



City of Fairburn City Council Agenda

April 7, 2025
6:30 PM

The Honorable Mayor Mario Avery of the Investigating Committee

The Honorable Linda J. Davis
The Honorable Hattie Portis-Jones

The Honorable Ulysee Smallwood
The Honorable James Whitmore

Mr. Rory Starkey
Ms. Brenda B. James

City Attorney
City Clerk

- I. Meeting Called to Order of the Investigating Committee: The Honorable Mayor Avery
- II. Roll Call: City Clerk
- III. Adoption of the Investigating Committee Agenda:
- IV. Approval of the Minutes:
 1. Approval of the Minutes: Council Meeting Minutes of the Investigative Committee Meeting of March 17, 2025, in re: **Ethics Complaint No: 2025-01.**
- V. Regular Agenda:
 2. **Consideration of Section 2-35(h) (10) of the Ethics Ordinance in re: Ethics Complaint No: 2025-01.**
Recommendation: (Council and Board)
- VI. Adjournment:

When an Executive Session is required, one will be called for for the following Issues:
(1) Personnel (2) Real Estate or (3) Litigation



**Special Called Investigative
Committee Meeting Minutes
March 17, 2025
6:30 pm**

- I. Roll Call by City Clerk, Brenda James found the following investigative committee members present:

The Honorable Linda J. Davis
The Honorable James Whitmore (Teams)
City Attorney Rory Starkey

The Honorable Hattie Portis-Jones
The Honorable Ulysses Smallwood

- II. The meeting was called to order by the Honorable Mayor Avery.

Also present was City Clerk Brenda James.

- III. Discussion of Investigative Committee

Mayor Avery stated: We need to determine if we need to subpoena documents and/or witnesses to aid in our determination or if the video and our collective personal knowledge of the subject event is sufficient for us to determine whether the complaint sets forth sufficient allegations of fact such that the complaint should be forwarded to the Board of Ethics for a hearing to determine whether there was in fact a violation of this section. We need to review the video publicly and then go into Executive Session and deliberate whether our collective personal knowledge and video of the event is sufficient for determination. If it is, we will deliberate and decide and then return to the public and cast our votes. If it is not, then we will deliberate and decide what documents and/or witnesses to subpoena and then return to the public and cast our votes. We will then issue subpoenas for the public for the necessary witnesses and documents and set another date to determine the sufficiency of the complaint. At this point, we will now play the video and once the video is completed, he will entertain a motion to go into Executive Session. The video was reviewed twice by the investigative committee.

Council Member Davis made a motion to go into Executive Session to deliberate.

Council Member Portis-Jones provided the second. **The motion carried unanimously.**

The Investigating Committee deliberated. Council Member Portis-Jones made a motion to exit Executive Session and reconvene the meeting at 7:25 pm. Council Member Davis provided the second. **The motion carried unanimously.**

Council Member Davis made a motion to dismiss the complaint 2025-01. Council Member Portis-Jones provided the second. **The motion carried** with Council Member Davis, Council Member Portis-Jones, and Mayor Avery voting yes, and Council Member Whitmore and Council Member Smallwood voting no.

V: Adjournment:

Council Member Davis made a motion to adjourn the meeting at 7:28 p.m. Council Member Smallwood provided the second. **The motion carried unanimously.**

Brenda James, City Clerk

Mario Avery, Mayor

DRAFT



CITY OF FAIRBURN CITY COUNCIL AGENDA ITEM

SUBJECT: Consideration of Section 2-35(h) (10) of the Ethics Ordinance in re: **Ethics Complaint No: 2025-01.**

ITEM TYPE: Other

SUBMITTED: 04/04/2025 **WORK SESSION:** MM/DD/YYYY **COUNCIL MEETING:** MM/DD/YYYY

DEPARTMENT: Council and Board

BUDGET IMPACT:

PUBLIC HEARING: No

PURPOSE:

HISTORY:

FACTS AND ISSUES:

FUNDING SOURCE:

RECOMMENDED ACTION:

ATTACHMENTS:

1. Ethics Ordinance

each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining.

Sec. 2-32. Order of business.

All regular council meetings shall follow the order of business established from time to time by the council.

Sec. 2-33. Duty of city clerk regarding minutes and ordinances.

The city clerk shall:

- (1) Keep correct and full minutes of the proceedings of the city council, together with all ordinances and resolutions passed by it, in a book or register kept for that purpose and as required by the city Charter;
- (2) Insert or cause to be inserted all amendments or ordinances that indicate the intention of the mayor and council to make the same a part of the city's Code of Ordinances when the same have been printed or reprinted in page form; and
- (3) Extract or cause to be extracted from the Code all provisions that may be from time to time repealed by the mayor and council.

Sec. 2-34. Authority of council to inquire and investigate.

The city council may make inquiries and investigations into the affairs of the city and the conduct of any department, office, or agency thereof and, for this purpose, may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the city council shall be punished as provided by ordinance.

Sec. 2-35. Code of ethics.

(a) *Intent*. It is essential to the proper administration and operations of the City of Fairburn ("city") that the members of its governing authority, as well as members of city boards, authorities and commissions (collectively "city

officials"), be, and give the appearance of being, independent and impartial; that public office not be used for private gain; that there be public confidence in the integrity of such city officials; that such city officials at all times adhere to the highest standards of professionalism; and that conduct unbecoming of a member of the governing authority or other city board, authority, or commission and conduct by such a member that tends to damage the reputation of the city or its governing authority and/or conduct which otherwise interferes with and negatively impacts city operations and/or which places the city in a poor public light not be tolerated. The governing authority finds that the public interest and welfare requires that it protect city operations from the influence of actual and apparent conflicts of interest and acts of unprofessional and unbecoming conduct by city officials by establishing appropriate ethical standards regarding the conduct of such city officials.

(b) *Definitions.*

City official means a member of the city governing authority, including the mayor, as well as persons appointed to serve by the city governing authority on any city board, authority, or commission.

Censure means a written resolution of the governing authority condemning the actions of a city official found by the board of ethics to have violated the terms of this code section.

Complaint means a written statement, sworn to by the complainant in the presence of a notary public, and delivered to the city clerk, containing specific allegations of fact, which, if established through the procedures set forth in this section, would show that a city official has violated one or more provisions of this section. Such complaints must be filed within 90 days following the alleged violation or not later than 30 days following the date on which the person filing the complaint knew or should have known of the occurrence of the alleged violation. No complaint shall be accepted against any city official unless same is, at the time of the filing of the complaint, a sitting member of the governing authority or other city board, authority, or commission.

Governing authority means the mayor and city council.

Immediate family means the city official's spouse, children, parents, brothers, sisters, grandparents, grandchildren, mother-in-law, father-in-law, son-in-law, or daughter-in-law.

Interest means any direct pecuniary or financial benefit held by or accruing to a city official as a result of a contract or transaction that is or may be the subject of an official act or action by the city. A city official shall be deemed to have an interest in contracts and transactions involving:

- (1) Any person in the city official's immediate family;
- (2) Any person with whom a contractual relationship exists whereby the city official may receive any payment or other benefits unless the city official is receiving a benefit for goods or services in the normal course of business for which the city official has paid a commercially reasonable rate;
- (3) Any business in which the city official is a director, officer, employee, agent, or shareholder, except as otherwise provided herein; or
- (4) Any person of whom the city official is a creditor, whether secured or unsecured.

Investigating committee means the committee of governing authority members and the city attorney organized and appointed pursuant to section (h) of this code section.

Reprimand means an oral condemnation by the governing authority condemning the actions of a city official found by the board of ethics to have violated the terms of this code section.

(c) *Prohibited conduct.* No city official shall:

- (1) By conduct give reasonable basis for the impression that any person can improperly influence his/her official conduct or unduly enjoy his/her favor in the performance of official acts;
- (2) Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, or thing of value for

himself/herself or another person if it could reasonably be presumed to influence the city official in the discharge of official duties; provided, however, this prohibition shall not apply in the case of:

- a. An occasional non-pecuniary gift of insignificant value;
 - b. An award publicly presented in recognition of public service;
 - c. A commercially reasonable loan or other financial transaction made in the ordinary course of business by an institution or individual authorized by the laws of Georgia to engage in the making of such a loan or financial transaction;
 - d. Campaign contributions made and reported in accordance with Georgia law.
- (3) Disclose or otherwise use confidential information acquired by virtue of his/her official position for his/her or another person's private gain;
 - (4) Use his/her official position to attempt to secure privileges that are not available to the general public;
 - (5) Engage in, accept employment with, or render services for any private business or other commercial or non-profit entity when such employment or rendering of services is adverse to and incompatible with the proper discharge of official duties; provided, however, this prohibition shall not apply to a city official who is a licensed professional and appears on behalf of another in such professional capacity so long as the disclosures required by subsection (d) are provided prior to any action being taken, and the city official was associated with the matter being considered at the time the initial need for or request for action was initiated by the city.
 - (6) Engage in any activity or transaction that is prohibited by law now existing or hereafter enacted which is applicable to him/her by virtue of being a city official;

- (7) Use his/her position to request or require a city employee to:
- a. Work on behalf of the city official's personal, family, business, social, church or fraternal interest while at the same time being compensated by the city;
 - b. Purchase goods or services with city funds or to otherwise use city resources for the city official's personal, business, or political purposes; and/or;
 - c. Work for the city official personally without paying the employee just compensation.
- (8) Use government property of any kind for other than officially approved activities, nor shall he/she direct employees to use government property for purposes other than those officially approved;
- (9) Use his/her position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to himself/herself, or another person;
- (10) Take any action or engage in any course of conduct that interferes with the proper, efficient and effective operations of the city government; no member of the governing authority or other such city official shall give directives to any city employee who is subject to the direction and supervision of the city administrator and/or a city department head. Actions with respect to any requests from a city official shall be taken only with the advice and consent of the city administrator or the employee's department head;
- (11) Make any disclosure of confidential information without the approval of the body on which the city official serves; provided, confidential information means information obtained by the city official in the course of the performance of his/her duties, which is either:
- a. Not subject to public disclosure under the laws of the State of Georgia; or
 - b. Obtained in a closed meeting of the body, duly closed for any of the purposes for which meetings of the body can be closed under the laws of the State of Georgia;
- (12) Engage in any ex parte communication with any member of the board of ethics regarding a pending complaint;
- (13) Engage in rude, verbally or physically abusive conduct, or criminal behavior, which interferes with the operations of city government and/or which places the city government in a negative public light.
- (d) *Disclosure of conflicts of interest.* A city official who has an interest that he/she has reason to believe may be affected by his/her official acts or actions or by the official acts or actions of the involved body shall disclose the precise nature of such interest in writing to the involved body prior to any action being taken. Such written disclosures shall be made as soon as the involved city official knows or should know that such action by the involved body is to be taken and the city official shall, upon making such a disclosure, refrain from all ex parte communications with other members of the body regarding the matter in which he/she has an interest and the city official shall thereafter disclose the interest at the time of such action by the involved body and abstain from any discussions thereof or vote. Such written and verbal disclosures shall be recorded in the minutes of the involved body's meeting and become part of the public record.
- (e) *Disqualification.* A city official shall disqualify himself/herself from participating in any official act or action of the city which results in a pecuniary benefit to him/her or a business or activity in which he/she has an interest directly or indirectly when such benefit is not available to the public at large.
- (f) *Prohibited contracts.* The city governing body, boards, authorities and commissions shall not enter into any contract involving services or

property with a member or with a business in which a member has an interest. This section shall not apply in the case of:

- (1) The designation of a bank or trust company as a depository for city funds;
- (2) The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest in the community for such loan;
- (3) Contracts otherwise entered into in accordance with state law;
- (4) Contracts entered into under circumstances that constitute an emergency situation, provided that the mayor authorizes and signs a written record explaining the emergency;
- (5) Contracts entered into with a city official, or with a business in which a city official has an interest, provided that such contracts are the result of a competitive bid process, disclosure of the nature of the city official's interest is made prior to any action being taken and in accordance with subsection (d), and a waiver of the prohibition contemplated by this section is approved by the city governing authority.

(g) *Restrictions on contracts with former members of the council.* The city shall not enter into any contract with any person or business represented by such person, who has been within the preceding 12-month period the mayor or a member of the city council, unless the contract is awarded by a competitive bid process.

(h) *Initial review.* Whenever a complaint as defined in this section is delivered to the city clerk, the following procedures shall apply:

- (1) The clerk shall forward the complaint to the city attorney and the city official against whom the complaint has been submitted;
- (2) The mayor, or the mayor pro-tem in the event the complaint is against the mayor, or the city attorney in the event the complaint is against both the mayor and the mayor pro-tem, shall within ten busi-

ness days appoint the remaining members of the governing authority, along with the city attorney, and not including any member of the governing authority who is either the complainant or the city official alleged in the complaint to have violated this section, as an investigating committee who shall be charged with determining whether the complaint sets forth sufficient allegations of fact such that the complaint should be forwarded to the city board of ethics for a hearing to determine whether there was, in fact, a violation of this section;

- (3) In making this determination, the investigating committee may request or subpoena such documents as it deems necessary to its inquiry, and the committee may request or subpoena such sworn testimony as it deems necessary to its inquiry;
- (4) Committee members may rely on their personal knowledge when considering such complaints and shall not be prohibited from doing so merely because they have been identified in the complaint as having such personal knowledge;
- (5) Meetings of the committee shall be open to the public;
- (6) Meetings of the investigating committee shall be presided over by the mayor unless the complaint is against the mayor, in which case the mayor pro-tem shall preside, or by the city attorney if the complaint is against both the mayor and mayor-pro tem;
- (7) The presiding officer shall be entitled to vote and no action shall be taken by the committee except by a majority vote;
- (8) If, on a motion to either dismiss the complaint or forward to the board of ethics for a final determination, there is no majority vote of the committee, then the complaint shall be deemed to have been dismissed and the parties to the complaint shall be notified;

- (9) If the committee determines by majority vote that there are not sufficient facts to forward the complaint to the board of ethics for a final determination, or that the complaint is frivolous or patently unfounded, the complaint shall be dismissed and the parties shall be notified;
- (10) In any case where the committee determines by majority vote that the complaint is frivolous or patently unfounded, the committee may also, by separate motion and majority vote, publicly reprimand the complainant or, in the case of a complaint submitted by a city employee or city official, refer the matter, in the case of a city employee, to the city administrator, or in the case of a city official, to the appropriate body or appointing authority, for further action;
- (11) In the event the committee forwards a complaint to the city board of ethics for a hearing and final determination, there shall be no presumption that a violation of this section has, in fact, occurred;
- (12) Once the committee has been appointed after the submission of a complaint, the committee shall endeavor to reach a decision as soon as reasonably possible, and if the committee does not act or fails to act on the complaint within 60 days thereafter, the complaint shall by these procedures be submitted to the board of ethics for a final determination; and
- (13) Once the committee has been appointed following the submission of a complaint, the committee shall retain jurisdiction over the complaint notwithstanding any attempt to withdraw the complaint.
- (i) *Board of ethics.*
- (1) Composition of the board of ethics.
- a. The board of ethics shall be composed of seven residents of the city to be appointed as provided herein. Each member of the board of ethics shall have been a resident of the city for at least one year immediately preceding the date of his/her appointment and shall remain a resident of the city while serving as a member of the board of ethics. No person shall serve as a member of the board of ethics if the person has, or has had within the preceding one year period, any interest in any contract, transaction, or official action of the city.
- b. The mayor and council members shall each appoint one qualified citizen to serve as a member of the board of ethics. These appointments shall be made within 60 days of the taking of office and shall be spread upon the minutes of the governing authority. The city clerk shall maintain a record of these appointments. Each member of the board of ethics shall serve a term concurrent with the term of the member of the governing body making the appointment. Members of the board of ethics serve at the pleasure of the member of the governing authority making the appointment; provided, however, except for cause, as determined by a majority vote of the governing authority, no member of the board of ethics may be removed during the pendency of any complaint.
- c. The members of the board of ethics shall serve without compensation. The governing authority of the city shall provide meeting space for the board of ethics. Subject to budgetary procedures and requirements of the city, the city shall provide the board of ethics with such supplies and equipment as may be reasonably necessary for it to perform its duties and responsibilities. In all proceedings of the board of ethics, the city attorney shall provide advice to the board on matters of procedure and evidence; provided, however, in cases where a member of the governing authority is the subject of the

complaint, the governing authority, without the participation of any party to the complaint, shall appoint special counsel for the board of ethics.

- (2) The board of ethics shall have the following duties and powers:
- a. To establish procedures, rules, and regulations governing its internal organization and the conduct of its affairs;
 - b. To hold an evidentiary hearing and render a final written decision within 60 days after a complaint has been forwarded to the board for a final determination; provided, however, that the timeframe may be enlarged by the board for good cause and with the approval of the parties to the complaint. In the event that the board fails or refuses to act on a complaint that has been forwarded to it for final determination, the matter shall be referred back to the full governing body for appropriate action. The 60-day period provided for in this section shall begin to run from the time an action has been taken by the governing body's investigating committee to forward the complaint to the board of ethics or, in such cases where it is required, the date on which the governing authority has appointed special legal counsel for the board, whichever event occurs last.
 - c. To prescribe forms, approved by the city attorney, or special counsel appointed for the board, as necessary and appropriate for carrying out the board's responsibilities;
 - d. To make such investigation and conduct such meetings as it deems appropriate to render a final determination as to whether, in fact, the party against whom a complaint is submitted has violated this section; request or subpoena such documents as it deems necessary to its

inquiry, and request or subpoena such sworn testimony as it deems necessary to its inquiry; and

- e. To report its written findings and recommendations for action to the governing authority for such action as the governing authority deems appropriate pursuant to this section; provided, however, that no party to the complaint who also serves on the governing authority may participate in the taking of such action.

(j) *Service of complaint; hearings and disposition of complaints.* Once a complaint has been forwarded to the board for a final determination, the city clerk shall ensure that the parties to the complaint are notified by any means by which the parties confirm the receipt of such notification. The city clerk shall be responsible for recording the meetings of the board of ethics and the keeping of summary minutes of such meetings—verbatim minutes and the transcribing of such recordings shall not be required. At least ten days in advance, parties shall be notified by legal counsel representing the board of all meetings at which the board intends to receive sworn testimony. At such hearings, the parties may be represented by legal counsel at their sole expense and they may provide, also at their sole expense, a court reporter to record or transcribe the proceedings. Witnesses may be examined and cross-examined by the parties and may be questioned by board members and the board's legal counsel. Meetings of the board of ethics shall be open to the public; provided, however, after the taking of testimony; the board may meet in closed session to deliberate the evidence; provided, further, that all votes of the board shall be taken in open session. No evidence may be received by the board while in closed session. The final determination and any recommendations of the board of ethics shall be submitted in writing to the governing authority within seven business days following its decision. Once a complaint has been forwarded to the board for a final determination, the board shall retain jurisdiction over the complaint notwithstanding any attempt to withdraw the complaint.

(k) *Penalties and additional rights of parties.*

- (1) Any city official who knowingly violates any provision of the code of ethics shall be subject to public reprimand, censure, or removal from office by the city governing authority; provided, however, that no member of the governing authority shall be removed from office except upon impeachment and trial pursuant to section 2-60 of this Code.
- (2) Before any evidentiary hearing held by the board of ethics, the city official who is the subject of inquiry shall have the right to written notice of the allegations at least ten business days before the hearing.
- (3) Whenever a city official has been charged in a complaint with a violation of this section while acting in their official capacity and the final determination of the board of ethics is that no such violation occurred, such city official may, in accordance with Georgia law, petition the governing authority for reimbursement of reasonable attorney's fees incurred by the city official in defense of the allegations.
- (4) In any case where, in addition to finding that no violation of this section occurred, the board, by an additional special finding, determines, after an evidentiary hearing, that the complaint was based on patently false assertions or was otherwise filed for malicious reasons, the governing authority may take such action against the complainant as within its authority to do so; including, public reprimand, censure, removal from office, or the referral of the matter to other authorities.

(l) *Appeals.* Any city official adversely affected by the findings of the board of ethics and who is disciplined in accordance with this section by the city governing authority may obtain judicial review by filing an application for a writ of certiorari in the Superior Court of Fulton County

within 30 days after the board's decision. The filing of such application shall act as supersedes. (Ord. No. 2008-12, § I, 11-27-2008; Ord. No. 2013-36; Ord. No. 2016-06, § 1, 5-23-2016; Ord. of 1-13-2020(1), § 1)

Secs. 2-36—2-56. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES*

DIVISION 1. GENERALLY

Sec. 2-57. Personnel policy adopted by reference.

The city has promulgated the City of Fairburn, Georgia, Personnel Policy, as amended from time to time, copies of which are available in the office of the city clerk and the city administrator. The manual is adopted as if fully set forth in this Code, and all city personnel are bound by its provisions.

Sec. 2-58. Compensation of officers; expenses.

(a) The salary of the mayor shall be \$27,000.00 per annum, payable annually in December, and the salary of each councilmember shall be \$13,500.00 per annum, payable annually in December; provided, however, the mayor and each member of city council may elect, individually, on or before December 31 of each year, to have their said annual compensation in the next following year paid in equal, bi-weekly installments. Whenever the mayor or a member of city council has not elected to receive their said annual compensation in equal, bi-weekly installments, such mayor or member of city council may request at any time, based on the existence of extraordinary circumstances, that he or she be compensated for the pro rata share of his or her annual compensation. Four affirmative votes of the governing body shall be required to approve

*State law reference—Authority of municipality to fix salaries of and provide benefits for municipal employees, O.C.G.A. § 36-35-4.

such requests and the mayor or member making the request may participate in any discussions, but shall not be eligible to vote.

(b) In addition to the salaries set forth in subsection (a) of this section, the mayor and council shall be entitled to receive their actual and necessary lodging and transportation expenses, and a per diem of \$50.00 per day when traveling in the state and \$100.00 per day when traveling outside of the state for the expenses incurred in the performance of their duties of office.

(c) The city's obligation to make lodging, transportation and per diem payments in accordance with this section is limited to the extent that funds have been budgeted for such purposes by the mayor and city council. Whenever the mayor or a councilmember shall incur expenses in excess of budgeted funds, the full amount of the expenditure in excess of budget shall be reimbursed to the city unless the mayor and city council, within the next following 90 days, votes to increase the amount of funds budgeted for such purposes. In the case of requests through the administrative process to expend funds in excess of budget such requests shall be denied until such time as the mayor and council shall increase the amount of budgeted funds.

(Ord. No. 2003-10, § 1, 8-25-2003; Ord. No. 2007-19, § 1, 2-21-2007; Ord. No. 2012-07, § 1, 7-23-2012; Ord. No. 2013-17, § 1, 8-28-2013; Ord. No. 2013-30, § 1, 11-25-2013; Ord. No. 2014-16, § 1, 6-9-2014; Ord. No. 2022-250, § 1, 8-22-2022)

Sec. 2-59. Oath and bond required.

The officers and employees of the city, both elected and appointed, shall execute such surety or fidelity bonds in such amounts and upon such terms and conditions, and shall take such prescribed oath of office, as the city council shall from time to time require by ordinance or as may be provided by law.

Sec. 2-60. Impeachment and trial of councilmembers and mayor.

The following method for the impeachment and trial of any member of the council or the mayor is hereby prescribed:

- (1) *Grounds for.* In the event the mayor or any member of the council shall be guilty of malpractice in office or any lawful neglect of duty, or other powers of the same, or any conduct unbecoming a member of the council or mayor, he shall be impeached and upon conviction, dismissed from office.
- (2) *Charges and specifications.* The mayor or any member of the council may, in writing, prefer charges and specifications against the mayor or any member of the council at any meeting of the mayor and council, which charges and specifications shall be spread upon the minutes of the mayor and council and, together with a copy of the order or resolution fixing the time of trial, be served upon the defendant if within the city, and if not within the city, then at his most notorious place

of abode, at least ten days prior to the date fixed for a hearing on said charges and specifications.

- (3) *Date of trial.* In the event a member of the council is charged as above provided, the mayor shall set the date for the trial which date shall be not less than 12 nor more than 60 days from the date charges are preferred. In the event the mayor is charged, then the council, by resolution, shall likewise fix the date of trial.
- (4) *Witnesses; process; service.* The proponent and the defendant shall each be entitled to compulsory attendance of witnesses and the compulsory production of books, papers, documents, etc., and the city clerk shall issue subpoenas upon the request of either party and it shall be the duty of the marshal or his deputy to serve the same.
- (5) *Trial; rules of procedure.* The trial shall be had at the time fixed, before the remaining members of the mayor and council (not to include the official charged nor the official preferring the charges), unless for legal cause shown, a continuance shall be granted. The rules of procedure and evidence obtaining in the superior courts of the state in misdemeanor criminal cases shall apply in all trials of impeachment held under this article, except as otherwise provided herein.
- (6) *Public trial; counsel.* The hearing shall be had in public and both the proponent of the charges and the defendant shall be entitled to benefit of counsel.
- (7) *Judgment.* After the evidence has been closed and the argument of counsel completed, the mayor and council trying the impeachment shall go into executive session and decide the guilt or innocence of the accused. Upon reaching a judgment, those concurring shall sign the same, and, in case of conviction, the judgment shall dismiss the accused from office. In all events, judgment shall be spread upon the minutes of the mayor and council.

- (8) *Voting.* In the event the court of impeachment is composed of five or six members, four votes shall be necessary to convict; when it is composed of four members, only three votes shall be necessary to convict. When there are not sufficient votes to convict as prescribed in this subsection, the members voting for acquittal shall be authorized to enter a judgment of acquittal.
- (9) *Actions final.* Judgments in impeachment proceedings shall be final and shall be a bar to subsequent impeachment proceedings on the same specifications.
- (10) *Presiding officer.* In all impeachment trials, the officer entitled to preside over the deliberations of mayor and council shall preside, provided that such officer is neither the accuser nor the accused. The city attorney shall attend such trials and give the court advice on procedural matters and the law of evidence.

(Code 1941, § 1301; Code 1966, § 2-27)

Secs. 2-61—2-74. Reserved.

DIVISION 2. CITY ADMINISTRATOR

Sec. 2-75. Position created.

The city council has created the position of city administrator for the city. (Ord. No. 74-2, §§ 1—6, 11-25-1974; Ord. No. 89-02, § 1, 4-24-1989; Ord. No. 95-14, § 2, 9-25-1995)

Sec. 2-76. Selection; compensation.

(a) The person appointed to fill the city administrator position shall be the administrative officer of the city. The position of city administrator shall be filled by appointment of the mayor and council as soon as reasonably practical after the adoption of the ordinance from which this division is derived. The person so appointed shall serve as city administrator for such term as the council shall determine. The person so appointed to fill said position may be discharged at any time if and when his services shall become unsatisfactory to the council or shall become unnecessary.