



# CITY OF ATLANTA

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## MEMORANDUM

TO: Councilmember Felicia Moore

FROM: Caroline Johnson Tanner, Atlanta Board of Ethics Chair *Caroline Johnson Tanner*

RE: Ethics Officer's term of office

DATE: July 13, 2011

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Thank you for meeting with members of the Board of Ethics last month to discuss the appointment of the Ethics Officer.

We were pleased to hear that there is no dispute concerning who is the appointing authority for the Ethics Officer. From the Board's perspective, the meeting was useful because it affirmed that the Board of Ethics has the authority to make the appointment as stated in the Code.

As we discussed, the Board believes that it also has the authority to set the term of office for the Ethics Officer, and the City Council has the ability to confirm or reject the appointment but not change the term of office. We understand that you intend to introduce legislation to change the language of the Code to shorten or limit the term of office for the Ethics Officer, and you have asked us to respond to your proposal.

Having reviewed the matter, we believe that the best policy is the one originally adopted by the City Council in 2002. The Board of Ethics has the authority to appoint the Ethics Officer and set the term of office for a period of six years or less, the City Council has the right to vote on the appointment in an up-or-down confirmation vote, and the Mayor retains the right to approve or reject the appointment. If, however, you and other members of the City Council prefer a fixed term of office, then we believe a six-year term of office is the best policy.

A six-year term of office strengthens the independence of the Ethics Office and Board.

The greatest strength of the city's current ethics policy is the independence of the Ethics Office and Board of Ethics, according to the Ethics Case Study published in 2009 by The Atlanta Committee for Progress and Georgia State University's Andrew Young School of Public Policy. This independence is a key part of the ethics reform the Mayor and Atlanta City Council enacted in 2002 following a federal investigation of corruption in City Hall. The federal probe resulted in the convictions of former Mayor Bill Campbell and his chief operating officer, deputy chief

operating officer, commissioner of administrative services, chair of the Civil Service Board, and eight other city officials and contractors.

Seeking to regain the trust of citizens, then Mayor-elect Shirley Franklin appointed an Ethics Task Force to recommend changes to the Ethics Code and ways to instill a culture of ethics within city government. Among its many revisions, the task force recommended a new, five-member board to which the Mayor would appoint one member and an Ethics Officer chosen by the Mayor from three candidates selected by the Board of Ethics. The Ethics Officer would serve a two-year term, which the Ethics Board could renew.

In response to the task force's proposal, the Atlanta City Council chose to make the Board of Ethics more independent of the Mayor's Office and the City Council. As enacted, the Code of Ethics provides that seven community and civic organizations select the members of the Board. The members undergo a background check of their criminal, educational, and employment history in lieu of a confirmation process. While serving on the Board, the members are prohibited from engaging in city election political activities and from making campaign contributions to candidates in city elections. They are persons who "shall be known for their personal integrity" and serve without compensation.

Similarly, the City Council chose to remove the Mayor from the selection process for the Ethics Officer. Instead, the Council gave the Board of Ethics the power to appoint the Ethics Officer, to set the officer's term for a period not to exceed six years, and to remove the officer only for cause. Once appointed, the Ethics Officer cannot be involved in partisan or nonpartisan political affairs of the City. By lengthening the permissible term from two years to six years, the law helps lessen the political influence over the appointment and provides for more stability, continuity, and efficiency in the office.

The 2009 confirmation process imposed an illegal condition on the term of office.

As currently drafted, the ordinance provides: "The ethics officer shall be appointed by a majority of the members of the board of ethics, subject to confirmation by a majority of the council and approval by the mayor, for a period not to exceed six years." Under the powers delegated to it by the City Council, the Board of Ethics appointed the current Ethics Officer to a six-year term of office in the spring of 2009. After the matter was discussed at four meetings of the Committee on Council, the Committee approved the appointment and forwarded it to the Council for a vote. During the confirmation process, the City Council voted to reduce the term of office from six years to four years and then voted to confirm the reappointment of the Ethics Officer for a four-year term.

The Board of Ethics has received legal advice from its attorney, who drafted the City of Atlanta Charter, that section 2-805 as currently written delegates to the Ethics Board both the power to appoint the Ethics Officer and to determine the term for which the officer is being appointed. He advises: "The role of the Council to confirm the appointment of the Ethics Officer for the term selected by the Board of Ethics by an up-or-down vote, and not to substitute its judgment for that of the Ethics Board by amending [the] appointment and prescribing a different term."

A four-year term of office would compromise the independence of the Ethics Office and would allow more political influence of the Ethics Office.

The sole rationale that has been given for reducing the term of office to four years is to give each City Council the right to vote on the selection of the Ethics Officer. It is argued that this policy is needed to provide for more Council oversight over the Ethics Office. Thus, the only

articulated reason to move to a four-year term is to enable city elected officials to have more influence over the Ethics Office.

Since the Ethics Officer has the duty to investigate and prosecute ethics violations and the Board of Ethics is the only city agency with the power to fine and reprimand elected city officials, the proposal to shorten the term of office is not good public policy. By exerting more influence over the appointment process, the City Council would be sending the wrong message to citizens and undermining public confidence in the integrity of government. Citizens may perceive that the Council is attempting to impair the independence and impartiality of the Ethics Office in performing its duties to enforce ethical standards. Furthermore, by shortening the term of the Ethics Officer, the City Council would be communicating its distrust of and disregard for the Board's ability to evaluate, assess, and recommend the appropriate term for any Ethics Officer, a job better suited to an independent body precluded from participating in city politics. Respectfully, we suggest that such a decision on the part of the Council can only be interpreted as undermining the independence of the Board of Ethics and thus eroding the ethical culture that Atlanta has developed over the last nine years.

The Board of Ethics supports a six-year term.

Based on our meeting with you and the City Attorney, it is our understanding that you now propose to amend the statute to set a shorter, likely four-year term of office for future appointments of the Ethics Officer. In response to your request for the Board's recommendations on the issue, the Board strongly believes that the current provision states the best policy and any changes should clarify the original legislative intent without making substantive changes. While we believe that the "not to exceed" language gives flexibility to the Board in setting the term, we are not opposed to amending the ordinance to provide for a fixed term of office. We support two options that would eliminate the confusion and uncertainty over the term of office created by the Council's actions while maintaining the independence of the Ethics Board and Ethics Office:

*Fixed Term.* The ethics officer shall be appointed for a period of six years by a majority of the members of the board of ethics. The appointment will be subject to confirmation by a majority of the council and approval by the mayor.

*Flexible Term.* The ethics officer shall be appointed for a period not to exceed six years by a majority of the members of the board of ethics. The appointment will be subject to confirmation by a majority of the council and approval by the mayor.

We believe that these provisions preserve the independence of the Board of Ethics and Ethics Office and that this independence is needed to promote public trust and confidence in city government.

cc: Mayor Kasim Reed  
Council President Ceasar Mitchell  
Members of the Atlanta City Council  
Chief Operating Officer Peter Aman  
Chief of Staff Candace Byrd  
City Attorney Cathy Hampton  
City Auditor Leslie Ward  
Board of Ethics members  
Emmet Bondurant

Sources:

Atlanta, Ga., Code of Ordinances §§ 2-804, 2-805.

Atlanta, Ga., Communication 09-C-0653 (June 15, 2009).

Ethics Task Force, "Ethics Task Force Report," City of Atlanta, located at [http://www.atlantaethics.org/docindexer/Ethics\\_Task\\_Force\\_Report\\_Feb2002.pdf](http://www.atlantaethics.org/docindexer/Ethics_Task_Force_Report_Feb2002.pdf).

Newman, Harvey K. and Greenup, Jeremy. "Ethics Case Study" (Atlanta Ga. 2009), located at [http://aysps.gsu.edu/Ethics\\_Case\\_Study.pdf](http://aysps.gsu.edu/Ethics_Case_Study.pdf).