

CITY COUNCIL
LESLIE MCPHERSON, MAYOR
SHIRLEY MARCHMAN, MAYOR PRO TEM
MATTHEW MONTAHAN
STEPHANIE WARMOTH
ANNA MCCOY
DANNY CARTER

City of Villa Rica



CITY MANAGER: TOM BARBER
CITY CLERK: THERESA CAMPBELL
CITY ATTORNEY: C. DAVID MECKLIN

571 W BANKHEAD HWY
VILLA RICA, GA. 30180
770.459.7000 | VILLARICA.ORG

SPECIAL CALLED CITY COUNCIL MEETING AGENDA

Holt-Bishop Justice Center, Municipal Courtroom, 101 Main Street
January 8, 2024 | 4:00 PM

Meeting Call to Order (Mayor Leslie McPherson)

Adoption of the Agenda (Mayor Leslie McPherson)

A. Governing Body

1. Discussion of Resolution to Investigate a Public Officer (C. David Mecklin, City Attorney)

Public Comment (We ask that you sign in for Public Comment before the meeting begins. Please state your Name and Address for the record and limit your comments to three minutes.)

B. Adjournment

1 BILL No.

RESOLUTION No. R-61-2023

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5 **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VILLA RICA, STATING THE**
6 **INTENTION TO UTILIZE THE INVESTAGATORY POWERS OF THE CITY COUNCIL OF THE**
7 **CITY OF VILLA RICA**
8

9 WHEREAS, the Villa Rica City Council ("Council") serves as the legislative authority
10 of the City of Villa Rica as codified in City Charter Sec. 2.10; and

11 WHEREAS, as the legislative authority, the Council has all powers and
12 responsibilities granted the legislative authority by Georgia Code, City Charter, and the Villa
13 Rica Code of Ordinances; and

14 WHEREAS, in City Charter Sec. 2.14 provides the council may make inquiries and
15 investigations into the affairs of the city and the conduct of any department, office or
16 agency thereof and for this purpose may subpoena witnesses, administer oaths, take
17 testimony, and require the production of evidence; and

18 WHEREAS, on or about December 12, 2023 the Mayor and council have become
19 aware of information that Ward 3 Council Member Leslie McPherson may have violated the
20 city charter by "disclosing confidential information concerning the property, government, or
21 affairs of the governmental body by which he/she is employed without proper
22 authorization, or use such information to advance the financial or other private interest of
23 himself or others". This accusation arises from the alleged disclosure of confidential
24 privileged information obtained by McPherson during an executive session for the purpose
25 of discussing potential litigation, pursuant to the attorney-client privilege and as provided
26 by Georgia Code section 50-14-2(1), a meeting otherwise required to be open was closed to
27 the public in order to consult and meet with legal counsel pertaining to pending or potential
28 litigation, settlement, claims, administrative proceedings, or other judicial actions brought
29 or to be brought by or against the agency or any officer or employee or in which the agency
30 or any officer or employee may be directly involved and the matter discussed.; and
31

32 WHEREAS, The City Charter provides that "No elected official, appointed officer, or
33 employee of the city or any agency or political entity to which this code of ethics applies

34 shall knowingly:...(c) Disclose confidential information concerning the property,
35 government or affairs of the governmental body by which he/she is employed without
36 proper authorization, or use such information to advance the financial or other private
37 interest of himself or others;". Sec. 7 – Penalties for violation, (a) Any city officer or
38 employee who willfully conceals such financial interest or willfully violates any of the
39 requirements of this section shall upon conviction be guilty of malfeasance in office or
40 position and shall be deemed to have forfeited his/her office or position. (b) Any officer or
41 employee of the city who shall forfeit his/her office or position as described in subsection
42 (a), shall be ineligible for appointment or election to or employment in a position in the city
43 government for a period of three (3) years thereafter.

44 WHEREAS, the Council has an obligation to protect the interests of its citizens,
45 including investigating matters that may have ethical or legal ramifications or result in costs
46 funded by taxpayer dollars and the treatment of employees or any abuses of power. The
47 Council may hire or contract with competent attorneys, legal research assistants, and/or
48 third parties on terms it considers appropriate, which includes the authorization to pursue
49 other potential violations that may be discovered in the course of this investigation; and

50 WHEREAS, the investigatory ability of the Council facilitates transparency,
51 accountability, and limits exposure of the City and its citizens by identifying facts pertinent
52 to the matter at hand.

53
54 **NOW, THEREFORE, BE IT RESOLVED BY THE VILLA RICA CITY COUNCIL OF THE**
55 **CITY OF VILLA RICA GEORGIA:**

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57 SECTION 1. The City Manager and City Attorney are directed to oversee the
58 investigation by an outside authority requested to investigate the events surrounding the
59 executive session of January 11, 2022. By this resolution, the Council invokes the authority
60 granted to it under state law and the city charter to compel the attendance of witnesses
61 and the production of documents and other records and evidence by subpoena, if
62 necessary.

63
64 SECTION 2. The Council will direct that the City Attorney report the findings to all
65 Members of Council no later than 120 days after the passage of this Resolution.

66 SECTION 3. The City Attorney may elect to hire or contract with competent attorneys
67 and legal research assistants on terms it considers appropriate. Appropriations or salaries

of competent attorneys, legal research assistants, and/or third parties employed may not exceed the appropriations for similar salaries in the budget of the City Attorney.

SECTION 4. The Council fully intends to exercise all authority granted under state law and the city charter. If a person refuses to testify or produce evidence during the investigation conducted under this Resolution, the Council may order the city attorney to immediately present to any competent court a written report of the facts relating to the refusal. The court shall hear all questions relating to the refusal to testify or produce evidence and shall also hear any new evidence not included in the report. If the court finds that the testimony or evidence sought should be given or produced, it shall order the person to testify or produce the evidence, or both.

SECTION 5. This resolution shall be in full force and effect from and after its approval by the members of Council.



Mayor Gil McDougal



City Clerk



SEAL

ARTICLE VI. - ETHICS

Sec. 2-180. - Purpose.

The purpose of this article is to:

- (1) Encourage high ethical standards in official conduct by city officials;
- (2) Establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the interest of the city;
- (3) Require disclosure by such officials of private financial or other interest in matters affecting the city; and
- (4) Serve as a basis for disciplining those who refuse to abide by its terms.

(Ord. No. 03-15-CCO, § 1(2-150), 5-5-2015)

Sec. 2-181. - Scope.

The provisions of this article shall be applicable to all elected or appointed city officials. Notwithstanding anything herein to the contrary, state law and the city Charter shall be controlling in the event of an actual conflict with the provisions of this article. This article shall be interpreted to supplement, and not replace, said provisions of state law and the Charter.

(Ord. No. 03-15-CCO, § 1(2-151), 5-5-2015)

Sec. 2-182. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City official or official, unless otherwise expressly defined, does not include city employees but does mean the mayor, members of the city council, municipal court judges (including substitute judges), city manager, city clerk, city attorney, and all other persons holding positions designated by the city charter, as amended. The term "city official" also includes all individuals, including city employees, appointed by the mayor and/or city council as appropriate to city authorities, commissions, committees, boards, task forces, or other bodies which can or may vote or take formal action or make official recommendations to the mayor and/or city council.

Decision means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the city council or other city board or commission, as well as the discussions or deliberations of the council, board, or commission which can or may lead to a vote or formal action by that body.

Employee means any person who is a full-time or part-time employee of the city.

Immediate family means the spouse, mother, father, grandparent, brother, sister, son or daughter of any city official related by blood, adoption or marriage. The relationship by marriage shall include in-laws.

Incidental interest means an interest in a person, entity or property which is not a substantial interest as defined herein and which has insignificant value.

Remote interest means an interest of a person or entity, including a city official, which would be affected in the same way as the general public. For example, the interest of an official in the property tax rate, general city fees, city utility charges or a comprehensive zoning ordinance or similar matters is deemed remote to the extent that the official would be affected in common with the general public.

Substantial interest means an interest, either directly or through a member of the immediate family, in another person or entity, where:

- (1) The interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000.00 or more of the equity or market value of the entity;
- (2) The funds received by the person from the other person or entity during the previous 12 months either equal or exceed:
 - a. \$5,000.00 in salary, bonuses, commissions or professional fees, or \$5,000.00 in payment for goods, products or services; or
 - b. Ten percent of the recipient's gross income during that period, whichever is less;
- (3) The person serves as a corporate officer or member of the board of directors or other governing board of a for-profit entity other than a corporate entity owned or created by the city council; or
- (4) The person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000.00 or more.

(Ord. No. 03-15-CCO, § 1(2-152), 5-5-2015)

Sec. 2-183. - Prohibitions.

- (a) No city official shall use such position to secure special privileges or exemptions for himself or others, or to secure confidential information for any purpose other than official duties on behalf of the city.
- (b) No city official, in any matter before the council or other city body, relating to a person or entity in which the official has a substantial interest, shall fail to disclose for the record such interest prior to any discussion or vote or fail to recuse himself from such discussion or vote as applicable.
- (c) No city official shall act as an agent or attorney for another in any matter before the city council or other city body.

- (d) No city official shall directly or indirectly receive, or agree to receive, any compensation, gift, reward, or gratuity in any matter or proceeding connected with, or related to, the duties of his office except as may be provided by law.
- (e) No city official shall enter into any contract with, or have any interest in, either directly or indirectly, the city except as authorized by state law.
 - (1) This prohibition shall not be applicable to the professional activities of the city attorney in his work as an independent contractor and legal advisor on behalf of the city.
 - (2) This prohibition shall not be applicable to an otherwise valid employment contract between the city and a city official who is not elected (such as, by way of example, a city manager, city administrator or chief of police).
 - (3) Any official who has a proprietary interest in an agency doing business with the city shall make that interest known in writing to the city council and the city clerk.
- (f) All public funds shall be used for the general welfare of the people and not for personal economic gain.
- (g) Public property shall be disposed of in accordance with state law.
- (h) No city official shall solicit or accept other employment to be performed, or compensation to be received, while still a city official if the employment or compensation could reasonably be expected to impair such official's judgment or performance of city duties.
- (i) If a city official accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official might reasonably be expected to act, investigate, advise, or make a recommendation, the official shall disclose the fact to the city council and shall recuse himself and take no further action on matters regarding the potential future employer.
- (j) No city official shall use city facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.
- (k) No city official shall grant or make available to any person any consideration, treatment, advantage, or favor beyond that which it is the general practice to grant or make available to the public at large.
- (l) A city official shall not directly or indirectly make use of, or permit others to make use of, official information not made available to the general public for the purpose of furthering a private interest.
- (m) A city official shall not use his or her position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to such official or persons within the official's immediate family, or those with whom the official has business or financial ties amounting to a substantial interest.

- (n) A city official shall not order any goods and services for the city without prior official authorization for such an expenditure. No city official shall attempt to obligate the city nor give the impression of obligating the city without proper prior authorization.
- (o) No city official shall draw travel funds or per diem from the city for attendance at meetings, seminars, training or other educational events and fail to attend such events without promptly reimbursing the city therefor.
- (p) No city official shall attempt to unduly influence the outcome of a case before the municipal court, nor shall any city official engage in ex parte communication with a municipal court judge on any matter pending before the municipal court.

(Ord. No. 03-15-CCO, § 1(2-153), 5-5-2015)

Sec. 2-184. - Conflict of interest.

- (a) A city official may not participate in a vote or decision on a matter affecting an immediate family member or any person, entity, or property in which the official has a substantial interest.
- (b) A city official who serves as a corporate officer or member of the board of directors of a nonprofit entity must disclose his interest in said entity to the mayor and council prior to participating in a vote or decision regarding funding of the entity by or through the city.
- (c) Where the interest of a city official in the subject matter of a vote or decision is remote or incidental, the city official may participate in the vote or decision and need not disclose the interest.

(Ord. No. 03-15-CCO, § 1(2-154), 5-5-2015)

Sec. 2-185. - Board of ethics.

The board of ethics shall consist of three residents of the city, one appointed by the mayor, one appointed by the city council, and the third appointed by the mayor and approved by a majority of the city council.

(Ord. No. 03-15-CCO, § 1(2-155), 5-5-2015)

Sec. 2-186. - Receipt of complaints.

- (a) All complaints against city officials shall be filed with the board of ethics, who may require that oral complaints, and complaints illegibly or informally drawn, be reduced to a memorandum of complaint in such form as may be prescribed by the city council or the board of ethics. Upon receipt of a complaint in proper form, the chairman of the board of ethics shall forward a copy of the complaint to the city official charged in the complaint within no more than seven calendar days.

- (b) All complaints shall be submitted and signed under oath, shall be legibly drawn and shall clearly address matters within the scope of this article.
- (c) Upon receipt of a complaint in proper form, the board shall review it to determine whether the complaint is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary jurisdiction of the city council. The board of ethics is empowered to dismiss in writing complaints that it determines are unjustified, frivolous, patently unfounded or fail to state facts sufficient to invoke the disciplinary jurisdiction of the city council; provided, however, that a rejection of such complaint by the board of ethics shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official. For complaints that are not dismissed, the board of ethics is empowered to collect evidence and information concerning any complaint and add the findings and results of its investigations to the file containing such complaint.
- (d) Upon completion of its investigation of a complaint, the board of ethics is empowered to dismiss in writing those complaints which it determines are unjustified, frivolous, patently unfounded or which fail to state facts sufficient to invoke the disciplinary jurisdiction of the city council; provided, however, that a rejection of such complaint by the board of ethics shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official.
- (e) The board of ethics is empowered to conduct investigations, to take evidence, and to hold hearings to address the subject matter of a complaint.
- (f) The board of ethics is empowered to adopt forms for formal complaints, notices, and any other necessary or desirable documents within its jurisdiction where the city council has not prescribed such forms.
- (g) Findings of the board of ethics shall be submitted to the city council for action.
- (h) To discourage the filing of ethics complaints solely for political purposes, complaints will not be accepted against a person seeking election as a city official, whether currently serving as a city official or not, from the date qualifying opens for the elected office at issue through the date the election results for that office are certified. The time for filing complaints will not run during this period. Properly filed complaints will be accepted and processed after the election results have been certified.

(Ord. No. 03-15-CCO, § 1(2-156), 5-5-2015)

Sec. 2-187. - Service of complaint.

The city clerk or board of ethics as appointed herein shall cause the complaint to be served on the city official charged as soon as practicable but in no event later than seven calendar days after receipt of a proper, verified complaint. Service may be by personal service, by certified mail, return receipt requested or

by statutory overnight delivery. A hearing shall be held within 60 calendar days after filing of the complaint. The board of ethics shall conduct hearings in accordance with the procedures and regulations it establishes but, in all circumstances, at least one hearing shall include the taking of testimony and the cross examination of available witnesses. The decision of the board of ethics shall be rendered to mayor and council within seven calendar days after completion of the final hearing. At any 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 hearing and the allegations at least seven calendar days before the first hearing, to be represented by counsel, to hear and examine the evidence and witnesses and, to oppose or try to mitigate the allegations. The city official subject to the inquiry shall have also have the right but not the obligation of submitting evidence and calling witnesses. Failure to comply with any of time deadlines in this section shall not invalidate any otherwise valid complaint or in any way affect the power or jurisdiction of the board of ethics or the city council to act upon any complaint.

(Ord. No. 03-15-CCO, § 1(2-157), 5-5-2015)

Sec. 2-188. - Right to appeal.

- (a) Any city official or complainant adversely affected by the findings or recommendations of the board of ethics may obtain judicial review of such decision as provided in this section.
- (b) An action for judicial review may be commenced by filing an application for a writ of certiorari in the Superior Court of Carroll County within 30 days after the decision of the board of ethics. The filing of such application shall act as supersedeas.

(Ord. No. 03-15-CCO, § 1(2-158), 5-5-2015)

Sec. 2-189. - Penalty.

Any person violating any provision of this article is subject to:

- (1) Public reprimand or censure by the city council; or
- (2) Request for resignation by the city council.

(Ord. No. 03-15-CCO, § 1(2-159), 5-5-2015)