses of position.

(a) Public servants of the city shall treat all citizens with courtesy, impartiality, fairness, and equality under the law, and shall avoid both actual and potential conflicts between their private self-interest and the public interest. Prohibited conduct of each such public servant shall include, but not be limited to, the following:

(1) Granting or making available to any person any special consideration, treatment, advantage, or favor beyond that which it is the general practice to grant or make available to the public at large;

(2) Requesting, using or permitting the use of any publicly owned or publicly supported property, vehicle, equipment, labor, or service for the personal convenience or the private advantage of oneself or any other person, except as otherwise allowed by law;

(3) Participating in the deliberation of or voting on any matter involving personal financial or personal interest;

(4) Engaging in private employment with, or rendering services for, any private person who has business transactions with the city, unless the public servant has made full public disclosure of such employment;

(5) Accepting any gift, whether in the form of money, thing, favor, loan, or promise, that would not be offered or given to the public servant if the individual were not a public servant;

(6) Disclosing any confidential information concerning any public servant, or any other person, or any property or governmental affairs of the city, without prior formal authorization of the city council;

(7) Using or permitting the use of confidential information to advance the financial or personal interest of the public servant or any other person;

(8) Ordering any goods and services for the city without prior official authorization for such an expenditure;

(9) Use his or her superior position to request or require an employee to:

a. Do clerical work on behalf of the public servant's family, business, social, church or fraternal interest when such work is not furthering a city interest;

b. Perform any work outside the employee's normal course of municipal employment;

c. Purchase goods and services for personal, business, or political purposes; or

d. Work for him or her personally without offering just compensation.

(10) A public servant shall not draw per diem or expense monies from the city to attend a seminar, convention, or conference and then fail to attend the seminar, convention, or conference without refunding the pro-rata unused per diem or expense monies to the city.

(b) No public servant shall hold any other office, elected or appointed, in any other governmental entity, when the duties of such office are incompatible with the proper discharge of the public servant's duties with the city. For purposes of this division, the holding of any office, elective or appointive, with any other governmental entity by any member of the city council or of a board is hereby prohibited in any one of the following circumstances:

(1) Where one office is subordinate to the other;

(2) Where one office carries the power of removal of the other; or

(3) Where the occupancy of both offices is prohibited by the City Charter or other law.

(c) No public servant shall falsely represent his or her personal opinion to be the official position of the city, and no public servant shall falsely represent his or her personal opinion to be the official position of any board. This subsection shall not apply to statements of elected officials made in the course of fulfilling the responsibilities of their offices or in running for election to office.

(d) All public servants have a fiduciary duty to use city fiscal and human resources in a manner which advances the public interest, and to refrain from using city resources for their personal benefit; therefore, public servants are prohibited from using city resources in any manner which violates any applicable law or policy, and are expressly prohibited from using any city resource to obtain any personal benefit.

(e) No public servant shall use his or her official authority or position to influence or interfere with or affect the results of any election, nor to solicit or receive contributions from city employees in connection with any city election.

(f) No public servant shall suppress any public document, record, report or any other public information available to the general public because it might tend to unfavorably affect their private financial, personal, or political interest.

(g) When a public servant, in the course of carrying out his or her duties, has been offered or is discussing future employment with a business that is presently dealing with the city concerning matters within the public servant's current official duties, that person shall disclose such possible future employment to the city clerk. The city clerk shall disclose such possible future employment to the city council.

(h) No member of the city council having a personal interest in a matter shall represent himself or any other person before the city council in connection with that matter, nor in connection with any matter in which a partner in interest has a personal interest, except in cases where a legal right to self-representation exists.

(i) No member of a board having a conflict of interest shall represent himself or any other person before that board in connection with that matter, nor in connection with any matter in which a member of his or her immediate family or a business with which he or she, or a member of his or her immediate family, is associated has a prohibited interest, except in cases where a legal right to self-representation exists.

(j) No member of a board who is prohibited by this provision from representing himself before that board shall represent himself in the appeal of any decision of that board to any decision maker.

(Ord. No. 2006-10-14, § 1(ch. 6, § 11), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Secs. 2-119--2-149. Reserved.

Subdivision II. Board of Ethics

Sec. 2-150. Creation; membership; terms; compensation.

(a) *Created; membership.* There is created a board of ethics consisting of five members and two alternates. Each board member and alternate shall have been a resident of the city for at least one year immediately preceding the date of taking office and shall remain a resident of the city while serving as a board member or alternate.

(b) *Member restrictions.* Members of the board and alternates shall not be elected officials, persons appointed to elective office, full time appointed officials (whether exempt or nonexempt), or city employees, and shall hold no elected public office nor any other city office or employment.

(c) *Appointment.* Members of the board and alternates shall be appointed by the mayor and approved by the city council. An appointment to fill a vacancy on the board shall be made by the mayor and approved by the city council.

(d) *Chairperson.* The board shall elect one of its members to serve as chairperson of the board and one of its members to serve as vice-chairperson of the board. Alternates may not hold any office on the board.

(e) *Term of office.* Members of the board and alternates shall serve staggered terms of no more than three years. A board member shall hold office until that member's successor is appointed.

(f) *Limit of terms.* No board member may serve more than two consecutive terms as a board member. No alternate may serve more than two consecutive terms as an alternate.

(g) *Deliberations, actions open to public.* The board's deliberations and actions upon requests shall be open to the public.

(h) *Compensation.* Members of the board are volunteers and shall serve without compensation. The city council 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 to perform its duties and responsibilities.

(i) *Staff support.* The city council shall provide such staff support for the board as the city council determines to be necessary for the board to fulfill its duties and responsibilities. The city attorney is designated to be the legal advisor for the board, except that the city attorney is not authorized to represent the board in any legal action if doing so would create a conflict which would prevent the city attorney from also representing the mayor, the city manager, or city council. The city clerk shall serve as recording secretary to the board.

(Ord. No. 2006-10-14, § 1(ch. 6, § 12), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-151. Duties and powers.

(a) The board shall, in addition to its other duties:

(1) Develop and adopt written procedural rules, which rules shall be subject to the approval of the mayor and city council, and filed with the city clerk;

(2) Be authorized to administer oaths;

(3) Conduct hearings as needed to hear and decide specific cases in which a violation of this ordinance is alleged, whether such cases arise from a complaint or are brought on the board's own motion;

(4) No later than December 1 of each year, submit an annual report to the mayor and city council concerning its action, if any, in the preceding year, which shall contain a summary of its decisions and opinions; the board shall make any alterations in the summaries necessary to prevent disclosure of any confidential information pertaining to any individual or organization;

(5) Establish a process for evaluating all significant aspects of the administration and implementation of this division;

(6) Prescribe and make available necessary forms for use under this ordinance;

(7) When necessary, request assistance from the city attorney in compelling the production of documents and witnesses to assist in any investigation; and

(8) When necessary, retain outside legal counsel and other experts as needed after solicitation of recommendations from the city attorney (unless the need to retain outside counsel is caused by a conflict involving the city attorney's office), and upon approval by the city council of a contract for services approved as to form by the city attorney.

(b) The board may:

(1) Conduct meetings and hearings as the board determines necessary or appropriate:

a. To ascertain public opinions and to gather information from the general public, public servants, or others regarding any aspect of the city's ethics policies or practices; and

b. For any other purpose for which the board is authorized to conduct hearings.

(2) Respond, as it deems appropriate, to requests for confidential advisory opinions; the board may decline to render an opinion in response to any request for an advisory opinion;

(3) Render and publish written formal opinions on any matter within the scope of the board's authority; the board may initiate opinions on its own motion or upon request;

(4) At the request of a person, the city attorney may render an informal opinion with respect to the prospective conduct of such person. Nothing in this division shall be construed to prohibit a request for an informal opinion by any public servant from the city attorney regarding a potential conflict of interest. If the city attorney elects to render an informal opinion, the city attorney shall, within a reasonable time, submit a written summary of the opinion to the board for the board's information; if the city attorney declines to render an informal opinion, nothing shall preclude the person requesting the opinion from requesting the board for an opinion;

(5) Prepare and publish special reports, technical studies, and recommendations to further the purposes of this division; and

(6) Make recommendations to the mayor and city council of legislative or administrative actions regarding the city's policies and practices which the board believes could enhance the ethical environment in which public servants work.

(c) The duties and limitations of an alternate are as follows:

(1) An alternate shall receive notice of and agenda for all meetings and hearings of the board;

(2) An alternate may be appointed by the chairperson of the board to serve on any committees of the board;

(3) An alternate may participate in discussions at all meetings and hearings of the board;

(4) An alternate may not vote at any board meeting or hearing, except as authorized in (c)(5) of this section; and

(5) In the absence of a board member at a board meeting or hearing, the chairperson (or vice-chairperson in the chairperson's absence) may appoint an alternate to take the place of the absent board member at said board meeting or hearing, and said appointed alternate shall have all rights, duties, and responsibilities attendant to board members, including without limitation, the right to motion the board for action and the right to vote on any item before the board. The alternate's service as a board member shall terminate at the close of the board meeting or hearing at which the alternate was appointed to serve.

(Ord. No. 2006-10-14, § 1(ch. 6, § 13), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-152. Custodian of records.

The city clerk shall serve as legal custodian of the board's records, and accept, file, maintain and administer, in accordance with all applicable laws, any information related to the purposes of this division.

(Ord. No. 2006-10-14, § 1(ch. 6, § 14), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-153. Requests for actions.

(a) Any person may file a request for board action with the city clerk, either personally or on behalf of an organization or governmental body, and may request of the board an ethics opinion, whether a formal opinion or a confidential advisory opinion, regarding the propriety of any matter or matters to which the person is or may become a party; and any decision maker, with the consent of a prospective appointee, may request of the board an ethics opinion regarding the propriety of any matter to which the public servant, prospective public servant or former public servant is or may become a party.

(b) Any request for board action shall be in writing, and shall be signed by the person making the request.

(Ord. No. 2006-10-14, § 1(ch. 6, § 15), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-154. Limitations of power.

The board does not have the authority to reverse or otherwise modify a prior action of a public servant of the city. If the board finds a prior action of a public servant to have been ethically improper, the board may advise the appropriate party or parties that the action should be reconsidered. Upon such advice by the board, the action may be reconsidered by the appropriate person or public body. If the board determines an existing city contract to be ethically improper, after such determination and advice from the board, the city may void or seek termination of the contract if legally permissible. The board may refer a matter to the city attorney for review and consideration for appropriate action. Upon

completion of review and consideration, the city attorney's office shall report its findings to the board.

(Ord. No. 2006-10-14, § 1(ch. 6, § 16), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-155. Procedures for hearing complaints.

(a) Any person may file a complaint with the city clerk where the person believes that a public servant may have violated this division.

(b) A complaint shall be made in writing on a form that is created and prescribed by the board of ethics, shall be signed and sworn to by the complainant in the presence of a notary public, shall specify the provision(s) of this article alleged to have been violated and the facts alleged to constitute the violation, and shall identify all persons with knowledge of the facts alleged to constitute the violation, and shall attach all documentation or other evidence supporting the alleged violation.

(c) Upon receipt of such a complaint, but in any event not later than five working days after receipt, the city clerk shall acknowledge receipt to the complainant, and forward the complaint simultaneously to the board, the respondent, and the city attorney.

(d) The city attorney shall provide the board with a preliminary written analysis of the complaint no later than 30 calendar days from the date the complaint is filed with the city clerk.

(e) During any investigation and during any hearing which is conducted to determine whether a violation of this division has occurred:

(1) The respondent may be represented by legal counsel, licensed in the State of Georgia of his or her own choosing; and

(2) The respondent or his or her counsel, if any, shall have an opportunity to:

a. Challenge the sufficiency of any complaint which has been filed against him or her;

b. Examine all documents and records obtained or prepared by the board in connection with the matter heard;

c. Bring witnesses and/or request witnesses to be subpoenaed by the board;

d. Establish all pertinent facts and circumstances;

e. Question or refute testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses; and

f. Exercise, to the extent the board, in its discretion, determines to be just and reasonable, any pretrial discovery procedure usually available in civil actions.

(f) The following principles shall apply regarding evidence in connection with hearings conducted by the board:

(1) The board shall not be bound to adhere to statutory rules of evidence, but shall be fundamentally fair and reasonable in its administration of evidence.

(2) All evidence including certified copies of records which the board considers shall be fully offered and made a part of the record in the proceedings.

(3) The respondent shall be afforded adequate opportunity to rebut or offer countervailing evidence.

(4) The board shall inform the respondent or his or her counsel of exculpatory evidence in its possession.

(5) The standard of evidence sufficient to prove a violation in hearings conducted under this article shall be by a preponderance of the evidence admitted at the hearing.

(g) The board, in addition to its other duties and powers, may:

(1) Appoint a hearing officer in the place of the chairperson to conduct hearings under this article;

(2) With the approval of the city council, retain outside legal counsel and other experts as needed with respect to hearings in accordance with its policies. The selection of outside counsel or other experts and any contract for such persons shall be made after solicitation of recommendations from the city attorney and upon approval by the city council of a contract for services approved as to form by the city attorney;

(3) Order testimony to be taken by deposition before any individual who is designated by the board and, in such instances, to compel testimony and the production of evidence to the extent it is otherwise lawfully authorized to do so;

(4) Require any person to submit in writing such reports and answers to questions relevant to the proceedings as the board may prescribe, such submission to be made within such period and under oath or otherwise as the board may determine; and

(5) Request and obtain copies of state income tax returns and access to other appropriate information as permitted under state law regarding all persons who are the subject of such investigation.

(h) The respondent shall have 30 calendar days from the date of receipt of the complaint from the city clerk to submit a written response prior to the board deciding whether to hold a hearing.

(i) Any person whose name is mentioned or who is otherwise identified and who, in the opinion of the board, may be adversely affected thereby may, upon request of the person or a representative of the person, or upon the request of any member of the board, appear at the hearing to testify on his own behalf or have a representative appear to so testify, and the board may permit any other person to appear and to testify at a hearing.

(j) Upon request of the respondent, on its own motion, or upon request of the city attorney, the board shall be authorized to issue subpoenas to compel the attendance of necessary witnesses.

(k) Within 30 calendar days following receipt of the city attorney's analysis, the board shall review and consider the complaint and the city attorney's analysis, and, if a hearing is to be held, shall set a date certain for the hearing to take place within 60 calendar days of said review by the board, unless the respondent petitions for and the board consents to a later date.

(l) As soon as practicable after giving due consideration to a complaint, or, if a hearing was held, after the hearing, the board shall take any action or combination of actions which it deems appropriate and which it is lawfully empowered to take, including, but not limited to, the following:

(1) Dismiss the complaint based on any of the following grounds;

a. The complaint is deemed frivolous, or was filed with knowledge of its falsity or with reckless disregard for its truth or falsity;

b. The complaint does not allege facts sufficient to constitute a violation of this division;

c. The board has no jurisdiction over the matter;

d. The complainant fails to cooperate in the board's review and consideration of the complaint;

e. The complaint, on its face, does not demonstrate that a violation of this

division has occurred;

f. The board exercises its discretion to forego hearing an alleged violation of the ethics ordinance upon a determination that the respondent is already subject to appropriate proceedings that will adequately address the alleged violation; or

g. The complaint is defective in a manner which results in the board being unable to make any sound determination.

(2) Determine that the complaint alleges facts sufficient to constitute a violation of this division and that the board will conduct a hearing, in which case the board shall promptly send written notice of such determination to the respondent and complainant; or

(3) Determine that further information is required to determine whether the complaint alleges facts sufficient to constitute a violation of this division; and

a. Conduct its own investigation of any alleged violation;

b. Request the city attorney to investigate the complaint and report all findings back to the board;

c. Schedule the complaint for further review and consideration at a future time certain, in which case the board shall promptly send written notice of such determination to the respondent and to the complainant;

d. Refer the complaint for criminal investigation or prosecution; or

e. Refer the complaint, along with the board's findings and conclusions, to any appropriate administrative authority for disciplinary action or other suitable remedial action; the board, although it has no independent administrative authority, may make any recommendation to any city administrator at any level of supervision, if the board finds that the recommendation will advance the objectives of this division.

(m) After it has made its final determination, the board shall issue its written findings of fact and conclusions and may issue any additional reports, opinions and recommendations as it deems necessary. All such reports shall be in compliance with all state and city laws governing confidentiality, open government, and torts. All such reports shall be reviewed by the city attorney prior to issuance.

(Ord. No. 2006-10-14, § 1(ch. 6, § 17), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-156. Elected officials.

If the board makes a finding that the conduct of an elected official constitutes a breach of the oath of office of that elected official, the matter shall be referred to the appropriate administrative authority for disciplinary action, prosecution or other suitable remedial action in accordance with applicable state or local laws.

(Ord. No. 2006-10-14, § 1(ch. 6, § 18), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-157. Ex parte communications.

After a complaint has been filed and during the pendency of a complaint before the board, no member of the board or alternate may communicate directly or indirectly with any party or other person about any issue of fact or law regarding the complaint, except that:

(1) The members of the board may obtain legal advice from the city attorney and may discuss the complaint with their staff; and

(2) The members of the board and alternates may discuss the complaint at a lawfully conducted meeting.

If any person attempts to communicate with a board member or alternate regarding the pending complaint, the board member or alternate shall report the substance of the communication to the board on the public record at the next meeting or hearing of the board.

(Ord. No. 2006-10-14, § 1(ch. 6, § 19), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-158. Confidentiality of board information.

No member of the board, alternate, or any public servant who has access to any confidential information related to the functions or activities of the board shall divulge that information to any person not authorized to have it. The identity of a person who requests a confidential advisory ethics opinion is confidential, as is information describing or pertaining to any organization mentioned, if the disclosure of the information could lead to the disclosure of the identity of the person requesting the confidential advisory opinion.

(Ord. No. 2006-10-14, § 1(ch. 6, § 20), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-159. Waiver of confidentiality.

A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of that person is deemed to have waived the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the board in connection with the request.

(Ord. No. 2006-10-14, § 1(ch. 6, § 21), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Sec. 2-160. Statute of limitations.

A complaint shall be filed within six months from the date that the complainant knew or should have known of the action that is alleged to be a violation of this division, and in no event shall the board of ethics consider a complaint which has been filed more than one year after a violation of this division is alleged to have occurred.

(Ord. No. 2006-10-14, § 1(ch. 6, § 22), 10-17-2006; Ord. No. 2009-02-06, 2-17-2009)

Secs. 2-161--2-188. Reserved.

BYLAWS SUPPORTING DOCUMENTS

Part II, Code of Ordinances, Chapter 2, Administration, Article II, City Council, Section 2-62, Robert's Rules of Order, Newly Revised, of the Code of the City of Sandy Springs

Sec. 2-62. Robert's Rules of Order, Newly Revised.

The provisions of this division shall serve as the rules and procedures of the city council. In the absence of applicable rules and procedures, which may from time to time be encountered during the public meetings, Robert's Rules of Order, Newly Revised, shall be followed.

Secs. 2-63--2-80. Reserved.

BYLAWS SUPPORTING DOCUMENTS

Article XXVIII.

Rezoning & Other Amendment Procedures

ARTICLE XXVIII

REZONING AND OTHER AMENDMENT PROCEDURES

28.1. GENERAL AMENDMENTS. Whenever the public necessity, convenience, general welfare or good zoning practice justify such action, and after consideration by the City Planning Commission, the City Council may, by resolution, change the regulations set forth in this Zoning Ordinance (text amendment) or amend the City Zoning Map.

In amending the City Zoning Map, the City Council may approve a rezoning petition and/or use permit request or a more restrictive zoning district based on the ranking of City zoning district intensities. The City Council may consider a variance filed concurrently with a rezoning petition and/or use permit request. For purposes of this Article, a rezoning petition shall be deemed to include, if applicable, a variance filed concurrently with a rezoning petition and a use permit request shall be deemed to include, if applicable, a variance filed concurrently with a use permit request.

In approving any rezoning petition and/or use permit request, the City Council shall impose conditions of approval as deemed necessary and appropriate to mitigate potentially adverse influences or otherwise promote the public health, safety or general welfare.

Rezoning petitions, use permit requests and/or concurrent variances are sometimes referred to in this text together as land use petitions and the property owner submitting a land use petition is referred to as the petitioner. An approved use permit request is referred to in this text as a use permit. All land use petitions approved by the City Council are subject to conditions approved by the City Council.

28.2. LAND USE PETITIONS. Land use petitions may be initiated by the property owner or the City Council on forms included in the Department's land use petition application package available from the Department.

No final action shall be taken on a land use petition affecting the same parcel more often than one (1) time every twelve (12) months when the petition is initiated by the property owner.

At any time, the City Council may initiate a land use petition on property which was previously rezoned; however, a six (6) month waiting period from the date of the final City Council action is required when a land use petition was previously

denied.

If a land use petition was previously denied, the petitioner must demonstrate that the proposed land use petition is significantly different from the one previously denied to the satisfaction of the City Council before it can be considered for a re-initiation. A significant difference includes, but is not limited to a change in zoning district, use, density, height, buffers or other methods of screening, or other items which were discussed at a public hearing.

Appeals to Superior Court.

Any appeal of, or other legal challenge to, a final decision of the City Council regarding a land use petition shall be pursued by petition for writ of certiorari filed with the Superior Court of Fulton County within thirty (30) days of the date of the decision of the City Council in accordance with applicable provisions of Georgia law.

28.2.1. FILING DEADLINES. A land use petition, complete in all particulars, shall be submitted in accordance with the advertised filing deadlines. The Director may extend the filing deadline by two (2) days or more, when deemed necessary by the Director, with a letter of explanation from the petitioner justifying the delay of submittal. An incomplete land use petition will not be accepted.

28.2.2. WITHDRAWAL PRIOR TO ADVERTISING. If a land use petition has not been advertised for public hearing, a petition may be withdrawn. The petitioner shall submit a written request for withdrawal stating the reason for the request. The request shall be made to and accepted by the Director. No refunds of petition fees will be made.

28.2.3. WITHDRAWAL AFTER ADVERTISING. After a land use petition has been advertised for public hearing, it may only be withdrawn by the City Council at the public hearing. A withdrawal shall not be deemed final action and shall not bar submission of a new land use petition. A written request for withdrawal stating the reason for the request shall be made to the Director.

28.2.4. LAND USE PETITION REQUIREMENTS. In order to be accepted by the Department, all land use petitions shall include the following with the required number of copies of each as prescribed by the Director:

a. Pre-petition review form;
b. Signed and notarized petition with original signatures;
c. Legal description;
d. Letter of intent;
e. Site plan which meets the requirements specified in Article 28.5.2;

f. Site plan checklist which indicates compliance with site plan requirements specified in Section 28.5.2;
g. Environmental Site Analysis, as described in Section 28.4.3.1;
h. 8 ½" x 11" site plan;
i. Zoning impact analysis for rezoning petitions, as described in Section 28.4.1;
j. Disclosure form;
k. Public Participation Plan, as described in Section 28.4.7;
l. Public Participation Report, as described in Section 28.4.7;
m. Traffic Impact Study, as described in Section 28.4.4, if applicable;
n. Metropolitan River Protection Act pre-preview letter, if applicable;
o. MARTA corridor plan review form, if applicable;
p. Development of regional impact review form, if applicable;
q. Environmental Impact Report, as described in Section 28.4.3.2, if applicable;
r. Other documents as identified in the pre-petition review; and
s. Non-refundable filing fee.

28.3. PUBLIC HEARING AND NOTICE REQUIREMENTS.

28.3.1. PUBLIC NOTICE REQUIREMENTS. Notice of the City Planning Commission and the City Council hearings shall be given simultaneously at least fifteen (15) days but not more than forty-five (45) days prior to the date of the City Council public hearing and shall be published in a newspaper of general circulation. Re-notification is not required when a land use petition is deferred by the City Council.

a. Sign Posting. The petitioner or his/her agent shall post a sign as issued by the Department in a conspicuous location on each public street frontage of the subject property not later than 8:30 a.m. on the 20th day prior to the City Planning Commission hearing.

The sign shall be mounted and posted as specified by the Department. Property that is not posted as required will be administratively removed from the agenda.

When the City Council defers a land use petition, the petitioner is required to post an updated sign with new hearing dates twenty (20) days prior to the next scheduled hearing date. When a land use petition is deferred by the City Council for less than twenty (20) days, posting an updated sign is not required.

It is the petitioner's responsibility to remove or cause to be removed any public notice sign required to be posted pursuant to this Article. If any

sign required by this Article to be posted by the petitioner is not removed within forty-eight hours of final action on the applicable land use petition, it shall constitute a violation of this Article and the Director shall issue a citation. Any violation of this Article shall be an offense and the violator shall be subject to the penalty provisions set forth in Article XXIX.

The failure of a petitioner or agent on two (2) consecutive occasions to post notice as provided in this Section in connection with a petition shall be considered willful disregard of the petitioner's obligation to comply with this Zoning Ordinance. In such event, the petition shall be denied and shall be subject to all provisions herein relating to denied petitions.

b. Notice by Mail. The Department shall give notice by regular mail to all property owners within three hundred (300) feet of the boundaries of the subject property who appear on the Fulton County tax records as retrieved by the City's Geographic Information System (GIS). The notices shall be mailed a minimum of fifteen (15) days prior to the hearing date. Re-notification by mail is not required when a land use petition is deferred by the City Council.

The published and mailed notices shall contain the time, place, and purpose of the scheduled hearing, the location of the property, and the present and proposed zoning classifications and/or use permit requested. The posted sign shall include all of the items required in the published notice except the location of the property. Notice shall not be considered inadequate if the mail is not delivered.

28.3.2. PUBLIC HEARING REQUIREMENTS. Before adopting any change to the City Zoning Map or text of the Zoning Ordinance, the City Council shall hold a public hearing following the public hearing by the City Planning Commission where a recommendation was made on the land use petition.

Any public hearing required by this Article shall be called and conducted in accordance with the following procedures. For purposes of this Section, the term "hearing body" shall refer to both the Mayor and City Council and the City Planning Commission. Nothing contained in this Section shall be construed as prohibiting a presiding officer or hearing body from conducting a public hearing in a fair, orderly, and decorous manner.

a. Presiding Officer. The presiding officer shall preside over the respective public hearing. In the case of the Mayor and City Council, the Mayor shall preside, or in the absence of the Mayor, the Mayor Pro Tempore. In the absence of both the Mayor and Mayor Pro Tempore, another member of the City Council shall be designated to preside over the public hearing.

In the case of the City Planning Commission, the chairman shall preside, or in the absence of the chairman, the vice chairman, if designated. If neither is present to preside, another member of the City Planning Commission shall be designated to preside.

b. Opening of Public Hearing. The presiding officer shall indicate that a public hearing has been called on one or more land use petitions made pursuant to this Article and shall open the public hearing. Thereupon, the presiding officer shall call the first case and the hearing body shall consider each land use petition on an individual basis in succession as printed on the published agenda or as otherwise approved by the hearing body; provided, however, that the presiding officer may at his/her discretion call and consider more than one (1) land use petition simultaneously when more than one (1) land use petition involves the same piece of property, and when proceedings would be efficiently completed by combining the hearing and discussion on more than one (1) scheduled matter.

c. Report of the Director. Upon opening the public hearing, the presiding officer shall recognize the Director or his/her designee, or other agents or representatives of the City, who shall provide a summary of the land use petition and present any recommendations or results of investigations. In the case of public hearings before the Mayor and City Council, the Director or his/her designee shall also provide a written summary of the recommendations made by the City Planning Commission and, if applicable, the Design Review Board. Any member of the hearing body upon recognition by the presiding officer may ask questions of the Director or his/her designee or other City representative providing the report or recommendations.

A limited supply of copies of findings of the initiating party, Director, and City Planning Commission shall be available at the hearing or meeting and available on request to interested members of the public in accordance with O.C.G.A. § 36-67-3.

d. Petitioner. Following the report of the Director or his/her designee, the presiding officer shall recognize the petitioner or his/her agent, spokesperson, or each of them, who shall present and explain the land use petition within the permitted time. There shall be a maximum time period of ten (10) minutes per land use petition at the public hearing for the proponents to present data, evidence, and opinions; however, the City shall not be obligated to provide the full ten (10) minutes period to the proponents if they elect not to use that much time. Upon motion by a member of the hearing body and upon approval of the entire hearing body,

the time allotted to the petitioner of his/her agent or spokesperson for presentation and explanation of the land use petition may be extended.

Any member of the hearing body upon recognition by the presiding officer may ask questions of the petitioner or agent of the petitioner, or both.

e. Public. At the conclusion of the petitioner's presentation, the presiding officer shall initiate the public comment portion of the public hearing. The presiding officer may ask for identification of those persons who wish to appear as opponents of the land use petition. If it appears that the number of persons opposing the land use petition is in excess of that which may reasonably be heard, the presiding officer may suggest that a spokesperson for the group be chosen to make presentations within the permitted time. There shall be a maximum time period of ten (10) minutes per land use petition at the public hearing for the opponents to present data, evidence, and opinions; however, the City shall not be obligated to provide the full ten (10) minute period to the opponents if they elect not to use that much time. Upon motion by a member of the hearing body and upon approval of the entire hearing body, the time allotted to opponents of the land use petition or their spoke person may be extended.

Prior to speaking, each speaker will identify himself/herself and state his/her current address. Any person refusing to identify himself/herself may be refused the right to address the hearing body. Each speaker shall speak only to the merits of the proposed land use petition under consideration and shall address his/her remarks only to the hearing body. Each speaker shall refrain from personal attacks on any other speaker or the discussion of facts or opinions irrelevant to the proposed land use petition under consideration. The presiding officer may limit or refuse a speaker the right to continue, if the speaker, after first being cautioned, continues to violate this procedure.

Any member of the hearing body, upon recognition by the presiding officer, may ask questions of the person giving testimony.

f. Petitioner's Rebuttal. At the conclusion of public testimony, or upon the expiration of time allotted for public testimony, the petitioner or his/her agent, or both, shall be allowed a short opportunity for rebuttal and final comment, and the time devoted to any rebuttal shall be counted toward the time allotted to the petitioner under paragraph d. above. Any member of the hearing body upon recognition by the presiding officer may ask questions of the petitioner, his/her agent, or both.

g. Close of Hearing. After the above procedures have been completed, the

presiding officer will indicate that the public hearing is closed. Upon the closing of the public hearing, the petitioner or his/her agent and any member of the public shall no longer address the hearing body in any way, including hand waving or motions for attention; provided, however, that at any time considered appropriate the presiding officer may reopen the public hearing for a limited time and purpose for members of the hearing body to ask questions of the proponents or opponents of the land use petition.

h. Decision. After the public hearing is closed, the hearing body shall deliberate and subsequently vote on the land use petition. The City Planning Commission shall move to recommend one of the following actions to the Mayor and City Council:

1. Approval
2. Approval with conditions
3. Denial
4. Withdrawal; or
5. Deferral and remand to the City Planning Commission

Should the City Planning Commission fail to pass a motion as set forth in subsections 1. through 5. above during the meeting at which the land use petition is scheduled, such land use petition shall automatically be forwarded to the Mayor and City Council for consideration with the failure to pass a motion being deemed a recommendation for deferral from the City Planning Commission.

A recommendation by the City Planning Commission to the Mayor and City Council for deferral and remand to the City Planning Commission shall not delay the land use petition from being considered at the advertised public hearing before the Mayor and City Council, nor does it prohibit the Mayor and City Council from taking a final action on the subject land use petition.

The Mayor and City Council may move to approve, approve with conditions, deny, withdraw, or defer and remand to the City Planning Commission. A deferral and remand to the City Planning Commission by the Mayor and City Council requires the posting of an updated sign consistent with this Article.

28.3.3. SECRETARY. The Director or his/her appointee shall serve as secretary to the City Planning Commission. The secretary shall keep minutes of proceedings that shall indicate the vote of each member upon each question and the absence or failure to vote of a member. The secretary shall keep records of evidence,

examinations and official actions, all of which shall be filed and shall be public record.

28.4. TECHNICAL EVALUATIONS AND REPORTS. Proposed land use petitions shall be considered by the City Council only after the evaluations and reports required below have been completed and the City Planning Commission has made a recommendation. Such reports shall be public record.

28.4.1. ZONING IMPACT ANALYSIS BY THE CITY PLANNING COMMISSION AND THE DEPARTMENT FOR REZONING PETITION. For each rezoning petition, the City Planning Commission and the Department shall investigate and make a recommendation with respect to the factors listed below, which is referred to herein as the zoning impact analysis. The Department shall make a written record of its investigation and recommendation on each rezoning petition, as well as any other factors it may find relevant, and carry out any other duties with which it is charged by the City Council.

The City Planning Commission shall make a recommendation based on the zoning impact analysis which the Department shall transmit in writing to the City Council.

The zoning impact analysis factors are as follows:

a. Whether the proposed rezoning will permit a use that is suitable in view of the use and development of adjacent and nearby property;

b. Whether the proposed rezoning will adversely affect the existing use or usability of adjacent or nearby property;

c. Whether the property to be affected by the proposed rezoning has a reasonable economic use as currently zoned;

d. Whether the proposed rezoning will result in a use which will or could cause an excessive burdensome use of existing streets, transportation facilities, utilities, or schools;

e. Whether the proposed rezoning is in conformity with the policies and intent of the City's Comprehensive Plan;

f. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposed rezoning; and

g. Whether the proposed rezoning will permit a land use which can be

considered Environmentally Adverse to the natural resources, environment and citizens of the City.

28.4.2. ZONING IMPACT ANALYSIS BY PETITIONER. If a rezoning petition is initiated by the property owner, a written documented analysis of the impact of the proposed rezoning with respect to each of the matters enumerated in 28.4.1 is required at the time of filing the rezoning petition.

28.4.3. ENVIRONMENTAL REPORTS. If a land use petition is initiated by the property owner, an Environmental Site Analysis and/or an Environmental Impact Report shall be filed with the land use petition pursuant to the following:

28.4.3.1. ENVIRONMENTAL SITE ANALYSIS. All land use petitions shall include an Environmental Site Analysis ("ESA") to identify environmental conditions on the site to determine if the proposed rezoning or land use may be considered Environmentally Adverse.

The ESA shall detail the following:

a. How the proposed rezoning or land use conforms to the City's Comprehensive Plan;

b. The presence or absence of the following and whether the proposed rezoning or land use will encroach or adversely affect any of the following:

1. Wetlands;
2. Floodplains;
3. Streams/stream buffers;
4. Slopes exceeding twenty-five percent (25%) over a ten (10) foot rise in elevation;
5. Vegetation;
6. Wildlife species (including fish);
7. Archeological/historical sites.

c. How the proposed rezoning or land use implements the following:

1. Protection of environmentally sensitive areas (floodplains, slopes exceeding twenty-five percent (25%), river corridors);
2. Protection of water quality;
3. Minimization of negative impacts on existing infrastructure;
4. Minimization of negative impacts on archeological/historically significant areas;
5. Minimization of negative impacts on Environmentally Stressed

Communities;

6. Creation and preservation of green space and open space;
7. Protection of citizens from the negative impacts of noise and lighting;
8. Protection of parks and recreational green space;
9. Minimization of impacts to wildlife habitats.

28.4.3.2. ENVIRONMENTAL IMPACT REPORT. Any land use petition for M-1, M-1A or M-2 District industrial development as described in Article X of this Ordinance shall include an Environmental Impact Report ("EIR") to determine if the proposed use is Environmentally Adverse.

The EIR shall detail the following:

a. Conformance to the City's Comprehensive Plan, including adopted City policies;
b. Impact on air quality of the surrounding area;
c. Impact on water quality/resources including surface water, ground water, flood plains, and wetlands;
d. Impact on vegetation, fish, and wildlife species and habitats;
e. Impact of thermal and explosive hazards on the surrounding area;
f. Impact of hazardous wastes on the surrounding area;

The EIR shall cite all uses and quantities of any agents listed on the Federal Environmental Protection Agency Lists of Hazardous Wastes.

The EIR shall detail strategies to mitigate or avoid impacts listed above as applicable.

28.4.3.3. REVIEW CRITERIA FOR ESA AND/OR EIR. An ESA and/or EIR shall be reviewed based upon the following:

a. Whether the land use petition is consistent with the policies of the City's Comprehensive Plan;

b. The detail provided for an ESA and an EIR as outlined in Sections 28.4.3.1. and 28.4.3.2. above.

The Department shall review an ESA and an EIR submitted with a land use petition and make recommendations to the City Council with respect to the proposed rezoning or land use. The anticipated impact of the proposed rezoning or land use on an Environmentally Stressed Community will be included in the Department's recommendation.

As determined by the Director or his/her designee, an EIR may also be required

with an application for a Land Disturbance Permit, a building permit, a temporary or permanent certificate of occupancy, or any other permit issued by the Department.

28.4.4. TRAFFIC IMPACT STUDY. A Traffic Impact Study ("TIS") is required when a land use petition equals or exceeds the thresholds indicated in Section11.4.16 of the City's Development Regulations Ordinance. The TIS shall be prepared by a certified traffic engineer or transportation planner in accordance with the standards required by the Development Regulations Ordinance and must be submitted at the time of the filing of the land use petition.

28.4.5. DEVELOPMENT OF REGIONAL IMPACT STUDY. A Development of Regional Impact Study ("DRI") is required when a land use petition meets or exceeds the thresholds indicated in the Department's land use petition application pakcage. Form 1: Initial DRI Information must be submitted at the time of filing of the land use petition.

28.4.6. OPEN.

28.4.7. PUBLIC PARTICIPATION PLAN AND PUBLIC PARTICIPATION REPORT.

The Public Participation Plan is to ensure that petitioners pursue early and effective public participation in conjunction with their land use petitions, to ensure that the citizens of the City have an adequate opportunity to learn about land use petitions that may affect them, and to ensure ongoing communication between petitioners, adjoining property owners, Environmentally Stressed Communities, community associations and other organizations, elected officials and City staff. A target area for public participation should be determined by the petitioner and Department staff at the time of the pre petition review. Petitioners are required to submit a Public Participation Plan for meeting with interested citizens to advise them of pending land use petitions and to allow citizens the opportunity to discuss concerns and provide input about the proposed development. A petitioner's responsibilities are to inform the public, solicit input, and provide a summary of these activities in the form of a written report (Public Participation Report).

The requirement for a Public Participation Plan does not give communities decision making powers or force a consensus on issues. Petitioners are not obligated to make any concessions or changes based upon input from citizens. Refusal by the community to meet with a petitioner does not mean that the petitioner fails to meet the requirements of the Public Participation Plan.

Dialogue should occur between petitioners and communities before the City Planning Commission hearing, the first public hearing. Public Participation Plans

are required with all land use petitions and must be filed simultaneously with the land use petition. Public Participation Reports are required to be submitted no less than seven (7) business days before the scheduled City Council hearing. If the Public Participation Report is not submitted as required, the City Council may defer the land use petition.

The minimum requirements for Public Participation Plans and Public Participation Reports are as follows:

a. Public Participation Plan. Every land use petition which requires a public hearing shall include a Public Participation Plan which must be implemented prior to the first public hearing.

Minimum standards:

1. Identify all property owners within one quarter mile of the site and area homeowners' associations, Environmentally Stressed Communities, political jurisdictions, and any other public agencies or organizations which may be affected by a land use petition as determined by the petitioner and Department staff at the time of the pre petition review.

2. Provide explanation of how interested parties will be informed of land use petitions.

3. Provide methods for providing opportunities for discussion of land use petitions with interested parties before public hearings are held. Petitioners are required to schedule at least one (1) meeting at a convenient location and time and notify all interested parties, as identified in subparagraph a. above, of the purpose, place and time of the meeting.

4. Provide petitioner's schedule for completion of the Public Participation Plan.

b. Public Participation Report. Every petitioner filing a land use petition is required to provide a Public Participation Report on the Department's form no later than seven (7) business days before the scheduled City Council hearing. The Public Participation Report shall be made a part of the official file and a summary will be provided to the City Council.

Minimum standards:

1. Provide a list of all parties that were contacted, the methods of

notification that were used, and copies of all notification letters.

2. Provide dates and locations of all community and/or other meetings that were attended by the petitioner to discuss a land use petition (attach meeting notices, letters, etc.).

3. Provide the number of people who participated in meetings held to discuss a land use petition (attach sign-in sheets).

4. Provide a summary of concerns and issues expressed by interested parties in meetings held to discuss a land use petition.

5. Provide a summary of the petitioner's response to concerns and issues raised in meetings held to discuss a land use petition.

28.5. CONDITION STANDARDS FOR DEVELOPMENT.

28.5.1. DESIGNATION. Each land use petition shall contain development conditions proposed by the petitioner addressing the proposed use and development of the subject property. Such conditions shall be included in a site plan provided with the land use petition.

28.5.2. PLANS. Site plans for land use petitions must be folded, drawn to scale, no larger than 30" x 42", and shall, at a minimum, include the following information:

a. Key and/or legend, site location map with North arrow, and scale;

b. Boundary survey of the subject property which includes dimensions along property lines that match the metes and bounds of the subject property's written legal description and clearly indicates the point of beginning;

c. Acreage of subject property;

d. Location of subject property land lot lines and identification of land lots;

e. Existing and proposed new dedicated and future reserved rights-of-way of all streets, roads, and railroads adjacent to and on the subject property;

f. Proposed streets on the subject site;

g. Current zoning of the subject site and adjoining properties;

h. Existing buildings with square footages and heights (stories), wells, driveways, fences, cell towers, and any other structures or improvements

on the subject property;

i. Existing buildings with square footages and heights (stories), wells, driveways, fences, cell towers, and any other structures or improvements on adjacent properties within four hundred (400) feet of the subject site based on the City's aerial photography or an acceptable substitute as approved by the Director;

j. Location of proposed buildings (except single family residential lots) with total square footage;

k. Layout and minimum lot size of proposed single family residential lots;

l. Topography (surveyed or City) on the subject site and adjacent property within two hundred (200) feet as required to assess runoff effects;

m. Location of overhead and underground electrical and pipeline transmission/conveyance lines;

n. Required and/or proposed setbacks;

o. 100 year flood plain horizontal limits and flood zone designations as shown on survey or Federal Emergency Management Agency Flood Insurance Rate Maps;

p. Required landscape strips, undisturbed buffers, and any other natural areas as required or proposed;

q. Required and proposed parking spaces; and loading and unloading facilities;

r. Lakes, streams, and waters on the subject site and associated buffers;

s. Proposed stormwater management facilities;

t. Community wastewater facilities including preliminary areas reserved for septic drain fields and points of access;

u. Availability of water system and sanitary sewer system;

v. Tree lines, woodlands and open fields on the subject site;

w. Entrance site distance profile assuming the driver's eye at a height of 3.5 feet (see City's Development Regulations Ordinance); and

x. Wetlands shown on the GIS maps or survey.

A request for relief from any of the above site plan requirements may be submitted in writing to the Director for approval prior to the filing deadline. The request should clearly state the reasons for the request. Projects subject to Development of Regional Impact Reviews and other large projects that will be phased shall be required to revise the site plan for each phase of the development to comply with the above standards through a Zoning Modification.

28.6. ZONING MAP. The official City Zoning Map will be amended to reflect land use petition approvals. Land use petitions that are approved and permitted but have not vested pursuant to Section 28.11. may be removed by action of the City Council from the City Zoning Map.

28.7. APPLICABLE REGULATIONS FOR LAND USE PETITION. Zoning regulations and other federal, state, and City development standards that exist at the time of acceptance of a land use petition or an application for a Land Disturbance Permit shall prevail.

28.8. PETITION FEES. Prior to accepting a land use petition or a petition for extension of land use petition approval, the Director shall collect nonrefundable fees as established by the City Council.

If consideration of a land use petition is postponed or delayed due to the petitioner's failure to comply with any of the provisions of this Article, the Director shall assess additional fees as may be determined by the Department to be the additional administrative costs associated with such postponement or delay.

28.9. PROCEDURES FOR MODIFICATION OF ZONING CONDITIONS. See Article XXII.

28.10. EXPIRATION AND EXTENSIONS OF LAND USE PETITION APPROVALS.

a. Rezoning petition. A rezoning petition approved by City Council shall remain in effect until such time as the subject property is rezoned by action of the City Council, or until such time as the rezoning is declared invalid by any court of competent jurisdiction. For purposes of this Section, a rezoning petition shall be deemed to include, if applicable, a variance filed concurrently with a rezoning petition.

b. Use permit. A use permit shall expire unless the property owner takes action to vest the land use requested in the use permit in accordance with Section 28.11 within a period of thirty six (36) months from the date of

such approval by the City Council, or fails to secure an approved extension in accordance with Section 28.11.2. For purposes of this Section, a use permit request shall be deemed to include, if applicable, a variance filed concurrently with a use permit request.

The filing of a request for extension authorized by this Article shall operate as a stay of the expiration of the use permit until a decision is made by the Department.

28.11. VESTING OF USE PERMIT. Upon the occurrence of one (1) of the three (3) conditions listed immediately below, a use permit shall be considered vested.

a. Prior to the expiration of a Land Disturbance Permit pursuant to applicable provisions of the Development Regulations Ordinance, a vesting determination may be made by the Department that substantial progress (as defined in Section 28.11.1) has been made toward the completion of on-site construction depicted on the site plan approved with the use permit.

b. The issuance of a certificate of occupancy and/or certificate of completion and/or structure specified in the approved conditions.

c. The issuance of a business license for the approved use, but only when no new construction or land disturbance is approved and/or required as a condition of rezoning.

28.11.1. SUBSTANTIAL PROGRESS. To demonstrate substantial progress for purposes of vesting a use permit, the Department shall approve a construction schedule for a Land Disturbance Permit which includes at least fifty percent (50%) of the public improvements for a specified phase. Substantial progress shall have been demonstrated when, within one (1) year of the date of issuance of the Land Disturbance Permit, the Department observes a level of accomplishment or expenditures on the project which produces measurable and verifiable evidence that the activities undertaken comply with those objectives and representations of the approved construction schedule.

Refusal to certify that substantial progress has been achieved may be appealed in accordance with Article XXII of this Ordinance.

28.11.2. EXTENSIONS.

a. Extension by Director. In connection with a use permit, the Director is authorized to grant, in writing, an extension for a maximum period of

twelve (12) months, subject to the qualifying conditions listed in this Section. To request an extension by the Director, the property owner must submit an application to the Department at least thirty (30) days prior to the expiration of the use permit.

No more than one (1) twelve (12) month extension per use permit may be granted by the Director for any of the qualifying conditions listed in this Section (except a court action delay).

An extension may not be sought for less than the total acreage of the underlying use permit.

b. Extension by the City Council. Any additional requests for extension of a use permit beyond the twelve (12) month extension granted by the Director may be considered by the City Council, subject to the qualifying conditions listed in this Section.

Use permits initiated by the City Council to implement the adopted City Comprehensive Plan are exempt from the provisions of this Section.

To request an extension by the City Council, the property owner must submit an application to the Department at least thirty (30) days prior to the expiration of the twelve (12) month extension period granted by the Director pursuant this Section.

The Department shall prepare an analysis and recommendation as to whether the documentation in the application is sufficient based on one (1) of the four (4) qualifying conditions which may validate an extension request by the City Council.

The Department shall submit its recommendation to the City Council.

An extension may not be sought for less than the total acreage of the underlying approved use permit request.

c. Qualifying conditions. In every application for an extension of a use permit, the property owner(s) shall provide an affidavit documenting at least one (1) of the following:

1. A delay resulting from court action involving the use permit or a previous extension on the subject property for which an extension is sought. Extensions approved in connection with court action shall remain valid for one (1) year beyond the granting of an order or the expiration of an appeal period before any court with jurisdiction.

2. Non-availability of utilities or facilities resulting from government inaction. In those instances where wastewater facilities are available for a fraction of the desired capacity, or when capacity was available at some time during the one (1) year period, but not during the sixty (60) days prior to expiration, the Director or the City Council, as applicable, shall evaluate such case's qualifications for an extension on its individual merits considering any evidence that might indicate a diligent effort to proceed with development.

3. A delay in development resulting from wetlands regulatory procedures requires the petitioner to provide a copy of the application acknowledgment letter from the Savannah Regulatory Branch of the Corps of Engineers as documented evidence. Said application should have been filed at least six (6) months before the expiration of the use permit approval.

4. An inability to obtain financing, despite documentation of the property owner's efforts during the three (3) months prior to the petitioner seeking an extension and continuing until one (1) week prior to consideration of the extension request by the Director or the City Council, as applicable. Documentation shall consist of two (2) official denials signed by officers of two (2) different lending institutions who have final jurisdiction over such financing transactions.

28.11.3. NOTICE OF EXPIRATION. At least ninety (90) days prior to the expiration of a use permit, the Director shall send by certified mail a notice of expiration to each owner of record as shown in the tax records.