

# Ethics Is Deal

the ONLY

THE FIRST FIVE YEARS OF THE ATLANTA ETHICS OFFICE

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MARCH 2009

GINNY LOONEY  
*Ethics Officer*

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This report covers activities in the City of Atlanta from August 2003 through August 2008, except the section on training, which includes training conducted through December 2008. Thanks to the following individuals for their assistance: Charles B. Crawford, Jr.; MaryAnne Gaunt; Janet Keene; Jabu Sengova; Steve Suitts; Nasceas Timms; and Janelle Walthour. Mary Sommers designed the report for publication.

# Table of Contents

<b>Executive Summary</b> . . . . .	iii
<b>Promoting Public Trust</b> . . . . .	1
<b>Measuring Achievements</b> . . . . .	2
10/5: The top ten achievements during the first five years of operation. . . . .	2
<b>Ethics Training Is Essential.</b> . . . .	3
Education is a key step to encouraging ethical conduct . . . . .	3
Half of all city employees have received some ethics training . . . . .	3
All city officials and employees should be required to take ethics training. . . . .	5
<b>Public Education Is a Priority</b> . . . . .	8
<b>Advice Provides Guidance.</b> . . . .	10
The Ethics Office initially focused on its advisory role . . . . .	10
Board opinions have established citywide guidelines for ethical conduct . . . . .	10
Giving timely, consistent, and understandable advice has been a goal . . . . .	12
<b>Financial Disclosure Has Increased</b> . . . . .	15
Improved filing rates show that cultural shifts are possible. . . . .	15
The City has achieved a 98 percent or better annual filing rate since 2005. . . . .	15
The Electronic Disclosure System enables review of actual and potential conflicts of interest. . . . .	16
The City should support efforts to establish a state electronic disclosure system for all local campaign finance reports . . . . .	17
<b>Accountability Through Enforcement</b> . . . . .	20
Training and advice are not enough to bring the City into compliance . . . . .	20
The first enforcement actions involved financial disclosure laws . . . . .	20
Enforcement of other ethics provisions began in earnest in 2006 . . . . .	22
The City needs to enact a civil remedy for enforcing board orders and collecting fines . . . . .	25
<b>Ethics Is a Big Deal</b> . . . . .	26
<b>Recommendations for Change</b> . . . . .	27
<b>Appendices</b>	
Appendix 1 – Current Members of the Board of Ethics. . . . .	29
Appendix 2 – Timeline of Activities . . . . .	31
Appendix 3 – Ethics Violations . . . . .	32



# Executive Summary

The Board of Ethics seeks to build a strong ethical culture within the City of Atlanta government and assure the public's trust. The City has made significant strides toward a robust and comprehensive ethics program. In the five years since the Ethics Office opened, half of all employees have received ethics training, a web-based disclosure system has been established that enables the public to easily review financial disclosure statements, and the City has tightened the rules on participating in contracts. Through its formal advisory opinions, the Board has provided guidance on the receipt of gifts, use of city property, and ways to avoid conflicts based on financial and personal interests. Through its enforcement cases, the Board has increased compliance with the city's ethical standards, achieving a 98 percent annual filing rate of the personal financial disclosure statements. The message from these cases is that all persons, no matter what their position, are expected to follow the law and will be held accountable.

Despite this progress, much work remains to achieve an ethical culture within city government. This effort requires every city official, whether elected or volunteer, and every employee, from the chief operating officer to the building inspector, to incorporate ethical considerations into their operational decisions. It means focusing on the way the City provides services as much as the services the City provides, asking in advance whether a proposed action complies with the law and avoids the appearance of impropriety, and consistently choosing to promote the best interests of the City over one's own financial or personal interests.

The Board of Ethics and Ethics Officer recommend that the City take several specific steps to build on this progress. At the individual level, every city official and employee should agree in writing to abide by the city's ethical standards, receive mandatory ethics training, and annually complete an outside employment agreement. At the agency level, every department, office, and board should establish written conflict-of-interest policies that address its particular challenges, collaborate with the Ethics Office on any departmental investigations involving allegations of ethics violations, and inform and evaluate employees on ethical standards, financial disclosure requirements, and the post-employment rule. At the citywide level, the Mayor and City Council should strengthen the city's ability to implement its ethical standards by enacting civil remedies for enforcing board orders and collecting fines, provide sufficient financial resources to support the board's work plan for building an ethical culture, and actively support efforts to establish a single, statewide electronic filing system for campaign finance reports for all candidates for election to local offices.

In the midst of a budget crisis, committing limited resources to ethics may be seen as a luxury that the City cannot afford. The failure to follow the city's ethical standards, however, can prove costly in terms of money, reputation, and goodwill. As Mayor Shirley Franklin has said: "Ethics is a big deal. . . . [I]t is the only deal. . . . We cannot accomplish anything, not economic development, not clean water or better sewers if we lose the public trust." With sufficient resources and political will, the City of Atlanta can achieve a comprehensive ethics and compliance program that instills ethical values in city operations and ensures the public's trust.

## Recommendations

- Individual officials and employees should
  - ➔ sign an agreement to abide by the city's ethical standards
  - ➔ receive mandatory ethics training
  - ➔ complete outside employment agreements
- Departments and boards should
  - ➔ establish written conflict-of-interest policies not addressed in the Ethics Code
  - ➔ collaborate with the Ethics Office on any ethics investigations
  - ➔ evaluate ethical behavior as part of employees' annual performance review
  - ➔ inform departing employees about the one-year cooling off period
- The Mayor and City Council should
  - ➔ enact civil remedies to enforce board orders, collect fines, and remove violators from office
  - ➔ provide sufficient resources for building an ethical culture
  - ➔ support a state electronic filing system for local candidates' campaign finance reports

*In the midst of a budget crisis, committing limited resources to ethics may be seen as a luxury that the City cannot afford. The failure to follow the city's ethical standards, however, can prove costly in terms of money, reputation, and goodwill. With sufficient resources and political will, the City can continue to improve its culture, making employees and officials accountable for the way they conduct city business and infusing ethical considerations in the operational decisions of the City.*

# Promoting Public Trust

*The goal of the Board of Ethics is to build a strong ethical culture within the City of Atlanta government and assure the public's trust.*

The Board of Ethics is responsible for bringing the City into compliance with the Code of Ethics and instilling a culture of ethics within city government. The Mayor's Ethics Task Force introduced the goal of an ethical culture for city government; it recommended in its 2002 report that the City improve its training and communication with employees so that they understand that ethical conduct is an integral part of their job.<sup>1</sup> As the head of an ethics research organization has written, "A commitment to ethics that engages all government employees at all levels and incorporates ethical considerations into operational decisions is critical to reducing misconduct and protecting public trust in government."<sup>2</sup>

The Code of Ethics is a conflict-of-interest law. Entitled the Standards of Conduct, it is located at sections 2-801 to 2-824 of the Atlanta Code of Ordinances. It is a rules-based code, rather than a values-based code. Originally enacted more than two decades ago, the provisions in the code are written in terms of prohibitions: "No official or employee shall," "It shall be unlawful," and "No contract or lease may require." It covers the following areas: gratuities, solicitations, use of city property, participation in contracts, outside investments, private employment, doing business with the City, representing private interests, confidential information, financial disclosure, and post-employment. It does not address campaign finance, lobbying, or lobbyists.

The Board is an independent city agency composed of seven volunteers appointed by citizen organizations. (See Appendix 1.) The Board appoints the Ethics Officer to a six-year term of office, subject to confirmation by the City

Council and approval by the Mayor. Since the Ethics Office opened in August 2003, the Board and Ethics Officer have worked to educate city officials and employees about the city's ethical standards, increase public access to financial disclosure forms, strengthen enforcement efforts, and assure that the City enjoys the full credit and trust of its citizens as a government that conducts itself in an ethical manner.

This report describes the city's efforts to promote ethical conduct and establish a culture of ethics within city government. It covers activities during the first five years of operation of the Ethics Office, from August 2003 through August 2008. Because the Board has a small staff, with just two employees during most of this time, it has by necessity built the ethics program in segments. The initial focus in 2003 was on education, initiating training for new employees, establishing a website, and issuing the first advisory opinions. Efforts in 2004 were devoted to gaining compliance with the financial disclosure filing requirement, which had been widely disregarded. In 2005, the Board established the web-based Electronic Filing System for disclosure reports. Four events made 2006 the seminal year for ethics in city government: (1) the Integrity Line was established; (2) an ethics investigator was hired; (3) the first ethics complaint was brought against an elected official; and (4) legislation was defeated that would have permitted unlimited numbers of gifts with no disclosure. In 2007, the enforcement program was fully established with the first probable cause hearing, enforcement hearing on a substantive violation, and settlement agreement. Finally, in 2008 the Board strengthened the program by entering into its first settlement agreement with a city contractor, hiring an associate ethics officer to assist with enforcement, and offering citywide ethics workshops for employees and board members. (See Appendix 2.)

<sup>1</sup>Ethics Task Force, Ethics Task Force Report, City of Atlanta, [http://www.atlantaga.gov/mayor/archivesp\\_ethtaskforce\\_021202.aspx](http://www.atlantaga.gov/mayor/archivesp_ethtaskforce_021202.aspx).

<sup>2</sup>Ethics Resource Center, National Government Ethics Survey: An Inside View of Public Sector Ethics v (Arlington, Va., 2008).

# Measuring Achievements

*The City has made significant strides toward a robust and comprehensive ethics program.*

## **10/5: The top ten achievements during the first five years of operation**

1. Supported an expanded code definition of "immediate family member" to provide for more disclosure of personal interests by officials and employees and place greater limits on their participation in contracts involving parents, siblings, and children
2. Successfully opposed code amendments that would have permitted city officials and employees to accept gifts, private meals, and free tickets with no meaningful restrictions or reporting requirements
3. Established the Ethics Disclosure System, a unique web-based public disclosure system that gives the public real-time access to personal financial disclosure statements and gift, travel, and conflict-of-interest disclosure reports of all applicable city officials and employees
4. Set up an ethics enforcement program by
  - establishing a fair administrative process for resolving complaints
  - initiating the first major ethics investigation into a substantive violation of the Ethics Code
  - conducting the first probable cause hearing and first enforcement hearing
  - identifying the civil process for enforcing fines, orders, and decisions of the Ethics Board
  - setting up and coordinating the Integrity Line, a 24/7 ethics and compliance hotline
5. Provided vigorous enforcement of the Ethics Code; investigated 36 ethics complaints, wrote 11 probable cause reports, negotiated nine settlement agreements, prosecuted one case before the Board, and collected \$10,432 in sanctions involving substantive violations of the Code of Ethics; brought enforcement actions in financial disclosure cases against 66 delinquent filers and collected \$7,925 in fines from violators; and issued 36 reprimands
6. Offered general guidance for ethical city operations; rendered and disseminated 30 formal advisory opinions and established citywide guidelines, policies, and forms related to:
  - holiday gift rule
  - gifts of travel to the City
  - solicitations of donations by city elected officials and employees
  - representation by city board members of private interests before city agencies
  - use of public property during political campaigns
  - outside employment
  - procurement evaluation panels
7. Gave timely advice on the Code of Ethics in 72 informal advisory letters, 357 emails and other written advice, and 413 telephone or personal conversations
8. Provided ethics training to 3,256 new employees and 1,587 current employees on how to recognize and avoid conflicts of interest in their work
9. Educated officials, employees, contractors, and the public on the city's ethical standards through the board's website, newsletter, and Integrity Matters program
10. Increased rate of persons timely filing their annual financial disclosure statement from 70 percent in 2002 to 92 percent in 2008 and decreased the rate of nonfilers from 25 percent in 2002 to less than one percent in 2008



# Ethics Training Is Essential

*The City has committed resources to ethics training for new employees, but the training needs to reach more employees and all volunteer city officials.*

## Education is a key step to encouraging ethical conduct.

The purpose of the Code of Ethics is to ensure that city officials and employees place the best interests of the City above their own and others' financial and personal interests. Ethics training is a key step in promoting ethical conduct<sup>3</sup> and a critical component to a comprehensive ethics and compliance program.<sup>4</sup> Using real-life case studies in training sessions, the Ethics Officer presents the relevant law, describes a scenario that raises an ethical question, leads a discussion in which participants discuss appropriate ways to resolve the question, and then explains how the issue was decided. The goal is to enable officials and employees to identify potential conflicts of interest, determine appropriate ways to avoid or resolve the conflict, and encourage them to seek advice in difficult situations.

Besides explaining the specific prohibitions in the code, the workshops seek to convey three general messages. First, the Code of Ethics is a minimum standard of conduct, and ethics sometimes demands that an individual do more than simply comply with the law; officials and employees should also seek to avoid the appearance of impropriety. For example, workshop participants are presented a question about an apartment lease (Vignette 1), which prompts a discussion of the two standards and what a department head should do in that situation. Second, when an individual is in doubt about the right thing to do, the safest course is to decline the offer, gift, or scheme. Third, ethics training does not provide all the answers. It is

<sup>3</sup>United States Sentencing Commission, 2008 Federal Sentencing Guidelines § 8B2.1.

<sup>4</sup>Ethics Resource Center, National Government Ethics Survey at 10 n.5.

designed to help individuals identify difficult situations and encourage them to seek advice before they act.

## Half of all city employees have received some ethics training.<sup>5</sup>

**One-third of the city's workforce has received training as new employees on conflicts of interest.**

The City has done an exemplary job of incorporating ethics training systematically into the orientation sessions for new employees. Through December 2008, the Ethics Officer has given the presentation, Don't Get Conflicted Out, on

### VIGNETTE 1 – TRAINING SCENARIO ON THE ETHICS CODE AND THE APPEARANCE OF IMPROPRIETY:

***The Apartment Lease*** A department commissioner wants to lease a condominium from a city contractor who does business with his department. Can he?

Source: Don't Get Conflicted Out

a monthly basis to more than 3,250 new employees, the equivalent of one-third of the city workforce.<sup>6</sup> Sponsored by the Department of Human Resources and the Department of Aviation, the session covers the conflict-of-interest provisions on outside employment, doing business with the City, contract participation, use of city property, confidential information, and post-employment. The story of the soliciting plumber (Vignette 2) is used to illustrate the improper use of confidential information. Because only one hour is allo-

<sup>5</sup>All numbers on ethics training cover the period from August 2003 through December 2008.

<sup>6</sup>The number of city employees is based on a report run in the Oracle database by the Office of City Auditor in August 2008.



## VIGNETTE 2 – TRAINING SCENARIO ON CONFIDENTIAL INFORMATION

*The Soliciting Plumber* A homeowner calls the City to report sewage back-up in his house and asks the City to come out and fix the problem. City workers check the pipes in the right-of-way and find no problem. They leave a note for the homeowner saying, “Problem not on city side. Problem on private property. Need to call a plumber.” That night the homeowner receives a telephone call. The caller says, “I understand you need a plumber.” The homeowner says, “Thanks, but I have already called my plumber, and he says he will be out tomorrow.”

The next day the homeowner receives a second call, “You still need a plumber?” the caller asks. The homeowner says, “Thanks, but I’ve already got someone coming out today.” He pauses, then asks, “By the way, how did you know I needed a plumber?” The caller responds: “Aww, you know how the boys at City Hall talk.”

Source: Don’t Get Conflicted Out

cated for ethics training for new employees, it does not cover the rules on gifts, solicitations, or financial disclosure.

### **Another 1,587 city employees have received some ethics training.**

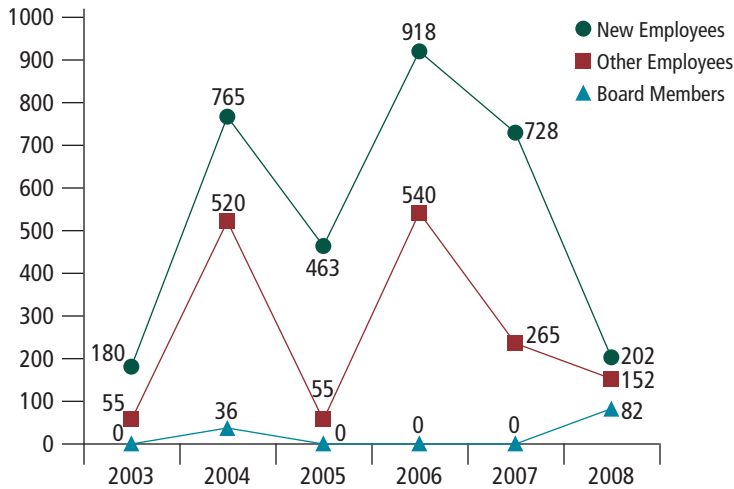
The Ethics Officer has conducted ethics training for an additional 1,587 employees in the past five years. Entitled There’s No Such Thing as a Free Lunch, these workshops typically build on the training given new employees by covering the entire Code of Ethics, including the gift rules. Historically, the training has been given at the request of a department head, human resources director, or office supervisor to employees who work together in the same department or office. This approach enables the workshops to be tailored to the typical conflict-of-interest situations that employees face on the job. The workshops are most effective when the head of the department or office supervisor attends the training, actively participates in the discussion, and reinforces the message that employees are expected to engage in ethical behavior.

### **Half of all city employees and two-thirds of volunteer city officials have received no ethics training.**

Despite these efforts, there are significant gaps in ethics training. City elected officials are the only persons required by law to receive ethics training; state law mandates that they receive training every four years after the quadrennial municipal elections. Because ethics training is voluntary for everyone else, half of all city employees have received no training on the Code of Ethics. A total of 4,843 city employees have attended an ethics presentation since October 2003, compared to 9,152 active city employees as of August 2008. Assuming every person who attended an ethics workshop since 2003 was still employed by the City, scarcely half of all employees would have received any ethics training during that period.

Moreover, the training by department is widely disparate. One example of a multi-layered effort to integrate ethics into ongoing training programs is the Department of Watershed Management, which sponsored ethics presentations at all-day training sessions for first-line supervisors in 2004

**EXHIBIT 1 – NUMBER OF PERSONS RECEIVING ETHICS TRAINING**



Source: Ethics Office Training Schedule, Aug. 2003 – Dec. 2008

Starting in 2008, the Ethics Office began offering two-hour, citywide ethics workshops that were open to any city employee and a comparable workshop for volunteer board members and NPU officers. Thirty-two board members and 70 city employees attended these workshops. Although the participants have been small in number, they have been positive in their evaluations: 58 percent rated the workshop as excellent and 35 percent rated it as good. Similarly, new employees have given ethics training consistently high marks. More than half of the 85 employees attending the workshops

and 2006, and separate workshops for the divisions of erosion control and sedimentation; fats, oil, and grease; and watershed compliance in the Bureau of Watershed. In contrast, four departments and two offices scheduled no separate ethics training other than for their new employees: the Departments of Aviation, Finance, Police, and Procurement and the Offices of the Solicitor and Public Defender. It was not until October 2008 that any employee on the staff of a city council member received any ethics training.

The percentage of city board members and neighborhood planning unit (NPU) officials who have received any ethics training is even lower than city employees. Although 390 city board members and NPU officers were required to file a financial disclosure statement in 2008, just 82 persons or 21 percent attended an ethics presentation; only 118 persons serving on a city board or as an NPU officer have attended any ethics presentation in the past five years. Most of the presentations have been less than 30 minutes and focus on a limited subject matter, such as financial disclosure.

during the first three months of 2008 gave the workshop the highest rating of 10, and 88 percent gave it a rating of eight or higher on a 10-point scale.

**All city officials and employees should be required to take ethics training.**

While classroom training for newly hired employees and citywide workshops are good starting points, they are insufficient to provide comprehensive, citywide ethics training. The experience over the past five years is that ethics training will never reach every active employee and board member as long as attendance is voluntary. Moreover, the ethical standards of conduct evolve as the City Council amends the code and the Board of Ethics interprets its provisions. Therefore, periodic, mandatory training is necessary to explain, reinforce, and refresh employees' and officials' knowledge about the city's ethical guidelines.

The City should enact a policy by executive order or legislation that requires mandatory ethics training for all city

## EXHIBIT 2 – ETHICS TRAINING BY DEPARTMENT\*

DEPARTMENT	WHO ATTENDED	NUMBER ATTENDING	YEAR
<b>Above 90%</b>			
Atlanta Development Authority	All staff	25	2005
City Auditor	All staff	10	2004
Human Resources	All staff	55	2004
Law	All staff**	60	2007
Municipal Court	Judges, All staff	103	2003, 2004, 2006
Planning	All staff,** Code compliance	210	2007, 2008
<b>From 50 - 89%</b>			
None			
<b>From 25 - 49%</b>			
Watershed Management	Supervisors, Inspectors	742	2004, 2006, 2007, 2008
<b>From 5 - 24%</b>			
City Council	City Council members	16	2006
Corrections	Supervisors	100	2004
Executive Offices	Mayor's office staff	61	2006
Information Technology	Senior managers	20	2004, 2008
<b>Less than 5%</b>			
Fire Rescue	Senior managers	25	2008
Parks & Recreation	Senior managers	15	2004
Public Works	Senior managers	30	2005
<b>None</b>			
Aviation		0	
Finance		0	
Police		0	
Procurement		0	
Public Defender		0	
Solicitor		0	

\* Excludes employees attending citywide workshops, new employees' training, and Integrity Matters presentations

\*\* Limited subject matter

Source: Ethics Office Training Schedule, Aug. 2003 – Dec. 2008

officials and employees. Given the Ethics Office's resources, a realistic goal is to require every employee to attend a

***"The long term goal is to create online courses to supplement the mandatory classroom course and to develop additional training programs that discuss values, such as honesty, fairness, transparency, accountability, and equal opportunity, which are behind the ethics rules."***

workshop on the Code of Ethics in the next three years, and for all new city employees, board members, and NPU presiding officers to attend a similar workshop within six

months of the date they are hired or take office. Ethics training for new employees needs to be expanded to two hours to enable coverage of the gift rules and thus fulfill the mandatory training requirement. The long-term goal is to create online courses to supplement the mandatory classroom course and to develop additional training programs that discuss values, such as honesty, fairness, transparency, accountability, and equal opportunity, which are behind the ethics rules.

Training does not prevent ethics violations. Training does, however, inform officials and employees on the basic conflict-of-interest rules and enable them to identify potential problems. Officials and employees should receive training to help them understand the standard of conduct expected of them. It is essential to changing the culture and ensuring that officials and employees act in the best interests of the City.

# Public Education Is a Priority

*The Board of Ethics also educates city officials, employees, contractors, and the public through its publications and website.*

During the past five years, the Board has consistently devoted its limited resources to educating the public about the code and values underlying it. A key component of this educational effort is the board's website, where employees and the general public can download the Code of Ethics, read the board's formal advisory opinions, file an ethics complaint, view a financial disclosure statement, and read board orders, reprimands, and settlement agreements

involving ethics violations. Originally launched in 2003 and updated at least monthly, the website is due for an overhaul in 2009 to enable easier public access and navigability. The website is located at <http://www.atlantaga.gov/government/boards/boardofethics.aspx>.

Because the City Code of Ethics is a set of laws that can be difficult to understand, the Ethics Office has sought to

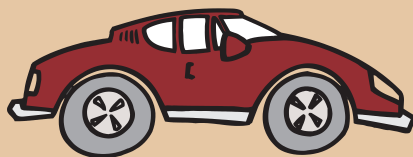
explain the standards to city officials and employees by various means and media. The Ethical Guidelines series provides a comprehensive review of the law's requirements and includes examples illustrating how each code provision applies in a specific factual situation. Vignette 3 provides a few of the examples used in the guidelines to explain permissible and impermissible uses of public property. There are now four versions of the Ethical Guidelines for employees, board members, elected officials, and NPU officers. The next publication will focus on city contractors, vendors, and other prohibited sources.

**The Mayor and City Council have helped inform volunteer city officials about their ethical responsibilities.**

Educating volunteer city officials about their ethical responsibilities has presented a challenge. To address this need, the Ethics Office worked with the Mayor's Office and City Council in 2004 to establish a standard process for informing appointed volunteers about the Code of Ethics, especially the annual filing requirement for financial disclosure statements. The Ethics Office also produced "Key Ethics Rules Every City Board Member Needs to Know," which the Office of Municipal Clerk has

## VIGNETTE 3 – EXAMPLES IN ETHICAL GUIDELINES SERIES ON USE OF PUBLIC PROPERTY

- An Atlanta Planning Advisory Board member may reserve a city facility for an NPU meeting on the same terms as other city agencies, but must pay the normal fee charged the general public when reserving the facility on behalf of a church group
- An employee has a second job as a sales representative for a cosmetic company. She may not use her city e-mail account or her city cell phone to announce new products, solicit orders from customers, or place orders with the company
- A department may not use city vehicles to escort union officials during an international convention



of trade unionists or loan the cars to employees for their use while their

personal vehicles are undergoing repair

Source: Ethical Guidelines for City Board Members and Ethical Guidelines for Employees

included in its notice about their appointment to new city board members. Twice a year, the Ethics Officer writes a letter to all newly appointed board members informing them about their duty to file a financial disclosure statement and encloses "Ethical Guidelines for City Board Members."

The Ethics Office began publishing an enewsletter, "Ethics Matters," in the fall of 2006 and distributing it to all individuals required to file a financial disclosure statement. Beginning with the summer 2008 issue, the quarterly newsletter has been sent citywide to all city employees who have a city email account. The newsletter reports on the board's advisory opinions and enforcement actions; announces other public decisions, filing deadlines, and upcoming workshops; and answers ethics questions in its "Ask the Ethics Officer" feature.

**The Integrity Matters program encourages employees to act with honesty.**

In 2006, the City initiated a public educational program called "Integrity Matters" to promote ethical behavior by city officials, employees, and contractors. The program encourages city officials and employees to act with honesty and integrity in their work and to speak up if they observe or suspect wrongdoing in city government. As part of the program, the City established a 24/7 ethics and compliance hotline, called the Integrity Line, where employees and the general public can call to report misconduct. Employees are encouraged to discuss work-related problems with

**VIGNETTE 4 – WHY INTEGRITY MATTERS**

A city employee who schedules events in City Hall was asked by her supervisor to reserve the atrium for the wedding of the supervisor's daughter. The supervisor instructed the



employee to waive the rental fee normally charged for private use of the atrium. The employee had two choices: She could follow her supervisor's instructions and waive the rental fee, an act that would be wrong and a violation of city policy; or she could disobey her supervisor and risk disciplinary action for insubordination. If you ever find yourself in a similar situation where you have two bad options and risk punishment no matter what you do, the Integrity Line is available for you to call.

Source: Don't Get Conflicted Out

their supervisors and coworkers, but are informed that the Integrity Line is available when the normal channels of communication fail to work. Vignette 4 explains to employees when they should call the Integrity Line.

# Advice Provides Guidance

*Ethics advice provides guidance on future conduct and helps prevent misconduct due to lack of knowledge.*

## The Ethics Office initially focused on its advisory role.

The Ethics Officer made a strategic decision during the initial two years to focus on the office's educational and advisory functions. This decision was made because the code was substantially revised in 2002, the ethics officer position was created in part to educate and advise employees, and it seemed fairer to give officials and employees the opportunity to learn about the new rules before being held accountable for them. As one commentator has explained, giving advice is the "most important responsibility" of an ethics board or commission; it helps "prevent unethical conduct

from occurring due to a lack of knowledge or understanding," and creates "a series of precedents to guide officials and employees in the future."<sup>7</sup>

The Board of Ethics renders its formal advisory opinions based on real or hypothetical situations when requested in writing by a city official or employee; the Ethics Officer also has authority to bring any inquiry involving a novel, recurring, or unsettled issue before the Board for its consideration. After the Board adopts a formal advisory opinion, it is disseminated to the Mayor, City Council, and department heads, and posted at the Board of Ethics' website

on the Advisory Opinions webpage. Formal advisory opinions generally involve questions of policy.

## VIGNETTE 5 – HOLIDAY GIFT RULE



The Code of Ethics prohibits city officials or employees from accepting personal gifts from persons doing business with the City or other prohibited sources. When city officials or employees receive a gift that is prohibited under the city's ethical standards, they should return the gift, pay for it, or donate it to charity without

taking any tax deduction. Gifts may be accepted on behalf of the agency when the following conditions apply:

- Gift is perishable
- Gift has a nominal market value
- Gift is shared with public visitors and other employees

Source: FAO2004-8, Holiday Gifts

## Board opinions have established citywide guidelines for ethical conduct.

Starting with the first formal advisory opinion on the waiver of rental fees, the Board of Ethics and Ethics Officer have sought to carry out three functions in giving advice: (1) resolve the individual case presented by the facts, (2) provide a safe harbor for persons relying on the advice, and (3) use formal advisory opinions to provide guidance on future conduct to other officials and employees in similar situations. The Board of Ethics has developed guidelines for ethical conduct through its formal advisory opinions in the following areas:

- holiday gift rule (Vignette 5)
- gifts of travel to the City

<sup>7</sup>Model Municipal Ethics Code, § 209 Advisory Opinions comment, cityethics.org, <http://www.cityethics.org/mc/full>.



## VIGNETTE 6 – DEFINING OFFICIAL CITY BUSINESS

A City Council member asked the Board to consider three actions by an elected city official in defining what constitutes official city business: (1) The Mayor or Council holds a press conference in the atrium; (2) The Mayor or Council hosts a reception at City Hall or any city facility; and (3) The Mayor or Council requests the use of the city-owned mobile stage for a community anti-drug rally. The Board concluded that whether a press conference, reception, or community rally is “official city business” depends on the purpose and nature of the event. A city official or employee needs to be present, but an official’s presence alone does not make the event city business. For the use of city property or expenditure of city funds to meet the standard of official business, the City must have approved the use in an ordinance, resolution, administrative order, executive order, or departmental policy, or the use must support a policy contained in an ordinance, resolution, or order.

### *Examples of official city business*

- A city official holds a press conference to announce the introduction of legislation
- A city department holds a reception to honor a retiring city employee
- The Mayor, Chair of the City Council’s Public Safety Committee, and Police Chief use the mobile stage to hold a rally as part of a citywide initiative against drugs

### *Examples that are not official city business*

- A city official holds a press conference to announce his candidacy for mayor
- A member of the City Council hosts a reception to raise money for a private school
- A neighborhood civic association uses the mobile stage to hold a community anti-drug rally

Source: FAO2004-1, What Constitutes Official City Business

- solicitations of donations for charities, employee prizes, and city programs
- representation of private interests before the City by city board members
- official city business
- use of public property during political campaigns

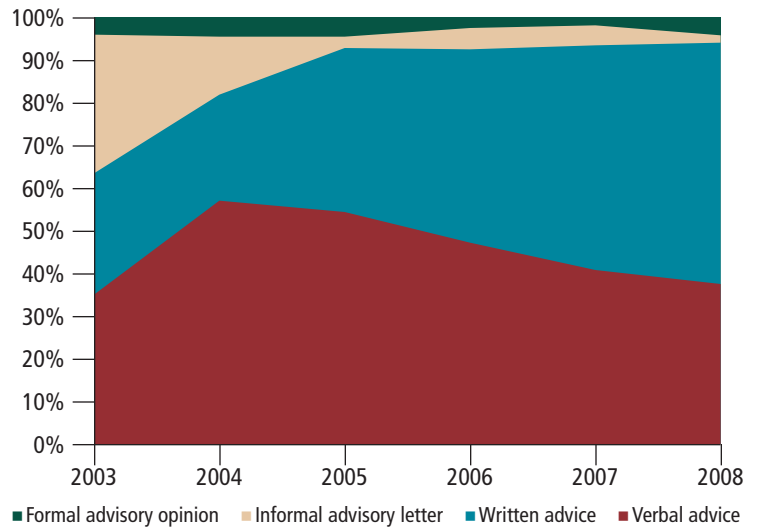
To assist officials and employees in understanding the opinions, the Board attempts to provide guidelines, standards, or concrete examples of permissible and impermissible actions.

The board’s action in defining “official city business” illustrates the important role it has played in helping to establish city policy. The board’s first opinion advised that city officials could not have rental fees waived for their own personal use of city property or for the use of any other private person or entity on terms not available to the general public. (See FAO2003-1.) The opinion noted two exceptions to the rule. A City Council member asked the Board to construe the second exception, which permits the use of city property when there is a “stated public policy” that city

officials or employees may use the property “in the conduct of official city business.” The city code does not define “official city business,” and research on city policies, practices, and procedures did not uncover any written definition of the term. In its advisory role, the Board adopted a definition of official city business, which has been used by departments in deciding when to charge or pay rent for use of city facilities, by city investigators in determining whether an employee has violated the code, and by the Office of City Auditor in conducting performance audits. Vignette 6 is an excerpt from the formal advisory opinion that defines the term and gives examples of when elected city officials are conducting city business.

Besides the formal advisory opinions by the Board, the Ethics Officer has the responsibility to advise all city officials and employees about the Code of Ethics. She may issue informal advisory letters or give advice by email, in a memorandum, over the telephone, or in person. Informal advisory letters generally involve more difficult and complex questions that the Board has not previously considered, and other written and verbal advice involves specific facts that apply solely to the individual seeking advice. In rendering advice, the aim is to be specific, practical, and understandable; when appropriate, the Ethics Officer will encourage officials and employees to do more than comply with the minimum standard required by law and attempt to avoid the appearance of impropriety.

**EXHIBIT 3 – ETHICS ADVICE BY TYPE AND YEAR**



Source: Ethics Office Advice, Aug. 2003 – Aug. 2008

In addition, the Ethics Office has worked with the Human Resources Policy Council to implement a consistent, citywide standard operating procedure for departments to review and approve outside employment requests. The Ethics Office has also worked with the Department of Procurement to develop a conflict-of-interest form for evaluators on procurement panels.

**Giving timely, consistent, and understandable advice has been a goal.**

In giving advice, the Ethics Office has sought to be timely, consistent, and helpful. Advice must be timely to provide answers before the official or employee acts, consistent to make the ethics law fair and predictable, and understandable so that the law can be followed.

**Ethics advice is given three times a week on average.**

The Board and Ethics Officer have given advice in 872 cases in the first five years of their operation, which averages to three opinions each week. More than half of the advice has

been in writing: The Board issued 30 formal advisory opinions, and the Ethics Officer issued 72 informal advisory letters and 357 emails, letters, and memoranda. In addition, the Ethics Officer has responded to 413 requests for verbal advice.

There has been a slight decrease in the total number of requests for advice each year since 2004, from a high of 191 requests in 2004 to 157 in 2007, based on a steady decline in verbal advice given. During the same period, the frequency of written advice has increased slightly. For the first time in 2007, the Ethics Office gave more advice by email (80) than by telephone or in person (64).

**One-third of all questions ask about conflicts of interest and gratuities.**

The most frequent subjects of ethics advice are conflicts of interest and gratuities – each at 16 percent; questions related to gift rules for food, travel, and tickets account for an additional 18 percent. Other top subjects for advice have

been outside employment (10%), use of city property (10%), and solicitations (7%).

Employees were 79 percent of the persons seeking advice, elected officials were eight percent, board members and NPU members were eight percent, and citizens were three percent. City Council members and staff seek advice more often than any other agency, with 132 inquiries. When adjusted by department size, the City Council, Office of City Auditor, and Department of Law have asked for advice most frequently, with at least one inquiry per employee or official over the past five years.

**More than half of all requests for advice are answered within one day and 80 percent within a week.**

The Ethics Office has successfully met its goal of giving timely advice in most cases. Of the 872 requests for advice, 56 percent are answered within one day, 80 percent within one week, and 93 percent within one month. Written advice

**EXHIBIT 4 – TOP 10 SUBJECTS OF ETHICS ADVICE**

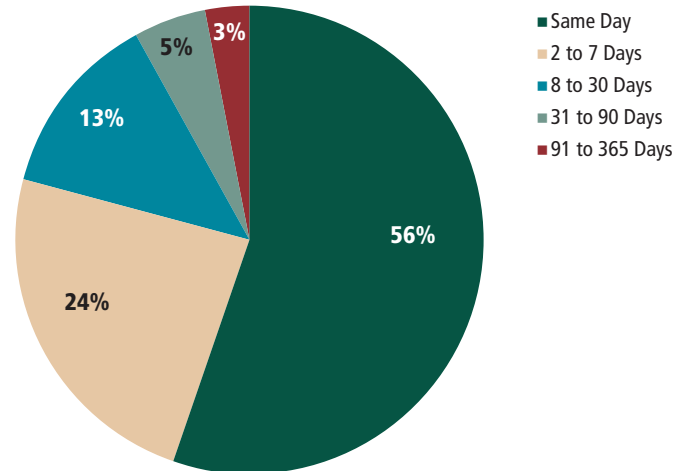


Source: Ethics Office Advice, Aug. 2003 – Aug. 2008

takes more time because the questions are more difficult and may require research and analysis. Nevertheless, a written answer is given within a day in 30 percent of all cases, within a week in 66 percent of the cases, and within a month in 87 percent of the cases. Of the 64 answers that took more than 30 days, 59 (92%) involved written advice.

An analysis of the role of the Board and Ethics Office in providing advice suggests several conclusions. First, the steady decline in inquiries answered by verbal advice suggests that education has helped employees gain a better understanding of the basic rules since verbal advice is generally used as the method to respond to routine inquiries. Second, the shift in written advice from informal advisory letters to emails is the probable result of several factors: an increase in city business conducted by email, the board's resolution of some unsettled issues through its opinions, and a pragmatic decision by the Ethics Officer to reserve informal advisory letters for novel, complex, or politically sensitive inquiries. Third, the volume of calls from the City Council probably results from

#### EXHIBIT 5 – RESPONSE TIME FOR ADVICE



Source: Ethics Office Advice, Aug. 2003 – Aug. 2008

a heightened concern by and scrutiny of elected officials to comply with the ethical standards and their need to file more financial disclosure forms. Attorneys in the Law Department frequently consult with the Ethics Office because they provide legal advice to the departments and boards, and there is an overlap between the Code of Ethics and similar provisions in the Charter and Code of Ordinances.

# Financial Disclosure Has Increased

*The Code of Ethics seeks to protect the integrity of government through requiring disclosure of financial assets and income of elected officials and certain employees.*

## **Improved filing rates show that cultural shifts are possible.**

An express purpose of the Code of Ethics is to “require disclosure of the assets and income of elected officials and certain employees so that the public may review actual and potential conflicts of interest.” It is important to involve the general public in this review to ensure officials and employees are not engaging in business, employment, contractual, or financial transactions that conflict with the city’s best interest.

One clear measure of the city’s improved ethical health has been the steady increase in filing rates. More officials and employees are filing their personal financial disclosure statements on time, and they have begun filing reports that disclose a conflict of interest, gifts received on behalf of the City, and travel paid by non-city sources. This change demonstrates that old habits can be discarded and cultural shifts made within city government through sufficient resources and steady, persistent, and unified efforts at enforcement.

## **The City has achieved a 98 percent or better annual filing rate since 2005.**

Historically, the filing of personal financial disclosure statements depended solely on an individual’s voluntary compliance. The City provided a form to required filers but made minimal efforts to encourage persons to return the completed form. In 2002, after the Code of Ethics was amended, three-fourths of all required filers voluntarily filed their financial disclosure statement; 88 percent of elected officials and employees and 51 percent of board members and NPU officers returned their completed statement. No effort was made to collect statements from persons who failed to file, and these filing percentages dropped in 2003.

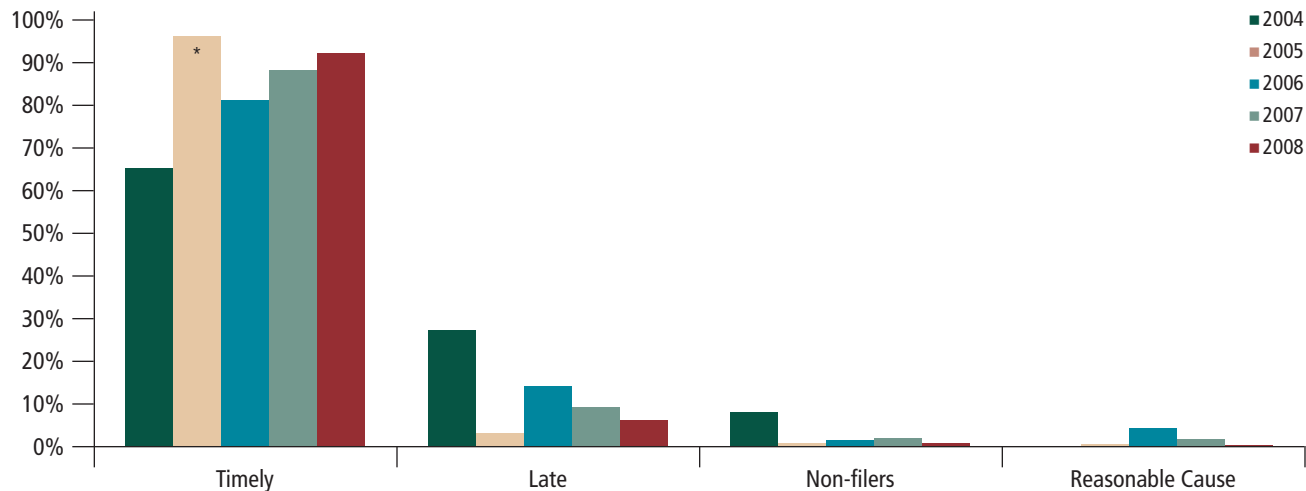
Beginning in 2004, the Board and Ethics Office have worked continuously, diligently, and systematically to improve compliance with the disclosure laws. In 2004, the City achieved an overall filing rate of 92 percent and a filing by every elected official and current employee required to file. Since 2005, when the filing deadline was extended two weeks to March 1, the City has achieved an overall annual filing rate of at least 98 percent every year; since 2006, there has been a steady increase in the percentage of timely filers and a decrease in the percentage of late filers. (See Exhibit 6.)

By 2007, the Board had adopted a process, incentives, and penalties that have resulted in most persons filing their completed statements on time. This process includes:

- a two-week grace period before late filing fees are imposed
- a warning notice to nonfilers prior to the end of the grace period
- a posting of the Roll of Delinquent Filers online each year
- a notice of delinquency
- the right to appeal any finding of delinquency

As part of this process, the Board delegated its fact-finding role to the Ethics Officer, who must issue an administrative decision in each delinquent filer case; the delinquent filer has the right to appeal the decision to the Board, which can reverse the administrative findings only if they are unreasonable, arbitrary, and capricious. This change means that the Board hears fewer cases, and hearings are generally limited to questions on the improper application of the law to the facts. Of the 29 delinquent filers in 2007, the Board held a hearing in six cases.

### EXHIBIT 6 – PERCENTAGE OF FILERS BY CATEGORY BY YEAR



\*Deadline for filing in 2005 extended for two weeks to March 1, 2005

Source: Ethics Office Financial Disclosure Reports, 2004 – 2008

In 2008, the rate of persons filing by the deadline improved to 92 percent, which was the total filing rate four years earlier when enforcement efforts began. The rate of those filing by the end of the grace period in 2008 reached 96 percent. The number of delinquent filers – persons who fail to file or file late and fail to pay the late filing penalty – was reduced to 11, and nine of those cases were resolved through the administrative process. The Board referred two violators to the Office of the City Solicitor to prosecute them for their failure to file.

The steady increase in filing rates is evidenced by comparing employees’ filing rates in 2004 and 2008. In 2004, just four departments had at least 90 percent of their employees filing by the deadline; by 2008, only one department had less than 90 percent of its employees filing on time.

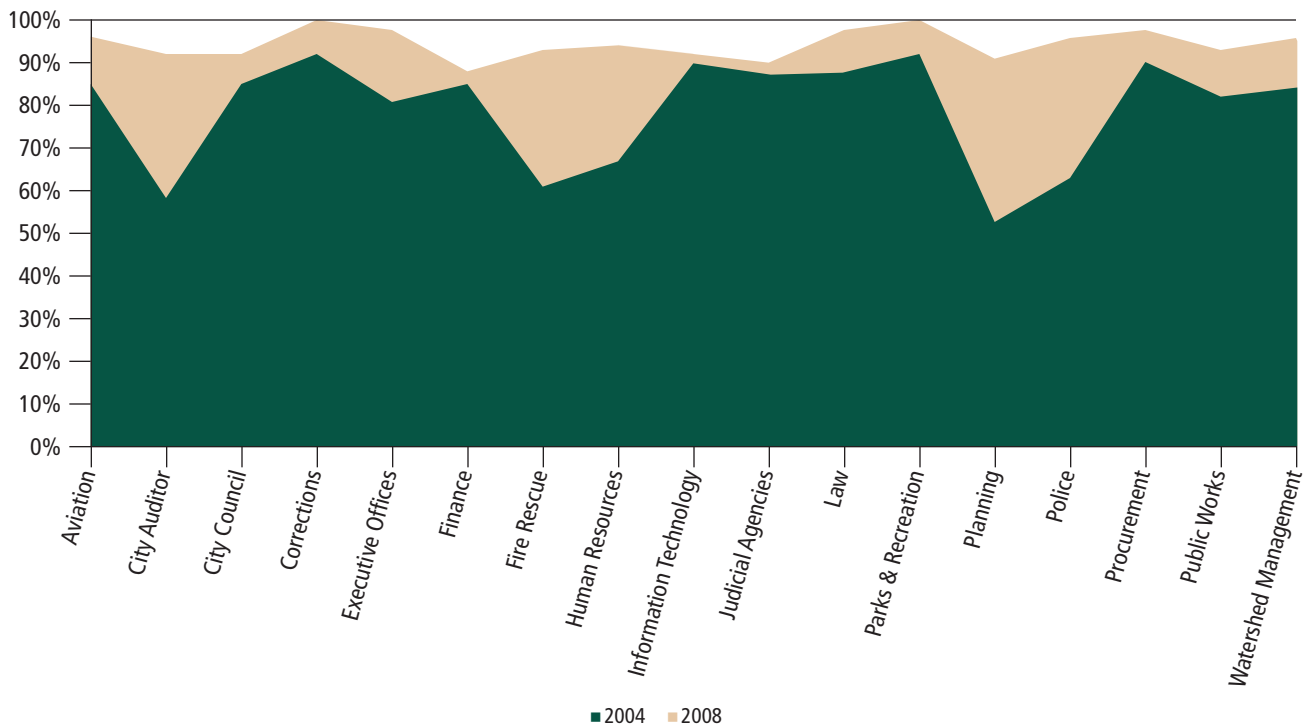
Several factors have probably contributed to increased compliance with the financial disclosure laws: more education on who is required to file and why; multiple notices

reminding filers of deadlines; increased engagement in the process by departments, boards, NPUs, and their staff; recognition of departments and boards with exemplary filing records; adoption of a standard enforcement process for delinquent filers; imposition of fines and other penalties to motivate individuals to file; cooperation by the executive branch in implementing the board’s recommended penalties; and identification of a judicial process for prosecuting violators who fail to comply with the board’s orders.

#### The Electronic Disclosure System enables review of actual and potential conflicts of interest.

The Board of Ethics established the web-based Electronic Filing System in 2005 to provide for real-time access to city financial disclosure statements and, in conjunction with the Office of Municipal Clerk, the campaign finance reports filed in 2005 during the last municipal election. The system now contains the four disclosure forms required by city law: all city financial disclosure statements filed since 2005, reports on gifts to the City, privately-financed travel, and disqualifications based on a conflict of interest.

### EXHIBIT 7 – PERCENTAGE OF TIMELY FILERS BY DEPARTMENT



Source: Ethics Office Financial Disclosure Reports, 2004 and 2008

Each year, the Ethics Office has improved the system. This year the Ethics Office launched an updated version, the Electronic Disclosure System, which will increase public access to the information disclosed on the city forms. The public will be able to view the actual reports filed and search the database of the personal financial disclosure statements and reports on gifts, travel, and conflicts of interest.

The system plays an important role in providing openness and transparency in city government. Citizens no longer have to travel to City Hall to review a disclosure statement. Instead, they can remain at home or go to any public library to review when City Council members recuse themselves due to a financial interest, when an entity other than the City pays the travel expenses of a city official and

employee, and when elected officials and departments accept gifts on behalf of the City. In the past, these gifts may have been publicly reported when the City Council passed a resolution accepting the gift. Now the Electronic Disclosure System compiles the information in one place and will be able to give a quick summary of the cash and in-kind contributions that businesses and individuals make each year to the City. The Electronic Disclosure System is located at: <http://web.atlantaga.gov/efile/>.

#### **The City should support efforts to establish a state electronic disclosure system for all local campaign finance reports.**

Unfortunately, one important disclosure report – campaign contribution disclosure reports – is not part of the revised Ethics Disclosure System. Unlike many local ethics commis-

## VIGNETTE 7 – SEARCHING FOR DISCLOSURE

2004: A citizen wants to review the financial disclosure statements that the Mayor has filed every year while in office. The citizen travels downtown to City Hall, making certain that she arrives during the city’s regular office hours. She finds and pays for parking, locates the Office of Municipal Clerk, and asks to see all the city financial disclosure statements that the Mayor has filed in 2002, 2003, and 2004. She is asked to wait while the staff pulls the reports. After a while, she is brought the statements and reviews them. She asks for a copy of the three reports and waits while the copies are made. Returning home, she notes that the trip took three hours.

2009: Five years later, a citizen decides one evening that he wants to review the financial disclosure statement of the Mayor. He goes online to <http://web.atlantaga.gov/efile>, clicks on the Public Search page, types in the name “Franklin,” and brings up the Mayor’s 2009 City Financial Disclosure Statement. He looks at the report for the Mayor’s sources of income, property, and other answers and prints out a copy. He notes a list of Gift to the City Reports filed by the Mayor since 2002 and clicks on one, viewing the gifts that the Mayor accepted on behalf of the City that year. He then decides he wants to review the 2008 statements of City Council members. Using an advanced search feature, he pulls up reports showing at a glance that 11 have other sources of employment income, one has other business income, two work for companies that do business with the City, three own stock, and three have family members working for the City. After an hour, he decides to quit for the night.

sions in the country, the Atlanta Board of Ethics has no responsibility for campaign finance reports. State law governs all filings of campaign contribution disclosure reports at the state and local level. Under the Ethics in Government Act, the Office of Municipal Clerk is the filing officer for the City of Atlanta municipal elections, and the State Ethics Commission is responsible for designing forms, providing training, interpreting the law, investigating complaints, and punishing violators.<sup>8</sup> Although state law mandates the electronic filing of all reports by candidates for local office who raise a minimum of \$10,000 in an election cycle,<sup>9</sup> the State has not established an electronic filing system for local candidates or provided funds to local

<sup>8</sup>See OCGA §§ 21-5-34, 21-5-7 (2008).

<sup>9</sup>See OCGA § 21-5-34.1.

governments to create their own systems. In 2005, the City implemented an electronic filing and disclosure system for the campaign finance reports filed in connection with the last municipal elections, but the system has not been used for that purpose since the Georgia General Assembly revised the campaign finance law in 2006.

Because 2009 is an election year, the City needs to guarantee that the campaign finance reports of candidates for municipal office are available online for the public to review. To be informed, voters need to know the role that money plays in elections – who is making campaign contributions and how the candidates are spending the money they raise. A statewide system is the most efficient and effective



way to enact a comprehensive public disclosure system for campaign finance reports in local races. The State Ethics Commission already has a nationally recognized electronic disclosure system for campaign finance reports filed by candidates for state elective offices, and for the past two years has supported a bill that would require candidates in local races who raise more than \$5,000 to file their campaign contribution disclosure reports with the commission.<sup>10</sup> The commission is the most logical body to assume this responsibility since it develops the forms to conform to any changes in the law and is responsible for enforcing compliance with the filing requirements.

Giving this authority to the State Ethics Commission would provide a comprehensive web-based disclosure system that would enable the public to view a copy of the actual reports filed by candidates and search the database by key criteria, such as the name of contributors. The City of Atlanta should continue to actively support legislative efforts to establish

a single, statewide electronic filing system for all candidates for election to local offices. Until the State Ethics Commission implements an electronic filing system for local campaigns, the City needs to make available online all of the campaign finance reports of candidates for the offices of

***“To be informed, voters need to know the role that money plays in elections – who is making campaign contributions and how the candidates are spending the money they raise.”***

Mayor and City Council in 2009. Toward that end, the Ethics Office intends to post online a copy of the campaign finance reports that candidates file with the Office of Municipal Clerk during this election year.

<sup>10</sup>See Georgia Senate Bill 243, [http://www.legis.ga.gov/legis/2007\\_08/search/sb243.htm](http://www.legis.ga.gov/legis/2007_08/search/sb243.htm).

# Accountability through Enforcement

*The goal of enforcement is to fairly decide the individual case, punish persons who violate the Ethics Code, and deter others from engaging in similar misconduct.*

Of the core functions of the Board of Ethics – training, advice, financial disclosure, and enforcement – the enforcement program was the last established. With limited resources, the Ethics Officer purposely devoted her efforts initially to education as the most efficient use of board members' and staff time. This focus gave city officials and employees the opportunity to learn about the standards of conduct before ethics complaints were filed. This transitional period also enabled the Board to use the advisory opinion process to address some long-standing, widespread practices in city government that violated the code, giving notice of the changes required by law without singling out any individual for punishment.

## **Training and advice are not enough to bring the City into compliance.**

Training and advising employees are important functions in a comprehensive ethics program, but they alone are insufficient to gain compliance with ethical standards. This fact was illustrated by the response to the board's first formal advisory opinion. In 2003, the Board advised that the City could not waive rental fees for the personal use of city property. The opinion was circulated to all elected officials and department heads and posted on the board's website. Two years later, the report on the status of ethics in the City, "Ethics Is Everybody's Business," concluded that the opinion had caused the City to stop its practice of "providing city facilities to individual citizens or groups without charge when the reservation was made by or through a City Council member or staff." The report's conclusion was incorrect.

The rental-fee waiver cases illustrate that ethics opinions, however sound in their advice, must be supported with vigorous enforcement. As a result of the board's advice, the Department of Parks, Recreation and Cultural Affairs stopped its practice of waiving rental fees based solely on the request of an elected City Council member or staff; the Office of General Services did not. It took an anonymous complaint, law department investigation, public exposure of the wrongdoing, and a management change for the City to finally comply with the basic premise of the earliest ethics opinion: No one is entitled to use public property on special terms based solely on who they are or who they know.

## **The first enforcement actions involved financial disclosure laws.**

Faced with widespread disregard of the financial disclosure filing requirements in 2004, the Board of Ethics, by necessity, began seeking compliance with financial disclosure laws as the first effort to enforce the Ethics Code. Just 65 percent of all required filers met the deadline for filing their annual financial disclosure statement in 2004, and 421 persons, one-third of all required filers, still had not filed statements three months later. In May, after the hiring of a second employee, the Ethics Office began the laborious process of getting city officials and employees to file their financial disclosure statement. By October, the City had achieved an overall filing rate of 92 percent, and every elected city official and current employee had filed the 2004 Financial Disclosure Statement. At hearings in November 2004, the Board found three current board members had violated the financial disclosure laws and imposed the maximum fine of \$500.

## VIGNETTE 8 – NO WAIVER OF RENTAL FEES

By 2003, a practice had developed in which the City waived rental fees normally charged to the public for use of city facilities for a private event based on the request of a City Council member or city employee. City Council members reserved the City Hall Atrium and Historic City Council Chambers for weddings, receptions, and other private parties; they reserved park pavilions, recreation centers, and the city's portable stage for a variety of other events, including church picnics, Easter Egg hunts, and neighborhood festivals. When the Commissioner of Parks, Recreation and Cultural Affairs asked about the department's ability to waive a fee, the Board of Ethics advised that city officials and employees were not entitled to the waiver of rental fees for their own personal use of public property or for the use by other private entities on terms not available to the general public. In 2005, a report on the ethical health of the City erroneously stated that the board's first advisory opinion had caused the City to stop its practice of waiving rental fees at the request of City Council members. At that time, the Ethics Office had not been informed by the Law Department that it was investigating allegations on the improper waiver of fees. In 2006, the Law Department released its investigative report finding that the Office of General Services had reduced or waived fees for at least 10 weddings and private receptions in City Hall between October 2003 and October 2005, causing the City to lose \$6,850 in rental fees. An ethics complaint was filed against two City Council members and three employees, citing the report. Two cases have settled, two were dismissed, and one is pending.

Sources: FAO2003-1, No Waiver of Rental Fees; "Ethics Is Everybody's Business"; Law Department Investigative Report CI2005-0018

Over the past five years, the Board has struggled with the best way to enforce the financial disclosure laws. An especially troublesome issue, not unique to Atlanta, has been meting out an appropriate penalty for volunteer city officials who fail to file any statement. In its enforcement efforts, the Board has tried imposing the maximum fine on a few key volunteer officials (2004), fining current employees and issuing private reprimands to other violators (2005), imposing a fine on any employee who did not meet the filing deadline (2006), and recommending removal from office of each nonfiling volunteer (2006).

Beginning in 2007, the Board settled on a comprehensive range of penalties to encourage persons to file and to punish those who do not. The Board now imposes fines on persons who fail to file by the end of the two-week grace period, issues private or public reprimands, recommends that departments include financial disclosure violations in performance reviews of employees, recommends that appointing authorities remove nonfiling city board members and NPU officers from office, and recommends that the City not rehire or reappoint delinquent filers for one year and until they comply with the disclosure laws. At a contested hearing in 2008, the Board rejected a former employee's appeal that he should not be required to file because he was a private citizen and his \$100 fine was excessive.

Since 2004, the Board has collected \$7,925 in fines and late filing fees, issued 13 public reprimands and

## EXHIBIT 8 – FINANCIAL DISCLOSURE ENFORCEMENT CASES

FILING YEAR	NUMBER CASES	BOARD HEARINGS	FINES & LATE FEES	BOARD REPRIMANDS	CASES REFERRED TO SOLICITOR	CASES PROSECUTED
2004	3	3	\$1,000	0	0	0
2005	7	7	\$725	23	0	0
2006	16	5	\$3,300	3	0	0
2007	29	6	\$1,450	6	6	0
2008	11	6	\$1,450	4	2	0
<b>Total</b>	<b>66</b>	<b>27</b>	<b>\$7,925</b>	<b>36</b>	<b>8</b>	<b>0</b>

Source: Ethics Office Financial Disclosure Cases, 2004 – 2008

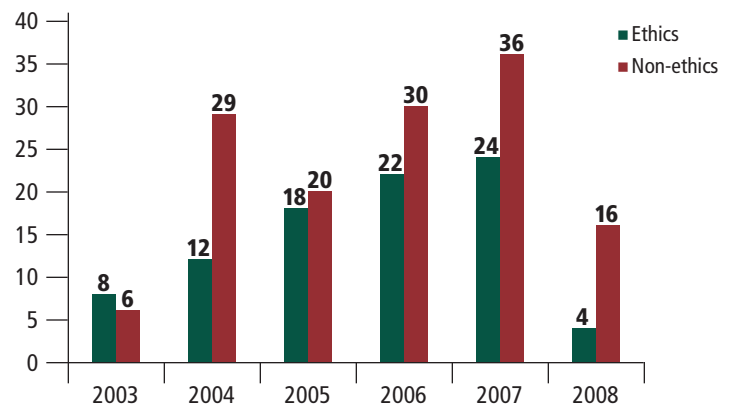
23 private reprimands, and referred eight financial disclosure cases to the Office of the Solicitor. To date, no person has been tried in Municipal Court for an ethics violation.

### Enforcement of other ethics provisions began in earnest in 2006.

The Ethics Office's enforcement of the Code of Ethics expanded beyond the financial disclosure laws in 2006. That year the City established the Integrity Line, a telephone hotline to report unethical, fraudulent, or illegal acts by City of Atlanta officials, employees, and contractors.<sup>11</sup> Next, the Ethics Office hired a third employee to investigate ethics complaints and monitor the handling of hotline calls. Then the Ethics Officer initiated the first major ethics complaint, alleging that a City Council member used his city office to receive city services without paying for them. Eighteen months later, the Board had established a framework for a comprehensive ethics enforcement program and

conducted the first probable cause hearing, approved the first settlement agreement, held the first enforcement hearing, and fined the first person for a substantive ethics violation. In that ethics case, a senior planner had violated the city's one-year "cooling off" period by appearing before his former department representing developers on applications that he had reviewed while with the City. (See Vignette 9.) All agreements and orders in closed ethics cases are posted online on the Enforcement webpage.

## EXHIBIT 9 – NUMBER OF COMPLAINTS BY YEAR



Source: Ethics Office Complaints, Aug. 2003 – Aug. 2008

<sup>11</sup>Integrity Line Steering Committee, Integrity Matters: A Report on the First Year of the Integrity Line, City of Atlanta, [http://www.atlantaga.gov/client\\_resources/government/boards/board\\_of\\_ethics/integrity\\_line\\_report\\_2006-2007\\_082007.pdf](http://www.atlantaga.gov/client_resources/government/boards/board_of_ethics/integrity_line_report_2006-2007_082007.pdf).

## VIGNETTE 9 – THE SENIOR PLANNER

Kevin Holloway worked for the Department of Planning and Community Development as a senior planner. His job was to receive applications for subdivisions, determine whether the application complied with city law, and recommend whether the City should approve the application. Mr. Holloway processed a subdivision application for 1812 Lakewood Avenue in October 2005 and another application in connection with 2500 and 2506 Perkerson Road in November 2005, writing a letter to the owner of the latter property listing the items that needed to be addressed on the final plat. Mr. Holloway left city employment in November 2006. Less than six months later, he submitted a final plat for approval to his former department on behalf of the Lakewood Avenue and Perkerson Road property owners. The Planning Department notified the Ethics Office, and an ethics complaint was brought against Mr. Holloway for violating the city's one-year cooling-off period. The Board found at a hearing that Mr. Holloway violated the Code of Ethics by representing the two property owners associated with the subdivision applications within a year of leaving city employment. The Board ordered him to pay \$1,000 for each violation, the maximum fine allowed.

Source: Ethics Case CO-07-018



### **Eighty-eight complaints have alleged ethics violations.**

The Ethics Office has received 225 complaints in its first five years of operations. Only 88 (39%) of the complaints alleged a violation of the Ethics Code. The number of ethics complaints has steadily increased each year, from eight in 2003 to 24 in 2007, although there was a drop in 2008, with four complaints filed through August.

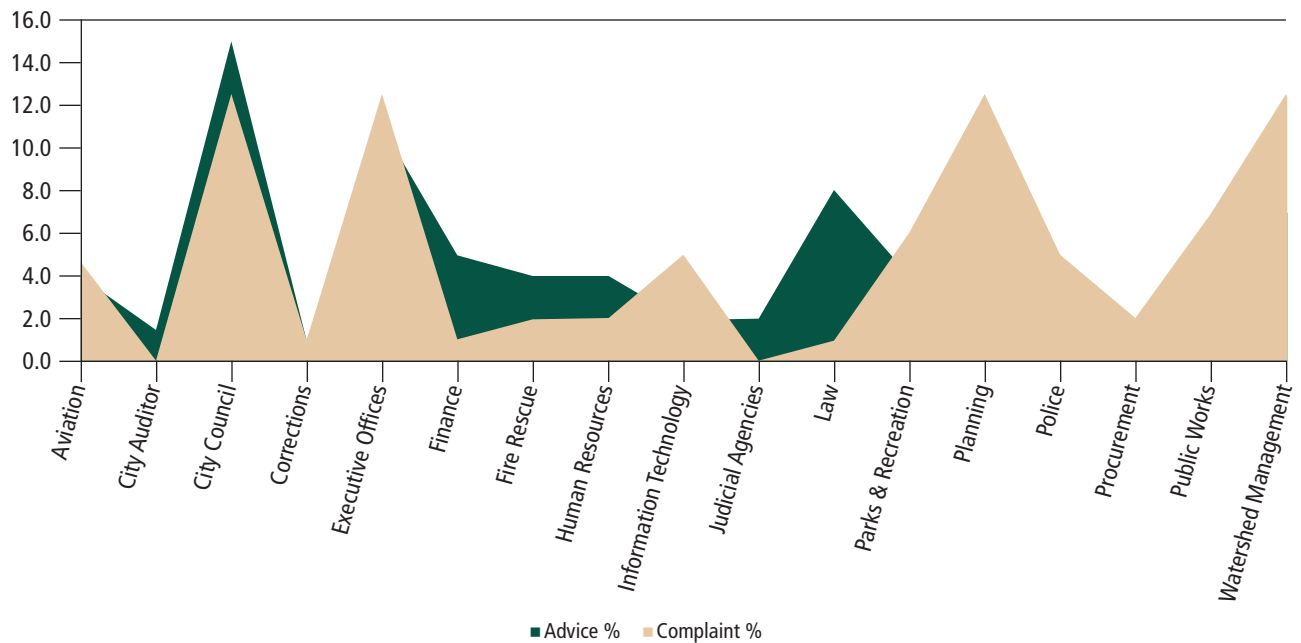
Misuse of city property is the subject of nearly half of all ethics complaints (42 of 88). The other top subjects allege a conflict of interest (11), a violation of the provisions on gratuities (10), solicitations (6), and post-employment (5).

Employees are the subject of 67 percent of the ethics complaints (59 of 88), with elected officials charged in 16 complaints; five complaints were brought against board

members or NPU officers, and one complaint was filed against a city contractor. Seven complaints challenged policies and did not identify any specific city official or employee.

Four departments were the subject of 11 complaints each: City Council, Executive Offices, Planning and Community Development, and Watershed Management. When adjusted by department size, the City Council had the most ethics complaints – 10.7 for every 100 employees and officials. The next highest rates of complaints were filed against employees in the Departments of Information Technology (4.8), Planning (4.7) and Procurement (4.7), all relatively small departments. Exhibit 10 compares the percentage of requests for advice by employees to the percentage of complaints filed against employees by department. It shows

### EXHIBIT 10 – COMPARISON OF ADVICE AND COMPLAINTS BY DEPARTMENT



Source: Ethics Office Advice and Complaints, Aug. 2003 – Aug. 2008

just seven offices or departments sought advice at a rate higher than the percentage of complaints filed against them: City Auditor, City Council, Finance, Fire Rescue, Human Resources, Judicial Agencies, and Law.

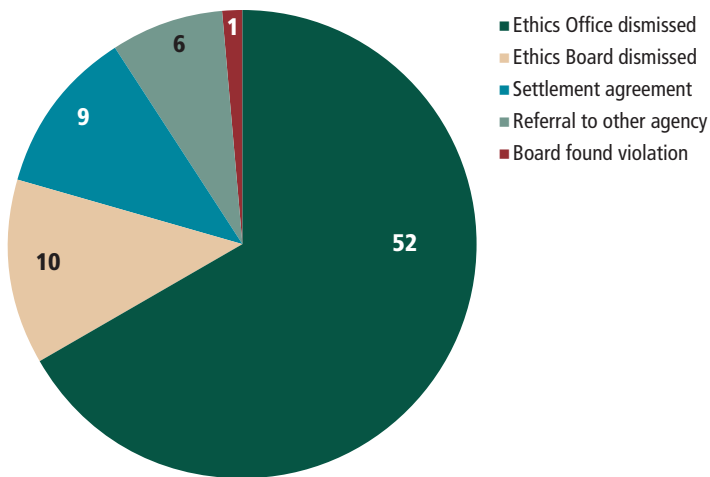
#### Ethics violations were found in 15 cases.

The Board of Ethics or Ethics Office found ethics violations in 17 percent (15 of 88) of the ethics cases; they dismissed 63 complaints for lack of evidence or probable cause, and 10 cases remained open in August 2008. Of the 78 closed cases, the Board of Ethics considered 20. It found an ethics violation in one case, approved settlement agreements in nine cases, and dismissed complaints in 10 cases for lack of probable cause. The Ethics Officer resolved 58 cases, dismissing 52 complaints, referring five cases to departments for disciplinary action, and referring one possible criminal violation to another jurisdiction.

The Code of Ethics gives the Board authority to assess a fine up to \$1,000 per violation, issue a public reprimand, seek recovery of any gratuity, recommend disciplinary action, and recommend suspension or disqualification of a contractor. In the 15 cases where ethics violations were found, a fine was imposed in four cases, an illegal gratuity recovered in two cases, written reprimands given in three cases, employees suspended in two cases, and other action taken in five cases, including mandatory ethics training and a cease and desist order.<sup>12</sup> (See Appendix 3.) The source of these 15 cases is equally varied: law department investigations prompted complaints in six cases, including two that were the subject of a report by the Office of City Auditor; departments referred three cases and individuals filed complaints in another three; the Ethics Office initiated two complaints; and the Integrity Line was the source of one case. The Ethics

<sup>12</sup>In one case, there was both a written reprimand and repayment of an illegal gratuity.

**EXHIBIT 11 – FINAL OUTCOME  
CLOSED ETHICS COMPLAINTS**



Source: Ethics Office Closed Ethics Cases, Aug. 2003 – Aug. 2008

**The City needs to enact a civil remedy for enforcing board orders and collecting fines.**

To ensure adequate enforcement, there are three pieces of the enforcement process that need to be addressed. First, the City lacks an effective civil remedy for enforcing board orders and collecting fines. Although the Code of Ordinances provides a criminal process for prosecuting violators of the board’s orders, the Office of the Solicitor has not prosecuted any case that has been referred to it by the Ethics Office. Second, the City has not yet reached a consensus on the appropriate penalty for

Office has collected \$10,432 in fines or recovered gratuities and referred one case involving an unpaid fine to the city solicitor for prosecution.

**Non-ethics complaints deal with personnel or customer service matters or other governments.**

The Ethics Office has received 137 complaints that did not allege any violation of the Code of Ethics. Half of those complaints dealt with three issues: personnel issues (33), customer service (24), and use of city property (12); one-third of the complaints did not involve the City of Atlanta. The Ethics Office dismissed 80 (58%) complaints, provided general information to 29 (21%) of the complainants, referred 20 (15%) persons to another office or jurisdiction, and conducted a preliminary investigation in eight (6%) of the cases.

citizens who serve as volunteers and fail to file a financial disclosure statement. To date, the Board of Ethics has relied on resignations, reprimands, and fines; a more appropriate remedy is automatic removal from office. Under this scheme, volunteer city officials found delinquent would be given a brief time to comply with the filing requirement or face automatic removal from office for violation of their duties as required by law. Finally, a question remains whether former employees and board members should be required to file financial disclosure statements after they leave the City, given the disproportionate amount of city resources spent in locating them, convincing them to file, and collecting fines for their violations. There are 12 cases in which a violator has failed to pay a fine imposed by the Board; all these cases involve former employees and board members.

# Ethics Is a Big Deal

## *Code amendments have strengthened disclosure requirements and conflict-of-interest rules.*

Since the Standards of Conduct were overhauled in 2002, there have been two efforts to further amend the code, both in 2006. As part of a project to reconcile provisions in the Charter and Code of Ordinances, the City Council strengthened disclosure requirements. The amendments expanded the definition of “immediate family,” set out procedures for disclosing conflicts of interest, and required public disclosure

### **ETHICS IS A BIG DEAL**

*“Ethics is a big deal. . . . [I]t is the only deal. . . . We cannot accomplish anything, not economic development, not clean water or better sewers if we lose the public trust.”*

MAYOR SHIRLEY FRANKLIN

of these conflicts through online forms that are immediately accessible to the public. The definition of immediate family was changed from spouse, registered domestic partner, and dependent child to mean “spouse, domestic partner registered under section 94-133, mother, father, sister, brother, and natural or adopted children of an official or employee.” (See 06-O-1368 [codified at § 2-801].)

In regard to conflicts of interest, the Code of Ethics was amended to:

- Prohibit city officials and employees from participating in contracts in which they know or with reasonable investiga-

tion should know that their spouse, registered domestic partner, parents, children, or siblings have a financial interest or personal interest. This prohibition precludes any city official or employee, including City Council members, from voting or participating in any decision related to a contract involving a spouse, domestic partner, parent, sibling, child, or the spouse of a parent, sibling, or child. (See § 2-812.)

- Require persons who must file a city financial disclosure statement to disclose when one of these family members is employed by the City or engaged in a “beneficial transaction” with the City. This change provides a way for the public to determine whether the rule against nepotism in the City Charter and the Civil Service Code is being followed by the elected officials and city employees who are required to file financial disclosure statements.

In that same year, the City Council passed an ordinance (06-O-0980) that would have allowed gifts of meals up to \$75 and gifts of tickets up to \$100 with no disclosure and no limits on the number of gifts. The Ethics Officer testified against the legislation, the Board of Ethics passed a resolution opposing the legislation, and the local newspaper expressed strong editorial criticism of the proposed law. Mayor Shirley Franklin vetoed the legislation, stating: “Ethics is a big deal. . . . [I]t is the only deal. . . . We cannot accomplish anything, not economic development, not clean water or better sewers if we lose the public trust.”<sup>13</sup> The City Council sustained the veto without objection.

<sup>13</sup>Mayor Shirley Franklin Vetoes Council’s Ethics Legislation, City of Atlanta, [http://www.atlantaga.gov/media/nr\\_ethicsveto\\_051806.aspx](http://www.atlantaga.gov/media/nr_ethicsveto_051806.aspx).



# Recommendations for Change

In the past five years, the City of Atlanta has established a robust ethics program that provides education, advice, and enforcement. It has set up regular training for new and current employees, established a library of 30 opinions interpreting the code, and set up the elements for a strong enforcement program.

The goal of the Ethics Board and Office for the next five years is to build on these efforts to create a comprehensive ethics program in which city operations are conducted in an ethical manner. To create a vibrant, comprehensive ethics program, training will need to focus on values as well as rules and reach more people, use more creative media, and encourage officials and employees to avoid the appearance of impropriety. A second version of the Electronic Disclosure System will enable the public to view statements on file and search the database of all filings, and audits will be conducted on the financial interests and assets disclosed. The focus on enforcement will be to initiate investigations when necessary, rather than waiting for a complaint to be filed, and to complete the majority of cases within six months. Amendments will be made to the code as needed to strengthen the law.

To achieve these goals, changes are needed in city policies, practices, and laws. Specifically, the Ethics Officer recommends that the following actions be taken:

## Recommendations

### 1. Ethics training should be mandatory.

The City needs to enact a mandatory training policy, either by legislation or an administrative order, requiring every city employee to attend an ethics workshop within three years,

and requiring new city employees and board members to attend a workshop within six months of their appointment. The Department of Human Resources needs to increase the time allotted for ethics training for new employees to two hours to enable more robust discussion of both gift and conflict-of-interest rules.

### 2. Every employee should agree in writing to abide by the city's ethical standards.

The City needs to give notice of the city's ethics and conflict-of-interest policy to every city employee during the hiring process and require each employee to sign a statement agreeing to abide by the city's ethical standards. Similarly, the City needs to inform every departing employee during the exit process about the city's post-employment rule and require each employee to sign a statement agreeing to abide by the city's one-year cooling off period and, when applicable, financial disclosure requirements. The City should initiate a citywide canvas by July 1, 2009 to ensure that every city employee is notified of and agrees to abide by the city's ethics and conflict-of-interest policy.

### 3. Departments should incorporate ethical considerations into their operational decisions.

Every city agency needs to institute standard operating procedures that include the following:

- annually request and review outside employment forms for conflicts of interest
- make evaluation of ethical behavior a part of its performance appraisals of employees
- report to the Ethics Office any departmental investigations and disciplinary action that involves allegations of violations of the Code of Ethics

#### **4. The City should review, revise, and establish conflict-of-interest policies and procedures.**

Every city agency should evaluate its policies and procedures in 2009 to ensure compliance with the conflict-of-interest provisions in the Charter and Code of Ordinances. In addition, each office, board, and NPU should consider adopting additional conflict-of-interest policies that, while not required by law, ensure both the appearance and the reality that officials' and employees' independence of judgment in the performance of their official duties is not impaired.

#### **5. The City should strengthen its ethics enforcement laws.**

The Code of Ethics should be amended to provide civil remedies for enforcing the decisions made by the Board of Ethics after a full and fair hearing. Specifically, the law should be revised to provide:

- Collection of fines imposed by the Board of Ethics in a civil action

- Automatic removal of any city board member who fails to file an annual financial disclosure statement as required by law
- The requirement that any candidate for a position on a city board or as a NPU officer be in full compliance with all financial disclosure laws as a precondition to his or her appointment or election

In the midst of a budget crisis, committing limited resources to ethics may be seen as a luxury that the City cannot afford. The failure to follow the city's ethical standards, however, can prove costly in terms of money, reputation, and goodwill. With sufficient resources and political will, the City can continue to improve its culture, making employees and officials accountable for the way they conduct city business and infusing ethical considerations in the operational decisions of the City.

## Current Members of the Board of Ethics

**John Lewis, Jr.**, the chair of the Board, is Senior Managing Litigation Counsel for The Coca-Cola Company in its global legal center. Prior to joining Coca-Cola, Mr. Lewis worked for several years in private practice in Atlanta, Kansas City, and Washington, D.C., and served as a court-appointed bankruptcy trustee and state bar disciplinary hearing officer. In addition to the Ethics Board, Mr. Lewis currently serves as Vice Chair of The Coca-Cola Company Family Federal Credit Union Board. He earned his Bachelor of Arts degree in economics at Morehouse College and his law degree at The George Washington University National Law Center. The Gate City Bar Association nominated Mr. Lewis.

**Carol Snype Crawford** is a community volunteer. Her volunteer service has included the United Way Board of Directors, Chair of the Legislative Black Caucus Advisory Board, and Advocacy Team Leader for the North Georgia Conference of the United Methodist Church, and she is an alumna of Leadership Atlanta. She previously served in state government as the Executive Director of the Office of Minority Health, the Director of Long-Term Care Services and Community Services, and the Deputy Director for the Georgia State Health Planning Agency. Ms. Snype Crawford received her Bachelor of Arts in psychology from Talladega College and her Masters of Social Work from Atlanta University; she is currently a Gammon Seminary student at the Interdenominational Theological Center. Ms. Snype Crawford is the nominee of the Atlanta Planning Advisory Board.

**Charles B. Crawford, Jr.**, is the Chairman, President, and CEO of the Private Bank of Buckhead. Mr. Crawford has served as the president of Riverside Bank of Buckhead, Milton National Bank, and The Buckhead Bank and as an officer of Bank South and NationsBank. He is a past president and director of the Rotary Club of Buckhead, a trustee of the Georgia Tennis Foundation, and a 2005 graduate of

Leadership Atlanta. Mr. Crawford earned a Bachelor of Arts in economics from the University of Pennsylvania, a Bachelor of Science in management from the Wharton School of Business, and an Executive MBA from Georgia State University. The Metro Atlanta Chamber of Commerce nominated him to the Board.

**Cathy R. Daniels** is the Secretary of the College of Spelman College. In that capacity, she serves as the principal administrative officer to Spelman's Board of Trustees and assists the president on board matters and ceremonial activities. Prior to moving to Atlanta in 2006, she worked for 16 years with the Writers Guild of America, West, in California as a member of its senior management team. She also is a former elementary schoolteacher. Ms. Daniels is a graduate of the University of California-Santa Barbara and the University of California-Los Angeles School of Law. She serves as the representative of the six major universities and colleges within the City – Clark Atlanta University, Georgia Institute of Technology, Georgia State University, Morehouse College, Morris Brown College, and Spelman College.

**MaryAnne Gaunt** is Associate Director of the Principals Center at Georgia State University. She previously worked as executive director of APPLE Corps Inc., development coordinator at Agnes Scott College, and a research assistant for the Southern Regional Education Board. Ms. Gaunt is a past president and longtime board member of the Atlanta-Fulton County League of Women Voters, volunteer for United Way Allocations, program director for the Atlanta Women's Network, member of GSU's Senate governing body, and active alumna of Leadership Atlanta. She earned her Bachelor of Arts degree in sociology at the University of Kentucky and her Masters of Public Administration at Georgia State University. Nominated by the Atlanta-Fulton County League of Women Voters, she serves as vice chair of the Board.

**Caroline Johnson Tanner** is a litigation partner at the law firm of Holland & Knight LLP, where she has worked since 1996. She practices primarily in the areas of product liability, copyright and trademark litigation, business tort and RICO litigation, and general commercial litigation. Ms. Tanner is active in Holland & Knight's Charitable Foundation and Women's Initiative and has formerly served on the Board of Directors of the Decatur-DeKalb YMCA and as a tutor at Centennial Elementary School. She earned her bachelor and law degrees from the University of North Carolina at Chapel Hill and is a graduate of the Atlanta Midtown Leadership Program. The Atlanta Bar Association nominated her to the Board.

**Charmaine Ward** is the Community Affairs Director for Georgia-Pacific. During her more than 20 years in corporate America, she has held senior-level positions in sales, marketing, community affairs, and diversity for IBM, Showtime Networks, Bank of America, and John H. Harland. Ms. Ward serves on the boards of the Professional Association of Georgia Educators, Atlanta Partners for Education, West End Medical Center, Atlanta chapters of the National Coalition of 100 Black Women and National Black MBA Association, and Atlanta Business League, which nominated her to the Board of Ethics. An alumna of Leadership Atlanta, she earned a Bachelor of Arts in economics from Clark Atlanta University and an Executive MBA from Kennesaw State University.

#### **Former Board Members\***

Susan Housen, Atlanta Bar Association, 2005-2008  
Jacquee Minor, Atlanta Business League, 2005-2008  
Kenyatta Mitchell, Atlanta Planning Advisory Board, 2005-2008  
Lawrence Levin, Ph.D., Metro Atlanta Chamber of Commerce, 2005-2008  
John D. Marshall, Jr., Six Major Universities, 2002-2007  
Leah Janus, Atlanta-Fulton County League of Women Voters, 2002-2006  
Robert B. Remar, Atlanta Bar Association, 2002-2005  
Chuck Barlow, Atlanta Business League, 2002-2005  
Michael D. Johnson, Gate City Bar Association, 2002-2004  
Gloria Bromell-Tinubu, Atlanta Planning Advisory Board, 2003-2004  
Seth Lynn, Metro Atlanta Chamber of Commerce, 2002-2004  
Myrtle Davis, Atlanta Planning Advisory Board, 2002-2003

\*Includes the names of board members serving since 2002 and their appointing authority and years of service

# Timeline of Activities

MONTH	YEAR	ACTIVITY
Nov.	2001	Mayor's Task Force on Ethics appointed
Feb.	2002	Task Force issues report
April	2002	City Council passes ordinance amending Standards of Conduct
Oct.	2002	Board of Ethics members take oath of office
Aug.	2003	Ethics Office opens
Aug.	2003	Board of Ethics issues first formal advisory opinion
Oct.	2003	One-hour ethics training added to New Employees Orientation
Nov.	2003	Board of Ethics establishes website
Dec.	2003	Board of Ethics adopts Board Rules on advice and complaints
Jan.	2004	Board of Ethics defines "official city business"
April	2004	Second staff member hired
May	2004	Enforcement of financial disclosure filings begins
June	2004	First Ethical Guidelines series published for city employees
June	2004	Outside employment form created and distributed
Oct.	2004	First report to Board on financial disclosure filings
Oct.	2004	City Council and Board write appointed city officials about financial disclosure
Nov.	2004	Board adopts holiday gift rule
Dec.	2004	Board imposes fines on financial disclosure violators in first three cases
Jan.	2005	Ethics E-filing System established
May	2005	Financial disclosure statements reviewed for accuracy and completeness
Sept.	2005	Board issues first public reprimand for violation of financial disclosure laws
Sept.	2005	Board adopts first Roll of Delinquent Filers

MONTH	YEAR	ACTIVITY
Oct.	2005	"Ethics Is Everybody's Business" is published
Jan.	2006	Conflict-of-interest form drafted for evaluators on procurement panels
April	2006	Integrity Line begins operating
May	2006	Investigator hired
May	2006	Ethics Officer opposes ordinance to permit free gifts, meals, and tickets
June	2006	Mayor Franklin vetoes gift legislation
June	2006	First major ethics investigation initiated against a city elected official
July	2006	Code amended to define immediate family to include parents, siblings, and children
Nov.	2006	"Ethics Matters" newsletter begins publication
Jan.	2007	Electronic filing of financial disclosure statements made mandatory
March	2007	Board adopts Roll of Honor and Roll of Merit to honor departments
May	2007	Board conducts first probable cause hearing
June	2007	First settlement agreement approved
Oct.	2007	Investigator relocates and leaves city employment
Nov.	2007	Board imposes maximum fine for ethics violation at first enforcement hearing
Dec.	2007	Departments begin filing year-end Gift to the City Reports
May	2008	First citywide ethics workshop held for city board members and NPU officers
June	2008	Investigator's position reclassified as Associate Ethics Officer
Aug.	2008	First citywide ethics workshop held for city employees
Aug.	2008	"Ethics Matters" newsletter begins citywide circulation

Source: Board of Ethics Work Plan Reports

# Ethics Violations

YEAR	ISSUE	SUBJECT'S AGENCY	FINDINGS	FINAL OUTCOME	SANCTION
2008	Gratuities	Watershed Management	Employee accepted free meal from city contractor	Settlement agreement	Mandatory ethics training
2008	Gratuities	Prohibited source	City vendor paid for three employees to fly on a private jet to Las Vegas	Settlement agreement	Disgorge gratuity
2007	Post-employment	Planning & Community Development	Former city planner represented property owners on a subdivision application that he reviewed as a city employee	Board found violation	Fine
2007	Use of city property	Executive Offices	Employee used city credit card for personal purchases	Settlement agreement	Fine
2007	Use of city property	Executive Offices	Employee used city credit card for personal purchases	Settlement agreement	None
2007	Use of city property	City Council	Council member requested waiver of atrium rental fee for weddings	Settlement agreement	Fine
2007	Use of city property	Executive Offices	Employee waived rental fees for personal use of atrium and Historic City Council Chambers by others	Settlement agreement	None
2006	Solicitation	Watershed Management	Inspector's child solicited donations from city contractor	Referral to department	Reprimand
2006	Fraud	Planning & Community Development	Employee reported reviews of nonexistent properties on his daily work log	Referral to department	3-day suspension
2006	Use of city property	Parks, Recreation & Cultural Affairs	Employee overcharged citizens for field trips and allowed a family member to operate a concession stand	Referral to department	30-day suspension
2006	Use of city property	City Council	Council member received same day service from City for paving of driveway apron and failed to pay City for two years	Settlement agreement	Fine Restitution
2005	Gratuities	Executive Offices	Employee received free airline ticket to attend a business meeting in Los Angeles	Referral to department	Disgorge gratuity Reprimand
2005	Solicitation	Planning & Community Development	Inspector solicited charitable donations from persons he inspected	Referral to department	Reprimand
2005	Use of city property	City Council	Council member handed out city-funded newsletter at a political forum for candidates	Settlement agreement	Cease & desist
2005	Financial disclosure	Public Works	Employee failed to disclose outside job and spouse's city employment on annual financial disclosure statement	Settlement agreement	Statement amended

Source: Ethics Office Closed Ethics Cases, Aug. 2003 – Aug. 2008



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