

21 North Avondale Road  
Avondale Estates, Georgia 30002  
(404) 294-5400 Phone  
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## ETHICS COMPLAINT FORM

PLEASE PRINT OR TYPE

### PART A – COMPLAINANT INFORMATION (PERSON MAKING THE COMPLAINT)

Complainant's Name: Joseph C. Manderino

Address of Residence: \_\_\_\_\_

City/County/State/Zip: Avondale Estates, GA 30002

Business Address (if applicable): \_\_\_\_\_

City/County/State/Zip: \_\_\_\_\_

Contact Phone Number: \_\_\_\_\_ (Primary) \_\_\_\_\_ (Other)

Email Address: \_\_\_\_\_

### PART B – COMPLAINANT DECLARATION

I HEREBY DECLARE that I, Joseph Manderino have a complaint against  
(Print Name)

the following person): all four commissioners of the BOMC who is a:  
(Subject of Complaint)

Member of the Board of Mayor and Commissioners

Member of the Planning and Zoning Board

Member of the Zoning Board of Appeals

Member of other board, commission or committee (identify below):  
\_\_\_\_\_

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**PART C – DESCRIPTION OF COMPLAINT**

Provide a statement of the facts upon which your complaint is based. Describe the events in the order in which they occurred. Keep dates of the events in sequence. Include witnesses present when the alleged violation(s) took place. Be factual; the information you provide in this statement must be based on facts and not on personal conjecture. Try to answer the questions, “who”, “what”, “where”, and “when”. Attach extra sheets if more space is required.

*See attachment pages.*

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**PART D – CODE OF ETHICS AND CONDUCT**

List the section(s) of the Code of Ethics allegedly violated:

*See attachment pages.*

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In what way did the event(s) violate the Code of Ethics provision(s) cited above (may attach separate sheet or documentation).

*see attachment pages*

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PART E - SOURCE OF EVIDENCE

Identify sources of evidence, if any, you believe should be considered by the Ethics Board and attach copies of any pertinent information you have to support your allegation(s).

See attachment pages

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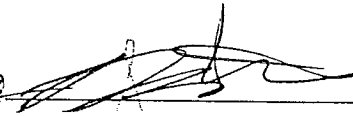
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I hereby swear or affirm that the information on this form is true and correct to the best of my knowledge.

Complainant's Signature: \_\_\_\_\_



Date: 3/4/2015

Date: 3/4/2015

on Expires \_\_\_\_\_

**ATTACHMENT PAGES TO  
AVONDALE ESTATES  
ETHICS COMPLAINT FORM**

The following paragraphs operate as attachments to the ethics complaints set forth on the Avondale Estates “ETHICS COMPLAINT FORM” to which these attachments are incorporated by reference.

**PART C – DESCRIPTION OF COMPLAINT**

The following paragraphs provide a narrative description and analysis of the various bases for the ethics violations set forth in Part D.

1. Avondale Estates (“Avondale”) is a small, incorporated city in the state of Georgia. It is located within the county of DeKalb.
2. Avondale operates under a charter form of government. That is, the state of Georgia created Avondale by enacting a specific statute that sets out Avondale’s boundaries and its charter. Avondale’s original city charter was enacted in 1927. In 1999, the Georgia legislature revised the city charter to its current version. Ga. Laws 1999, Act 301, p. 4886.
3. The charter, as amended from time to time by the Georgia legislature (the “Charter”), is the operative legal authority for the authority, boundaries and powers of Avondale and its government. The Charter is analogous to the United States Constitution. Any assertion of power by Avondale or its government that conflicts with the Charter must fail.
4. The Charter contains specific rules and provisions that govern a variety of topics. Importantly, Section 1.11 of the Charter sets forth rules on the boundaries of Avondale.
5. For example, Section 1.11(a) of the Charter sets forth the boundaries as in effect on the date the Charter was enacted.
6. Furthermore, Section 1.11(b) of the Charter sets forth rules on changes to those boundaries. Because of the relevance of these rules to the ethics violations set forth below, we set out these rules in full:

“The board of mayor and commissioners, as defined in Section 2.10 of this charter, may provide for changes in Appendix A by ordinance to reflect lawful changes in the corporate boundaries.”

The reference to “Appendix A” is to the legal description of Avondale’s boundaries as in effect on the date of enactment.

7. Thus, it seems clear that Charter permits Avondale to change its boundaries only by actions of the “board of mayor and commissioners.”

8. Section 1.13 of the Charter contains the equivalent of the “supremacy clause.” That is, Section 1.13 makes clear that if the Charter specifies how a power can be exercised, then it cannot be exercised in any other fashion:

“All powers, functions, rights, privileges, and immunities of the city, its officers, agencies, or employees shall be carried into execution as provided by this charter. If this charter makes no provision, such shall be carried into execution as provided by ordinance or as provided by pertinent laws of the State of Georgia, as are or may hereafter be enacted.”

9. Accordingly, the only way that Avondale can change its boundaries is, as set forth in Section 1.10(b), by action of the board of mayor and commissioners. Because the term “board of mayor and commissioners” will be used extensively in the following paragraphs, we henceforth refer to it as the “Board.”

10. Article II of the Charter sets forth various provisions on Avondale’s government structure. Specifically, Section 2.10 defines the Board and sets forth its primal rule in the governance of Avondale:

“The legislative authority of the government of this city, except as otherwise specifically provided in this charter, shall be vested in a board of mayor and commissioners to be composed of a mayor and four commissioners and shall be known as the board of mayor and commissioners.”

11. Thus, Section 2.10 defines the Board as consisting of “a mayor and four commissioners.”

12. Section 2.12(a) provides specific rules on when a vacancy occurs on the Board:

“The office of mayor or commissioner shall become vacant upon the occurrence of any event specified as constituting a vacancy by the Constitution of the State of Georgia, the Official Code of Georgia Annotated, such other applicable laws as are or may hereafter be enacted, or this charter or should the mayor or commissioner no longer be qualified pursuant to this charter.”

13. Section 45-5-1(a) of the Georgia Code provides specific rules on when a public office is deemed vacant:

All offices in the state shall be vacated: (1) By the death of the incumbent; (2) By resignation, when accepted; (3) By decision of a competent tribunal declaring the office vacant; (4) By voluntary act or misfortune of the incumbent whereby he is placed in any of the specified conditions of ineligibility to office; (5) By the incumbent ceasing to be a resident of the state or of the county, circuit, or district for which he was elected; (6) By failing to apply for and obtain commissions or certificates or by failing to qualify or give bond, or both, within the time

prescribed by the laws and Constitution of Georgia; or (7) By abandoning the office or ceasing to perform its duties, or both.

14. Thus, it seems clear under Section 45-5-1(a)(2) of the Georgia Code that if a member of the Board resigns and that resignation is accepted, then the office of that member of the Board is vacant.

15. Section 2.12(b) of the Charter provides specific rules on what happens when a vacancy occurs on the Board:

A vacancy in the office of mayor or commissioner shall be filled for the remainder of the unexpired term by special election in accordance with Titles 21 and 45 of the Official Code of Georgia Annotated or such other laws as are or may hereafter be enacted.

16. Thus, it seems clear that if there is a vacancy in the office of mayor or commissioner, then it can only be filled by election. Put differently, because the Charter specifies how a vacancy is filled, the vacancy cannot be remedied by appointment or some other process.

17. Recall that the Charter defines the Board as consisting of “a mayor and four commissioners.” Therefore, upon a vacancy of any office in the Board, there cannot be “a mayor and four commissioners” until the vacancy is filled by the election of a new office holder. Critically, there is no Board during the period of vacancy.

18. Reasonable people can argue that it is not wise to stop the legislative power of government when such vacancies occur. Reasonable people can argue that a better system would be to allow a temporary appointment during such vacancy, or increase the quorum requirement. However, that is not what the Charter says. It is profoundly clear that the drafters of the Charter, perhaps out of concern that shadowy actions could take place when vacancies occurred, effectively deactivates the Board until any vacancies are filled by election.

19. On October 1, 2014, the Board held a “Special Called Work Session” to address concerns by the residents of Avondale over annexation legislation that had been sponsored in the Georgia legislature, annexation plans by the Board, and various other concerns about annexation issues and Avondale.

20. At that meeting, each member of the Board apologized in some fashion for the actions taken by the Board thus far and pledged not to move forward with annexation issues without public input.

21. On October 2, 2014, the mayor of Avondale, Ed Rieker, submitted his resignation.

22. Subsequent to the event, the remaining four members of the Board continued to meet and enact ordinances and exercise the authority of the full Board. In particular, the four

members pursued efforts to enact an ordinance to annex the so-called “Stratford Green” development. The four members did not provide public notice or hearings consistent with their declarations at the October 1, 2014, public hearing.

23. On October 15, 2014, the Board accepted the resignation. Thus, upon the acceptance of that resignation, the office of mayor became vacant. Under the Charter, the only way to fill that vacancy was by election, which was scheduled for March 17, 2015.
24. In the same hearing, despite the earlier statements at the public meeting on October 1, 2014, the four members adopted a resolution approving the annexation of Stratford Green. The resolution also provided for a public hearing on the matter on November 17, 2014. Under the terms of the resolution, notice of the hearing was to be given only via legal notices and such notices were to be published “once a week for two consecutive weeks immediately preceding the hearing in the DeKalb Champion newspaper.”
25. While a notice advertising a hearing for the 2015 proposed Avondale budget does appear in the October 31, 2014, edition of the DeKalb Champion newspaper, no notices of any sort in connection with Avondale appear in the October 24, 2014, or November 14 editions (there appears to be no November 7, 2014, edition of the paper).
26. Thus, with no public notice, the “public hearing” resulted in no input from the residents of Avondale. In retrospect, the wisdom of the original framers of the Charter seems remarkably sound.
27. As the minutes of the November 17, 2014, hearing indicate, the effort to push the annexation through without alerting the residents of Avondale was highly successful. The dry wording stands in counter point to the near revolt at the October 1, 2014 hearing:

Item No. 3     Receive public comment on the Ordinance to Annex Certain Property Known as Stratford Green Townhomes into the City of Avondale Estates

City Manager Brown stated that the meeting tonight is to receive public comment on the Ordinance to Annex Certain Property Known as Stratford Green Townhomes into the City of Avondale Estates

No public comment

Item No. 4     Adjournment

28. On December 15, 2014, the four members purported to enact an ordinance to annex Stratford Green.
29. In conjunction with the secret annexation effort, a document labeled “Financial Analysis” was posted on the Avondale city website purporting to show a net financial benefit to

Avondale if the annexation of Stratford Green occurred. The benefit is shown to be approximately \$100,000.

30. In fact, the "Financial Analysis" shows no estimate for any public safety expenses. Although the four members assured the residents of Avondale at the October 1, 2014, public hearing that they would consider all aspects of any annexation, there is no evidence that any analysis of crime or other public safety aspects of the annexation were considered.
31. This deficiency is significant because publicly available resources show a disproportionate amount of property and violent crime in the proposed annexation area, as adjusted for population. A rough estimate of an increase in total crime of approximately 35% is consistent, for example, with an evaluation of crime statistics on DeKalb County's CRIMETRAC website.
32. Given the current Avondale public safety budget, a 35% increase in workload would lead to a \$350,000 increase in expenditures. Thus, instead of benefitting Avondale at the rate of \$100,000 per year, the annexation could saddle Avondale with a \$1 million deficit over the next four years.
33. In addition, we understand that the four members have also worked to permit the residents of Stratford Green to vote in the election scheduled for March 17. This is so even though the election is to fill an office that was vacated before the purported annexation occurred.



**PART D – CODE OF ETHICS AND CONDUCT**

The following paragraphs describe the specific violations of the Avondale Estates Code of Ethics that occurred as a result of the actions set forth in Part C.

1. Section 2-92(4) of the Code of Ethics provides that “The people have a right to expect that every public official will conduct himself in a manner that will tend to preserve public confidence in and respect for the government he represents.”

Based on the facts set out in Part C, the four members of the Board: (1) used their positions to push through an annexation ordinance in the face of wide-spread opposition; (2) purported to pass an annexation ordinance in secret; (3) purported to pass an annexation resolution and ordinance without open hearings, despite promising a more transparent annexation process; (4) scheduled a “public hearing” without any notice to the public; and (5) acted as if they constitute the Board, purporting to enact ordinances, approve budgets, and take other actions that could be taken with a vacancy in the office of mayor. Each of these actions tended to degrade public confidence in and respect for the government of Avondale. Accordingly, such actions constitute violations of Section 2-92(4) of the Code of Ethics.

2. Section 2-96(a) of the Code of Ethics provides that “No commissioner or member of any board or commission shall use such position to secure special privileges or exemptions for such persons or others, or to secure confidential information for any purpose other than official responsibilities.”

Based on the facts set out in Part C, the four members of the Board used their positions to secure special privileges for others, in particular the residents and property owners of Stratford Green. The privileges include, among other items, the provision of municipal services by Avondale, including public safety services, and the permission to vote in Avondale elections. These privileges are improperly provided because the residents and property owners of Stratford Green are not residents and property owners of Avondale. Because these privileges can only properly be enjoyed by residents and property owners of Avondale, the extension of these privileges to the residents and property owners of Stratford Green constitutes a violation of Section 2-96(a) of the Code of Ethics.

3. Section 2-96(f) of the Code of Ethics provides that “All public funds shall be used for the general welfare of the people and not for personal economic gain.”

Based on the facts set out in Part C, the four members of the Board used their positions to provide municipal services by Avondale, including public safety services, to the residents and property owners of Stratford Green. The provision of such services to the residents and property owners of Stratford Green is improper because they are not residents and property owners of Avondale. Accordingly, the four members of the Board have caused the public funds of Avondale to be used for the personal economic gain of persons and

property owners who are not residents of Avondale, a violation of Section 2-96(f) of the Code of Ethics.

4. Section 2-96(g) of the Code of Ethics provides that "Public property shall be disposed of in accordance with Georgia law."

Based on the facts set out in Part C, the four members of the Board used their positions to provide municipal services by Avondale, including public safety services, to the residents and property owners of Stratford Green. The provision of such services to the residents and property owners of Stratford Green is improper because they are not residents and property owners of Avondale. Accordingly, the four members of the Board have caused the public funds of Avondale to be disposed of for the benefit of persons and property owners who are not residents of Avondale, a violation of Section 2-96(g) of the Code of Ethics.

5. Section 2-96(j) of the Code of Ethics provides that "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."

Based on the facts set out in Part C, the four members of the Board used their positions to provide municipal services by Avondale, including city facilities, personnel, equipment or supplies, to the residents and property owners of Stratford Green. The provision of such facilities, personnel, equipment and supplies to the residents and property owners of Stratford Green is improper because they are not residents and property owners of Avondale. Accordingly, the four members of the Board have caused the use city facilities, personnel, equipment or supplies for private purposes, a violation of Section 2-96(j) of the Code of Ethics.

6. Section 2-96(k) of the Code of Ethics provides that "No city official or employee 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."

Based on the facts set out in Part C, the four members of the Board used their positions to provide municipal services by Avondale to the residents and property owners of Stratford Green. The residents and property owners of Stratford Green are not residents or property owners of Avondale. As a result, the provision of such services is improper, because it constitutes consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large. Accordingly, the four members of the Board have granted or made available to the residents and property owners of Stratford Green consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large, a violation of Section 2-96(k) of the Code of Ethics.

**PART E - SOURCE OF EVIDENCE**

This section of the complaint identifies the source of all evidence provided in or relied on in Parts C and D of the Avondale Estates "ETHICS COMPLAINT FORM."

All the facts cited in Part C can be found on publicly available websites. For example, statements by the four members of the Board at the public hearing on October 1, 2014, can be heard on an audio file posted on the Avondale city website under "Annexation." Similarly, the annexation resolution, the "Financial Analysis" posted in connection with the purported annexation, and the purported annexation ordinance are also posted on the same website. Back issues of the DeKalb Champion newspaper can be accessed at that paper's website. Crimetrack can be accessed at the DeKalb County police website.

**REMEDIES SOUGHT**

There is no place on the Avondale Estates “ETHICS COMPLAINT FORM” to set forth a remedy for the actions for which the complaint is filed. The following paragraphs set forth the proposed remedies:

1. The four members of the Board who are the subject of this complain shall be requested to resign.
2. The City Attorney shall commence all necessary legal action to unwind, terminate, rescind, revoke, cancel and nullify the purported annexation described in Part C, and all other purported actions by the Board during the vacancy of the mayor.
3. The extension of voting privileges to non-residents of Avondale shall be revoked and, to the extent necessary, the pending election for mayor scheduled for March 17, 2015, shall be delayed until a proper voter list can be developed.
4. An investigation into the circumstances of the annexation effort, including the November 17, 2014, “public hearing,” should be conducted by an impartial third party.