

1 STATE OF GEORGIA
2 COUNTY OF FULTON
3 CITY OF SOUTH FULTON
4

5 **ORDINANCE No. 2018-052**

6
7 **AN ORDINANCE TO AMEND TITLE 1, ADMINISTRATION, OF THE CITY OF SOUTH**
8 **FULTON CODE OF ORDINANCES, TO HELP ENSURE HIGH ETHICAL**
9 **STANDARDS WITHIN THE CITY AND FOR OTHER LAWFUL PURPOSES**

10
11 **(Sponsored by Councilpersons kahlid, Rowell, Gumbs and Willis)**
12

13 **WHEREAS**, the City of South Fulton ("City") is a municipal corporation duly
14 organized and existing under the laws of the State of Georgia;

15
16 **WHEREAS**, the duly elected governing authority of the City, is the Mayor and
17 Council thereof ("City Council");

18 **WHEREAS**, pursuant to City Charter Section 1.12(b)(10), the City is authorized
19 to "adopt ethics ordinances and regulations governing the conduct of municipal
20 elected officials, appointed officials, and employees, establishing procedures for
21 handling ethics complaints, and setting forth penalties for violations of such rules and
22 procedures";

23
24 **WHEREAS**, the governing authority deems it essential to the proper operation of
25 democratic government that is independent, impartial, and responsible to the people;
26 that governmental decisions and policies be made in the proper channels of the
27 governmental structure; and that public office not be used for personal gain or
28 politically-motivated attacks;

29 **WHEREAS** such measures are necessary to provide the public with confidence
30 in the integrity of its government;

31 **WHEREAS** it is the goal of the city that its officials, employees, appointees, and
32 volunteers conducting official city business:

- 33 Serve others and not themselves;
34 Be independent, impartial and responsible;
35 Use resources with efficiency and economy;
36 Treat all people fairly;
37 Use the power of their position for the well-being of their constituents; and
38 Create an environment of honesty, openness and integrity; and

39
40 **WHEREAS**, this ordinance is in the best interests of the health and general
41 welfare of the City, its residents and general public.
42

43 THE COUNCIL OF THE CITY OF SOUTH FULTON HEREBY ORDAINS as
44 follows:

45 Section 1. The City of South Fulton Code of Ordinances, Title 1, Administration,
46 Chapter 5, Code of Ethics, is hereby revised to read as follows:
47

48 **TITLE 1. - ADMINISTRATION**

49 **CHAPTER 5. - CODE OF ETHICS**

50 **Sec. 1-5001. - Purpose**

51 The purpose of this code of ethics is to:

- 52 a. Encourage high ethical standards in official conduct by city officials;
- 53 b. Establish guidelines for ethical standards of conduct for all such officials by setting
54 forth those acts or actions that are incompatible with the interest of the city;
- 55 c. Require disclosure by such officials of private financial or other interest in matters
56 affecting the city; and
- 57 d. Serve as a basis for disciplining those who refuse to abide by its terms.
58

59 **Sec. 1-5002. - Scope**

60 The provisions of this code of ethics shall be applicable to all city employees and
61 elected or appointed city officials.

62 Notwithstanding anything herein to the contrary, state law and the charter of the city
63 shall be controlling in the event of an actual conflict with the provisions of this code of
64 ethics. This ordinance shall be interpreted to supplement, and not replace, said
65 provisions of state law and the charter.

66 **Sec. 1-5003. - Definitions**

67 Solely for the purpose of this code of ethics:

- 68 a. *City official* or *official*, unless otherwise expressly defined does not include city
69 employees but does mean the mayor, members of the city council, municipal
70 court judges (including substitute judges), city manager, city clerk, city attorney,
71 and all other persons holding positions designated by the city charter, as
72 amended. The term "city official" also includes all individuals, including city
73 employees, appointed by the mayor and/or city council as appropriate to city
74 authorities, commissions, committees, boards, task forces, or other bodies which
75 can or may vote or take formal action or make official recommendations to the
76 mayor and/or city council.
77
- 78 b. *City Employee* means any person who is a full-time or part-time employee of the
79 city.
80
81
82

- 83 c. *Complainant* means any person filing an ethics complaint under this chapter.
84
85 d. *Decision* means any ordinance, resolution, contract, franchise, formal action or
86 other matter under this chapter voted on by the city council or other city board or
87 commission, as well as the discussions or deliberations of the council, board, or
88 commission which can or may lead to a vote or formal action by that body.
89
90 e. *Immediate family* means the spouse, mother, father, grandparent, brother, sister,
91 son or daughter of any city official related by blood, adoption or marriage. The
92 relationship by marriage shall include in-laws.
93
94 f. *Incidental interest* means an interest in a person, entity or property which is not a
95 substantial interest as defined herein and which has insignificant value.
96
97 g. *Remote interest* means an interest of a person or entity, including a city official,
98 which would be affected in the same way as the general public. For example, the
99 interest of an official in the property tax rate, general city fees, city utility charges
100 or a comprehensive zoning ordinance or similar matters is deemed remote to the
101 extent that the official would be affected in common with the general public.
102
103 h. *Substantial interest* means an interest, either directly or through a member of the
104 immediate family, in another person or entity, where:
105
106 i. the interest is ownership of five percent or more of the voting stock, shares
107 or equity of the entity or ownership of \$5,000.00 or more of the equity or
108 market value of the entity; or
109 ii. the funds received by the person from the other person or entity during the
110 previous 12 months either equal or exceed
111 (a) \$5,000.00 in salary, bonuses, commissions or professional
112 fees, or \$5,000.00 in payment for goods, products or services, or
113 (b) ten percent of the recipient's gross income during that
114 period, whichever is less;
115 iii. the person serves as a corporate officer or member of the board of
116 directors or other governing board of a for-profit entity other than a
117 corporate entity owned or created by the city council; or
118 iv. the person is a creditor, debtor, or guarantor of the other person or entity
119 in an amount of \$5,000.00 or more.
120

121 **Sec. 1-5004. – Prohibitions**
122

- 123 a. No city official shall use such position to secure special privileges or exemptions
124 for himself or herself or others, or to secure confidential information for any
125 purpose other than official duties on behalf of the city.
126
127 b. No city official, in any matter before the council or other city body, relating to a
128 person or entity in which the official has a substantial interest, shall fail to

129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174

- disclose for the record such interest prior to any discussion or vote or fail to recuse himself/herself from such discussion or vote as applicable.
- c. No city official shall act as an agent or attorney for another in any matter before the city council or other city body.
 - d. No city official shall directly or indirectly receive, or agree to receive, any compensation, gift, reward, or gratuity in any matter or proceeding connected with, or related to, the duties of his office except as may be provided by law.
 - e. No city official shall enter into any contract with, or have any interest in, either directly or indirectly, the city except as authorized by state law.
 - i. This prohibition shall not be applicable to the professional activities of the city attorney in his or her work as an independent contractor and legal advisor on behalf of the city.
 - ii. This prohibition shall not be applicable to an otherwise valid employment contract between the city and a city official who is not elected (such as, by way of example, a city manager, city administrator or chief of police).
 - iii. Any official who has a proprietary interest in an agency doing business with the city shall make that interest known in writing to the city council and the city clerk.
 - f. All public funds shall be used for the general welfare of the people and not for personal economic gain.
 - g. Public property shall be disposed of in accordance with state law.
 - h. No elected official shall encourage, suggest, recommend or promote any person to hire a member of such elected official's immediate family for employment with the city.
 - i. No city official shall solicit or accept other employment to be performed, or compensation to be received, while still a city official if the employment or compensation could reasonably be expected to impair such official's judgment or performance of city duties.
 - j. If a city official accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official might reasonably be expected to act, investigate, advise, or make a recommendation, the official shall disclose the fact to the city council and shall recuse himself/herself and take no further action on matters regarding the potential future employer.

- 175 k. No city official shall use city facilities, personnel, equipment or supplies for
176 private purposes, except to the extent such are lawfully available to the public.
177
- 178 l. No city official shall grant or make available to any person any consideration,
179 treatment, advantage or favor beyond that which it is the general practice to grant
180 or make available to the public at large.
181
- 182 m. A city official shall not directly or indirectly make use of, or permit others to make
183 use of, official information not made available to the general public for the
184 purpose of furthering a private interest.
185
- 186 n. A city official shall not use his or her position in any way to coerce, or give the
187 appearance of coercing, another person to provide any financial benefit to such
188 official or persons within the official's immediate family, or those with whom the
189 official has business or financial ties amounting to a substantial interest.
190
- 191 o. A city official shall not order any goods and services for the city without prior
192 official authorization for such an expenditure. No city official shall attempt to
193 obligate the city nor give the impression of obligating the city without proper prior
194 authorization.
195
- 196 p. No city official shall draw travel funds or per diem from the city for attendance at
197 meetings, seminars, training or other educational events and fail to attend such
198 events without promptly reimbursing the city therefore.
199
- 200 q. No city official shall attempt to unduly influence the outcome of a case before the
201 Municipal Court of the City of South Fulton nor shall any city official engage in ex
202 parte communication with a municipal court judge of the City of South Fulton on
203 any matter pending before the Municipal Court of the City of South Fulton.
204
- 205 r. No city official shall knowingly, directly or indirectly, aid or assist any city official,
206 or a city official's partner in substantial interest, in violating this chapter.
207
- 208 s. No city official shall disclose or release any confidential information acquired by
209 virtue of their office unless authorized by law or the city to do so.
210

211 **Sec. 1-5005. - Conflict of Interest**
212

- 213 a. A city official may not participate in a vote or decision on a matter affecting an
214 immediate family member or any person, entity, or property in which the official has
215 a substantial interest.
216
- 217 b. A city official who serves as a corporate officer or member of the board of directors
218 of a nonprofit entity must disclose their interest in said entity to the mayor and
219 council prior to participating in a vote or decision regarding funding of the entity by or
220 through the city.

221
222 c. Where the interest of a city official in the subject matter of a vote or decision is
223 remote or incidental, the city official may participate in the vote or decision and need
224 not disclose the interest.
225

226 **Sec. 1-5006. – Board of Ethics**
227

228 The Board of Ethics shall consist of eight (8) residents of the City, with a Chairperson
229 appointed by the mayor, and one appointed by each member of City Council. The Chair
230 shall not vote except to break a tie vote.
231

- 232 a. All members of the Board of Ethics shall be residents of the city for at least one
233 (1) year immediately preceding the date of taking office and shall remain a
234 resident while serving on the Board.
235
- 236 b. All members of the Board of Ethics shall serve a concurrent term with their
237 appointed Councilmember.
238
- 239 c. No person shall serve as a member of the Board of Ethics if the person has, or
240 has had within the preceding one (1) year period, any interest in any contract or
241 contracting opportunity with the city or has been employed by the City; or is
242 employed by another local government doing business with the City.
243
- 244 d. Members of the Board of Ethics with any permit or rezoning application pending
245 before the city, or any pending or potential litigation against the city or any city
246 official charged in the complaint shall be disqualified from serving on the Board of
247 Ethics for that complaint. An alternate member of the Board of Ethics shall be
248 selected in the same manner as the disqualified individual.
249
- 250 e. The members of the Board of Ethics shall serve without compensation. The city
251 council shall provide meeting space for the Board of Ethics and, subject to
252 budgetary procedures and requirements of the City, such supplies and
253 equipment as may be reasonably necessary for the Board to perform its duties
254 and responsibilities.
255
- 256 f. No person shall serve on the Board of Ethics who has been convicted of a felony
257 involving moral turpitude in this state or any other state, unless such person's
258 civil rights have been restored and at least ten years have elapsed from the date
259 of the completion of the sentence without a subsequent conviction of another
260 felony involving moral turpitude.
261
- 262 g. No person shall serve on the Board of Ethics who is less than 18 years of age,
263 who holds a public elective office, who is physically or mentally unable to
264 discharge the duties of a member of the Board of Ethics, or who is not qualified
265 to be a registered voter in the City of South Fulton.
266

- 267 h. Upon appointment, members of the Board of Ethics shall sign an affidavit
268 attesting to their qualification to serve as a member of the Board of Ethics.
269
- 270 i. Members of the Board of Ethics may be removed by majority vote of the City
271 Council. Any removed member, or member who may no longer serve, voluntarily
272 or by qualification, shall be replaced by the council member who appointed them.
273
- 274 j. Operation and decorum. Four ethics board members shall constitute a quorum.
275 The affirmative vote of a majority of board members present shall be required for
276 any action by the board. The ethics board members shall not direct city staff and
277 shall facilitate all requests of the city council through the city manager or City
278 Attorney. The board of ethics members may submit requests to the city clerk for
279 documents filed in a case and advertisement of their meetings. The city manager
280 may additionally assign a staff member to provide clerical duties for the board.
281 The city attorney is designated to be the legal advisor for the board, except that
282 the city attorney is not authorized to represent the board in any legal action if
283 doing so would create a conflict which would prevent the city attorney from also
284 representing the mayor, the city manager, or city council. Additionally, the board
285 of ethics shall:
286
 - 287 (1) Be governed by Roberts Rules of Order; and
 - 288 (2) Submit any proposed policies to the city council for approval.
- 289 k. *General authority.* The board of ethics shall be empowered to:
290
 - 291 1. Collect evidence and information concerning any complaint and add the
292 findings and results of its investigations to the file containing such complaint;
 - 293 2. Conduct investigations, take evidence, conduct meetings and hold hearings
294 to address the subject matter of a complaint; and
 - 295 3. Postpone, continue and defer hearings and/or meetings under this chapter
296 so long as the deadlines under this chapter are adhered to. The board may
297 extend the deadlines in this chapter for up to 30 days upon exigent
298 circumstances. The board may extend any deadline in this chapter for up to
299 60 days upon both the accused and the complainant's consent.

300 **Sec. 1-5007. - Complaints**

301
302 All complaints against city employees or officials shall be filed with the City Clerk, who
303 shall email it to the accused, Board of Ethics, Mayor and Council City Manager and City
304 Attorney within two business days of receipt. Complaints may be filed only by residents
305 of the City of South Fulton and any complaint filed by any other person shall be
306 dismissed. A complaint filed by a person who no longer resides within the city while the
307 action is pending shall be dismissed.
308

- 309 a. *Form of complaints and subsequent filings.*

310 1. *Contents.* All ethics complaints shall be legibly printed on 8 ½ x 11 size paper
311 and shall include the following:

312 i. The complainant’s full name, residential address in the city, email address
313 and contact number;

314 ii. Identification, by name and title, of the official whom the Complaint is filed
315 against. A complaint may not include allegations against more than one
316 official, meaning that a separate complaint must be filed against each
317 official against whom allegations under this chapter are made;

318 iii. The specific subsections under this chapter of which the accused is alleged
319 to have violated, including the facts which support the basis for such
320 allegation;

321 iv. Documents, attached to the complaint as exhibits, if any, supporting the
322 allegations;

323 v. The name, contact number and mailing address of any specific person
324 and/or entity referenced in the complaint and/or believed to have personal
325 knowledge about the matters alleged therein; and

326 vi. A notarized affidavit signed by the complainant in the following form:

327 "STATE OF GEORGIA
328 COUNTY OF FULTON

329 AFFIDAVIT

330
331 PERSONALLY APPEARED before the undersigned officer, duly authorized to
332 administer oaths, came the undersigned complainant, [insert name of complainant],
333 who after having been duly sworn, states under oath that: 1) the undersigned
334 complainant is a resident of the City of South Fulton and 2) that the statements in the
335 foregoing complaint are true and correct to the best of his/her knowledge. The
336 undersigned complainant further acknowledges that false statements made in this
337 complaint may result in criminal and/or civil liability, including in a prosecution against
338 them for false swearing, a felony under Georgia law. See O.C.G.A. 16-10-71.

339 _____
340 (Signature of complainant)

341
342 Sworn to and subscribed before me this ____ day of _____, 20 ____.

343
344 Notary Public”

345
346 2. *Subsequent Submissions to Board.* All subsequent submissions to the board by
347 the complainant and/or the accused shall be filed with the city clerk. The city
348 clerk shall email all filings in the matter, within two business days of receipt, to
349 the complainant, accused, city council, city manager and city attorney, with the

350 exception that the city clerk shall not be required to email documents to the
351 party filing such document;

352 3. *Answer.* The accused may file an answer and/or response to the complaint, but
353 shall not be obligated to do so.

354 b. *Dismissal.*

355 1. By Complainant. A complaint may be voluntarily dismissed at any time by the
356 complainant and/or the complainant's attorney by submitting a writing evidencing
357 such dismissal to the city manager, city attorney and/or city clerk. The city
358 manager and/or city attorney shall submit such writing to the city clerk who shall
359 forward such dismissal to the board, accused, city manager and city council
360 within two business days of receipt. A complaint, and any allegations therein,
361 dismissed a second time by the complaint shall be with prejudice. No further
362 action of the board on the complaint shall be required upon notice of a voluntary
363 dismissal.

364 2. By Board. A complaint that does not meet the standards required by this
365 chapter shall be dismissed by the board of ethics, without prejudice. Repetitive
366 failures to meet the standard imposed by this chapter shall authorize the board of
367 ethics to dismiss the complaint with prejudice. The board shall additionally
368 dismiss, with prejudice, any complaint which is unjustified, frivolous, patently
369 unfounded and/or fails to state facts sufficient to invoke the disciplinary
370 jurisdiction of the city council; provided, however, that the dismissal of such
371 complaint shall not deprive the complainant of any action such person might
372 otherwise have at law or in equity against the city official;

373 c. *Preliminary Review and Hearing.* (1) Within 30 calendar days of the board's receipt
374 of a complaint, the board shall make a determination at a preliminary hearing as to
375 whether the complaint should: 1) proceed for a formal hearing or 2) be dismissed on
376 grounds that it is non-compliant with the requirements of this chapter, unjustified,
377 frivolous, and patently unfounded and/or fails to state facts sufficient to invoke the
378 disciplinary jurisdiction of the city council. The complainant and accused shall each
379 be allowed ten minutes at the preliminary hearing to speak in favor or against the
380 dismissal. The board of ethics shall cause for its decision on the preliminary review
381 to be submitted to the city clerk within two business days of such decision being
382 rendered. The city clerk shall forward the decision to the complainant, accused, city
383 council, city manager, and city attorney within two business days of receipt. A
384 dismissal shall conclude the proceedings on a complaint.

385 d. *Formal Investigation and Hearing.*

386 1. *Formal Hearing.* The board shall render a final written recommendation on the
387 complaint within 60 calendar days of the filing of the complaint, for all
388 complaints that are not dismissed. A formal hearing shall be held by the board
389 prior to making a final recommendation. The complainant and accused shall
390 have the right, but not obligation, at the formal hearing to present testimony,
391 offer evidence and cross-examine available witnesses.

392 2. *Final Recommendation.* The board of ethics shall cause for its final written
393 recommendation to be submitted to the city clerk, within two business days of
394 such decision being rendered. The city clerk shall forward the final written
395 recommendation to the accused, complainant, city council, city manager and
396 city attorney within two business days of his or her receipt. (5) The failure to
397 comply with any of time deadlines in this section shall not invalidate any
398 otherwise valid complaint or in any way affect the power or jurisdiction of the
399 board of ethics or the city council to act upon any complaint.

400 e. *Notice.* The complainant and accused shall be provided with written notice of the
401 preliminary and formal hearings on a complaint under this chapter, by U.S. mail and
402 email, at least 10 calendar days before such hearings occur.

403 f. *Politically Motivated Complaints.* To discourage the filing of ethics complaints solely
404 for political purposes, complaints will not be accepted against a person seeking
405 election as a city official, whether currently serving as a city official or not, from the
406 date qualifying opens for the elected office at issue through the date the election
407 results for that office are certified. The time for filing complaints will not run during
408 this period. Properly filed complaints will be accepted and processed after the
409 election results have been certified.

410
411 g. *Time Limitations.* The board shall promptly dismiss:

412
413 1. Any complaint which is filed later than one year after a violation of this chapter is
414 alleged to have occurred;

415
416 2. Any complaint that is not filed within six months from the date the complainant
417 knew or should have known of the action alleged to be a violation; and/or

418
419 3. Any complaint which arises out of substantially the same facts or circumstance
420 which have previously served as the basis for a complaint dismissed with
421 prejudice pursuant to this chapter. The time limitation periods under this section
422 shall be measured from the date of the last act occurring in furtherance of the
423 alleged violation. Additionally, no complaints under this chapter shall be filed
424 with, and/or accepted by, the city clerk after the earlier of:

425
426 i. the expiration of the term of office of the person complained against; or

427
428 ii. the resignation, death, vacancy, disqualification or withdrawal from office of
429 the person against whom a complaint is filed. The time for any action by
430 the board under this chapter shall be tolled during any period in which the
431 board has not been activated by the city council.

432
433 **Sec. 1-5008. - Appeal**

434
435 Any city official or complainant adversely affected by a decision of the city council under
436 this Chapter may obtain judicial review of such decision as provided by law.

437 **Sec. 1-5009. - Penalty**

438
439 a. The city council shall take action upon the final written recommendation of the board
440 of ethics, within 30 days of receiving such recommendation from the city clerk. The
441 city council may:

- 442
443 1. Accept the board's recommendation; or
444 2. Reject the board's recommendation and render an alternative decision.

445 b. Any person violating any provision of this article is subject to:

- 446
447 1. Public reprimand or censure by the city council; or
448 2. Request for resignation by the city council.

449
450 *****
451
452 **Section 2.** It is hereby declared to be the intention of the Mayor and Council that: (a)
453 All sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were,
454 upon their enactment, believed by the City Council to be fully valid, enforceable and
455 constitutional.

456 (b) To the greatest extent allowed by law, each and every section, paragraph, sentence,
457 clause or phrase of this Ordinance is severable from every other section, paragraph,
458 sentence, clause or phrase of this Ordinance. No section, paragraph, sentence, clause
459 or phrase of this Ordinance is mutually dependent upon any other section, paragraph,
460 sentence, clause or phrase of this Ordinance.

461 (c) In the event that any phrase, clause, sentence, paragraph or section of this
462 Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or
463 otherwise unenforceable by the valid judgment or decree of any court of competent
464 jurisdiction, it is the express intent of the City Council that such invalidity,
465 unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not
466 render invalid, unconstitutional or otherwise unenforceable any of the remaining
467 phrases, clauses, sentences, paragraphs or sections of the Ordinance.

468 **Section 3.** All Ordinances and parts of Ordinances in conflict herewith are hereby
469 expressly repealed.

470 **Section 4.** The city attorney and city clerk are authorized to make non-substantive
471 editing and renumbering revisions to this Ordinance for proofing, codification, and
472 supplementation purposes. The final version of all Ordinances shall be filed with the
473 clerk.

474 **Section 5.** The effective date of this Ordinance shall be the date of adoption unless
475 provided otherwise by the City Charter or state and/or federal law.
476

477 **Section 6.** *Instruction to City Clerk.* Unless vetoed, the City Clerk is hereby
478 directed to forward a copy of this Ordinance to the Ethics Board members.
479

503 THIS ORDINANCE adopted this 8th day of January 2019. CITY OF SOUTH FULTON,
504 GEORGIA.

505
506
507
508
509
510

“SECOND READING”

511
512
513
514
515
516
517


WILLIAM “BILL” EDWARDS, MAYOR

518
519

ATTEST:

520
521
522
523
524
525
526


MARK MASSEY, CITY CLERK



527
528
529
530

ITEM# ord2018-052 DATE 1.8.2019

531
532
533
534

APPROVED AS TO FORM:


EMILIA C. WALKER, CITY ATTORNEY

535
536
537
538