Agenda Item 20150685
Ordinance No. 7834

AN ORDINANCE

AMENDING Chapter 1-14 of the Code of Marietta, Georgia, Code of Ethics for Elected Officials.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MARIETTA, GEORGIA:

Section 1: Article 1-14-2 shall read as follows:

ARTICLE 1-14-2 - GENERAL PROVISIONS

1-14-2-010 - Definitions.

A. "Board Member" shall mean any member appointed by the Mayor and/or Council and serving the City of Marietta on any board or commission.

B. "Business" or "business entity" means any entity, regardless of form, whether or not operated for profit, including but not limited to any corporation, general or limited partnership, sole proprietorship, joint venture, association, franchise, firm, institution, trust, person or foundation.

C. "Direct contractual interest" is defined as any direct interest that the elected official has in a contract regarding an individual item that is being considered by the city council and from which the elected official receives direct monetary value or other direct financial benefit from such contract that is directly affected by the elected official's vote on said item.

D. "District wide" means an ordinance, motion or action which affects an entire category or matter such as a zoning category, a TAD district or a category that encompasses an area or matter that is greater than an individual property.

E. "Elected official" shall be any person who is an elected city official with the City of Marietta and shall mean the elected members of the City Council and the Mayor.

F. "Employee" or "public employee" means any person, employed full-time or part-time by the City of Marietta government, or any City of Marietta agency. Appointees of boards and commissions of the City of Marietta shall be considered public employees for the purposes of this section.

G. "Employment interest" means a situation where the elected official is employed by a person or entity or the subsidiary of an entity that is seeking a contract or action from the City of Marietta. Excluded from this definition is employment of an elected official by another governmental entity.

H. "Fair market" value as applies to real estate means the appraised value of the property for ad valorem tax purposes.

I. "Financial interest" means all direct ownership interests:

1. Of any business or subsidiary thereof or investment, exclusive of the individual stocks and bonds in mutual funds, in which the elected official owns a direct ownership interest which interest:
    a. Is more than five percent of the total interests in such business or investment, exclusive of the individual stocks and bonds in mutual funds; or
    b. Has a net fair market value of more than $10,000.00;
2. In real property owned by the elected official having a fair market value of more than $10,000.00;
3. Which is directly held by a trust of which the elected official is the trustee of or acting trustee or executor of a will or administrator of an estate; and
    a. Where the elected official has actual knowledge of such ownership interest;
    b. Where said trust is for a member of the family of the elected official; and
    c. Where the trust owns a direct ownership interest which interest:
        (1) Is more than five percent of the total interests in such business or investment, exclusive of the individual stocks and bonds in mutual funds;
        (2) Has a net fair market value of more than $10,000.00;
4. In real property in the State of Georgia having a fair market value of more than $10,000.00 which is directly held by a trust of which the elected official is the trustee of or acting trustee or executor of a will or administrator of an estate; and
    a. Where the elected official has actual knowledge of such ownership interest; and
    b. Where said trust is for a member of the family of the elected official;
5. Where such ownership interest is directly held by an individual the elected official has or is acting under power of attorney for financial affairs in a fiduciary capacity; and
    a. Where the elected official has actual knowledge of such ownership interest;
    b. Where said ownership interest owned by the individual is covered by the power of attorney;
    c. Where said power of attorney is for a member of the family of the elected official; and
    d. Where the individual for which the elected official has or is acting under power of attorney owns a direct ownership interest which interest:
        (1) Is more than five percent of the total interests in such business or investment, exclusive of the individual stocks and bonds in mutual funds;
        (2) Has a net fair market value of more than $10,000.00;
6. In real property in the State of Georgia having a fair market value of more than $10,000.00 where:
    a. The elected official has actual knowledge of such ownership interest;
    b. Where such ownership interest is directly held by an individual the elected official has or is acting under power of attorney for;
    c. Where said power of attorney is for a member of the family of the elected official; and;

d. Where said real property owned by the individual is covered by the power of attorney;

7. In any business or subsidiary thereof or investment, exclusive of the individual stocks and bonds in mutual funds, in which the combination of ownership interest of 1., 3. and 5., above, owns a direct ownership interest which interest:

   a. Is more than five percent of the total interests in such business or investment, exclusive of the individual stocks and bonds in mutual funds; or

   b. Has a net fair market value of more than $10,000.00; or

8. Where the combination of ownership interest of all ownership interests of a parcel of real estate owned as covered by 2., 4. and 6., above, where such ownership interest by any combination of the above is equal to or greater than $10,000.00.

"Interest(s)" means any legal or equitable economic interest as defined above, whether or not subject to an encumbrance or a condition, which was owned or held, in whole or in part, jointly or severally.

J. "Government or city" shall be construed to mean the City of Marietta, Georgia, government.

K. "Member of the family" means the spouse, mother, father, brother, sister, son, daughter, stepchildren of an elected official, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, step-sibling/blood-siblings or step children-in-law of an elected official. However, where one or more of the above are not known to the elected official in such relationship capacity, they shall not be considered a member of the family for purposes of this definition.

L. "Person" includes any individual, employee, appointee, entity or trust.

M. "Participate" means to take part in official act(s), action(s) or proceeding(s) as an elected official through approval, disapproval, decision or the performance of an official duty as an elected official. It does not include action(s) taken in the individual's private capacity and/or in a nonelected official capacity or the individual's appearance before a board of the city or dealing with employees of the city in such capacity as any other public citizen would in dealing with their individual business or individual interests.

1-14-2-020 - Acceptance of gifts.

A. Elected officials or board members shall not solicit or accept directly or indirectly anything of value from any person, corporation, or group which:

   1. Has or is seeking to obtain contractual or other business or financial relationships with the City of Marietta; or

   2. Seeks in exchange for the thing of value to have an elected official exercise a matter of discretion in his or her favor; or

   3. Seeks in exchange for the thing of value to have interests which may be affected by the performance or nonperformance of the official duty of the elected official.

B. Elected officials or board members shall not 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:

   1. It could reasonably be considered to influence the elected official in the future or if the elected official is involved in any official act or action which results in a monetary benefit for the donor or lender which is not available to the public at large; or

2. The elected official recently has been, or is now, or within six months in the future, is involved in any official act or action which results in a monetary benefit for the donor or lender which is not available to the public at large.

C. The above prohibitions shall not apply in the case of:

1. Occasional nonmonetary gift(s) of insignificance or trinkets or gifts such as a calendar, memento or pen received in the normal course of business with a value of/or less than $100.00 and/or admission to and/or consumption of food and/or beverage at a meal, function, social setting or event;

2. Award publicly presented in recognition of public service;

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

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

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

6. Items listed under O.C.G.A. § 16-10-2 that are specifically itemized as "a thing of value shall not include" as now or hereafter amended; or

7. Food, beverage or expenses afforded city official, members of their families, or others that are associated with normal and customary business or social functions or activities.

1-14-2-030 - Abuse of office.

A. Elected officials or board members may not:

1. Engage in, directly or indirectly, financial transactions as a result of, or primarily relying upon, information obtained from their office;

2. Use their positions to improperly induce or coerce a person in a way that provides financial benefits to themselves or to any for-profit or nonprofit organization of which they are a member; or

3. Vote upon any matter involving any organization of which the elected official is a member of the governing board of such organization, except:

a. Boards or authorities on which the elected official serves by virtue of his or her elected office, or by appointment or with approval of the city council, mayor or the governor or an agency of the state; or

b. Organizations which the elected official serves on and receives no compensation (other than for expense reimbursements).

B. Aside from these restrictions, elected officials are free to engage in lawful financial transactions to the same extent as private citizens.

1-14-2-040 - Financial disclosures.

A. Financial disclosures shall be governed by federal and state law, and this code of ethics shall not require any additional reports to be filed other than those required by federal and state law, except as provided in Subsection B of this section.

B. The following requirements are hereby adopted as part of this code of ethics in addition to any other requirement of state or federal law. In addition to the filing requirements specified in O.C.G.A. § 21-5-50, financial disclosure statements, each elected official shall file with the

Marietta City Clerk not before the first day of January nor later than July 1 of each full year in which such elected official holds office, a financial disclosure statement for the preceding calendar year as set forth below; except that any newly elected official shall file said disclosure for their first year within the first 60 days of taking office.

1. Each tract of real property in which the elected official has a direct ownership interest as of December 31 of the covered year when that interest has a fair market value in excess of $10,000.00. The disclosure shall contain the county and state, general description of the property, and whether the fair market value is between:

   a. $10,000.00 and $100,000.00;

   b. $100,000.01 and $200,000.00; or

   c. More than $200,000.00;

2. Each tract of real property in which the elected official's spouse has a direct ownership interest as of December 31 of the covered year when that interest has a fair market value in excess of $10,000.00. The disclosure shall contain the county and state, general description of the property, and whether the fair market value is between:

   a. $10,000.00 and $100,000.00;

   b. $100,000.01 to $200,000.00; or

   c. More than $200,000.00;

3. If the elected official has actual knowledge of such ownership interest, each tract of real property in the State of Georgia which the member of the family, not covered above, has a direct ownership interest as of December 31 of the covered year when that interest has a fair market value in excess of $10,000.00. The disclosure shall contain the county and state and general description of the property;

4. If the elected official has actual knowledge of such ownership interest, each tract of real property in the State of Georgia where such ownership interest is directly held by the trust of which the elected official is the trustee of or acting trustee of and where said trust is for a member of the family and has a direct ownership interest as of December 31 of the covered year when that interest has a fair market value in excess of $10,000.00. The disclosure shall contain the county and state and general description of the property;

5. If the elected official has actual knowledge of such ownership interest, each tract of real property having a fair market value in excess of $10,000.00 in the State of Georgia which is held by a business entity in which the elected official has direct ownership interest as of December 31 of the covered year when that interest has a fair market value in excess of $10,000.00, with the exception of publicly traded corporations. The disclosure shall contain the county and state and general description of the property;

6. If the elected official has actual knowledge of such ownership interest, each tract of real property in the State of Georgia where such ownership interest is directly held by a member of the family of the elected official where the elected official has or is acting under power of attorney for said member of the family and where said real property owned by the member of the family is covered by the power of attorney and where such individual has a direct ownership interest as of December 31 of the covered year when that interest has a fair market value in excess of $10,000.00. The disclosure shall contain the county and state and general description of the property;

7. The name of any business or subsidiary thereof or investment, exclusive of the individual stocks and bonds in mutual funds, in which the elected official, jointly or severally, owns a direct ownership interest as of December 31 of the covered year which interest:

a. Is more than five percent of the total interests in such business or investment, exclusive of the individual stocks and bonds in mutual funds; or

b. Has a net fair market value of more than $10,000.00;

8. If the elected official has actual knowledge of such ownership interest, the name of any business or subsidiary thereof or investment, exclusive of the individual stocks and bonds in mutual funds, in which the elected official's spouse or dependent children, jointly or severally, own a direct ownership interest as of December 31 of the covered year which interest:

   a. Is more than five percent of the total interests in such business or investment, exclusive of the individual stocks and bonds in mutual funds; or

   b. Has a net fair market value of more than $10,000.00;

   or in which the elected official's spouse or any dependent child serves as an officer, director, equitable partner, or trustee;

9. If the elected official has actual knowledge of such ownership interest, the name of any business or subsidiary thereof or investment, exclusive of the individual stocks and bonds in mutual funds, in which a member of the elected official's family, jointly or severally, own a direct ownership interest as of December 31 of the covered year which interest:

   a. Is more than five percent of the total interests in such business or investment, exclusive of the individual stocks and bonds in mutual funds; or

   b. Has a net fair market value of more than $10,000.00;

   or in which the elected official's spouse or any dependent child serves as an officer, director, equitable partner, or trustee;

10. If the elected official has actual knowledge of such ownership interest, where such ownership interest is directly held by the trust of which the elected official is the trustee of or acting trustee of for a member of the elected official's family and where said trust, the name of any business or subsidiary thereof or investment, exclusive of the individual stocks and bonds in mutual funds, in which said trust, owns a direct ownership interest as of December 31 of the covered year which interest:

    a. Is more than five percent of the total interests in such business or investment, exclusive of the individual stocks and bonds in mutual funds; or

    b. Has a net fair market value of more than $10,000.00;

11. If the elected official has actual knowledge of such ownership interest, where such ownership interest is directly held by a member of the family of the elected official where the elected official has or is acting under power of attorney for said member of the family and where the item(s) owned by the member of the family is covered by the power of attorney, the name of any business or subsidiary thereof or investment, exclusive of the individual stocks and bonds in mutual funds, in which said member of the family the elected official has or is acting under power of attorney for, owns a direct ownership interest as of December 31 of the covered year which interest:

    a. Is more than five percent of the total interests in such business or investment, exclusive of the individual stocks and bonds in mutual funds; or

    b. Has a net fair market value of more than $10,000.00;

C. Disclosure of items under 9. through 11., above, require disclosure of the item(s) only and that said item(s) is owned by a member of the family or covered trust within the group and shall not require an itemized ownership disclosure.

D. On or before February 1 of each year, the city clerk shall send a written notice to each elected official as a reminder of the requirement to file the disclosure specified in this chapter.

E. On or before June 15 of each year, the city clerk shall send a written notice to each elected official, that has not then filed the disclosure, as a reminder of the requirement to file the disclosure specified in this chapter and that it will be late if filed after June 30. For each day the notice under this paragraph is not sent out, the deadline to file shall be extended a day.

F. Within ten days after the date financial disclosure statements are due, the city clerk shall notify the city council and the ethics committee in writing of the names and addresses of elected official(s) who have not filed financial disclosure statements as required by this section.

G. None the Financial Disclosures set forth herein shall apply to any Board Member nor shall any Board Member be required to file any financial disclosure as set forth in state or federal law.

1-14-2-050 - Disclosure to avoid appearance of partiality.

If a matter comes before the city council in which an elected official or a member of the family of the elected official does not have a financial interest, direct contractual interest or employment interest such as provided by the section pertaining to abstention, but in which the elected official in good faith determines that his or her professional representative/client has such an interest and which the elected official in good faith believes could create an impression of partiality, such professional relationship should be disclosed by the elected official prior to the elected official's participating in any discussion or official action with respect to the matter. Such relationship shall not preclude participation and voting on a subject.

1-14-2-060 - Abstention to avoid conflicts of interest.

A. It shall be a violation of this code of ethics for any elected official or board member to participate in an official capacity as an elected official or board member upon the following, each of which is deemed to be a conflict of interest except as provided in paragraph G., below, or in Section 1-14-2-70:

   1. Any matter in which the elected official or board member has a financial interest, direct contractual interest or employment interest; or

   2. Any proceeding, application, vote, request for ruling, claim, controversy, contract or any other matter involving a member of the family of the elected official or board member or any item(s) owned by a member of the family of the elected official requiring disclosure under Section 1-14-2-040 to which the elected official or board member has actual knowledge, or as trustee as set forth in Section 1-14-2-040 under financial disclosures.

B. Except as provided in Subsection C., if any elected official or board member has a conflict of interest or has an interest that he has reason to believe either violates this code of ethics or affects his or her official acts or actions in any matter prohibited, the elected official or board member shall immediately leave the meeting room, if the meeting is not open to the public. If the meeting is open to the public, the elected official or board member shall move to the area the general public occupies. The elected official or board member may, however, participate at any meeting open to the general public as would any other person attending the meeting, except as provided in Subsection C. In the event of such conflict of interest, the elected official or board member shall leave his or her regular seat as a member of the Marietta City Council, and not return to it until the deliberation and action on the matter is completed.

C. Nothing herein shall prohibit an elected official or board member from publicly stating that a conflict of interest exists and/or the nature of the conflict as well as participating on the procedural matter if the item is placed on the consent agenda showing the elected official or board member abstaining on the item.

D. Except where an item is on the "consent agenda" or as otherwise permitted under this section, any conflict of interest which prohibits an elected official or board member from voting on an issue shall also prohibit an elected official or board member from presiding during the issue being heard.

E. Nothing herein shall require the elected official or board member to absent himself or herself from her seat while action is taken for any item for which the elected official or board member has a conflict of interest which is contained on a "consent agenda" and upon which there is no deliberation provided the elected official's conflict has been disclosed and the elected official abstains from voting on that particular item on the "consent agenda" and while voting for the "consent agenda", except as noted (Note: The elected official may vote for the adoption of the "consent agenda" provided it shows that he or she abstained from that particular item on the consent agenda).

F. An elected official may abstain from a portion of a motion that the elected official has a conflict on and not have to abstain from the remainder of the items contained in the motion for which there is no conflict of interest. However, an elected official with a conflict may not make or second the motion to approve.

G. Notwithstanding anything to the contrary contained herein, in the event of an ordinance of general application or a matter of city wide, district wide application or an amendment thereto applying to all covered in a category or by the entire ordinance, or in the event such vote would be proper under Section 1-14-2-70, such elected official shall disclose such item(s) requiring disclosure under Section 1-14-2-040 (if said item(s) have not already been disclosed) and, following such disclosure, shall be allowed to vote on such matter(s) and said vote shall not constitute a violation of these rules and shall not be the subject matter of an ethics complaint hereunder. This paragraph shall not apply where the elected official is the only one in the covered category.

H. The city clerk shall note in the minutes/record when a member leaves the council seat due to a conflict of interest on an issue.

1-14-2-070 - Voting on general matters.

Elected official or board members are required to consider many matters as part of their official duties, including general zoning matters, budgeting matters and many other items of public business. In that regard, a complaint alleging a violation of such a matter must be proven beyond a reasonable doubt. Nothing shall be construed to prohibit a local government official from voting on amendments to the zoning code, amendments to the future land use plan, amendments to the comprehensive plan, ordinances, resolutions, code sections, proclamations or the annual budget or general budget amendments when the local government is voting upon a revision of the above initiated by the local government, its members and/or its staff or allowed pursuant to Section 1-14-2-060.

1-14-2-080 - Use of public property.

An elected official or board member shall not use City of Marietta government property of any kind for other than officially approved activities, nor shall he or she direct employees to use such property for these purposes.

1-14-2-090 - Use of confidential information.

An elected official or board member shall not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a financial interest, official information not made available to the general public.

1-14-2-100 - Permitted employment.

A. It is essential to the efficient operation of government that those persons best qualified be encouraged to serve in positions of public trust. This division shall be construed to accomplish this purpose and interpreted and understood as not to unreasonably frustrate or impede the desire or inclination to seek and serve in public office by those persons best qualified to serve. To that end an elected official or board member should not, except as otherwise provided by law, be denied the opportunity available to all other citizens to acquire and maintain private, economic and other interests, except where a direct conflict of interest would necessarily result.

B. This code of ethics does not prohibit the employment of:

   1. An elected official or board member who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to it; or

   2. An elected official or board member whose government duties are ministerial, if the private employment or financial interest does not create a conflict of interest.

1-14-2-110 - Interests and contracts involving elected officials or board members.

A. During the elected official's or board member's term, no elected official or board member shall acquire a property interest in any contract or transaction if a reasonable basis exists that such an interest conflicts with a known intended purchase by the city, without first offering said interest to the city.

B. Except as provided herein, the city shall not enter into any contract involving services or property with an elected official or board member or with a business in which the elected official or board member has an interest requiring disclosure herein. Provided that such interest is disclosed to all parties involved, the prohibitions of this section shall not apply in the case of:

   1. Designating a bank or trust company as a depository for city funds;

   2. Borrowing funds from any bank or lending institution which offers competitive rates for such loans;

   3. Entering into contracts with a business which employs a consultant, provided that such employment is not incompatible with this section;

   4. Contracts for services entered into with a business which is the only available source for such goods or services; and

   5. Contracts entered into under circumstances which would constitute an emergency situation, provided that such emergency is documented and submitted to the city clerk to be kept on file;

   6. Where the city council approves the contract;

   7. Where the elected official serves on the board or entity by virtue of his or her office or by appointment or with approval of the city council.

8. Where the elected official discloses the position and the city council approves the service(s) or the transaction;

9. Where the contract is on a bid basis following the city's procurement procedures and provided such service is not a professional service.

C. In the event that an elected official shall be paid any remuneration under this section, it shall not be, as long as disclosure is made, a violation of this section to earn such remuneration during times when the elected official is being remunerated by the city or an agency thereof.

D. The city shall not be prohibited from doing business with an entity which employs a member of the family of an elected official, provided that:

1. Such business relationship does not violate this section;

2. Such business relationship is fully disclosed in writing; and

3. Where applicable, the affected business entity shall be required to use the bid system when conducting business with the city.

1-14-2-120 - Unauthorized purchases.

An elected official shall not order any goods and services for the City of Marietta without prior official authorization for such an expenditure.

1-14-2-130 - City attorneys used for private business.

An elected official shall not use an attorney or attorneys who are under retainer by the City of Marietta, Marietta Board of Lights and Water, Marietta Housing Authority or any other board, commission, authority or committee under the umbrella of the City of Marietta for personal or private business without paying just compensation.

1-14-2-140 - Unauthorized use of public employees.

An elected official shall not use his or her position to request or require an employee to:

A. Do work on behalf of his or her social, church or fraternal interests without paying just compensation;

B. Do work on behalf of a member of the family of the elected official without paying just compensation;

C. Purchase goods and services to be used for personal, business or political purposes; and

D. Work for him or her personally or in his or her private business without paying just compensation.

1-14-2-150 - Coercion by elected official.

An elected official shall not use his or her position in any way to coerce, or give the appearance of coercing, another person to provide any financial or in kind benefit to him or person(s) that are a member of the family of the elected official, or those with whom a council member has a financial interest, direct contractual interest or employment interest.

1-14-2-160 - Improper use of office; harassment; improper influence.

A. An elected official shall not intentionally use the office or official title or position for the elected official's own financial interest or the financial gain of another that is applicable to the elected official under any of the provisions as previously set out in Section 1-14-2-010 H. The

performance of usual and customary constituent services, without additional compensation, does not constitute the improper use of office prohibited by this section.

B. No elected official shall intimidate, threaten, coerce, discriminate against, or give the appearance of or attempt to intimidate, threaten, coerce or discriminate against any employee for the purpose of interfering with that person's freedom of choice in the regular discharge of his or her official duties or to cause the employee to violate city's employee code Section 4-4-10.

C. No elected official shall improperly influence any city elected official to violate the standards of ethical conduct set forth in this ethics code.

D. No elected official shall create a "hostile work environment" towards an employee as defined under federal law.

1-14-2-170 - Elections.

No elected official shall direct any person employed by the city to undertake political activity on behalf of that elected official, any other elected official or any other individual or political party or group or business organization, during such time that the city employee is required to conduct city business. This section does not prohibit incidental telephone calls made for the purpose of scheduling an elected official's daily city business.

1-14-2-180 - Travel expenses.

An elected official member shall not draw per diem or expense monies from the City of Marietta 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.

1-14-2-190 - Contact with ethics committee members.

No elected official shall have discussions or contact, of any manner, with a member of the ethics committee, other than as a witness, about the conduct or actions of an elected official in regard to the potential filing of a complaint or after the filing of a complaint through the decision on a complaint. Should the ethics committee be considering a complaint against an elected official, no discussion regarding the complaint shall be held between elected officials and members of the ethics committee until adjudication of the complaint is made.

1-14-2-200 - No prohibition.

A. Nothing contained herein shall prohibit action or make it improper for action taken in the individual's private capacity or the individuals appearance before any board of the city or interaction with employees of the city in his or her private capacity as any other public citizen would in regard to their individual business or individual interests.

B. Except as specifically prohibited in this chapter or state law, an elected official shall be able to and is entitled to participate and vote on any matter that comes before the governing authority of the City of Marietta.

1-14-2-210 - Penalties.

The code of ethics to be adhered to by elected officials or board members is set forth above and any violation thereof or of Section 1-14-4-090 shall subject the offender to disciplinary action which may include censure and either public or private reprimand. Power to administer a greater punishment shall include the power to administer the lesser. Any board member found to have violated this Ethics Code shall be removed from such board or commission by the Ethics

Committee and shall not be eligible for appointment to any City board or commission for a period of two years after such removal. Any board member removed by the Ethics Committee shall be allowed to appeal such removal to the Marietta City Council which shall hear such appeal within 45-days of receipt of such notice of appeal by the City Clerk. The City Council shall affirm or reverse the decision of the Ethics Committee, provided, however, there shall be no appeal from the finding of a violation of the Ethics Code by the Ethics Committee which decision shall be final.

Section 2: Article 1-14-4 shall read as follows:

ARTICLE 1-14-4 - ADMINISTRATION

1-14-4-010 - Ethics committee.

The ethics committee shall consist of three persons, one appointed by the mayor, one appointed by the city council, and the third appointed by the first two above named subject to approval by a majority of the city council. The third member of the ethics committee shall be a member in good standing of the State Bar of Georgia. All members shall be residents of the City of Marietta and shall serve a two-year term. The purpose of the committee is to review all complaints filed and determine whether there is clear and convincing evidence that an elected official or board member has violated this ethics code.

(Ord. No. 6919, 5/10/2006, § 1)

1-14-4-020 - Ethics committee vacancies, etc.

A. The position of a member of the ethics committee shall be deemed vacated:

1. Upon the expiration of his or her or her term;
2. Upon the death of a member or the disability or incapacity of a member for more than 90 days;
3. Upon the written resignation of the member, when accepted by the nominating party. A resignation tendered for more than 30 days shall be deemed accepted;
4. By the member ceasing to be a resident of the city; or
5. Upon removal of the member for good cause by a majority vote of the ethics committee.

B. Members shall be prohibited from engaging in city election political activities and from making campaign contributions to candidates in city elections during their terms as committee members and for six months prior to their appointment. A member who violates this subsection shall be punished by removal from committee membership.

1-14-4-030 - Receipt of complaints.

A. All complaints against an elected official or board member shall be first filed in the city clerk's office and a copy shall be forwarded to the ethics committee. All complaints shall be under oath; affirm that the facts contained therein are true and correct; aver the specific section violated and state the facts which constitute a violation of the section of state law; ordinance of the City of Marietta or Marietta City Code section; and be reduced to a memorandum of complaint in such form as may be prescribed or approved by the Marietta City Council. Complaints may be filed only by residents of the City of Marietta and any complaint filed by any other person shall be dismissed. The complaint shall be supported by affidavit(s) based on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. All document(s) referred to in the affidavit shall be attached to the affidavit(s).

The person filing the complaint shall swear under oath at the time of the filing that he or she is a resident of the City of Marietta, state his or her residence address (post office box is not sufficient) and home phone number, if they have one and if not their business or mobile phone number, if any.

B. Upon receipt of a complaint in proper form and complete, the ethics committee shall schedule a preliminary hearing at which the ethics committee shall review the complaint and determine whether it is unjustified, frivolous, patently unfounded, fails to state facts sufficient to invoke the disciplinary jurisdiction of the Marietta City Council, or is deficient for some other appropriate reason as determined by the ethics committee, and if so, dismiss the complaint. Upon a dismissal of the complaint, the ethics committee may also hold a hearing(s) at the request of the respondent as to the complainants motivation for the filing of the complaint. If after such review, the complaint is not dismissed, the ethics committee may schedule a full hearing on the merits of the complaint at which hearing the complainant and respondent may present evidence. in all proceedings before the ethics committee under this chapter, the burden of proof shall be on the complaining party. In all proceedings under this section occurring after a preliminary investigation as described in this chapter, the procedures and rules of evidence applicable in civil cases shall apply. The ethics committee shall be empowered to collect evidence and information concerning the complaint and to add the findings and results to the file containing such complaint.

C. Upon completion of the investigation of a complaint or after full hearing before the ethics committee, the ethics committee shall be empowered to dismiss any complaints which are unjustified, frivolous, patently unfounded which fail to state facts sufficient to invoke the disciplinary jurisdiction of the Marietta City Council, for lack of evidence, or other appropriate reason as determined by the ethics committee; provided, however, that a rejection of such complaint by the ethics committee shall not deprive the complaining party of any action he might otherwise have at law or in equity against the respondent elected official or board member. Upon the conclusion the of the hearing by the ethics committee, the ethics committee shall have the following options:

1. Dismiss the complaint; or

2. Refer the complaint to the city council if the evidence presented by the complainant proves by clear and convincing evidence the likelihood of a violation.

Failure of the ethics committee to take either action above within 30 days of the conclusion of the hearing shall constitute dismissal of the complaint and no other evidence of dismissal shall be needed. In the event of dismissal of the complaint by the ethics committee, the ethics committee may give a reason thereof as well as any other relevant finding(s) which may form the basis for attorney's fees as set forth in Section 1-14-4-220, including a finding that the complaint and/or the complainant's motivation was/is frivolous, malicious, harassing and/or an abuse of process.

D. The ethics committee shall be empowered to review complaints, to accept evidence and hold hearings where provided for in these rules. All evidentiary hearings before the ethics committee shall require that clear and convincing evidence be the standard of proof in determining whether an elected official or board member has violated this ethics code.

E. The ethics committee shall be empowered to adopt forms for formal complaints, notices, applications for reinstatement and any other written instruments necessary or appropriate under these rules, subject to approval of the city council.

F. The ethics committee shall be empowered to prescribe its own rules of conduct and procedure, subject to approval of the city council.

1-14-4-040 - Powers and duties.

In accordance with these rules the city council shall have the following powers and duties:

A. To receive and evaluate any and all written complaints against an elected official or board member(s), after referral from the ethics committee and to set forth such charges and complaints as shall conform to the requirements of these rules. A copy of any complaint serving as the basis for investigation or proceedings before the city council shall be furnished by mail to the respondent elected official or board member. Each complaint received by the city council before serving as the basis of proceedings before the city council shall be verified by the complainant.

B. To require additional information from a complainant, where appropriate, have subpoena powers and to dismiss and reject such complaints as it may seem unjustified, frivolous, or patently unfounded; provided, however, that the rejection of a complaint by such city council shall not deprive the complaining party of any right of action the complainant might otherwise have at law or in equity against the party complained against.

1-14-4-050 - Evidence.

In all proceedings before the city council under this chapter, the burden of proof shall be on the complaining party. In all proceedings under this chapter occurring after a preliminary investigation as described in this chapter, the procedures and rules of evidence applicable in civil cases shall apply and the standard of proof required shall be beyond a reasonable doubt in hearings before the city council.

1-14-4-060 - Pleadings and copies.

Original pleadings shall be filed with the city clerk and copies served upon all parties to the disciplinary proceedings.

1-14-4-070 - Punishment of offenders.

Unless waived by the respondent, any hearing before the city council shall be before all elected officials eligible to vote. If a majority of the city council finds beyond a reasonable doubt that a violation of this chapter has in fact occurred, subject to the mayor's veto, it is authorized to punish the offender according to the punishments set forth in Section 1-14-2-210. After a majority of the city council subject to the mayor's veto, finds an offender guilty of the violation charged, a majority of the city council, subject to the mayor's veto, must agree to the punishment.

1-14-4-080 - Voting by accused members.

If the mayor of the City of Marietta or any city council member is charged with a violation of this chapter, he or she shall not actively participate or preside in the hearing(s) before the city council in their official capacity as an elected official as enumerated in Section 1-14-4-040 or Subsection 1-14-4-220 D., shall not discuss the matter (other than in their capacity as respondent) with other members of the city council and shall not be allowed to vote or veto to determine his or her innocence or guilt nor his or her punishment.

1-14-4-090 - Voting by complaining official.

An elected official who files a complaint, initiates a complaint or investigation or otherwise actively participates in or encourages the filing of a complaint against a member shall not actively participate, preside, vote, or veto in the hearing(s) before the city council or any other matter related to such complaint or pursuant to Subsection 1-14-4-220 D., other than as a witness or as the complainant to present the complaint and request procedural process at a hearing and shall not discuss the matter with other members of the city council.

1-14-4-100 - Statute of limitations.

No proceedings under this chapter shall be instituted or prosecuted unless such proceeding shall be instituted or begun within six months after the commission of the act complained of, provided, however, the limitation shall not run so long as the offender or offense is unknown. The period within which a proceeding under this chapter shall be instituted or prosecuted does not include any period in which the alleged violation is unknown to someone directly injured by the offense and who makes the complaint or is generally unknown to the public. In all cases, the period shall not be tolled in the event the complainant knew or should have known about the alleged violation. However, no proceedings under this chapter shall be instituted or prosecuted after the earlier of:

1. The expiration of the term of office, if not re-elected, of the person complained against; or
2. The resignation, death, vacancy, disqualification or withdrawal from office of the person against whom a complaint is filed.

1-14-4-110 - Notice of punishment.

A. Upon a final judgment of censure or reprimand, notice of the action taken shall be given by the city council to the city clerk.

B. In the event of a final judgment of acquittal, notice of the action taken shall be given by the city council to the city clerk.

1-14-4-120 - Rights of accused.

An elected official or board member accused of violations of this act shall be entitled:

A. To representation by counsel at all stages of these proceedings;

B. To written notice of any complaints or charges filed against him;

C. To copies of all pleadings filed in a case against him; and

D. To at least ten days notice prior to any hearing held by the ethics committee or to the city council in proceedings under this act.

1-14-4-130 - Additional regulations.

This chapter shall be cumulative to any other ordinance, resolution or act now existing.

1-14-4-140 - Right to appeal.

Any final decision by the city council pursuant to this code of ethics for elected officials shall be reviewable by the superior court of Cobb County as set forth in O.C.G.A. § 5-4-1 entitled "Certiorari to Superior Court". The review by the superior court shall be limited to an inquiry of whether there was any evidence before the city council which supported the decision of the city council. Provided, however, no action of the city council refusing or failing to take action pursuant to this code of ethics shall be reviewable by the superior court.

1-14-4-150 - Staffing and expense.

The ethics committee shall be provided sufficient meeting space, staff and other supportive services to carry out its duties required under this Code. The clerk of the City of Marietta shall serve as the filing clerk for the ethics committee and shall be authorized to receive all filings before the ethics committee. The ethics committee filing clerk shall not be required to serve as the recording clerk for the ethics committee. The ethics committee is hereby authorized to employ a hearing clerk to serve at the sole discretion of the ethics committee during the hearing process and shall be paid at a rate no greater than that of the highest paid executive secretary employed by the city at the time of said hearing. The ethics committee shall not

provide stenographic reporting of the evidence and any party desiring such shall make independent arrangements. The ethics committee shall not be assisted in any hearing or administrative proceeding or meetings by any current or regular city staff presently directly serving the city council or mayor. Any city staffing required by the ethics committee shall be assigned by the city manager.

1-14-4-160 - Counsel.

The ethics committee shall be represented and assisted in carrying out its responsibilities by an attorney appointed by the ethics committee. Such attorney shall serve at the pleasure of the ethics committee as needed at not more than the hourly rate currently approved by the city council and paid by the city. No such attorney representing the ethics committee may be a former elected official or board member of the city or have previously represented a party to or been a party to litigation against the city or adversely affecting the city within 12 years prior to the date of appointment or any elected official or board member of the city or have stated a bias to either. The person complained against is hereby granted the right to file a motion to disqualify an attorney chosen by the ethics committee in the event the complaining party believes that the attorney chosen by the ethics committee will not be fair and impartial or in the event there are other grounds for disqualifications.

1-14-4-170 - Limitation of liability.

No member of the ethics committee, any clerk, attorney, or city employee or any person acting on behalf of the ethics committee, shall be liable to any person for any damages arising out of the enforcement or operation of this ethics code except in the case of willful, malicious, or wanton conduct. This limitation of liability shall apply to the city, the members of the ethics committee, and any person acting under the direction of the ethics committee, including the clerk, attorney and/or any other city employee acting under the direction of the ethics committee.

1-14-4-180 - Advisory opinions.

The ethics committee shall render an advisory opinion based on a real or hypothetical set of circumstances when requested in writing by any elected official or board member subject to the provisions of this Code, and it shall be a responsibility of the ethics committee for the interpretation of this Code. Such advisory opinion shall be rendered pursuant only to a written request, fully setting forth the circumstances to be reviewed by the ethics committee. The proceedings of the ethics committee pursuant to this section shall be held in public, and the opinions of the ethics committee shall be made available to the public to examine and for the press to publish. The ethics committee shall dismiss any complaint filed against an elected official or board member based upon facts or grounds for which any elected official or board member has previously submitted and received an advisory opinion from the ethics committee that approves or renders an opinion that there is no conflict of interest based upon a real or hypothetical set of circumstances submitted by the elected official or board member. In the event the ethics committee does not render an opinion following a written request by an elected official or board member, the matter or matters which are the subject matter of the requested opinion by the elected official or board member shall be automatically continued or delayed until such time as the ethics committee shall issue an opinion in response to the request. No further action shall be required of the elected official or board member in order to have the matter or matters continued.

1-14-4-190 - Judicial review.

A. A complaining party whose complaint has been dismissed by the ethics committee may obtain judicial review of the decision by writ of certiorari to the superior court of Cobb County. The

application for the writ must be filed within 30 days from the date of the decision. Judicial review shall be based upon the record. No party shall be entitled to a de novo appeal.

B. Upon failure to timely request judicial review of the decision by writ of certiorari as provided in this section, the decision shall be binding and final upon all parties.

1-14-4-200 - Recusal of member of ethics committee.

In the event that a member of the ethics committee shall recuse themselves or be recused for any reason, such recused member shall be temporarily replaced as provided in Marietta Code Section 1-14-4-010, that is, the recused member shall be replaced by the appointing authority which initially appointed said recused member.

1-14-4-210 - Bar against subsequent complaints.

Where a complainant files a complaint for which the ethics committee fails to make a "referral to city council" or for which the city council fails to determine that any penalty is appropriate, the complainant shall be barred from filing any subsequent complaint against the same respondent elected official or board member(s) for a period of six months after termination of the original complaint proceeding. Where a complainant files a complaint for which the ethics committee fails to make a "referral to city council" or for which the city council fails to determine that any penalty is appropriate, the complainant shall be barred from filing any subsequent complaint against the same respondent elected official or board member(s) alleging substantially the same facts and circumstances as the basis for the subsequent complaint.

1-14-4-220 - Legal fees and subrogation.

A. For any complaint which the ethics committee determines the complaint is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary jurisdiction of the Marietta City Council and the complaint is dismissed at or from the first (initial or preliminary) hearing prior to the ethics committee taking evidence or deciding to hold any further hearings, or is deficient for some other reason, the City of Marietta shall pay reasonable attorney fees and expenses not to exceed $7,500.00 (through this stage) for representation and defense of the respondent elected official or board member before the ethics committee.

B. For any complaint which is not dismissed at the initial hearing mentioned in Subsection A., above, and further hearings are pursued by the ethics committee on the contested charge(s)in which the ethics committee determines the contested charge(s) in the complaint is unjustified, frivolous, patently unfounded, not a violation, fails to state facts sufficient to invoke the disciplinary jurisdiction of the Marietta City Council or for lack of evidence, or is deficient for some other reason as determined by the ethics committee and/or the complaint or the contested charge(s) is dismissed and not sent to the city council, the city shall pay reasonable attorney fees and expenses not to exceed $15,000.00 (through this stage) for representation and defense of the respondent elected official or board member before the ethics committee.

C. For any complaint which the end result is a ruling against the complainant, finding there is not a violation, or a dismissal of the complaint or the contested charge(s) by the Marietta City Council or the courts, the City of Marietta shall pay reasonable attorney fees and expenses not to exceed $15,000.00 for representation and defense of the respondent elected official or board member before the ethics committee and the city council, through this stage. (The sum total of all expenses incurred in Subsections A., B. and C. shall not exceed $15,000.00.)

D. Amounts over the above may be requested of the city and may be approved only by the Marietta City Council, in their sole discretion, upon request of the respondent elected official or board member.

E. Should the complaint allege more than one ethical violation against a member and city council finds any of the contested ethical violations as alleged are proven beyond a reasonable doubt, the city shall not be responsible for any legal fees incurred by the member in the defense of the contested ethical claims. However, where the elected official or board member admits to one of or more of any alleged violations but contests others, and either the ethics committee or the city council determines that the contested charge(s) is unjustified, frivolous, patently unfounded, fails to state sufficient facts to invoke the disciplinary jurisdiction of either the ethics committee or the city council or the end result is a ruling against complainant or a dismissal of the contested charges, the City of Marietta shall reimburse the elected official or board member for all attorneys fees and expenses paid in defense of the contested charges incurred by the elected official or board member pursuant to Subsections A. through C., above.

F. Based upon the findings of the ethics committee as set forth in Subsection 1-14-4-030 C., the city council may direct the city attorney to institute an action against the complainant in order to obtain the recovery or reimbursement of such attorneys fees and expenses for the money paid in defense of the contested charges incurred by the elected official or board member pursuant to Subsections A. through B. and expenses as well as for the ethic's committee's attorney's fees. By filing a complaint pursuant to this ethics ordinance, the complainant agrees to and subjects themselves to the obligations under this paragraph.

G. A dismissal, without any other finding(s) by the ethics committee, shall preclude any action, against the complainant, by the City of Marietta for attorney's fees and expenses in relation to the complaint.

H. A statement regarding attorney fees and expenses shall be added to the form of the complaint advising the complainant of possible exposure under this chapter as follows: A complaint which is dismissed with a finding that the complaint and/or the complainant's motivation is frivolous, malicious, harassing and/or an abuse of process as set forth in this Code may expose the complainant to reimburse the City of Marietta for attorney's fees and expenses as set forth in Section 1-14-4-220.

Section 3: It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses and phrases are severable, and if any section, paragraph, sentence, clause or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance.

Section 4: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 5: This Ordinance shall become effective upon the signature or without the signature of the Mayor subject to Georgia laws 1983, page 4119.

DATE: **August 12, 2015** **APPROVED:** R. Steve Tumlin, Jr.
R. Steve Tumlin, Mayor

ATTEST: Stephanie Guy
Stephanie Guy, City Clerk

Approved as to form: D. Haynie
Douglas R. Haynie, City Attorney