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BOARD OF ETHICS

Kate Wasch, Chair
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De'Lonn Brown
Carol Snype Crawford
Riah Greathouse
Jessica Stern
Kai Williamson

68 MITCHELL STREET SW, SUITE 12130
ATLANTA, GEORGIA 30303-0312
(404) 330-6286
FAX: (404) 658-6077

ETHICS OFFICE

Nina R. Hickson, Ethics Officer
ethicsofficer@atlantaga.gov

Formal Advisory Opinion 2015-1

Criteria and Process for Filing of Annual Financial Disclosure Statements

Opinion Summary

Section 2-814 of the Atlanta Code of Ethics provides that certain city officials (which include appointees to boards, commissions and task forces as defined by Section 2-801) and employees are required to file a financial disclosure statement every year that they are serving and in the year after they leave city service. The statement requires disclosure of income sources, real estate interests, business transactions with the City, and family members' transactions with the City. As set forth by the Ethics Code, the Ethics Office has established a process to determine which officials and employees are required to file each year.

Question Presented

Which city officials and employees are required to file an annual financial disclosure statement pursuant to the Atlanta Code of Ethics and how is this determined?

Facts

The Ethics Office has received several inquiries and questions from city officials and employees concerning the criteria and process used to determine who is required to file an annual disclosure statement. To provide general guidance to both officials and employees, the Board of Ethics addresses the following questions presented:

1. What is the purpose of the financial disclosure statement?
2. What process is used to determine who needs to file?
3. Why are certain employees being required to file when they have not been required to file in the past and worked for the City for several years?

4. Why are city officials, employees and appointees to city boards, commissions and task forces required to file a disclosure statement the year after their city employment or service ends?

Discussion

1. What is the purpose of the financial disclosure statement?

Annual disclosure is often referred to as “financial disclosure;” however, the focus is not on the individual’s finances, but on the relationships and the potential of benefiting from government action or inaction. See *Second Resource of Free Resource Book on Local Government Ethics Programs 2.0*, Robert Wechsler (May 4, 2014) p. 327; <http://www.cityethics.org/files/lgep1-0%20-%20Robert%20Wechsler.pdf>

Prior to 2002, the filing of city financial disclosure statements by Atlanta city officials and employees was based on an individual’s voluntary compliance and not a mandatory requirement. The paper filings were collected and maintained by the City of Atlanta Municipal Clerk’s Office. In 2002, an Ethics Task Force, established by former Mayor Shirley Franklin, recommended substantial changes to the existing ethics policy. The proposed ethics ordinance mandated filing of annual financial disclosure forms and authorized an Ethics Officer to administer and enforce the financial disclosure process. *Part I of the Atlanta Case Study Project*, p 1, 4

(2009); http://www.atlantaethics.org/docindexer/Atlanta%20Committee_for_Progress_Ethics_Case_Study.pdf The Board of Ethics and new Ethics Officer were charged to the task of improving compliance with disclosure laws and worked diligently and continuously to do so. *Ethics is the Only Deal: The First Five Years of the Atlanta Ethics Office* (March 2009); p. 15; http://www.atlantaethics.org/docindexer/Ethics_is_the_only_deal_March%202009.pdf

Section 2-814 of the Atlanta Code of Ethics provides that certain city officials and employees are required to file a financial disclosure statement every year that they are serving the City and in the year after they leave city service. The statement requires disclosure of income sources above \$5000, real estate interests, business transactions with the City, and family members’ transactions with the City.

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.” The general public should be able to review disclosure statements to ensure that officials and employees are not engaging in business, employment, contractual, or financial transactions that conflict with the city’s best interests. *Ethics is the Only Deal* at 15. Further, the ethics law is focused on the perception, as well as the reality, that an official or employee’s financial and personal interests may create a conflict. See FAO 2010-2; Disclosure and Disqualification Due to Personal Interests.

2. What process is used to determine who needs to file?

Not every official or employee has to file a financial disclosure statement. Limiting who discloses saves the time of officials and employees who do not need to file as well as allows the Ethics Office to focus its oversight on the financial process, not just paperwork. *Local Government Ethics Programs 2.0* at 328. The Atlanta Code of Ethics identifies 23 categories of filers who must file a financial disclosure statement and publicly disclose any interests they may have. In regards to city employees, the Ethics Office works closely with the Department of Human Resources and respective departments, boards and commissions every year to determine who is required to file. The categories of filers are listed below:

Elected Officials

- Mayor
- President of City Council
- Members of City Council
- Municipal Court Judges

Employees

- Chief operating officers and deputy officers
- Chiefs of staff and deputy chiefs
- All employees of the office of the mayor who report directly to the mayor
- Commissioners and deputy commissioners
- Bureau directors and assistant bureau directors
- Division heads and managers
- Zoning administrators, assistant zoning administrators, and inspectors
- Deputy, assistant, and associate city attorneys
- Contract compliance officers, contracting officers, and buyers
- Employees with authority over investment or auditing of city finances or contracts
- Employees of the auditor's office
- City ethics officer
- Inspectors
- Executive directors of city boards, commissions, and authorities
- Appointed City Officials

Volunteer Officials

- City board members
- City appointments to other public boards
- Hearing officers
- Neighborhood planning unit officers

Atlanta, Ga. Code of Ordinances §2-814(b).

3. Why are certain employees being required to file when they have not been required to file in the past and worked for the City for several years?

Notwithstanding the categories listed above, the Ethics Officer routinely engages in an ongoing review of job codes, job classifications and responsibilities of new and existing positions to determine whether an employee needs to file a financial disclosure statement; which addresses the question as to why certain employees are being required to file when they have not been required to file in the past and worked for the City for several years. Therefore, just because a person may not have been required to file a disclosure statement in the past does not mean they should not have been filing. The following positions are examples of employees who were not required to file disclosure statements in the past yet worked for the City for many years and are now required to file:

- Legislative Research Assistant for the Municipal Clerk's Office
- Program Analyst Lead for the Department of Watershed Management
- Airport Operations Representative for the Department of Aviation

Another important point to mention is that the Atlanta City Council passed pay and class legislation in 2012 and many city job codes were deleted or merged with other job codes and position titles. The pay and class legislation resulted in new and existing positions added to the category of required filers upon the Ethics Office's review of job positions and responsibilities; and employees who never filed in the past were now required to file a disclosure statement. The Ethics Office was subject to many inquiries from employees who were now required to file due to the pay in class legislation. However, the Ethics Office is authorized to act under the provisions of the Ethics Code, the interpretation of which is done by the Ethics Officer under the direction of the Ethics Board.

4. Why are city officials, employees and appointees to city boards, commissions and task forces required to file a disclosure statement the year after their city employment or service ends?

Lastly, former city officials and employees **must** file the year following that in which the official or employee leaves such position. Atlanta, Ga. Code of Ordinances §2-814(e). This provision applies whether the person resigned from service or was terminated from that position. The rationale is that such filing will reveal any possible conflicts or post-service problems after the official or employee leaves city service. Further, it is very useful for the public to have knowledge of any business relationships that these persons may have developed prior to leaving city service to prevent misuse of their former position or inappropriate future business dealings. *Local Government Ethics Programs 2.0* at 332.

Conclusion

In conclusion, disclosing interests and relationships of city officials and employees protects the public. Not disclosing whatever the law requires, is putting private interests ahead of the public's trust.

Adopted October 15, 2015

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