

First Reading: 01/13/05
Second Reading: 01/27/05

ORDINANCE NO. 318

AN ORDINANCE ESTABLISHING A CODE OF ETHICS; THE CREATION OF AN ETHICS BOARD; AND FOR OTHER PURPOSES DESIGNED TO CONFORM TO THE GEORGIA MUNICIPAL ASSOCIATION'S CITY OF ETHICS GUIDELINES; TO PROVIDE FOR SEVERABILITY; AND TO REPEAL CONFLICTING ORDINANCES AND FOR OTHER LAWFUL PURPOSES.

WHEREAS, the City of Flowery Branch is committed to operating in an open and ethical environment;

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

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

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

THEREFORE, Ordinance No. 209, passed on January 29, 2002, is hereby repealed in its entirety; and

THEREFORE, be it ordained by the Mayor and Council of the City of Flowery Branch, and effective upon the passage of this Ordinance and the selection of qualified members to sit as members of the Board of Ethics, as follows:

Section 1 Intent

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

Section 2 **Definitions.**

As used in this Ordinance, the term:

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

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

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

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

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

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

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

Section 3 **Prohibitions.**

No member of the Governing Authority shall:

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

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

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

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

(e) Engage in, accept employment with, or render services for any private business or professional activity when such employment or rendering of services is adverse to and incompatible with the proper discharge of official duties;

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

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

(1) Do clerical work on behalf of the member's family, business, social, church or fraternal interest when such work is not furthering a City interest;

- (2) Perform any work outside the employee's normal course of municipal employment;
- (3) Purchase goods or services to be used for personal, business, or political purposes; and
- (4) Work for the member personally without paying the employee just compensation;
- (h) Use government property of any kind for other than officially approved activities, nor shall he/she direct employees to use such property for any purposes other than those officially approved;
- (i) Use his/her position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to himself/herself or persons having an interest.

Prohibition (b) of this Section shall not apply in the case of:

- (1) An occasional non-pecuniary gift of insignificant value;
- (2) An award publicly presented in recognition of public service;
- (3) A commercially reasonable loan or other financial transaction made in the ordinary course of business by an institution or individual authorized by the laws of Georgia to engage in the making of such a loan or financial transaction;
- (4) Campaign contributions made and reported in accordance with Georgia law.

Prohibition (e) of this section shall not apply to a member of the Governing Authority who is a licensed professional and appears on behalf of any applicant in such professional capacity so long as disclosures required by Section 2-5-4 are made to the Board or Commission Chairperson 30 days prior to any action being taken, and the member is associated with the project at the time the initial application is filed.

Section 4 **Disclosure of Conflicts of Interest.**

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

Section 5 Disqualification.

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

Section 6 Prohibited Contracts.

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

- (a) The designation of a bank or trust company as a depository for City funds;
- (b) The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest in the community for such loan;
- (c) Contracts entered into in accordance with the Official Code of Georgia Annotated, § 16-10-6.
- (d) Contracts entered into under circumstances that constitute an emergency situation, provided that the Mayor prepares a written record explaining the emergency.
- (e) Contracts entered into with a Member of the Governing Authority, or with a business in which a member of the governing authority has an interest, provided that such contract is the result of a competitive bid, disclosure of the nature of such member's interest is made prior to the time any bid is submitted, and a waiver of the prohibition contemplated by this section is issued by the City Administrator following disclosure.

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

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

Section 8 Complaints.

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

Section 9 **Board of Ethics.**

(a) Composition of the Board of Ethics:

(1) The Board of Ethics of the City shall be composed of five (5) residents of the City to be appointed as provided in paragraphs 2 and 3 of this subsection. Each member of the Board of Ethics shall have been a resident of the City for at least one (1) year immediately preceding the date of taking office and shall remain a resident of the City while serving as a member of the Board of Ethics. No person shall serve as a member of the Board of Ethics if the person has, or has had within the preceding one (1) year period, any interest in any contract, transaction, or official action of the City.

(2) The Mayor and Councilmembers shall each designate two (2) qualified citizens to provide a pool of fourteen (14) individuals who have consented to serve as a member of such Board of Ethics and who will be available for a period of two (2) years to be called upon to serve in the event a Board of Ethics is appointed.

(3) The City Manager shall maintain a listing of these fourteen (14) qualified citizens. Should the investigating committee determine a complaint warrants a hearing before the Board of Ethics, the Mayor and Council, at the first public meeting after such determination, shall draw names randomly from the listing of qualified citizens until the specified five (5) members of the Board of Ethics have been appointed. Such Board will elect one of its members to serve as Chairman.

(4) The members of the Board of Ethics shall serve without compensation. The Governing Authority of the City shall provide meeting space for the Board of Ethics. Subject to budgetary procedures and requirements of the City, the City shall provide the Board of Ethics with such supplies and equipment as may be reasonably necessary for it to perform its duties and responsibilities.

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

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

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

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

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

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

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

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

Section 10 Service of Complaint; Hearings and Disposition of Complaints.

The Board of Ethics as appointed herein set forth shall cause the complaint to be served on the member of the Governing Authority charged as soon as practicable. Service may be by personal service or by certified mail, return receipt requested. A hearing shall be held within sixty (60) days after filing of the complaint. The Board of Ethics shall conduct the hearing in accordance with the procedures and regulations it establishes but, in all circumstances, the hearing shall include the taking of testimony and the cross-examination of witnesses. The decision of the Board of Ethics shall be rendered to Mayor and Council within five (5) days after completion of the hearing.

Section 11 Penalty and Member Rights.

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

(b) At any hearing held by the Board of Ethics, the member of the Governing Authority who is the subject of inquiry shall have the right to written notice of the allegations at least 10 business days before a hearing, to be represented by counsel, to hear and examine the evidence and witnesses and to present evidence and witnesses in opposition or in extenuation.

Section 12 Appeals.

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

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

Approved this 27th day of January, 2005.

CITY OF FLOWERY BRANCH

Bryan G. Puckette, Mayor
On behalf of the City Council

ATTEST:

Judy L. Foster, City Clerk

Richard A. Carothers, City Attorney
Approved as to form