

ARTICLE II. - ETHICS COMMISSION

Sec. 23-31. - Creation and composition.

- (a) There is hereby created the ethics commission, an agency of the City of Tybee Island. By creating the commission, council intends to:
 - (1) Enhance the public's confidence in the integrity of city government and management;
and
 - (2) Provide a facilitative and advisory resource that assists the city council, the city manager and others to leverage, implement, administer and enforce this code.
- (b) The commission is to be composed of seven. Members of the commission are to be appointed by city council as set forth in this chapter.
- (c) As used within this chapter, "commission" means "the ethics commission" or any subset of the ethics commission acting on behalf of the whole commission.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-32. - Duties and powers.

- (a) The ethics commission has the duty and authority to:
 - (1) Establish (and amend as needed) bylaws, policies and procedures consistent with this Code that govern internal organization and conduct of commission affairs;
 - (2) Schedule and hold commission meetings as needed to discharge duties;
 - (3) Receive and consider complaints that this code was violated;
 - (4) Interpret this code as it applies to complaints of violation and other issues in order to reach opinions as to whether certain actions, behaviors, or conduct constitute violation of this code;
 - (5) Formally present or deliver the commission's opinions to council;
 - (6) Make proposals or recommendations to the city council for the adoption of any revisions or amendments to this ethics code;
 - (7) Publish opinions and other documents related to this code;
 - (8) Engage in training activities;
 - (9) Issue advisory opinions as provided in this chapter;
 - (10) Initiate any investigation or perform any other function determined by the commission to be essential to fulfilling its purpose or discharging duties established within this code.
- (b) Members of the commission are subject to this code. Each has special responsibility to identify and acknowledge any conflict of interest in commission matters and abide by the

rules of recusal when he/she has a conflict of interest in a pending commission decision.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-33. - Member qualifications.

- (a) Upon appointment to the commission, a person must have resided in the city for at least one year, be registered to vote in city elections and have signed a statement of qualification.
- (b) For the duration of service on the commission a member must:
 - (1) Reside in the City of Tybee Island;
 - (2) Be registered to vote in city elections;
 - (3) Not hold any other elected office or become a candidate for elected office of the United States, this state, this county, or the city;
 - (4) Not be a city employee; and
 - (5) Exhibit strong moral character and good citizenship.
- (c) Statement of qualification:

STATEMENT OF QUALIFICATION: I, _____, have interest in serving on the Tybee Island Ethics Commission. I meet the qualifications set forth in the Ethics Code.	
I have resided in the City of Tybee Island for at least one year.	
I am registered to vote in City elections.	
I do not hold elected City office.	
I am not a candidate for elected office of the United States, this state, this county, or this City.	
Signed _____	Date _____

- (d) Statements of qualification are to be retained by the clerk of council as official city records.
- (e) As a member of a city agency having semi-judicial function, a person is to take an oath of office before each term of service as a commission member. The mayor is to administer the oath. A written representation of the oath is to be signed by the appointee and retained by the clerk of council as an official city record.
- (f) If member becomes disqualified, he or she must resign from the commission.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-34. - Terms of service.

- (a) Those members of the commission currently serving as of the adoption of this chapter shall continue to serve under their original appointment and for the full term thereof.
- (b) Council intends for commission members to serve two "staggered" terms.
- (c) Members having odd position numbers are to serve terms expiring on the day before the annual meeting in odd-numbered years. Members having even numbers are to serve two-year terms expiring on the day before the annual meeting in even-numbered years.
- (d) Removal of members of the ethics commission other than by resignation or expiration of term shall be for cause as determined by the mayor and council following a public hearing. As used herein, "cause" shall include but not be limited to, failure to attend meetings of the ethics commission on a regular basis; when there is a recommendation from the ethics commission for conduct allegedly reasonably calculated to result in the ethics commission, the city or the city council being held up to ridicule; while a member, conviction of a crime which is a felony or misdemeanor involving moral turpitude or dishonesty, or of an ordinance violation involving moral turpitude or dishonesty; a lack of qualification as determined by the ethics commission and/or the mayor and council; and conduct or circumstances determined by the mayor and council to justify removal in the best interest of the city. There is no property right in an appointment and the existence of cause as grounds for removal is not to be considered as creating any property right in the appointed position, nor is the existence of any hearings or procedures to be deemed or considered as creating any property right.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-35. - Voting.

- (a) "Voting panel" means the group of commission members entitled to participate in a commission matter.
 - (1) When the commission is not in session (i.e., meeting), the voting panel is composed of members.
 - (2) During a commission meeting or hearing and for a particular matter, the voting panel is composed of Members in attendance.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-36. - Meetings.

- (a) Except as allowed or required by state law, all meetings of the ethics commission are to be open to the public, publicized as required by state law and compliant with all requirements imposed by the Georgia open records and meetings laws.

- (b) The ethics commission is to hold an annual meeting in February.
- (c) The presiding officer or a majority of the voting panel may call additional meetings on an as-needed basis.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-37. - Appointments and nominations.

(a) *Appointments to fill vacancies.*

- (1) Each vacated commission position is to be filled by council appointment based on majority vote or other method adopted by council.
- (2) No person appointed to serve on the first commission or any commission thereafter is to be considered "the appointee" of a particular council member.

(b) *Annual appointments.* This topic does not encompass mid-term vacancies.

- (1) On the day before the annual meeting in 2009 and on each such day thereafter, the terms of five members expire. At the last regular council meeting in January of each year after 2008, council is to appoint five members to fill the positions with expiring terms.
- (2) Members associated with expiring terms may be reappointed.
- (3) The mayor is to assign odd position numbers to the members appointed during odd-numbered years. Likewise, the mayor is to assign even position numbers to members appointed during even numbered years.
- (4) Commission bylaws or policies are to give guidance to situations and circumstances that are not covered in preceding items of this topic.

(c) *Mid-term vacancies.*

- (1) When any member vacates or announces intention to vacate a commission position before the associated term of service expires, the presiding officer is to request council to appoint a member to the position. The request may be accompanied by nominations from the voting panel.
- (2) A person appointed by council to fill a vacated position assumes the status, position number and the unexpired portion of the term associated with the former member.

(d) *Nominations.*

- (1) Any person interested in serving on the commission may nominate themselves by submitting a completed qualification form to the clerk of council. This applies to incumbent members occupying commission positions with approaching term expiration dates.
- (2) Council may solicit additional nominations for commission membership from the general public, from council members or from the ethics commission. The clerk of

council is to contact such nominees for the purpose of determining their interest and/or to have them sign a statement of qualification.

- (3) Council intends that the appointment process not interfere with the effectiveness of the commission. Ideally, at any point in time, there will be several nominees so that, when necessary, the appointment process will be expedited.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-38. - Officers.

- (a) At each annual meeting after February 2009, the voting panel is to elect two members to serve as chairperson and vice-chairperson of the commission. These officers are to serve as such until the next annual meeting. If for some reason the voting panel fails to elect a chair or vice-chair at an annual meeting, the incumbent may remain in office until a successor is properly elected by the members.
- (b) An incumbent may be re-elected to serve as an officer.
- (c) If the chair or vice-chair leaves office before the term of office expires but remains on the commission, the voting panel is to elect a principal member to serve in the office until the next annual meeting.
- (d) If an office becomes vacant because of a principal position vacancy, the voting panel is to elect a replacement officer after the principal position is filled by council appointment.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-39. - Compensation, expenses and staffing.

- (a) Members of the ethics commission are not to be compensated.
- (b) A member may request the city for reimbursement of reasonable expenses incurred as a direct result of performing commission duties.
- (c) The city manager is to assign a capable staff member to serve as recording secretary and to make available appropriate and sufficient meeting space.
- (d) The clerk of council or designee is to serve as the filing clerk for the commission, receive complaints and to publish notices of ethics commission meetings upon request of the commission's presiding officer.
- (e) The clerk of council and the city manager are to provide other support requested by the commission and approved by council.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-40. - Counsel.

- (a) The city attorney is to be the legal advisor for the ethics commission except in circumstances

where doing so would result in the city attorney's conflict of interest in a complaint involving a council member as respondent, complainant, or otherwise.

- (b) If the commission requires legal services that the city attorney cannot provide or is not available to provide, the commission is to be represented and assisted in carrying out its responsibilities by an attorney appointed by the ethics commission and confirmed by council. A person serving as commission attorney is subject to this code.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-41. - Limitation of liability.

To the fullest extent permitted by law, no member of the ethics commission, or any person acting on behalf of the ethics commission, is to 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 or wanton misconduct. This limitation of liability is to apply to the city, the members of the ethics commission and any person acting under the direction of the ethics commission.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-42. - Advisory opinions.

- (a) The commission may render an advisory opinion based on a real or hypothetical set of circumstances and the commission's interpretation of this code as it applies to the circumstances.
- (b) An advisory opinion is to be rendered only in response to a written request (from a city official) that fully describes the circumstances and the question to be answered. The request must be signed.
- (c) A member of the commission may submit a request for an advisory opinion.
- (d) Such advisory opinions are to be formulated during formal commission meetings and are to be made part of the commission's open records.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-43. - Complaints.

(a) *In general.*

- (1) For this code to be most effective, the public and city officials must have access to a fair, expedient, effective and evolving complaint process that is not encumbered by the need to amend this code. To that end, the commission is to develop, publish and maintain a

complaint policy that explains procedures to be followed, timeframes to be honored and the roles, responsibilities and rights of the complainant, city official alleged to have violated this code and members of the commission.

- (2) The policy may include steps, options or requirements beyond the general provisions contained in this chapter. If, at any point in time, such policy does not address the requirements of a particular complaint, the commission is to make formal adjustment to the policy to ensure the fair and appropriate handling of the complaint and such complaints thereafter. As the complaint policy evolves, revisions are subject to the approval of the city attorney and/or city council. The essential components of the complaint policy are outlined in the following provisions of this section.
- (b) *Restraints.* The policy is to specify the restraints, if any, that apply to the commission, the complaint and/or the person against whom a complaint is filed (the respondent).
 - (c) To discourage the filing of ethics complaints solely for political purposes, complaints may not be accepted against any person, whether currently serving as a city official or not, from 90 days prior to the beginning of the qualifying process for the elected office at issue through the date the election results for that office are certified. The time for filing complaints will not run during this period. Properly filed complaints will be accepted and processed after the election results have been certified.
 - (d) *Submission and qualification.*
 - (1) A person (complainant) alleging that a city official (respondent) violated any provision of this code may submit a written and signed complaint declaration to the clerk of council. The declaration, a written statement made under penalty for false swearing, must meet the qualifications described in the complaint policy.
 - (2) The clerk of council's office is to deliver the declaration of complaint to the presiding commission officer who thereafter communicates the complaint to commission members.
 - (3) Subsequently commission members, in a manner consistent with the complaint policy, are to determine if the complaint qualifies for further action.
 - (4) A disqualified complaint declaration is to be returned to the complainant and otherwise dealt with in a manner consistent with the complaint policy.
 - (5) A disqualified declaration may be corrected by the complaint and resubmitted as de novo declaration.
 - (e) *Qualified complaints against city officials.*
 - (1) The commission has the responsibility to investigate, hear, validate, and dispose of complaints against city officials in a manner consistent with this code and the complaint policy.
 - (2) The commission is to inform (by registered mail) the respondent of the complaint and

of a reply due date and a case review date. The complaint and other pertinent documents are to be attached to this correspondence.

- (3) The complaint policy is to provide details for handling a case for which the respondent agrees that he or she has violated this code.
 - (4) Unless the respondent's reply agrees that a violation occurred, there is to be a case review to determine whether specific substantiated evidence from a credible source(s) exists to support a reasonable belief that there was a violation of this code. The case is to be dismissed unless a majority of the voting panel agrees that such evidence exists. The complaint policy is to provide details for closing a dismissal.
 - (5) If the case is not dismissed, the commission is to hold a hearing at a public meeting for the purposes of reaching a complaint opinion (decision) as to whether or not the respondent violated the code. The hearing is to be conducted in accordance with those conventionally associated with hearings at public meetings. The complainant and the respondent are to have the opportunity to be heard and to have witnesses at the hearing.
 - (6) After the hearing, voting panel members are to reach a decision (complaint opinion) as to whether or not the respondent violated this code. Such decision is to be based on:
 - a. Preponderance or greater weight of the evidence presented at the hearing; and
 - b. The declarations submitted by the complainant and respondent; and
 - c. Panel member's conscientious and compliant interpretation and application of this code to the evidence.
 - (7) The complaint opinion is to be documented consistent with the complaint policy. This documentation is to include a statement of remedial or consequential actions that the commission deems appropriate. Such actions may be applicable to the respondent or to the complainant. Consequences for a city official may include, but are not limited to, private warning, training on the subject of the violation, public warning or reprimand, public censure and/or apology and/or restitution. Consequences for a malicious or frivolous complaint from a person other than a city official may include misdemeanor charges.
 - (8) The documented opinion is to be forwarded to clerk of council who will distribute the opinion to council members, the complainant, the respondent and the city attorney in preparation for a final and concluding action on the part of council.
- (f) A person (complainant) alleging that the city manager, the city attorney, the city clerk, or a municipal court judge violated any provision of his code may submit a written and signed complaint to the mayor and council. The mayor and council shall consider such complaint and follow the procedure for investigation and holding a hearing in the same or similar fashion as the ethics commission as set forth in subparagraphs (e)(1)—(7) hereinabove.

Complaints against a city employee under the control of the city manager shall be forwarded to the city manager for his or her review and consideration with the city manager following the procedure for investigation and holding a hearing in the same or similar fashion as the ethics commission as set forth in subparagraphs (e)(1)—(8) hereinabove.

(Ord. No. 54-2011, (Attach.), 7-28-2011; Ord. No. 05A-2017, § 1, 7-13-2017)

Sec. 23-44. - Final and concluding action on complaint cases.

Final and concluding decisions for complaint cases are to be made at the final council meeting of each month. Advisory opinions related to such decisions are to be listed as main agenda items for this meeting. The city attorney is to develop and implement a process for council to consider the opinions.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-45. - Right to appeal.

Any final decision by the city council pursuant to this code of ethics shall be reviewable by the Superior Court of Chatham County. The review by the superior court shall be limited to an inquiry to 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.

(Ord. No. 54-2011, (Attach.), 7-28-2011)

Sec. 23-46. - Legal fees.

The city council may direct the payment of legal fees for a city official who successfully defends an ethics complaint up to a maximum of \$5,000.00 upon a determination that the city official acted in good faith and that the services of an attorney were appropriate and reasonably necessary under the circumstances.

(Ord. No. 05A-2017, § 1, 7-13-2017)

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