

*APPOINTED OFFICERS PERMITTED TO CONTINUE IN APPOINTED POSITION AS NON-VOTING MEMBERS AFTER QUALIFYING FOR ELECTED OFFICE IN THE CITY OF NORCROSS, BUT MUST RESIGN FROM APPOINTED POSITION UPON BEING SWORN IN TO SUCH ELECTED PUBLIC OFFICE AND MAY RESUME APPOINTED POSITION AS VOTING MEMBERS IF NOT ELECTED TO PUBLIC OFFICE*

ORDINANCE NO. 16- 2019

**An Ordinance to provide for the Amendment to amend Article II, Section 2.14 (f) of the City Charter for the City of Norcross Regarding Conflicts of Interest to Provide for Appointed Members of Any Board, Commission or Authority of the City to Continue in Their Appointed Position as Non-Voting Members After Qualifying as a Candidate for Nomination or Election to Public Office in the City of Norcross, to Require Appointed Board Member to Resign from Appointed Position Upon Being Sworn in to Such Public Office and to Continue Such Appointed Position as a Voting Member if Not Elected to Such Public Office; and for Other Purposes as Stated Herein:**

WHEREAS, Article II, Sec. 2.14 of the City Charter for the City of Norcross sets forth certain conflicts of interest for elected officers, appointed officers, employees and members of a board, commission or authority of the City of Norcross; and

WHEREAS, Sec. 2.14 (f) of the City Charter was amended by Ord. No. 03-2017 to permit City of Norcross directors, department heads, employees and members of any board, commission or authority of the City to continue in such position or employment upon qualifying as a candidate for nomination or election to public office for any public office other than in the City of Norcross, or for the Gwinnett County Board of Commissioners; and

WHEREAS, the Mayor and Council of the City of Norcross have determined that Sec. 2.14 (f) is over broad and unfairly prohibits appointed officials from continuing in their appointed positions after qualifying for elected offices in the City of Norcross, which does not present an actual conflict of interest that would make their continued appointed position untenable and unacceptable; and

WHEREAS, the Mayor and Council of the City of Norcross have determined that it is in the best interest of the City to amend Sec. 2.14 (f) to permit appointed officials to continue their appointed position with the City of Norcross in a non-voting capacity after qualifying as a candidate for nomination or election to public office in the City of Norcross, that such appointed official must resign such appointed position upon being sworn into such elected public office, and that such appointed official shall continue to act as a voting member if not elected to such public office; and

WHEREAS, Chapter 53 of Title 36 of the Official Code of Georgia Annotated provides that the City of Norcross has legislative power to amend its Charter by ordinance as an incident or its home rule power by following the procedure set forth in O.C.G.A. § 36-35-3 (b);

NOW THEREFORE, the Mayor and Council hereby amend Article II, Section 2.14 (f) of the City Charter for the City of Norcross, as is more particularly set forth below.

**ENACTING CLAUSE.** The Mayor and City Council of the City of Norcross, Georgia, hereby ordains that the Article II, Section 2.14 (f) of the City Charter for the City of Norcross, shall be

amended by ordinance after compliance with the procedure set forth in O.C.G.A. § 36-35-3 (b) as more particularly set forth below.

## **I. COMPLIANCE WITH O.C.G.A. § 36-35-3 (B).**

(a) The Mayor and Council of the City of Norcross shall adopt ordinances amending the City Charter at two regular consecutive meetings of the Mayor and City Council of the City of Norcross, held not less than seven (7) nor more than sixty (60) days apart;

(b) The Mayor and Council of the City of Norcross hereby direct that a notice containing a synopsis of the proposed amendment shall be published in the Gwinnett Daily Post once a week for three (3) weeks within a period of sixty (60) days immediately preceding its final adoption.

(c) The Mayor and Council of the City of Norcross further direct that the notice shall state that a copy of the proposed amendment is on file in the office of the City Clerk of the City of Norcross and in the office of the clerk of the Superior Court of Gwinnett County for the purpose of examination and inspection by the public; and

(d) The Mayor and Council of the City of Norcross further direct that the City Clerk of the City of Norcross shall furnish anyone, upon written request, a copy of the proposed amendment.

**II. AMENDMENT.** After giving the notices and holding the meetings as set forth in Section I above, the Mayor and Council of the City of Norcross under the exercise of its Home Rule Powers, hereby direct that Article II, Section 2.14 (f) of the City Charter for the City of Norcross, shall be amended by deleting Section 2.14 (f) in its entirety and substituting the following in lieu thereof:

- “(f) (1) No department director, department head, or employee of the City shall continue in such position or employment upon qualifying as a candidate for nomination or election to public office in the City of Norcross, or for the Gwinnett County Board of Commissioners.
- (2) Department directors, department heads and employees of the City shall be and are permitted to continue in such position or employment after qualifying as a candidate for nomination or election to any public office other than in the City of Norcross or for the Gwinnett County Board of Commissioners.
- (3) (i) An appointed member of a board, commission or authority of the City shall continue in such position as a non-voting member after qualifying as a candidate for nomination or election to public office in the City of Norcross or for the Gwinnett County Board of Commissioners. The limitations of such appointed members authority after qualifying for nomination or election to public office in the City of Norcross or for the Gwinnett County Board of

Commissioners are more particularly described in sections (f)(3)(iii) and (f)(3)(iv) below.

(ii) An appointed member of any board, commission or authority of the City that is elected to public office in the City of Norcross or the Gwinnett County Board of Commissioners shall resign such appointed position upon being sworn in to such public office.

(iii) Between the time that such appointed member of any board, commission or authority of the City qualifies for nomination or election to public office in the City of Norcross or for the Gwinnett County Board of Commissioners and the time that the successful candidate is sworn in to such public office, such appointed official may continue in their appointed position as a non-voting member. During this time said member shall be counted for the purpose of determining a quorum, and shall be entitled to all other powers, rights, privileges and immunities of such appointed office, including attending and participating in debate in open meetings and in meetings closed for executive session, but shall not have authority to make a motion, to second a motion or to cast a vote on any matter coming before such board, commission or authority.

(iv) An appointed member of any board, commission or authority of the City that is unsuccessful in his or her candidacy for election to public office in the City of Norcross or for the Gwinnett County Board of Commissioners shall resume such appointed position with all powers, rights, privileges and immunities of such appointed office, including the ability to make a motion, to second a motion and to cast votes on any matter coming before said board, commission or authority fully restored upon the successful candidate being sworn in to such public office.

(v) An appointed member of any board, commission or authority of the City shall be and is permitted to continue in such position after qualifying as a candidate for nomination or election to any public office other than in the City of Norcross or for the Gwinnett County Board of Commissioners.

(4) Elected officials in the City of Norcross (i.e., the Mayor and Councilmembers) shall be permitted to continue the balance of their term for which they were elected after qualifying as a candidate for nomination or election to any other elective public office (including but not limited to a different elective office in the City of Norcross other than the present office held by such elected official), so long as the term of the elective

office for which such official is qualifying begins more than 30 days prior to the expiration of such official's present term of office.

(5) The office of any elected official in the City of Norcross shall be declared vacant upon such elected official qualifying in a general primary or general election for another elective public office if the term of office for which such official is qualifying begins more than 30 days prior to the expiration of such official's present term of office.

(6) The elected officials of the City of Norcross shall be ineligible to hold any other elected office during the term of office for which such Mayor or Councilmember was chosen unless he or she first resigns before entering such other office. The vacancy created in any such office shall be filled as provided by Georgia Law."

### **III. SEVERABILITY.**

In the event that any section, subsection, sentence, clause or phrase of this Ordinance shall be declared or adjudged invalid or unconstitutional, such adjunction shall in no manner affect the other sections, sentences, clauses, or phrases of this Ordinance, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally part thereof.

### **IV. REPEALER**

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

### **V. EFFECTIVE DATE**

This Ordinance shall become effective on \_\_\_\_\_.

THEREFORE BE IT RESOLVED, that the Norcross City Council does hereby ordain, resolve and enact the foregoing Ordinance to amend the City Charter of the City of Norcross as set forth above.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_.

APPROVED:

NORCROSS CITY COUNCIL

BY:

\_\_\_\_\_  
(Mayor)

ATTEST:

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(City Clerk)