



**Carl Vinson
Institute of Government
UNIVERSITY OF GEORGIA**



City of Peachtree Corners Charter Review

At the request of the City of Peachtree Corners, the Carl Vinson Institute of Government reviewed the city's charter in order to identify changes that would bring the charter into greater conformity with the law and current practice. The current standard typically used for benchmarking language in city charters is the Georgia Model Municipal Charter, currently in its 5th edition, published by the Georgia Municipal Association. Institute of Government faculty compared the existing charter to the Model Charter, reviewed recent legislation and case law relevant to city governance, and consulted other pertinent literature and academic research. Language in the charter that may warrant revision has been noted and alternative wording suggested for consideration with the rationale for such potential alternatives noted. It may be helpful to think of the potential revisions as falling into three distinct areas; changes related to addressing the unique characterization of the charter as providing for a "city-lite" government, changes that are more in the nature of recognizing current organizational practice and keeping pace with other developing law, and those related to the charter's 1 mill property tax cap. A brief discussion of these three areas and the suggested revisions are presented in context for consideration.

"City-Lite"

One of the significant factors motivating the suggested charter changes is the legal nature of home rule for cities in Georgia. The City of Peachtree Corners was originally conceived as a "city-lite" that would only provide a limited number of services. There is no requirement that cities provide a wide range of services, in fact, to continue to exist, a municipal corporation in Georgia need only provide three services either directly or by contract from a list in the state code. See O.C.G.A. § 36-30-7.1. However, charter provisions, whether enacted locally or by local Act of the Georgia General Assembly, that artificially limit a municipal corporation's ability to provide a service it is otherwise legally authorized to provide, or requiring that provision of a new service be contingent upon a referendum are unconstitutional.

In 2015, the Georgia State Senate convened a study committee on Municipal Annexation, Deannexation, and Incorporation. The committee held several hearings and solicited testimony from local government officials and legal experts. Legal opinions on the constitutionality of the city-lite concept were solicited from a law firm that specializes in local government law, legislative counsel to the General Assembly, and a former Chief Justice of the Georgia Supreme Court. All three concluded that a municipal charter may not restrict or place conditions on the provision of municipal services, such limitations can only be achieved through the enactment of general statutes. (See the Appendix for copies of the legal opinions.)

The General Assembly has recently enacted general law addressing services provided by newly incorporated cities. Rather than restrict service provision for new cities, however, it has mandated a service that must be provided. In the same year that the study committee mentioned above was held, the legislature adopted O.C.G.A. § 36-31-7.1 which requires that cities created after April 15, 2005: “assume the ownership, control, care, and maintenance of county road rights of way located within the area incorporated unless the municipality and the county agree otherwise by joint resolution.”

Clarifying the ability of the city to provide for services both directly and by contract potentially strengthens the city’s position for both procuring contracted services and in intergovernmental negotiations with other governments. Participation by municipalities in negotiations over the Special Purpose Local Option Sales tax revenues requires that cities meet the statutory definition of a qualified municipality. Meeting this definition requires that the city provide three services from a statutory list. See O.C.G.A. § 48-8-110. The state mandated Service Delivery Strategy that local governments are required to negotiate with their neighboring cities and county government assumes each city enters into such negotiations with the full powers afforded by home rule. See O.C.G.A. § 36-70-20 et. seq. Removing doubts about service providing options self-imposed by unconstitutional charter provisions can only serve to add clarity and flexibility to citizens and negotiating partners.

Recognizing Current Practice

Another factor guiding the suggested changes is bringing the charter's provisions related to administrative duties and form of government into conformity with the actual ongoing practice. Although the current charter allows for administrative positions to be created, it does not specifically recognize the position of city manager. Nevertheless, the city by ordinance created a city manager position in 2012 and has operated with a city manager ever since shortly after its creation. Although some of the provisions in the ordinance are similar to those in the Model Charter, some of the provisions don't track standard language for Council-Manager forms of government. For example, one provision of the ordinance requires that the manager reside in the city limits. State law prohibits local governments from requiring their employees to live in their jurisdictions, and thus this legally infirm provision is not recommended for inclusion. See O.C.G.A. § 45-2-5.

In addition to the statute mentioned above, other general statutes have preemptive power over provisions in municipal charters. While it is a given that a constitutional general state statute will control over a conflicting provision in a city charter, it makes sense to bring charter language into compliance so as to provide clarity and transparency to those relying on the city charter for guidance. For example, language in the city's charter that purports to provide that the municipal court judge serves at the pleasure of the governing authority has been preempted by state law. In 2016, the General Assembly amended O.C.G.A. § 36-32-2 which provides that judges shall serve for a minimum term or one year unless removed from office for cause. Because the most recent edition of the Model Municipal Charter predates this change, language from the statute was used to craft new suggested charter language.

Property Tax Caps

Some consideration should be given to removing the 1 mill property tax cap from the charter. General state law in Georgia does not impose millage rate caps on municipalities, and instead entrusts the tax rate to the judgment of the elected representatives of the city, with ample prescribed public notice. Removing this language from the charter does not require that the city

ever raise the millage rate, but it may assist the city in obtaining financing for projects at better rates at some point in the future.

Recent scholarship strongly suggests that millage rate caps have a negative impact on municipal credit ratings. (See Craig Maher, Steven Deller, Judith Stallman, and Sungho Park, “The Impact of Tax and Expenditure Limits on Municipal Credit Ratings.” *American Review of Public Administration*, Vol. 46, 2016, pgs. 592-613.) Scholars looked at Moody’s credit ratings and the fiscal metrics database of the National Governmental Finance Officers Association for over 500 cities nationwide. Their conclusion was instructive: “Our central finding is that more restrictive TELS [tax and expenditure limitations such as property tax caps] . . . have a negative impact on the credit ratings of municipalities. We also find that certain institutional rules, specifically the presence of home-rule powers, provide enhanced fiscal flexibility, which increases municipalities’ credit ratings.” The authors go on to observe that because the cost of borrowing is directly tied to credit ratings, cities with restrictive tax limitations have increased costs of borrowing.

While the city may not currently have need of increased property tax revenue, it may decide at some point that financing capital improvements is a prudent course of action. It may also be the case that financing improvements will not necessitate a property tax increase, but it would be a responsible action to remove language from the city charter that might impose unnecessary additional financing costs on the city in the future.

Procedure

Many of the changes identified herein may be made by home rule amendment to the city charter. The Municipal Home Rule Act of 1965 grants cities the power to amend their own charters without the necessity of action by the Georgia General Assembly. O.C.G.A. § 36-35-3 provides that municipal charters may be amended “by ordinances duly adopted at two regular consecutive meetings of the municipal governing authority, not less than seven nor more than 60 days apart.” With respect to removing the 1 mill property tax cap, the Attorney General has opined, as well as legislative counsel to the General Assembly, that property tax caps may be removed by home rule charter amendment. See Unofficial Opinion of the Georgia Attorney General Opinion 83-19. (See Appendix for the Attorney General Opinion and legal opinion from legislative counsel.)

The only limitations on that authority relevant to the changes identified here is a prohibition on the city's ability to take "actions affecting the composition and form of the municipal governing authority." O.C.G.A. §36-35-6.

It appears to be the law that adding the position of city manager to a city charter constitutes a change in the form of government requiring action by the General Assembly. See Jackson v. Inman, 232 Ga. 566 (1974). There are two cases involving county governments that address changes to the form of government in light of constitutional home rule language for county governments that is worded similarly to the Municipal Home Rule Act. See Gray v. Dixon, 249 Ga. 159 (1982) and Kreiger v. Walton County, 269 Ga. 678 (1998). However, the General Assembly has specifically enacted general statutory language that allows county governments to opt to create the position of county manager. See O.C.G.A. § 36-5-22. There is no corresponding statutory authority granting cities the power to create a city manager position by home rule. Thus, it is recommended that these sections be amended by an act of the General Assembly rather than by home rule.

Conclusion

The changes presented here for the council's consideration are intended to either reflect current practice, correct legal infirmities, or strengthen the city's position with respect to contract negotiations. City charters serve to provide not only a legal framework for operations but serve as a transparent guide to how a city does business and make clear where certain official responsibilities are vested. Hopefully, this analysis will provide information to the city council in making critical decisions regarding the wording of the charter.

It is clear, as explained in the preceding analysis, that the current city charter is legally deficient and that due to the nature of municipal law in Georgia, it needs to be rewritten by the General Assembly.

The suggested changes to the existing charter are identified by yellow highlighted text. Suggested deletions from the existing charter language are denoted by a strike through and suggested additions to the existing charter language are denoted by underlined text. The language highlighted in blue following each section is merely commentary explaining the suggested changes to the preceding section.

Charter of the City of Peachtree Corners

Sec. 1.10. - Name.

This Act shall constitute the charter of the City of Peachtree Corners. The city and the inhabitants thereof are constituted and declared a body politic and corporate under the name and style "City of Peachtree Corners, Georgia," and by that name shall have perpetual succession.

Sec. 1.11. - Corporate boundaries.

(a) The boundaries of this city shall be those set forth and described in Appendix A of this charter, and said Appendix A is incorporated into and made a part of this charter. The boundaries of this city at all times shall be shown on a map, a written description, or any combination thereof, to be retained permanently in the office of the city clerk and to be designated, as the case may be: "Official Map (or Description) of the corporate limits of the City of Peachtree Corners, Georgia." Photographic, typed, or other copies of such map or description certified by the city clerk shall be admitted as evidence in all courts and shall have the same force and effect as with the original map or description.

(b) The city council may provide for the redrawing of any such map by ordinance to reflect lawful changes in the corporate boundaries. A redrawn map shall supersede for all purposes the entire map or maps which it is designated to replace.

Sec. 1.12. - Powers and construction.

(a) This city shall have all the powers possible for a city to have under the present or future construction or laws of this state as fully and completely as though they were specifically enumerated in this charter. This city shall have all the powers of self-government not otherwise prohibited by this charter or by general law.

(b) The powers of this city shall be construed liberally in favor of the city. The specific mention or failure to mention powers shall not be construed as limiting in any way the powers of this city.

[The changes here add language from the Georgia Model Municipal Charter. The Georgia Constitution Article IX, Section II, Paragraph III known as the "supplementary powers provision" enumerates a long list of powers that municipal corporations may employ and services they may provide. While the state legislature may regulate, restrict, or limit such powers, they may not withdraw them from a city, and they may only do so through general, not local, legislation. Adding this language would clarify that the city enjoys the full range of municipal powers without requiring that the city exercise all of them.]

Section 1.13- Examples of Powers.

(a) Except as provided in subsection (b) of this section, this city shall have the following powers:

(1a) Animal regulations. To regulate and license or to prohibit the keeping or running at large of animals and fowl and to provide for the impoundment of same if in violation of any ordinance or lawful order; to provide for the disposition by sale, gift, or humane destruction of animals and fowl when not redeemed as provided by ordinance; and to provide punishment for violation of ordinances enacted under this charter;

(2b) Appropriations and expenditures. To make appropriations for the support of the government of the city; to authorize the expenditure of money for any purposes authorized by this charter and for any purpose for which a municipality is authorized by the laws of the State of Georgia; and to provide for the payment of expenses of the city;

(3c) Building regulation. To regulate and to license the erection and construction of buildings and all other structures; to adopt building, housing, plumbing, electrical, gas, and heating and air-conditioning codes; and to regulate all housing and building trades;

(d) Business Regulation and Taxation. To levy and to provide for the collection of regulatory fees and taxes on privileges, occupations, trades and professions as authorized by Title 48 of the Official Code of Georgia Annotated, or other such applicable laws as are or may hereafter be enacted; to permit and regulate the same; to provide for the manner and method of payment of such regulatory fees and taxes; and to revoke such permits after due process for failure to pay any city taxes or fees;

(e) Condemnation. To condemn property, inside or outside the corporate limits of the city, for present or future use and for any corporate purpose deemed necessary by the governing authority, utilizing procedures enumerated in Title 22 of the Official Code of Georgia Annotated, or such other applicable laws as are or may hereafter be enacted;

(4f) Contracts. To enter into contracts and agreements with other governmental entities and with private persons, firms, and corporations;

(5g) Emergencies. To establish procedures for determining and proclaiming that an emergency situation exists within or outside the city and to make and carry out all reasonable provisions deemed necessary to deal with or meet such an emergency for the protection, safety, health, or well-being of the citizens of the city;

(6h) Environmental protection. To protect and preserve the natural resources, environment, and vital areas of the state through the preservation and improvement of air quality, the restoration and maintenance of water resources, the control of erosion and sedimentation, the management of solid and hazardous waste, and other necessary actions for the protection of the environment;

(7i) Fire regulations. To fix and establish fire limits and from time to time to extend, enlarge, or restrict the same; to prescribe fire safety regulations not inconsistent with general law, relating to both fire prevention and detection and to fire fighting; and to prescribe penalties and punishment for violations thereof;

(j) Garbage Fees. To levy, fix, assess, and collect a garbage, refuse and trash collection and disposal, and other sanitary service charge, tax, or fee for such services as may be necessary in the operation of the city from all individuals, firms, and corporations residing in or doing business therein benefiting from such services; to enforce the payment of such charges, taxes or fees; and to provide for the manner and method of collecting such service charges;

(8k) General health, safety, and welfare. To define, regulate, and prohibit any act, practice, conduct, or use of property which is detrimental to health, sanitation, cleanliness, welfare, and safety of the inhabitants of the city and to provide for the enforcement of such standards;

(9l) Gifts. To accept or refuse gifts, donations, bequests, or grants from any source for any purpose related to powers and duties of the city and the general welfare of its citizens, on such terms and conditions as the donor or grantor may impose;

(10m) Health and sanitation. To prescribe standards of health and sanitation and to provide for the enforcement of such standards;

(11n) Jail sentences. To provide that persons given jail sentences in the municipal court may work out such sentences in any public works or on the streets, roads, drains, and other public property in the city; to provide for commitment of such persons to any jail; or to provide for commitment of such persons to any county work camp or county jail by agreement with the appropriate county officials;

(o) Motor Vehicles. To regulate the operation of motor vehicles and exercise control over all traffic, including parking upon or across the streets, roads, alleys and walkways of the city;

(2p) Municipal agencies and delegation of power. To create, alter, or abolish departments, boards, offices, commissions, and agencies of the city and to confer upon such agencies the necessary and appropriate authority for carrying out all the powers conferred upon or delegated to the same;

(13q) Municipal debts. To appropriate and borrow money for the payment of debts of the city and to issue bonds for the purpose of raising revenue to carry out any project, program, or venture authorized by this charter or the laws of the State of Georgia;

(14r) Municipal property ownership. To acquire, dispose of, lease, and hold in trust or otherwise any real, personal, or mixed property, in fee simple or lesser interest, inside or outside the property limits of the city;

(15s) Municipal property protection. To provide for the preservation and protection of property and equipment of the city and the administration and use of same by the public; and to prescribe penalties and punishment for violations thereof;

(t) Municipal Utilities. To acquire, lease, construct, operate, maintain, sell and dispose of public utilities, including but not limited to a system of waterworks, sewers and drains, sewage disposal, stormwater management, gas works, electric light panels, cable television and other telecommunications, transportation facilities, public airports, and any other public utility; and to fix the taxes, charges, rates, fares, fees, assessments, regulations and penalties, and to provide for the withdrawal of service for refusal or failure to pay the same;

(16u) Nuisance. To define a nuisance and provide for its abatement whether on public or private property;

(17v) Penalties. To provide penalties for violation of any ordinances adopted pursuant to the authority of this charter and the laws of the State of Georgia;

(18w) Planning and zoning. To provide comprehensive city planning for development by zoning; and to provide subdivision regulation and the like as the city council deems necessary and reasonable to ensure a safe, healthy, and esthetically pleasing community;

(x) Police and Fire Protection. To exercise the power of arrest through duly appointed police officers, and to establish, operate, or contract for a police and a firefighting agency;

(19y) Public hazards; removal. To provide for the destruction and removal of any building or other structure which is or may become dangerous or detrimental to the public;

(20z) Public improvements. To provide for the acquisition, construction, building, operation, and maintenance of parks and playgrounds, public grounds, recreational facilities, public buildings, and charitable, cultural, educational, recreational, conservation, and sport institutions, agencies, and facilities; and to regulate the use of public improvements;

(21aa) Public utilities and services. To grant franchises or make contracts for or impose taxes on public utilities and public service companies and to prescribe the rates, fares, regulations, and standards and conditions of service applicable to the service to be provided by the franchise grantee or contractor, insofar as not in conflict with valid regulations of the Georgia Public Service Commission;

(22bb) Regulation of roadside areas. To prohibit or regulate and control the erection, removal, and maintenance of signs, billboards, trees, shrubs, fences, buildings, and any and all other structures or obstructions upon or adjacent to the rights-of-way of streets and roads or within view thereof, within or abutting the corporate limits of the city; and to prescribe penalties and punishment for violation of such ordinances;

(23cc) Retirement. To provide and maintain a retirement plan for officers and employees of the city;

(24dd) Roadways. To lay out, open, extend, widen, narrow, establish or change the grade of, abandon or close, construct, pave, curb, gutter, adorn with shade trees, or otherwise improve, maintain, repair, clean, prevent erosion of, and light the roads, alleys, and walkways within the corporate limits of the city; and To grant franchises and rights-of-way throughout the streets and roads and over the bridges and viaducts for the use of public utilities; and to require real estate owners to repair and maintain in a safe condition the sidewalks adjoining their lots or lands and to impose penalties for failure to do so;

(ee) Sewer Fees. To levy a fee, charge, or sewer tax as necessary to assure the acquiring, constructing, equipping, operating, maintaining, and extending of a sewage disposal plant and sewerage system, and to levy on those to whom sewers and sewerage systems are made available a sewer service fee, charge or sewer tax for the availability or use of the sewers; to provide for the manner and method of collecting such service charges and for enforcing payment of the same; and to charge, impose and collect a sewer connection fee or fees to those connected with the system;

(ff) Solid Waste Disposal. To provide for the collection and disposal of garbage, rubbish and refuse, and to regulate the collection and disposal of garbage, rubbish and refuse by others; and to provide for the separate collection of glass, tin, aluminum, cardboard, paper, and other recyclable materials, and to provide for the sale of such items;

(25gg) Special areas of public regulation. To regulate or prohibit junk dealers, pawn shops, the manufacture, sale, or transportation of any intoxicating liquors, alcoholic beverages, and the use of firearms; to regulate the transportation, storage, and use of combustible, explosive, and inflammable materials, the use of lighting and heating equipment, and any other business or situation which may be dangerous to persons or property; to regulate and control the conduct of peddlers and itinerant traders, theatrical performances, exhibitions, and shows of any kind, by taxation or otherwise; and to license, tax, regulate, or prohibit professional fortunetelling, palmistry, adult bookstores, and massage parlors;

(26hh) Special assessments. To levy and provide for the collection of special assessments to cover the costs for any public improvements;

(27ii) Taxes, ad valorem. To levy and provide for the assessment, valuation, revaluation, and collection of taxes on all property subject to taxation subject to a maximum of 1 mill;

(28jj) Taxes, other. To levy and collect such other taxes as may be allowed now or in the future by law; and

(29kk) Taxicabs. To regulate and license vehicles operated for hire in the city; to limit the number of such vehicles; to require the operators thereof to be licensed; to require public liability insurance on such vehicles in the amounts to be prescribed by ordinance; and to regulate the parking of such vehicles.;

(ll) Urban Redevelopment. To organize and operate an urban redevelopment program; and

(mm) Other Powers. To exercise and enjoy all other powers, functions, rights, privileges and immunities necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, or general welfare of the city and its inhabitants; and to exercise all implied powers necessary or desirable to carry into execution all powers granted in this charter as fully and completely as if such powers were fully stated herein; and to exercise all powers now or in the future authorized to be exercised by other municipal governments under other laws of the State of Georgia; and no listing of particular powers in this charter shall be held to be exclusive of others, nor restrictive of general words and phrases granting powers, but shall be held to be in addition to such powers unless expressly prohibited to municipalities under the Constitution or applicable laws of the State of Georgia.

(b) Except as provided in subsection (c) of this section, the city shall exercise the powers enumerated in subsection (a) of this section only for the purposes of planning and zoning, code adoption and enforcement, and solid waste management services and those items directly related to the provision of such services and for the general administration of the city in providing such services.

(c) In the event that the city desires to provide services in addition to those services enumerated in subsection (b) of this section, the city council shall pass a resolution specifically stating the services sought to be offered by the city and shall submit the approval of such resolution for ratification by the electors of the city in a referendum. If the electors of the city vote in favor of ratifying such resolution,

then the city shall be authorized to exercise the powers enumerated in subsection (a) of this section for the purpose of providing such services stated in such resolution and those items directly related to the provision of such services and for the general administration of the city in providing such services. If the electors of the city disapprove such resolution, it shall immediately be null and void and of no force and effect.

(d) Notwithstanding the limitations of subsections (b) and (c) of this section, the city may, without the necessity of a referendum, enter into agreements with other governmental entities, including federal and state agencies and other local governments, to provide for any services not currently authorized by this charter but necessary for the general health, safety, and welfare of the citizens.

(2013 Ga. Laws (Act No. 139), § 1)

[The changes here add language from the Georgia Model Municipal Charter. The Georgia Constitution Article IX, Section II, Paragraph III known as the “supplementary powers provision” enumerates a long list of powers that municipal corporations may employ and services they may provide. While the state legislature may regulate, restrict, or limit such powers, they may not withdraw them from a city, and they may only do so through general, not local, legislation. Adding this language would clarify that the city enjoys the full range of municipal powers without requiring that the city exercise all of them.]

Sec. 1.13. - Exercise of powers.

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.

ARTICLE II. - GOVERNMENT STRUCTURE

Sec. 2.10. - City council creation; number; election.

The legislative authority of the government of this city, except as otherwise specifically provided in this charter, shall be vested in a city council to be composed of a mayor and six councilmembers. The mayor and councilmembers shall be elected in the manner provided by this charter.

Sec. 2.11. - City councilmembers; terms and qualifications for office.

(a) ~~Except as otherwise provided in Article VIII of this charter for the initial terms of office, t~~The members of the city council shall serve for terms of four years and until their respective successors are elected and qualified. The term of office of each member of the city council shall begin on the first day of January immediately following the election of such member unless general law authorizes or requires the term to begin at the first organizational meeting in January or upon some other date. No person shall be eligible to serve as mayor or councilmember unless that person shall have been a resident of the city for 12 months prior to the date of the election of mayor or members of the city council; each shall continue to reside therein during that person's period of service and to be registered and qualified to vote in municipal elections of this city.

(b) The city council seats shall be designated Post 1, Post 2, Post 3, Post 4, Post 5, and Post 6. Candidates shall designate the post for which they are offering for election when qualifying for election.

(c) (1) The members of the city council from Post 4, Post 5, and Post 6 shall be elected by the electors of the city at large by majority vote.

(2) For the purposes of electing members of the city council from Post 1, Post 2, and Post 3, the city is divided into three districts. One member of the board shall be elected from each such district by only the electors of such district by majority vote. Post 1, Post 2, and Post 3 shall be and correspond to those three numbered districts as described in the districting plan attached to and made a part of this Act and further identified as Plan Name: peachpropl-3dist Plan Type: Local User: Shantee Administrator: H051.

(d) When used in such attachment, the terms "Tract" and "BG" (Block Group) shall mean and describe the same geographical boundaries as provided in the report of the Bureau of the Census for the United States decennial census of 2000 for the State of Georgia. The separate numeric designations in a tract description which are underneath a 'BG' heading shall mean and describe individual blocks within a block group as provided in the report of the Bureau of the Census for the United States decennial census of 2000 for the State of Georgia. Any part of the city which is not included in Post 1, Post 2, or Post 3 as described in that attachment describing Post 1, Post 2, and Post 3 shall be included within that district contiguous to such part which contains the least population according to the United States decennial census of 2000 for the State of Georgia. Any part of the city which is described in that attachment describing Post 1, Post 2, and Post 3 as being in Post 1, Post 2, or Post 3 shall nevertheless not be included within such district if such part is not contiguous to such district. Such noncontiguous part shall instead be included within the post that is contiguous to such part which contains the least population according to the United States decennial census of 2000 for the State of Georgia. Except as otherwise provided in the description of any commissioner district, whenever the description of such district refers to a named city, it shall mean the geographical boundaries of that city as shown on the census map for the United States decennial census of 2000 for the State of Georgia. If any area included within the descriptions of Post 1, Post 2, or Post 3 is on the effective date of this Act within the municipal boundaries of another municipality or within a county other than Gwinnett County, such area shall not be included within the district descriptions of such posts.

[This change merely removes reference to obsolete provisions that are being deleted.]

Sec. 2.12. - Vacancy; filling of vacancies; suspensions.

(a) Vacancies. The office of mayor or councilmember shall become vacant upon such person's failing or ceasing to reside in the city or upon the occurrence of any event specified by the Constitution, Title 45 of the O.C.G.A., or such other applicable laws as are or may hereafter be enacted.

(b) Filling of vacancies. A vacancy in the office of mayor or councilmember shall be filled for the remainder of the unexpired term, if any, by appointment if less than 12 months remain in the unexpired term, otherwise by an election as provided for in Section 5.14 of this charter and Titles 21 and 45 of the O.C.G.A. or such other laws as are or may hereafter be enacted.

(c) Suspension. Upon the suspension from office of mayor or councilmember in any manner authorized by the general laws of the State of Georgia, the city council or those remaining shall appoint a successor for the duration of the suspension. If the suspension becomes permanent, then the office shall become vacant and shall be filled for the remainder of the unexpired term, if any, as provided for in this charter.

Sec. 2.13. - Compensation and expenses.

(a) The mayor shall receive an initial salary of \$9,000.00 per year, paid in equal monthly installments from the funds of the municipality. ~~E~~ and each councilmember shall receive an initial salary of \$8,000.00 per year, paid in equal monthly installments from the funds of the municipality.

(b) The mayor and councilmembers may alter such compensation for their services as provided by law ordinance.

[The changes here utilize language from the Georgia Model Municipal Charter. Typically the compensation of municipal elected officials is set by ordinance. O.C.G.A. §36-35-4 prescribes the specific timing that cities may utilize to make changes to in compensation of their elected officials. This change should be accompanied by an ordinance setting the compensation.]

Sec. 2.14. - Conflicts of interest; holding other offices.

(a) Elected and appointed officers of the city are trustees and servants of the residents of the city and shall act in a fiduciary capacity for the benefit of such residents.

(b) Conflict of interest. No elected official, appointed officer, or employee of the city or any agency or political entity to which this charter applies shall knowingly:

(1) Engage in any business or transaction or have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of that person's official duties or which would tend to impair the independence of that person's judgment or action in the performance of that person's official duties;

(2) Engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of that person's official duties or would tend to impair the independence of that person's judgment or action in the performance of that person's official duties;

(3) Disclose confidential information, including information obtained at meetings which are closed pursuant to Chapter 14 of Title 50 of the O.C.G.A., concerning the property, government, or affairs of the governmental body by which that person is engaged without proper legal authorization or use such information to advance the financial or other private interest of that person or others;

(4) Accept any valuable gift, whether in the form of service, loan, thing, or promise, from any person, firm, or corporation which to that person's knowledge is interested, directly or indirectly, in any manner whatsoever, in business dealings with the governmental body by which that person is engaged; provided, however, that an elected official who is a candidate for public office may accept campaign contributions and services in connection with any such campaign;

(5) Represent other private interests in any action or proceeding against this city or any portion of its government; or

(6) Vote or otherwise participate in the negotiation or in the making of any contract with any business or entity in which that person has a financial interest.

(c) Disclosure. Any elected official, appointed officer, or employee who shall have any financial interest, directly or indirectly, in any contract or matter pending before or within any department of the city shall disclose such interest to the city council. The mayor or any councilmember who has a financial interest in any matter pending before the city council shall disclose such interest and such disclosure shall be entered on the records of the city council, and that person shall disqualify himself or herself from participating in any decision or vote relating thereto. Any elected official, appointed officer, or employee of any agency or political entity to which this charter applies who shall have any financial interest, directly or indirectly, in any contract or matter pending before or within such entity shall disclose such interest to the governing body of such agency or entity.

(d) Use of public property. No elected official, appointed officer, or employee of the city or any agency or entity to which this charter applies shall use property owned by such governmental entity for personal benefit, convenience, or profit except in accordance with policies promulgated by the city council or the governing body of such agency or entity.

(e) Contracts voidable and rescindable. Any violation of this section which occurs with the knowledge, express or implied, of a party to a contract or sale shall render such contract or sale voidable at the option of the city council.

(f) Ineligibility of elected official. Except where authorized by law, neither the mayor nor any councilmember shall hold any other elective or compensated appointive office in the city or otherwise be employed by said government or any agency thereof during the term for which that person was elected. No former councilmember and no former mayor shall hold any compensated appointive office in the city until one year after the expiration of the term for which that person was elected.

(g) Political activities of certain officers and employees. No appointed officer and no employee of the city shall continue in such employment upon qualifying as a candidate for nomination or election to any public office. No employee of the city shall continue in such employment upon election to any public office in this city or any other public office which is inconsistent, incompatible, or in conflict with the duties of the city employee. Such determination shall be made by the mayor and city council either immediately upon election or at any time such conflict may arise.

(h) Penalties for violation.

(1) Any city officer or employee who knowingly conceals such financial interest or knowingly violates any of the requirements of this section shall be guilty of malfeasance in office or position and shall be deemed to have forfeited that person's office or position.

(2) Any officer or employee of the city who shall forfeit that person's office or position as described in paragraph (1) of this subsection shall be ineligible for appointment or election to or employment in a position in the city government for a period of three years thereafter.

Sec. 2.15. - Inquiries and investigations.

Following the adoption of an authorizing resolution, the city council may make inquiries and investigations into the affairs of the city and 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 may be provided by ordinance.

Sec. 2.16. - General power and authority of the city council.

(a) Except as otherwise provided by law or this charter, the city council shall be vested with all the powers of government of this city.

(b) In addition to all other powers conferred upon it by law, the council shall have the authority to adopt and provide for the execution of such ordinances, resolutions, rules, and regulations, not inconsistent with this charter and the Constitution and the laws of the State of Georgia, which it shall deem necessary, expedient, or helpful for the peace, good order, protection of life and property, health, welfare, sanitation, comfort, convenience, prosperity, or well-being of the inhabitants of the City of Peachtree Corners and may enforce such ordinances by imposing penalties for violation thereof.

[The changes here add language from the Georgia Model Municipal Charter. The Georgia Constitution Article IX, Section II, Paragraph III known as the "supplementary powers provision" enumerates a long list of powers that municipal corporations may employ and services they may provide. While the state legislature may regulate, restrict, or limit such powers, they may not withdraw them from a city, and they may only do so through general, not local, legislation. Adding this language would clarify that the city enjoys the full range of municipal powers without requiring that the city exercise all of them.]

Sec. 2.17. - Organizational meetings.

Unless otherwise provided by ordinance, the city council shall hold an organizational meeting on the first Tuesday as provided by ordinance in January of each even-numbered year. The meeting shall be called to order by the city clerk and the oath of office shall be administered to the newly elected members as follows:

"I do solemnly (swear) (affirm) that I will faithfully perform the duties of (mayor) (councilmember) of this city and that I will support and defend the charter thereof as well as the Constitution and laws of the State of Georgia and the United States of America."

[The change allows the city council to determine the date of the organizational meeting by ordinance.]

Sec. 2.18. - Meetings.

(a) The city council shall hold regular meetings at such times and places as shall be prescribed by ordinance.

(b) Special meetings of the city council may be held on call of the mayor or three members of the city council. Notice of such special meeting shall be served on all other members personally, or by telephone personally, at least 48 hours in advance of the meeting. Such notice to councilmembers shall not be required if the mayor and all councilmembers are present when the special meeting is called. Such notice of any special meeting may be waived by a councilmember in writing before or after such a meeting and attendance at the meeting shall also constitute a waiver of notice on any business transacted in such councilmember's presence. Only the business stated in the call may be transacted at the special meeting.

(c) All meetings of the city council shall be public to the extent required by law, and notice to the public of special meetings shall be made as fully as is reasonably possible as provided by Code Section 50-14-1 of the O.C.G.A. or other such applicable laws as are or may hereinafter be enacted.

Sec. 2.19. - Rules of procedure

(a) The city council shall adopt its rules of procedure and order of business consistent with the provisions of this charter and shall provide for keeping of a journal of its proceedings, which shall be a public record.

(b) All committees and committee chairpersons and officers of the city council shall be appointed by the mayor and shall serve at the pleasure of the mayor. The mayor shall have the power to appoint new members to any committee at any time.

Sec. 2.20. - Quorum; voting.

Four councilmembers shall constitute a quorum and shall be authorized to transact business of the city council. Voting on the adoption of ordinances shall be by voice vote and the vote shall be recorded in the journal, but any councilmember shall have the right to request a roll-call vote and such vote shall be recorded in the journal. Except as otherwise provided in this charter, the affirmative vote of four councilmembers shall be required for the adoption of any ordinance, resolution, or motion. An abstention shall be counted as **an affirmative negative** vote.

[The Georgia Model Municipal Charter calls for counting abstentions as a negative vote. Counting abstentions as a negative vote makes it more difficult to reach the number of votes necessary for passage.]

Sec. 2.21. - Ordinance form; procedures.

(a) Every proposed ordinance should be introduced in writing and in the form required for final adoption. No ordinance shall contain a subject which is not expressed in its title. The enacting clause shall be "It is hereby ordained by the governing authority of the City of Peachtree Corners..." and every ordinance shall so begin.

(b) An ordinance may be introduced by any councilmember and be read at a regular or special meeting of the city council. Ordinances shall be considered and adopted or rejected by the city council in accordance with the rules which it shall establish; provided, however, an ordinance shall not be **considered for adoption** the same day it is introduced **without unanimous consent of council**, except for emergency ordinances provided for in Section 2.23 of this charter. Upon introduction of any ordinance, the clerk shall as soon as possible distribute a copy to the mayor and to each councilmember and shall file a reasonable number of copies in the office of the clerk and at such other public places as the city council may designate.

[Rules regarding the adoption of ordinances vary from charter to charter in Georgia. This language was added to allow council the option of proceeding towards a vote on ordinance adoption without having to consider the ordinance at more than one meeting.]

Sec. 2.22. - Action requiring an ordinance.

Acts of the city council which have the force and effect of law shall be enacted by ordinance.

Sec. 2.23. - Emergencies.

(a) To meet a public emergency affecting life, health, property, or public peace, the city council may convene on call of the mayor or three councilmembers and may promptly adopt an emergency ordinance, but such ordinance may not levy taxes; grant, renew, or extend a franchise; regulate the rate charged by any public utility for its services; or authorize the borrowing of money except for loans to be repaid within 30 days. An emergency ordinance shall be introduced in the form prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing the emergency in clear and specific terms. An emergency ordinance may be adopted, with or without amendment, or rejected at the meeting at which it is introduced, but the affirmative vote of at least three councilmembers shall be required for adoption. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance shall automatically stand repealed 30 days following the date upon which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

(b) Such meetings shall be open to the public to the extent required by law and notice to the public of emergency meetings shall be made as fully as is reasonably possible in accordance with Code Section 50-14-1 of the O.C.G.A. or such other applicable laws as are or may hereafter be enacted.

Sec. 2.24. - Codes of technical regulations.

(a) The city council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such adopting ordinance shall be as prescribed for ordinances generally except that: (1) the requirements of subsection (b) of Section 2.21 of this charter for distribution and filing of copies of the ordinance shall be construed to include copies of any code of technical regulations, as well as the adopting ordinance; and (2) a copy of each adopted code of technical regulations, as well as the adopting ordinance, shall be authenticated and recorded by the clerk pursuant to Section 2.25 of this charter.

(b) Copies of any adopted code of technical regulations shall be made available by the clerk for inspection by the public.

Sec. 2.25. - Signing; authenticating; recording; codification; printing.

(a) The clerk shall authenticate by the clerk's signature and record in full in a properly indexed book kept for that purpose all ordinances adopted by the city council.

(b) The city council shall provide for the preparation of a general codification of all the ordinances of the city having the force and effect of law. The general codification shall be adopted by the city council by ordinance and shall be published promptly, together with all amendments thereto and such codes of technical regulations and other rules and regulations as the city council may specify. This compilation shall be known and cited officially as "The Code of the City of Peachtree Corners, Georgia." Copies of the code shall be furnished to all officers, departments, and agencies of the city and made available for purchase by the public at a reasonable price as fixed by the city council.

(c) The city council shall cause each ordinance and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances and charter amendments shall be made available for purchase by the public at reasonable prices to be fixed by the city council. Following publication of the first code under this charter and at all times thereafter, the ordinances and charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for incorporation therein. The city council shall make such further arrangements as deemed desirable with reproduction and distribution of any current changes in or additions to codes of technical regulations and other rules and regulations included in the code.

Sec. 2.26. - Election of mayor; forfeiture; compensation of the mayor's service.

The mayor shall be elected and shall serve for a term of four years and until the mayor's successor is elected and qualified. The mayor shall be elected at-large by majority vote. The mayor shall be a qualified elector of this city and shall have been a resident of the city for 12 months prior to the election. The mayor shall continue to reside in this city during the period of the mayor's service. The mayor shall forfeit the office of mayor on the same grounds and under the same procedure as for councilmembers. The compensation of the mayor shall be established in the same manner as for councilmembers.

Sec. 2.27. - Mayor pro tempore.

By a majority vote, the councilmembers shall elect a councilmember to serve as mayor pro tempore. The mayor pro tempore shall assume the duties and powers of the mayor during the mayor's physical or mental disability or absence. Any such disability or absence shall be declared by a majority vote of the councilmembers. The mayor pro tempore shall sign all contracts and ordinances in which the mayor has a disqualifying financial interest as provided in Section 2.14 of this charter.

Sec. 2.28. - Powers and duties of mayor.

The mayor shall:

- (1) Preside at all meetings of the city council;
- (2) Be the head of the city for the purpose of service of process and for ceremonial purposes and be the official spokesperson for the city and the chief advocate of policy;
- (3) Have the power to administer oaths and to take affidavits;
- (4) Sign as a matter of course on behalf of the city all written and approved contracts, ordinances, and other instruments executed by the city which by law are required to be in writing;
- (5) Vote on matters before the city council and be counted toward a quorum as any other councilmember;
- ~~(6) Prepare and submit to the city council a recommended annual operating budget and recommended capital budget; and~~
- ~~(7) Fulfill such other executive and administrative duties as the city council shall by ordinance establish.~~

[These duties are being removed from the mayor and become part of the duties of the city manager in Section 2.30. This change is intended to reflect current practice.]

Sec. 2.29. – City Manager; Appointment; Qualifications; Compensation.

(a) The mayor shall appoint, subject to confirmation by the council, for an indefinite term, an officer whose title shall be the “City Manager” and the city manager shall serve at the pleasure of the council. The city manager shall be appointed without regard to political beliefs and solely on the basis of his or her executive and administrative qualifications with special reference to his or her educational background and actual experience in, and knowledge of, the duties of office as hereinafter prescribed. The city manager shall receive such compensation as the Council shall determine appropriate.

(b) The city manager shall be the chief executive and administrative officer of the city. The manager shall be responsible to the mayor and council for the management and administration of all city affairs placed in the manager’s charge by or under this charter.

[The language here is from the Georgia Model Municipal Charter for cities with a Manager-Council form of government, except that the mayor has been added to clarify that the manager is responsible to all the elected officials. This language is intended to reflect current practice.]

Sec. 2.30 City Manager Powers and Duties Enumerated.

The city manager shall have the power, and it shall be his or her duty to:

(a) appoint and, when the manager deems it necessary for the good of the city, suspend or remove all city employees and administrative officers the manager appoints, except as otherwise provided by law or personnel ordinances adopted pursuant to this charter. The manager may authorize any administrative officer who is subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;

(b) direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law;

(c) attend all city council meetings except for closed meetings held for the purposes of deliberating on the appointment, discipline or removal of the city manager and have the right to take part in discussion but not vote;

(d) see that all laws, provisions of this charter, and acts of the city council, subject to enforcement by the manager or by officers subject to the manager's direction and supervision, are faithfully executed;

(e) prepare and submit the annual operating budget and capital budget to the city council;

(f) submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;

(g) make such other reports as the city council may require concerning the operations of city departments, offices and agencies subject to the manager's direction and supervision;

(h) keep the city council fully advised as to the financial condition and future needs of the city, and make such recommendations to the city council concerning the affairs of the city as the manager deems desirable; and

(i) perform other such duties as are specified in this charter or as may be required by the city council.

[The language here is from the Georgia Model Municipal Charter for cities with a Manager-Council form of government. This language is intended to reflect current practice.]

Sec. 2.32 Council Interference with Administration.

Except for the purpose of inquiries and investigations under Section 2.15 of the city charter, the mayor and the city council or its members shall deal with city officers and employees who are subject to the direction or supervision of the city manager solely through the city manager, and neither the mayor, nor the city council nor its members shall give orders directly to any such officer or employee, either publicly or privately.

[The language here is from the Georgia Model Municipal Charter for cities with a Manager-Council form of government, except that the mayor has been added to clarify that the prohibition of interference applies to all the elected officials.]

Sec. 2.33 Removal of City Manager.

The city manager is employed at will and may be summarily removed from office at any time by the city council.

[The language here is from the Georgia Model Municipal Charter for cities with a Manager-Council form of government.]

Sec. 2.34 Acting City Manager.

By letter filed with the city clerk, the manager shall designate, subject to approval of the city council, a qualified city administrative officer to exercise the powers and perform the duties of manager during the manager's temporary absence or physical or mental disability. During such absence or disability, the city council may revoke such designation at any time and appoint another officer of the city to serve until the manager shall return or the manager's disability shall cease.

[The language here is from the Georgia Model Municipal Charter for cities with a Manager-Council form of government.]

ARTICLE III. - ADMINISTRATIVE AFFAIRS

Sec. 3.10. - Administrative and service departments.

(a) Except as otherwise provided in this charter, the city council by ordinance shall prescribe the functions or duties and establish, abolish, alter, consolidate, or leave vacant all non-elective offices, positions of employment, departments, and agencies of the city as necessary for the proper administration of the affairs and government of this city.

(b) Except as otherwise provided by this charter or by law, the directors of departments and other appointed officers of the city shall be appointed solely on the basis of their respective administrative and professional qualifications.

(c) All appointed officers and directors of departments shall receive such compensation as prescribed by ordinance.

(d) There shall be a director of each department or agency who shall be its principal officer. Each director shall, subject to the direction and supervision of the **mayor city manager**, be responsible for the administration and direction of the affairs and operations of that director's department or agency.

(e) All appointed officers and directors under the supervision of the **mayor city manager** shall be ~~nominated~~ appointed by the **mayor city manager** ~~with confirmation of appointment by the city council~~. All appointed officers and directors shall be employees at will and subject to removal or suspension at any time by the **mayor city manager** unless otherwise provided by law or ordinance.

[The language here is from the Georgia Model Municipal Charter for cities with a Manager-Council form of government. The changes to the Model Charter language are intended to reflect current practice.]

Sec. 3.11. - Boards, commissions, and authorities.

(a) The city council shall create by ordinance such boards, commissions, and authorities to fulfill any investigative, quasi-judicial, or quasi-legislative function the city council deems necessary and shall by ordinance establish the composition, period of existence, duties, and powers thereof.

(b) All members of boards, commissions, and authorities of the city shall be appointed by the mayor and council for such terms of office and in such manner as shall be provided by ordinance, except where other appointing authority, terms of office, or manner of appointment is prescribed by this charter or by law.

(c) The city council by ordinance may provide for the compensation and reimbursement for actual and necessary expenses of the members of any board, commission, or authority.

(d) Except as otherwise provided by charter or by law, no member of any board, commission, or authority shall hold any elective office in the city.

(e) Any vacancy on a board, commission, or authority of the city shall be filled for the unexpired term in the manner prescribed in this charter for original appointment, except as otherwise provided by this charter or by law.

(f) No member of a board, commission, or authority shall assume office until that person has executed and filed with the clerk of the city an oath obligating that person to perform faithfully and impartially the duties of that person's office, such oath shall be prescribed by ordinance and administered by the mayor.

(g) All members of boards, commissions, or authorities of the city serve at will and may be removed at any time by the mayor and council unless otherwise provided by law.

(h) Except as otherwise provided by this charter or by law, each board, commission, or authority of the city shall elect one of its members as chairperson and one member as vice chairperson and may elect as its secretary one of its own members or may appoint as secretary an employee of the city. Each board, commission, or authority of the city government may establish such bylaws, rules, and regulations, not inconsistent with this charter, ordinances of the city, or law, as it deems appropriate and necessary for the fulfillment of its duties or the conduct of its affairs. Copies of such bylaws, rules, and regulations shall be filed with the clerk of the city.

Sec. 3.12. - City attorney.

(a) ~~The mayor and council~~ city manager shall appoint, subject to confirmation by the council, a city attorney, together with such assistant city attorneys as may be authorized, and shall provide for the payment of such attorney or attorneys for services rendered to the city. The city attorney shall be responsible for providing for the representation and defense of the city in all litigation in which the city is a party; may be the prosecuting officer in the municipal court; shall attend the meetings of the city council as directed; shall advise the mayor and council and other officers and employees of the city concerning legal aspects of the city's affairs; and shall perform such other duties as may be required by virtue of such person's position as city attorney.

[This language is an alternative to having either the elected officials or the city manager having exclusive control over the appointment of the city attorney. The language is a variation contemplated by the Model Charter of the National Civic League.]

(b) The city attorney is not a public official of the city and does not take an oath of office. The city attorney shall at all times be an independent contractor. A law firm, rather than an individual, may be designated as the city attorney.

[This language is found in Georgia Model Municipal Charter and is recommended in order to clarify to the federal Internal Revenue Service that the City Attorney is not a city employee.]

Sec. 3.13. - City clerk.

The city manager shall appoint a city clerk who shall not be a councilmember. The city clerk shall be custodian of the official city seal and city records; maintain city council records required by this charter; and perform such other duties as may be required by the city council.

[The language here is from the Georgia Model Municipal Charter for cities with a Manager-Council form of government.]

Sec. 3.14. - Position classification and pay plans.

The ~~mayor~~ city manager shall be responsible for the preparation of a position classification and pay plan which shall be submitted to the city council for approval. Such plan may apply to all employees of the city and any of its agencies, departments, boards, commissions, or authorities. When a pay plan has been adopted, the city council shall not increase or decrease the salary range applicable to any position except by amendment of such pay plan. For purposes of this section, all elected and appointed city officials are not city employees.

[The language here is from the Georgia Model Municipal Charter for cities with a Manager-Council form of government.]

Sec. 3.15. - Personnel policies.

All employees serve at will and may be removed from office at any time unless otherwise provided by ordinance.

ARTICLE IV. - JUDICIAL BRANCH

Sec. 4.10. - Creation; name.

There shall be a court to be known as the Municipal Court of the City of Peachtree Corners.

Sec. 4.11. - Chief Judge; associate judge.

(a) The municipal court shall be presided over by a chief judge and such part-time, full-time, or stand-by judges as shall be provided by ordinance.

(b) No person shall be qualified or eligible to serve as a judge on the municipal court unless that person shall have attained the age of 21 years and shall be a member of the State Bar of Georgia and shall possess all qualifications required by law. All judges shall be appointed by the mayor, subject to confirmation by the city council and shall serve until a successor is appointed and qualified.

(c) Compensation of the judges shall be fixed by ordinance.

(d) Judges serve at will and may be removed from office at any time by the city council unless otherwise provided by ordinance.

Any individual appointed as a judge shall serve for a minimum term of one year and until a successor is appointed or if the judge is removed from office as provided in O.C.G.A. § 36-32-2.1.

(e) Before assuming office, each judge shall take an oath, given by the mayor, that such judge will honestly and faithfully discharge the duties of the judge's office to the best of the judge's ability and without fear, favor, or partiality. The oath shall be entered upon the minutes of the city council journal required in Section 2.19 of this charter.

~~State Law reference — Qualifications of municipal court judges, O.C.G.A. § 36-32-1.1.~~

[Recent changes to state law regarding the appointment and removal of municipal court judges expressly preempt the existing charter language. The changes here make reference to the appropriate code section. See O.C.G.A. §36-32-2. The language here has also been changed to reflect current the current practice of the mayor nominating and the council confirming the judge.]

Sec. 4.12. - Convening.

The municipal court shall be convened at regular intervals as provided by ordinance.

Sec. 4.13. - Jurisdiction; powers.

(a) The municipal court shall try and punish violations of this charter, all city ordinances, and such other violations as provided by law.

(b) The municipal court shall have authority to punish those in its presence for contempt, provided that such punishment shall not exceed \$200.00 or ten days in jail.

(c) The municipal court may fix punishment for offenses within its jurisdiction not exceeding a fine of \$1,000.00 or imprisonment for 180 days, or both such fine and imprisonment, or may fix punishment by fine, imprisonment, or alternative sentencing, as now or hereafter provided by law.

(d) The municipal court shall have authority to establish a schedule of fees to defray the cost of operation and shall be entitled to reimbursement of the cost of meals, transportation, and caretaking of prisoners bound over to superior courts for violations of state law.

(e) The municipal court shall have authority to establish bail and recognizances to ensure the presence of those charged with violations before such court and shall have discretionary authority to accept cash or personal or real property as surety for the appearance of persons charged with violations. Whenever any person shall give bail for that person's appearance and shall fail to appear at the time fixed for trial, that person's bond shall be forfeited by the judge presiding at such time and an execution issued thereon by serving the defendant and the defendant's sureties with a rule nisi at least two days before a hearing on the rule nisi. In the event that cash or property is accepted in lieu of bond for security for the appearance of a defendant at trial, and if such defendant fails to appear at the time and place fixed for trial, the cash so deposited shall be on order of the judge declared forfeited to the city, or the property so deposited shall have a lien against it for the value forfeited, which lien shall be enforceable in the same manner and to the same extent as a lien for city property taxes.

(f) The municipal court shall have the same authority as superior courts to compel the production of evidence in the possession of any party; to enforce obedience to its orders, judgments, and sentences; and to administer such oaths as are necessary.

(g) The municipal court may compel the presence of all parties necessary to a proper disposal of each case by the issuance of summonses, subpoenas, and warrants which may be served as executed by any officer as authorized by this charter or by law.

(h) Each judge of the municipal court shall be authorized to issue warrants for the arrest of persons charged with offenses against any ordinance of the city, and each judge of the municipal court shall have the same authority as a magistrate of the state to issue warrants for offenses against state laws committed within the city.

Sec. 4.14. - Certiorari.

The right of certiorari from the decision and judgment of the municipal court shall exist in all criminal cases and ordinance violation cases, and such certiorari shall be obtained under the sanction of a judge of the Superior Court of Gwinnett County under the laws of the State of Georgia regulating the granting and issuance of writs of certiorari.

Sec. 4.15. - Rules for court.

With the approval of the city council, the judge shall have full power and authority to make reasonable rules and regulations necessary and proper to secure the efficient and successful administration of the municipal court; provided, however, that the city council may adopt in part or in toto the rules and regulations applicable to municipal courts. The rules and regulations made or adopted shall be filed with

the city clerk, shall be available for public inspection, and, upon request, a copy shall be furnished to all defendants in municipal court proceedings at least 48 hours prior to such proceedings.

ARTICLE V. - ELECTIONS AND REMOVAL

Sec. 5.10. - Applicability of general law.

All primaries and elections shall be held and conducted in accordance with Chapter 2 of Title 21 of the O.C.G.A., the "Georgia Election Code," as now or hereafter amended.

Sec. 5.11. - Regular elections; time for holding.

~~Except as otherwise provided in Article VIII of this charter for the initial elections, t~~ There shall be a municipal general election biennially in odd-numbered years on the Tuesday next following the first Monday in November. There shall be elected the mayor and three councilmembers at one election and at every other election thereafter. The remaining councilmember seats shall be filled at the election alternating with the first election so that a continuing body is created.

[This change merely removes reference to obsolete provisions that are being deleted.]

Sec. 5.12. - Nonpartisan elections.

Political parties shall not conduct primaries for city offices and all names of candidates for city offices shall be listed without party designations.

Sec. 5.13. - Election by majority vote.

The councilmembers from Post 1, Post 2, and Post 3 shall be elected by a majority vote of the electors of their respective districts. The mayor and councilmembers from Post 4, Post 5, and Post 6 shall be elected by a majority vote of the votes cast for each position by the electors of the city at large.

Sec. 5.14. - Special elections; vacancies.

In the event that the office of mayor or councilmember shall become vacant as provided in Section 2.12 of this charter, the city council or those remaining shall order a special election to fill the balance of the unexpired term of such official; provided, however, that, if such vacancy occurs within 12 months of the expiration of the term of that office, the city council or those members remaining shall appoint a successor for the remainder of the term. In all other respects, the special election shall be held and conducted in accordance with Chapter 2 of Title 21 of the O.C.G.A., the "Georgia Election Code," as now or hereafter amended.

Sec. 5.15. - Other provisions.

Except as otherwise provided by this charter, the city council shall, by ordinance, prescribe such rules and regulations as it deems appropriate to fulfill any options and duties under Chapter 2 of Title 21 of the O.C.G.A., the "Georgia Election Code."

Sec. 5.16. - Removal of officers.

(a) A councilmember, the mayor, or other appointed officers provided for in this charter shall be removed from office for any one or more of the causes provided in Title 45 of the O.C.G.A. or such other applicable laws as are or may hereafter be enacted.

(b) Removal of an officer pursuant to subsection (a) of this section shall be accomplished by one of the following methods:

(1) Following a hearing at which an impartial panel shall render a decision. In the event an elected officer is sought to be removed by the action of the city council, such officer shall be entitled to a written notice specifying the ground or grounds for removal and to a public hearing which shall be held not less than ten days after the service of such written notice. The city council shall provide by ordinance for the manner in which such hearings shall be held. Any elected officer sought to be removed from office as provided in this section shall have the right of appeal from the decision of the city council to the Superior Court of Gwinnett County. Such appeal shall be governed by the same rules as govern appeals to the superior court from the probate court; or

(2) By an order of the Superior Court of Gwinnett County following a hearing on a complaint seeking such removal brought by any resident of the City of Peachtree Corners.

ARTICLE VI. - FINANCE

Sec. 6.10. - Property tax.

The city council may assess, levy, and collect an ad valorem tax on all real and personal property within the corporate limits of the city that is subject to such taxation by the state and county. This tax is for the purpose of raising revenues to defray the costs of operating the city government, of providing governmental services, for the repayment of principal and interest on general obligations, and for any other public purpose as determined by the city council in its discretion.

Sec. 6.11. - Millage rate; due dates; payment methods.

The city council by ordinance shall establish a millage rate for the city property tax ~~which shall not exceed 1 mill~~, a due date, and the time period within which these taxes must be paid. The city council by ordinance may provide for the payment of these taxes by installments or in one lump sum, as well as authorize the voluntary payment of taxes prior to the tune when due.

[Millage rate caps are not imposed on cities by general law. Removing this atypical provision from the charter may assist the city with obtaining better rates for financing projects, but does not require that the city raise the millage rate.]

Sec. 6.12. - Occupation and business taxes.

The city council by ordinance shall have the power to levy such occupation or business taxes as are not denied by law. The city council may classify businesses, occupations, or professions for the purpose of such taxation in any way which may be lawful and may compel the payment of such taxes as provided in Section 6.18 of this charter.

Sec. 6.13. - Licenses; permits; fees.

The city council by ordinance shall have the power to require businesses or practitioners doing business in this city to obtain a permit for such activity from the city and pay a regulatory fee for such permit as provided by general law. Such fees shall reflect the total cost to the city of regulating the activity and, if unpaid, shall be collected as provided in Section 6.18 of this charter.

Sec. 6.14. - Franchises.

(a) The city council shall have the power to grant franchises for the use of this city's streets and alleys for the purposes of railroads, street railways, telephone companies, electric companies, electric membership corporations, cable television and other telecommunications companies, gas companies, transportation companies, and other similar organizations. The city council shall determine the duration, terms, whether the same shall be exclusive or nonexclusive, and the consideration for such franchises; provided, however, that no franchise shall be granted for a period in excess of 35 years and no franchise shall be granted unless the city receives just and adequate compensation therefor. The city council shall provide for the registration of all franchises with the city clerk in a registration book kept by the city clerk. The city council may provide by ordinance for the registration within a reasonable time of all franchises previously granted.

(b) If no franchise agreement is in effect, the city council has the authority to impose a tax on gross receipts for the use of this city's streets and alleys for the purposes of railroads, street railways, telephone companies, electric companies, electric membership corporations, cable television and other telecommunications companies, gas companies, transportation companies, and other similar organizations.

Sec. 6.15. - Service charges.

The city council by ordinance shall have the power to assess and collect fees, charges, **assessments**, and tolls for services provided or made available within and outside the corporate limits of the city, **for the total cost to the city of providing or making available such services**. If unpaid, such charges shall be collected as provided in Section 6.18 of this charter.

[This language has been modified to more closely track the language in the Georgia Model Municipal Charter. The Georgia Constitution allows municipalities to impose assessments to funds services. Service fees, charges, assessments, and tolls for service imposed by municipalities need not reflect the total costs of the service, they merely need not be arbitrary.]

Sec. 6.16. - Reserved. Special Assessments.

The city council by ordinance shall have the power to assess and collect the costs of constructing, reconstructing, widening, or improving any public way, street, sidewalk, curbing, gutters, sewers, or other utility mains and appurtenances from the abutting property owners. If unpaid, such charges shall be collected as provided in Section 6.18.

[This language comes from the Georgia Model Municipal Charter. The Georgia Constitution, Article IX, Section II, Paragraph VI, grants authority to cities to impose assessments. Additionally, recent state legislation requires any cities created after 2005 to take on responsibility of assuming "the ownership, control, care, and maintenance of county road rights of way located within the area incorporated unless the municipal and the county agree otherwise by joint resolution." See O.C.G.A. § 36-31-7.1.]

Sec. 6.17. - Construction; other taxes.

This city shall be empowered to levy any other tax or fee allowed now or hereafter by law, and the specific mention of any right, power, or authority in this article shall not be construed as limiting in any way the general powers of this city to govern its local affairs.

Sec. 6.18. - Collection of delinquent taxes and fees.

The city council by ordinance may provide generally for the collection of delinquent taxes, fees, or other revenue due the city under Sections 6.10 through 6.17 of this charter by whatever reasonable means as are not precluded by law. This shall include providing for the dates when the taxes or fees are due; late penalties or interest; issuance and execution of fi. fas.; creation and priority of liens; making delinquent taxes and fees personal debts of the persons required to pay the taxes or fees imposed; revoking city permits for failure to pay any city taxes or fees; and providing for the assignment or transfer of tax executions.

Sec. 6.19. - ~~Reserved.~~ General Obligation Bonds.

The city council shall have the power to issue bonds for the purpose of raising revenue to carry out any project, program or venture authorized under this charter or the laws of the state. Such bonding authority shall be exercised in accordance with the laws governing bond issuance by municipalities in effect at the time said issue is undertaken.

[This language comes from the Georgia Model Municipal Charter. Cities are authorized by O.C.G.A. § 36-82-1 et. seq. to submit general obligation bond referenda to the voters.]

Sec. 6.20. - ~~Reserved.~~ Revenue Bonds.

Revenue bonds may be issued by the city council as state law now or hereafter provides. Such bonds are to be paid out of any revenue produced by the project, program or venture for which they were issued.

[This language comes from the Georgia Model Municipal Charter. Cities are authorized by O.C.G.A. § 36-82-60 et. seq. to issue revenue bonds.]

Sec. 6.21. - Short-term loans.

The city may obtain short-term loans and must repay such loans not later than December 31 of each year, unless otherwise provided by law.

Sec. 6.22. - Lease-purchase contracts.

The city may enter into multiyear lease, purchase, or lease-purchase contracts for the acquisition of goods, materials, real and personal property, services, and supplies, provided the contract terminates without further obligation on the part of the municipality at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed. Contracts must be executed in accordance with the requirements of Code Section 36-60-13 of the O.C.G.A., or other such applicable laws as are or may hereafter be enacted.

Sec. 6.23. - Fiscal year.

The city council shall set the fiscal year by ordinance. This fiscal year shall constitute the budget year and the year for financial accounting and reporting of each and every office, department, agency, and activity of the city government.

Sec. 6.24. - Budget ordinance.

The city council shall provide an ordinance on the procedures and requirements for the preparation and execution of an annual operating budget, a capital improvement plan, and a capital budget, including requirements as to the scope, content, and form of such budgets and plans. The city council shall also comply with the budgeting and auditing provisions of Chapter 81 of Title 36 of the O.C.G.A.

Sec. 6.25. - Operating budget.

On or before a date fixed by the city council, but not later than 60 days prior to the beginning of each fiscal year, the **mayor city manager** shall submit to the city council a proposed operating budget for the ensuing fiscal year. The budget shall be accompanied by a message from the **mayor city manager** containing a statement of the general fiscal policies of the city, the important features of the budget, explanations of major changes recommended for the next fiscal year, a general summary of the budget, and other pertinent comments and information. The operating budget and the capital budget provided for in Section 6.29 of this charter, the budget message, and all supporting documents shall be filed in the office of the city clerk and shall be open to public inspection.

[The language here is from the Georgia Model Municipal Charter for cities with a Manager-Council form of government.]

Sec. 6.26. - Action by city council on budget.

(a) The councilmembers may amend the operating budget proposed by the **mayor city manager**, except that the budget as finally amended and adopted must provide for all expenditures required by state law or by other provisions of this charter and for all debt service requirements for the ensuing fiscal year. The total appropriations from any fund shall not exceed the estimated fund balance, reserves, and revenues.

(b) The city council by ordinance shall adopt the final operating budget for the ensuing fiscal year not later than December 15 of each year. If the city council fails to adopt the budget by said date, the amounts appropriated for operation for the then current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items prorated accordingly, until such time as the city council adopts a budget for the ensuing fiscal year. Adoption of the budget shall take the form of an appropriations ordinance setting out the estimated revenues in detail by sources and making appropriations according to fund and by organizational unit, purpose, or activity as set out in the budget preparation ordinance adopted pursuant to Section 6.24 of this charter.

(c) The amount set out in the adopted operating budget for each organizational unit shall constitute the annual appropriation for such, and no expenditure shall be made or encumbrance created in excess of the otherwise unencumbered balance of the appropriations or allotment thereof to which it is chargeable.

[The language here is from the Georgia Model Municipal Charter for cities with a Manager-Council form of government.]

Sec. 6.27. - Levy of taxes.

The city council shall levy by ordinance such taxes as are necessary. The taxes and tax rates set by such ordinance shall be such that reasonable estimates of revenues from such levy shall at least be sufficient, together with other anticipated revenues, fund balances, and applicable reserves, to equal the total amount appropriated for each of the several funds set forth in the annual operating budget for defraying the expenses of the general government of this city.

Sec. 6.28. - Changes in appropriations.

The city council by ordinance may make changes in the appropriations contained in the current operating budget at any regular meeting or special or emergency meeting called for such purpose, but any additional appropriations may be made only from an existing unexpended surplus.

Sec. 6.29. - Capital improvements.

(a) On or before the date fixed by the city council, but not later than 60 days prior to the beginning of each fiscal year, the **mayor city manager** shall submit to the city council a proposed capital improvements plan with a recommended capital budget containing the means of financing the improvements proposed for the ensuing fiscal year. The city council shall have power to accept, with or without amendments, or reject the proposed plan and budget. The city council shall not authorize an expenditure for the construction of any building, structure, work, or improvement unless the appropriations for such project are included in the capital budget, except to meet a public emergency as provided in Section 2.23 of this charter.

(b) The city council shall adopt by ordinance the final capital budget for the ensuing fiscal year not later than December 15 of each year. No appropriation provided for in a prior capital budget shall lapse until the purpose for which the appropriation was made shall have been accomplished or abandoned; provided, however, that the **mayor city manager** may submit amendments to the capital budget at any time during the fiscal year, accompanied by recommendations. Any such amendments to the capital budget shall become effective only upon adoption by ordinance.

[The language here is from the Georgia Model Municipal Charter for cities with a Manager-Council form of government.]

Sec. 6.30. - Audits.

There shall be an annual independent audit of all city accounts, funds, and financial transactions by a certified public accountant selected by the city council. The audit shall be conducted according to generally accepted auditing principles. Any audit of any funds by the state or federal governments may be accepted as satisfying the requirements of this charter. Copies of annual audit reports shall be available at printing costs to the public.

Sec. 6.31. - Procurement and property management.

No contract with the city shall be binding on the city unless:

- (1) It is in writing;
- (2) It is drawn by or submitted and reviewed by the city attorney and, as a matter of course, is signed by the city attorney to indicate such drafting or review; and
- (3) It is made or authorized by the city council and such approval is entered in the city council journal of proceedings pursuant to Section 2.19 of this charter.

Sec. 6.32. - Purchasing.

The city council shall by ordinance prescribe procedures for a system of centralized purchasing for the city.

Sec. 6.33. - Sale and lease of property.

(a) The city council may sell and convey or lease any real or personal property owned or held by the city for governmental or other purposes as now or hereafter provided by law.

(b) The city council may quitclaim any rights it may have in property not needed for public purposes upon report by the **mayer city manager** and adoption of a resolution, both finding that the property is not needed for public or other purposes and that the interest of the city has no readily ascertainable monetary value.

(c) Whenever in opening, extending, or widening any street, avenue, alley, or public place of the city a small parcel or tract of land is cut off or separated by such work from a larger tract or boundary of land owned by the city, the city council may authorize the **mayer city manager** to sell and convey said cut-off or separated parcel or tract of land to an abutting or adjoining property owner or owners where such sale and conveyance facilitates the highest and best use of the abutting owner's property. Included in the sales contract shall be a provision for the rights-of-way of said street, avenue, alley, or public place. Each abutting property owner shall be notified of the availability of the property and given the opportunity to purchase said property under such terms and conditions as set out by ordinance. All deeds and conveyances heretofore and hereafter so executed and delivered shall convey all title and interest the city has in such property, notwithstanding the fact that no public sale after advertisement was or is hereafter made.

[The language here is from the Georgia Model Municipal Charter for cities with a Manager-Council form of government.]

Sec. 6.34. - Apportionment of revenue.

Except as otherwise agreed pursuant to Chapter 70 of Title 36 of the O.C.G.A., the city is authorized to pay all revenues collected by Gwinnett County on behalf of the city to the county in exchange for continuation of services during the transition period provided in Section 8.11 of this charter and beyond, with the exception of the following revenues, which shall stay with the city:

- (1) New revenues from utility franchise fees;**

(2) Fines collected in municipal court; and

(3) Revenues generated from any additional millage of up to 1 mill above the millage rate imposed in the county special service district.

[This language is no longer necessary to include as part of the city charter as the initial referendum, special election, and transition period provided for therein have transpired.]

ARTICLE VII. - GENERAL PROVISIONS

Sec. 7.10. - Bonds for officials.

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

Sec. 7.11. - Construction and definitions.

(a) Section captions in this charter are informative only and are not to be considered as a part thereof.

(b) The word "shall" is mandatory and the word "may" is permissive.

(c) The singular shall include the plural, the masculine shall include the feminine, and vice versa.

ARTICLE VIII. - REFERENDUM AND INITIAL ELECTIONS

Sec. 8.10. - Referendum and initial election.

(a) Unless prohibited by the federal Voting Rights Act of 1965, as amended, the election superintendent of Gwinnett County shall call a special election for the purpose of submitting this Act to the qualified voters of the proposed City of Peachtree Corners for approval or rejection. The superintendent shall set the date of such election for the Tuesday after the first Monday in November, 2011. The superintendent shall issue the call for such election at least 30 days prior to the date thereof. The superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of Gwinnett County. The ballot shall have written or printed thereon the words:

"()	()	Shall the Act incorporating the City of Peachtree Corners in Gwinnett County according to
YES	NO	the charter contained in the Act be approved?"

All persons desiring to vote for approval of the Act shall vote "Yes," and those persons desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on such question are for approval of the Act, it shall become of full force and effect as provided in Section 8.11 of this charter, otherwise it shall be void and of no force and effect.

The initial expense of such election shall be borne by Gwinnett County. Within two years after the elections if the incorporation is approved, the City of Peachtree Corners shall reimburse Gwinnett County for the actual cost of printing and personnel services for such election and for the initial election of the mayor and councilmembers pursuant to this charter.

It shall be the duty of the superintendent to hold and conduct such election. It shall be his or her further duty to certify the result thereof to the Secretary of State.

(b) For the purposes of the referendum election provided for in subsection (a) of this section and for the purposes of the special election of the City of Peachtree Corners to be held on the date of the 2012 presidential preference primary, the qualified electors of the City of Peachtree Corners shall be those qualified electors of Gwinnett County residing within the corporate limits of the City of Peachtree Corners as described by Appendix A of this charter. At subsequent municipal elections, the qualified electors of the City of Peachtree Corners shall be determined pursuant to the authority of Chapter 2 of Title 21 of the O.C.G.A., known as the "Georgia Election Code."

(c) Only for the purposes of holding and conducting the referendum election provided for in subsection (a) of this section and holding and conducting the special election of the City of Peachtree Corners to be held on the date of the 2012 presidential preference primary, the election superintendent of Gwinnett County is vested with the powers and duties of the election superintendent of the City of Peachtree Corners and the powers and duties of the governing authority of the City of Peachtree Corners.

Sec. 8.11.— Effective dates and transition.

(a) The provisions of this Act necessary for the referendum election provided for in Section 8.10 of this charter shall become effective immediately upon this Act's approval by the Governor or upon its becoming law without such approval.

(b) Those provisions of this Act necessary for the special election provided for in Section 8.13 of this charter shall be effective upon the certification of the results of the referendum election provided for by Section 8.10 of this charter if this Act is approved at such referendum election.

(c) Except as provided in Section 8.10 of this charter, the remaining provisions of this Act shall become of full force and effect for all purposes at 12:00 Midnight on June 30, 2012, except that the initial mayor and councilmembers shall take office immediately following their election and by action of a quorum may, prior to 12:00 Midnight on June 30, 2012, meet and take actions binding on the city.

(d) A period of time will be needed for an orderly transition of various government functions from Gwinnett County to the City of Peachtree Corners. Accordingly there shall be a transition period beginning on the date the initial mayor and councilmembers take office under this charter, and ending at 12:00 Midnight on December 31, 2013. During such transition period, all provisions of this charter shall be effective as law, but not all provisions of this charter shall be implemented.

(e) During such transition period, Gwinnett County shall continue to provide within the territorial limits of the city all government services and functions which Gwinnett County provided in that area during the years 2010 and 2011 and at the same actual cost, except to the extent otherwise provided in this section; provided, however, that upon at least 60 days' prior written notice to Gwinnett County by the City of Peachtree Corners, responsibility for any such service or function shall be transferred to the City of Peachtree Corners. During the transition period, the city shall remain within the Gwinnett County special services district, but shall be removed from such district at the conclusion of such period. Beginning December 1, 2012, the City of Peachtree Corners shall collect taxes, fees, assessments, fines and forfeitures, and other moneys within the territorial limits of the city in the same manner as authorized immediately prior to the effective date of this section; provided, however, that upon at least

60 days' prior written notice to Gwinnett County by the City of Peachtree Corners, the authority to collect any tax, fee, assessment, fine or forfeiture, or other moneys shall remain with Gwinnett County after December 1, 2012, until such time as Gwinnett County receives subsequent notice from the City of Peachtree Corners that such authority shall be transferred to the City of Peachtree Corners.

(f) During the transition period, the governing authority of the City of Peachtree Corners:

(1) Shall hold regular meetings and may hold special meetings as provided in this charter;

(2) May enact ordinances and resolutions as provided in this charter;

(3) May amend this charter by home rule action as provided by general law;

(4) May accept gifts and grants;

(5) May borrow money and incur indebtedness to the extent authorized by this charter and general law;

(6) May levy and collect an ad valorem tax for calendar years 2012 and 2013;

(7) May establish a fiscal year and budget;

(8) May create, alter, or abolish departments, boards, offices, commissions, and agencies of the city; appoint and remove officers and employees; and exercise all necessary or appropriate personnel and management functions; and

(9) May generally exercise any power granted by this charter or general law, except to the extent that a power is specifically and integrally related to the provision of a governmental service, function, or responsibility not yet provided or carried out by the city.

(g) Except as otherwise provided in this section, during the transition period, the Municipal Court of the City of Peachtree Corners shall not exercise its jurisdiction. During the transition period, all ordinances of Gwinnett County shall remain applicable within the territorial limits of the city and the appropriate court or courts of Gwinnett County shall retain jurisdiction to enforce such ordinances. However, by mutual agreement and concurrent resolutions and ordinances if needed Gwinnett County and the City of Peachtree Corners may during the transition period transfer all or part of such regulatory authority and the appropriate court jurisdiction to the City of Peachtree Corners. Any transfer of jurisdiction to the City of Peachtree Corners during or at the end of the transition period shall not in and of itself abate any judicial proceeding pending in Gwinnett County or the pending prosecution of any violation of any ordinance of Gwinnett County.

(h) During the transition period, the governing authority of the City of Peachtree Corners may at any time, without the necessity of any agreement by Gwinnett County, commence to exercise its planning and zoning powers; provided, however, that the city shall give the county notice of the date on which the city will assume the exercise of such powers. Upon the governing authority of the City of Peachtree Corners commencing to exercise its planning and zoning powers, the Municipal Court of the City of Peachtree Corners shall immediately have jurisdiction to enforce the planning and zoning ordinances of the city. The provisions of this subsection shall control over any conflicting provisions of any other subsection of this section.

(i) Effective upon the termination of the transition period, subsections (b) through (h) of this section shall cease to apply except for the last sentence of subsection (g) [of this section] which shall remain effective. Effective upon the termination of the transition period, the City of Peachtree Corners shall be a full functioning municipal corporation and subject to all general laws of this state.

(j) (1) At the conclusion of the transition period as defined herein, the City of Peachtree Corners shall be deemed to be a part of the existing special service district located in Gwinnett County known as the Police Service District. The participation of the City of Peachtree Corners in the Police Service District shall be subject to, and in accordance with, the existing terms and conditions of participation as established by Gwinnett County with other participating cities, including, but not limited to, those terms and conditions related to costs, funding, duration, and modification of services. Gwinnett County is expressly authorized to provide police services within the City of Peachtree Corners and, for the purpose of funding such services, to establish and levy a tax on property located within the City of Peachtree Corners at a millage rate that is uniform with property located in other cities and unincorporated areas participating in the Police Service District, but the millage rate shall not be counted against the 1 mill maximum imposed on taxes established and levied by the City of Peachtree Corners.

(2) At the conclusion of the transition period as defined herein, the City of Peachtree Corners shall be deemed to be a part of the existing special service district located in Gwinnett County known as the Fire and Emergency Medical Service District. The participation of the City of Peachtree Corners in the Fire and Emergency Medical Service District shall be subject to, and in accordance with, the existing terms and conditions of participation as established by Gwinnett County with other participating cities, including, but not limited to, those terms and conditions related to costs, funding, duration, and modification of services. Gwinnett County is expressly authorized to provide fire and emergency medical services within the City of Peachtree Corners and, for the purpose of funding such services, to establish and levy a tax on property located within the City of Peachtree Corners at a millage rate that is uniform with property located in other cities and unincorporated areas participating in the Fire and Emergency Medical Service District, but the millage rate shall not be counted against the 1 mill maximum imposed on taxes established and levied by the City of Peachtree Corners.

(3) At the conclusion of the transition period as defined herein, the City of Peachtree Corners shall be deemed to remain a part of the existing special service district known as the Gwinnett County Recreation District, approved and created by the electors of Gwinnett County by referendum held on November 4, 1986, for the purpose of establishing and maintaining a county-wide parks and recreation system. The participation of the City of Peachtree Corners in the Gwinnett County Recreation District shall be subject to, and in accordance with, the existing terms and conditions of participation as established by Gwinnett County. Gwinnett County is expressly authorized to provide recreational services within the City of Peachtree Corners and, for the purpose of funding such services, to establish and levy a tax on property located within the City of Peachtree Corners at a millage rate that is uniform with other property located in the Gwinnett County Recreation District, but the millage rate shall not be counted against the 1 mill maximum imposed on taxes established and levied by the City of Peachtree Corners.

(4) At the conclusion of the transition period as defined herein, the City of Peachtree Corners shall continue to be served by Gwinnett County's Emergency 9-1-1 System for the provision of emergency 9-1-1 services, including, but not limited to, call taking and emergency dispatch services, and shall

continue to be served by the existing public safety answering points established and operated by Gwinnett County, all pursuant to the authority of the Georgia Emergency Telephone Number 9-1-1 Service Act of 1977. The City of Peachtree Corners shall not create or operate its own Emergency 9-1-1 System or public safety answering point and shall not impose or collect a 9-1-1 charge from suppliers of telephone services, including local exchange telephone service or other telephone communication service, wireless service, prepaid wireless service, mobile telecommunications service, computer service, Voice over Internet Protocol service, or any technology that delivers or is required by law to deliver a call to a public safety answering point.

(k) Only for the purposes of holding and conducting municipal elections during the transition period, the election superintendent of Gwinnett County shall be vested with the powers and duties of the election superintendent of the City of Peachtree Corners. During the transition period, the election superintendent of Gwinnett County shall conduct all municipal elections for the City of Peachtree Corners during the 2013 election cycle. The expense of any such election, or necessary runoff, shall be borne by the City of Peachtree Corners and remitted to Gwinnett County within 60 days after any such election or runoff. It shall be the election superintendent's duty to certify the result of any election or runoff to the Secretary of State.

(2013 Ga. Laws (Act No. 139), § 2)

Sec. 8.12.— Directory nature of dates.

It is the intention of the General Assembly that this Act be construed as directory rather than mandatory with respect to any date prescribed in this Act. If it is necessary to delay any action called for in this Act for providential cause, delay in securing approval under the federal Voting Rights Act, or any other reason, it is the intention of the General Assembly that the action be delayed rather than abandoned. Any delay in performing any action under this Act, whether for cause or otherwise, shall not operate to frustrate the overall intent of this Act. Without limiting the generality of the foregoing it is specifically provided that:

(1) If it is not possible to hold the referendum election provided for in Section 8.10 of this charter on the date specified in that section, then such referendum shall be held as soon thereafter as is reasonably practicable; and

(2) If it is not possible to hold the first election provided for in Section 8.13 of this charter on the date specified in that section, then there shall be a special election for the initial members of the governing authority to be held as soon thereafter as is reasonably practicable, and the commencement of the initial terms of office shall be delayed accordingly.

Sec. 8.13.— Special election.

(a) The first election for mayor and councilmembers shall be a special election held on the date of the 2012 presidential preference primary. At such election, the first mayor and councilmembers shall be elected to serve for the initial terms of office specified in subsections (b), (c), and (d) of this section. Thereafter, the time for holding regular municipal elections shall be on the Tuesday next following the first Monday in November of each odd-numbered year beginning in 2013. The successors to the first mayor and initial councilmembers and future successors shall take office at the first organizational

meeting in January immediately following their election and shall serve for terms of four years and until their respective successors are elected and qualified.

(b) The members of the city council from Post 1, Post 2, and Post 3 shall be elected by majority vote of the electors of their respective districts. The members of the city council from Post 4, Post 5, and Post 6 shall be elected by the electors of the city at large by majority vote. The initial members elected from Post 2, Post 4, and Post 6 shall serve a term of office of two years and until their respective successors are elected and qualified. The initial members elected from Post 1, Post 3, and Post 5 shall serve a term of office of four years and until their respective successors are elected and qualified. Thereafter, successors to such initial members shall serve four-year terms of office and until their respective successors are elected and qualified.

(c) The mayor of the City of Peachtree Corners shall be elected by a majority vote of the qualified electors of the city at large. The mayor shall serve a term of four years and until his or her successor is elected and qualified and successors to the mayor shall serve four-year terms of office and until their successors are elected and qualified.

ARTICLE IX.—GENERAL REPEALER

Sec. 9.10.— General repealer.

All laws and parts of laws in conflict with this Act are repealed.

[The language of Article VIII is no longer necessary to include as part of the city charter as the initial referendum, special election, and transition period provided for therein have transpired.]

Appendix A
Relevant Legal Opinions



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July 17, 2015

VIA EMAIL AND HAND DELIVERY

Ralph J. Amos, Chairman
Forsyth County Board of Commissioners
110 East Main Street, Suite 210
Cumming GA 30040

RE: Legal Propriety of a Limited Service City ("City-Lite")

Dear Mr. Chairman:

The Forsyth County Board of Commissioners has requested that this office offer an opinion regarding the legal propriety of a limited service city, also known as a "city-lite." A limited service city, or "city-lite," refers to a city the charter of which expressly restricts the number of services the city may provide to only three identified municipal services (far fewer than those otherwise authorized in the Constitution of the State of Georgia) without a voter referendum. It is my opinion that a "city-lite" is not authorized under Georgia law.

I. Statement of Facts.

Recently, a number of cities have been formed in the Atlanta-metro area. In some cases, the charter for a given city attempts to limit the services provided to a fewer number of services than are otherwise authorized by the Constitution of the State of Georgia. This type of city is often referred to as a "city-lite." For example, it has been proposed that a City of Sharon Springs (proposed in Forsyth County) would provide only services related to planning and zoning, code enforcement, and solid waste management.

II. Legal Analysis and Relevant Authorities.

The "Supplementary Powers" clause of the Constitution of the State of Georgia provides,

- (a) In addition to and supplementary of all powers possessed by or conferred upon any county, municipality, or any combination thereof,

any county, municipality, or any combination thereof may exercise the following powers and provide the following services:

- (1) Police and fire protection.
- (2) Garbage and solid waste collection and disposal.
- (3) Public health facilities and services, including hospitals, ambulance and emergency rescue services, and animal control.
- (4) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof.
- (5) Parks, recreational areas, programs, and facilities.
- (6) Storm water and sewage collection and disposal systems.
- (7) Development, storage, treatment, purification, and distribution of water.
- (8) Public housing.
- (9) Public transportation.
- (10) Libraries, archives, and arts and sciences programs and facilities.
- (11) Terminal and dock facilities and parking facilities.
- (12) Codes, including building, housing, plumbing, and electrical codes.
- (13) Air quality control.
- (14) The power to maintain and modify heretofore existing retirement or pension systems, including such systems heretofore created by general laws of local application by population classification, and to continue in effect or modify other benefits heretofore provided as a part of or in addition to such retirement or pension systems and the power to create and maintain retirement or pension systems for any elected or appointed public officers and employees whose compensation is paid in whole or in part from county or municipal funds and for the beneficiaries of such officers and employees.

(b) Unless otherwise provided by law,

- (1) No county may exercise any of the powers listed in subparagraph (a) of this Paragraph or provide any service listed therein inside the boundaries of any municipality or any other county except by contract with the municipality or county affected; and
- (2) No municipality may exercise any of the powers listed in subparagraph (a) of this Paragraph or provide any service listed therein outside its own boundaries except by contract with the county or municipality affected.

(c) Nothing contained within this Paragraph shall operate to prohibit the General Assembly from enacting general laws relative to the subject matters listed in subparagraph (a) of this Paragraph or to prohibit the General Assembly by general law from regulating, restricting, or

limiting the exercise of the powers listed therein; but it may not withdraw any such powers.

- (d) Except as otherwise provided in subparagraph (b) of this Paragraph, the General Assembly shall act upon the subject matters listed in subparagraph (a) of this Paragraph only by general law.

GA. Const. Art. 9, § 2, ¶ III (emphasis added).

“A general law is one having general application or at least applying to all municipalities and/or all counties. A local act is one that deals only with a particular city or county. Municipal charters are an example of local legislation.” Georgia Municipal Association, *Handbook for Georgia Mayors and Councilmembers*, Fifth Edition (2012); see O.C.G.A. § 36-35-2(a)¹; see also *City of Atlanta v. City of Coll. Park*, 311 Ga. App. 62, 66, 715 S.E.2d 158, 162 (2011) *aff’d*, 292 Ga. 741, 741 S.E.2d 147 (2013) (noting in a footnote that “a city charter is a local law, not a general law”); see also *Cowan v. City of Atlanta*, 177 Ga. 470, 470, 170 S.E. 356, 356 (1933), (holding that “[a]n amendment to a municipal charter is a local bill . . .”). As the Constitution provides that the General Assembly may only regulate, restrict, or limit a municipality’s authority to provide the services enumerated in the Supplementary Powers clause by general law, it is therefore the case that a city charter (a local act) may not be used to limit the services that a municipality provides.

Regarding the purpose of this constitutional provision (providing for an established number of municipal and county powers), the Attorney General of Georgia has opined,

The purpose of this constitutional provision is to provide uniformity of municipal powers which the General Assembly may not remove . . . in a random fashion.”

Ga. Op. Atty. Gen. No. U94-8 (1994) (citing *City of Mountain View v. Clayton County*, 242, GA. 163 (1978) (“This provision provides uniformity of certain powers of municipalities, not autonomy. The General Assembly may not remove these powers in a random fashion.”). There, the Attorney General was considering the constitutionality of a local act passed by the General Assembly to amend the City of Gainesville’s charter to require the City to apply fair and nondiscriminatory charges and fees for waterworks and sewage services to customers outside its official limits. The Attorney General noted that the local legislation attempted to act “on the subject matter of the enumerated services of water distribution and sewer systems identified in the constitutional provision discussed above” but that such services, as identified in Constitution, are “subject only to general law.” Consequently, the Attorney General opined that the local act in that instance appeared unconstitutional. The same would be true regarding a city’s charter that attempts to limit the number of services that a city may provide to *fewer* than the services otherwise authorized by the State’s Constitution.

¹ “No municipal corporation shall be incorporated, dissolved, merged, or consolidated with any other municipal corporation, or have its municipal boundaries changed except by local Act of the General Assembly or by such methods as may be provided by general law.” O.C.G.A. 36-35-2(a).

Anecdotally speaking, this issue may have been discussed prior to the creation of one "city-lite." At least one article regarding the creation of Peachtree Corners noted, "The city idea emerged several years ago but it failed in an informal vote. Leaders discussed a 'city light' form of government but eventually learned that the state only acknowledges one form of municipal government." Camie Young, *Peachtree Corners Cityhood Issue Divides Community*, GWINNETT DAILY POST, Nov. 11, 2011 (emphasis added). Although certainly not a legal authority, one commentator discussing the City of Peachtree Corners charter explained the effect of the charter as follows:

Section 1.12 (a) defines the comprehensive powers of the city government. These powers define what the city of Peachtree Corners is authorized to do in the provision of services. The listing of powers includes animal control, appropriations and expenditures, fire regulations, health and sanitation among many others. These are standard and expected powers for any city. In 1999, Berkeley Lake's charter was revised. You can see that the powers are very similar to those authorized for Peachtree Corners.

The key difference between us and any other city is in Section 1.12 (b) of our charter. This section spells out the specific services the city will provide: Planning and Zoning, Code Enforcement and Solid Waste Services. The charter specifically states that the comprehensive list of powers can only be exercised in the provision of these three services. If a power is not required for the provision of these services, the power is authorized but cannot be exercised.

UPCCA, *Peachtree Corners – City Charter – Powers and Services*, PEACHTREE CORNERS PATCH, July 27, 2011, <http://patch.com/georgia/peachtreecorners/bp--peachtree-corners-city-charter-powers-and-services-2> (emphasis added). This explanation highlights that that city's charter (a local act) appears to regulate, restrict, or limit the City's ability to exercise its constitutional powers. Again, according to the constitutional provision quoted above, the General Assembly may only use general law to regulate, restrict or limit a city's ability to exercise its constitutional powers.

Georgia's Constitution provides that "[t]he legislative power of the state shall be vested in the General Assembly which shall consist of a Senate and a House of Representatives." Ga. Const. Art. 3, §1, ¶ I. Further, "[t]he General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly." Ga. Const. Art. 9, §2, ¶ II. However, we have been unable to find any authority for the idea that the General Assembly may have, has, or could delegate its authority to create general law, which by definition applies not only to a single municipality but state-wide.

With that said, the General Assembly has authorized municipalities to make revisions to their charters without the involvement of the General Assembly or voters. O.C.G.A. § 36-35-3 (Home Rule for Municipalities) provides in part:

- (a) . . . Any such charter provision shall remain in force and effect until amended or repealed as provided in subsection (b) of this Code section. This Code section, however, shall not restrict the authority of the General Assembly, by general law, to define this home rule power further or to broaden, limit, or otherwise regulate the exercise thereof. . . .
- (b) Except as provided in Code Section 36-35-6, a municipal corporation may, as an incident of its home rule power, amend its charter by following either of the following procedures:
 - (1) Municipal charters may be amended by ordinances duly adopted at two regular consecutive meetings of the municipal governing authority, not less than seven nor more than 60 days apart No amendment under this paragraph shall be valid to change or repeal an amendment adopted pursuant to a referendum as provided in paragraph (2) of this subsection or to change or repeal a local Act of the General Assembly ratified in a referendum as provided in paragraph (2) of this subsection or to change or repeal a local Act of the General Assembly ratified in a referendum by the electors of the municipal corporation unless at least 12 months have elapsed after such referendums. No amendment under this paragraph shall be valid if provision has been made therefore by general law; or
 - (2) (A) Amendments to charters or amendments to or repeals of ordinances, resolutions, or regulations adopted pursuant to subsection (a) of this Code section may be initiated by a petition, filed with the governing authority of the municipal corporation [and meeting certain other requirements]. The petition shall specifically set forth the exact language of the proposed amendment or repeal In the event that the governing authority determines that such petition is valid, it shall be the duty of such authority to issue the call for an election for the purpose of submitting such amendment or repeal to the registered electors of the municipal corporation for their approval or rejection. . . . No amendment under this subparagraph shall be valid if provision has been made therefore by general law. . . .

(emphasis added). This general law is important because a charter for a “city-lite” generally provides:

In the event that the city desires to provide services in addition to those [limited] services enumerated . . . [and authorized in that charter,], the city council shall pass a resolution specifically stating the services sought to be offered by the city and shall submit the approval of such resolution for ratification by the electors of the city in a referendum. If the electors of the city vote in favor of ratifying such resolution, then the city shall be authorized to exercise the powers enumerated in subsection (a) of this section for the purpose of providing such services state in such resolution and those items directly related to the provision of such services and for the general administration of the city in providing such services. If the

electors of the city disapprove such resolution, it shall immediately be null and void and of no force and effect.

(emphasis added). This charter provision appears to limit the city's authority to provide such services until a *referendum* is passed by the city's voters. However, according to the general law quoted above, a referendum is unnecessary to amend the charter to include such services, as (1) the city already has those powers (per the Constitution) irrespective of the charter's effort to suggest otherwise, and (2) even if not, the charter may otherwise be amended by the process articulated in O.C.G.A. 36-35-3(b)(1).² In short, the proposed Sharon Springs charter attempts to render O.C.G.A. 36-35-3(b)(1) a nullity. Since that is the case, it would appear that the "city-lite" concept has two structural infirmities. First, the proposed charter purports to limit the city to only three functional powers – in spite of the Georgia Constitution clearly authorizing more; second, the charter seeks to impose a home rule amendment "referendum" requirement that is in derogation of general law.

The logical and unambiguous language in the Supplementary Powers clause provides that a municipality "may exercise the . . . powers and provide the . . . services" listed absent the General Assembly enacting a "general law" "regulating, restricting, or limiting" the municipality's authority to "exercise the powers listed." Indeed, the Supplementary Powers clause specifically provides that the General Assembly "may not withdraw any such powers." Georgia law provides:

In all interpretations of statutes, the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.

O.C.G.A. § 1-3-1(b). Here, it appears that a charter for a "city-lite" is, at best, attempting to regulate (limit) the authority of a "city-lite" to exercise the constitutional powers listed in the Supplementary Powers clause – without authority under general law – and, simultaneously offering up a single home rule amendment process that is in derogation of O.C.G.A. 36-35-3(b). Based upon both infirmities, it is my position that the city-lite concept is not authorized under the Georgia Constitution.

Some may point to one *general law* in which the General Assembly has defined what will be considered an "active municipality" to argue that a "city-lite" is a duly qualified municipality. I agree. O.C.G.A. § 36-30-7.1(b) provides:

² Proponents of this form of government may suggest that modifying the charter to add services not initially authorized constitutes a change to the "form" of government prohibited by O.C.G.A. 36-35-6(a)(1). However, I reject this suggestion as the city would *already* have those powers under the constitutional provision referenced above; and, even assuming it were true that such an amendment constitutes an impermissible change in 'form,' such a conclusion would then necessarily void the provision in the proposed charter authorizing amendment by referendum. The prohibitions in O.C.G.A. 36-35-3 cannot be overcome by *either* charter revision method in O.C.G.A. 36-35-3(b).

An active municipality is any incorporated municipality in this state the governing body of which meets each of the following minimum standards:

(1) Provides at least three of the following services, either directly or by contract:

- (A) Law enforcement;
- (B) Fire protection (which may be furnished by a volunteer fire force) and fire safety;
- (C) Road and street construction or maintenance;
- (D) Solid waste management;
- (E) Water supply or distribution or both;
- (F) Waste-water treatment;
- (G) Storm-water collection and disposal;
- (H) Electric or gas utility services;
- (I) Enforcement of building, housing, plumbing, and electrical codes and other similar codes;
- (J) Planning and zoning; and
- (K) Recreational facilities;

(2) Holds at least six regular, monthly or bimonthly, officially recorded public meetings within the 12 months next preceding the execution of the certificate required by subsection (c) of this Code section; and

(3) Qualifies for and holds a regular municipal election as provided by law, other than a municipality which has a governing authority comprised of commissioners or other members who are appointed by a judge of the superior court.

(emphasis added). Based upon this statutory provision, it is clear that cities providing a minimum of three of the services listed are active and legally authorized municipalities. Therefore, it is clear that if a city chooses to provide only three (or more) of the services that it is otherwise authorized to provide under the Constitution, that city is an active municipality recognized under Georgia law. However, this *general law* does not have the effect of authorizing the General Assembly to regulate and restrict (via a city's charter) when or how a municipality may provide the services that it is constitutionally authorized to provide. The "three services" rule in O.C.G.A. § 36-30-7.1(b) is a function of funding – not authority. It is a recognition that many municipalities will not have the funding to provide more than three such services. However, that is an altogether different concept than the underlying "authority" to provide more than this.

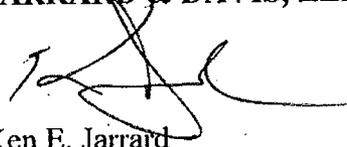
III. Conclusion.

Based upon the facts presented and the analysis above, I am of the opinion, as of the date hereof, that a limited service city, or "city-lite," the charter of which attempts to restrict the city from providing more than a few listed services (fewer services than those otherwise authorized in the Constitution of the State of Georgia) without a voter referendum, is not legally authorized. First, the proposed charter purports to limit the constitutional powers available to all municipalities. Second, the charter seeks, by local act, to add requirements that must be met in order for the municipality to exercise its statutory home rule power. These attempts to limit, by local act, powers otherwise granted to all municipalities are not authorized under Georgia law.

If you have any questions, please feel free to contact me.

Kindest regards,

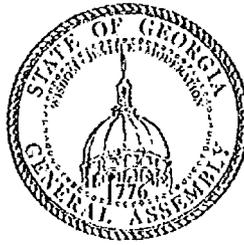
JARRARD & DAVIS, LLP

A handwritten signature in black ink, appearing to read 'Ken E. Jarrard', written over the company name.

Ken E. Jarrard

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President of the Senate
Secretary of the Senate
Clerk of the House
President Pro Tempore
Speaker Pro Tempore
Senate Majority Leader
House Majority Leader
Senate Minority Leader
House Minority Leader



COMMITTEE MEMBERS:

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Committee
Chairperson, Senate Banking and Financial
Institutions Committee
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Committee
Chairperson, House Judiciary Committee
Chairperson, House Ways and Means
Committee

LEGISLATIVE SERVICES COMMITTEE

OFFICE OF LEGISLATIVE COUNSEL
316 STATE CAPITOL
ATLANTA, GEORGIA 30334
(404) 656-5000

October 7, 2015

Honorable John Albers
Senator, District 56
110-D State Capitol
Atlanta, Georgia 30334

Dear Senator Albers:

This letter is in response to your request for an opinion on the legality of a "city lite." The term "city lite" is used to denote a municipality which is created with the intention that the municipality provide only a limited number of services to reduce the cost of operating the municipality to the taxpayers of the municipality. There have been numerous proposals suggested to accomplish this end in recent years. There has been the idea of creating a lesser form of government, often denominated in the proposals as a "township," which has less than the full slate of powers given to full-fledged municipalities. At present, there is no authorization to create such townships, so I will not discuss that aspect of "city lite." There has also been the idea of reducing the powers given to a municipality in its creating charter and there has been the idea of giving a municipality all of the powers of a full-fledged municipality, but conditioning the use of certain powers upon certain procedural actions, such as seeking the approval of the voters of the municipality. It should also be noted that a "city lite" is not a municipality that has all the powers of a full-fledged municipality under Georgia law but chooses to exercise only a limited number of such powers. A municipality may voluntarily limit the services that it provides to its citizens without any action of the General Assembly.

The starting place for reviewing the powers of municipalities in Georgia is Article IX, Section II, Paragraph III(a) of the State Constitution which provides that:

Honorable John Albers

October 7, 2015

Page 2

Paragraph III. Supplementary powers.

(a) In addition to and supplementary of all powers possessed by or conferred upon any county, municipality, or any combination thereof, any county, municipality, or any combination thereof may exercise the following powers and provide the following services:

- (1) Police and fire protection.
- (2) Garbage and solid waste collection and disposal.
- (3) Public health facilities and services, including hospitals, ambulance and emergency rescue services, and animal control.
- (4) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof.
- (5) Parks, recreational areas, programs, and facilities.
- (6) Storm water and sewage collection and disposal systems.
- (7) Development, storage, treatment, purification, and distribution of water.
- (8) Public housing.
- (9) Public transportation.
- (10) Libraries, archives, and arts and sciences programs and facilities.
- (11) Terminal and dock facilities and parking facilities.
- (12) Codes, including building, housing, plumbing, and electrical codes.
- (13) Air quality control.
- (14) The power to maintain and modify heretofore existing retirement or pension systems, including such systems heretofore created by general laws of local application by population classification, and to continue in effect or modify other benefits heretofore provided as a part of or in addition to such retirement or pension systems and the power to create and maintain retirement or pension systems for any elected or appointed public officers and employees whose compensation is paid in whole or in part from county or municipal funds and for the beneficiaries of such officers and employees.

It should first be noted that this is not an exhaustive list of municipal powers, but is in "addition to and supplementary of all powers possessed by or conferred upon any ... municipality, ...". Therefore, when a municipality is created in Georgia, it is possessed with a vast range of powers by which to govern and operate by its very creation and without any

further action of the General Assembly or by the General Assembly enumerating such powers in its charter.

There is a caveat regarding such powers which is contained in Article IX, Section II, Paragraph III(c) of the State Constitution which states that:

(c) Nothing contained within this Paragraph shall operate to prohibit the General Assembly from enacting general laws relative to the subject matters listed in subparagraph (a) of this Paragraph or to prohibit the General Assembly by general law from regulating, restricting, or limiting the exercise of the powers listed therein; but it may not withdraw any such powers.

Therefore, the General Assembly may pass general laws regarding the enumerated municipal powers or regulating, restricting, or limiting the exercise of such powers, but it may not withdraw such powers. A general law is a law of universal application within the state. Art. III, Sec. VI, Par. IV(a) of the State Constitution. That is, a general law is one that operates generally upon the entire class of subjects with which it deals uniformly throughout the state. City of Calhoun v. North Georgia Electric Membership Corporation, 233 Ga. 759 (1975). On the other hand, a local law operates only within a limited area of the state, such as a municipal charter or a law affecting a particular county.

With this in mind, it is easy to dispose of the idea of creating a city with a charter that contains less than all of the powers of a full-fledged municipality. Under the state constitution, such a city would have all of the powers of a full-fledged municipality regardless of the omission of such powers from the charter. Such powers come from the state constitution and, as noted above, cannot be withdrawn, but may only be regulated, restricted, or limited by general law. A municipal charter is clearly a local law which cannot be used to regulate, restrict, or limit municipal powers. Therefore, it is not possible to create a municipality in Georgia which has less than all of the powers of a full-fledged municipality.

The other notion of giving a municipality all of the powers of a full-fledged municipality, but conditioning the use of certain powers upon certain procedural actions, such as seeking the approval of the voters of the municipality, is interesting. The theory behind that idea is that the municipal powers are fully provided to the municipality and are not withheld or limited by the law. In other words, the municipality is created with and possesses all the powers of any other municipality. The difference is that, if the municipality wants to exercise certain powers, the municipality must follow certain procedures, such as gaining the approval of the voters of the municipality in a referendum. Proponents of this theory argue that the

Honorable John Albers
October 7, 2015
Page 4

requirement to get referendum approval of the exercise of a power is not a regulation, restriction, or limit on the power, but a procedural mechanism for the use of the power. The municipality has the power to perform the act if it chooses and the actual power itself is not regulated, restricted, or limited. The power is fully present and capable of being exercised by the municipality without limitation, provided that the procedural processes are followed. This would be similar to a requirement that a city council of seven members cannot act without the affirmative vote of five members. The power to act is fully available, but unless the council musters five affirmative votes, no action can be taken. In the case of this "city lite" theory, the council has the power to act but cannot act without the consent of the voters in a referendum. It is not a charter change which would invoke home rule powers, but is a procedural mechanism which must be satisfied before acting.

While there is no case directly on point on this issue, the stronger argument would appear to be that the device of requiring referendum approval before exercising a power by a municipality is a limitation on the powers of the municipality by a local law which would run afoul of Article IX, Section II, Paragraph III(a) of the State Constitution. It is difficult to say that the limitation does not, in actuality, regulate, restrict, or limit the exercise of the powers by a municipality and thereby contravenes the constitutional provision.

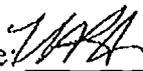
In the event that a limitation on municipal powers is contained in a charter and a court of competent jurisdiction finds that such limitation is violative of Article IX, Section II, Paragraph III(a) of the State Constitution, the court would likely eliminate such provision from the charter and allow the charter to remain in existence without such limitation. Under O.C.G.A. § 1-1-3, unless otherwise specified, when a provision of an Act of the General Assembly is found to be unconstitutional or invalid, such provision is eliminated and the remaining parts of the Act continue in effect.

I trust that this has been responsive to your inquiry.

Sincerely,



H. Jeff Lahler
Deputy Legislative Counsel

Approved for release 

Brinson Askew Berry

BRINSON, ASKEW, BERRY, SEIGLER, RICHARDSON & DAVIS, LLP

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September 11, 2015

Ralph J. Amos, Chairman
Forsyth County Board of Commissioners
110 East Main Street, Suite 210
Cumming, Georgia 30040

**RE: Legal Opinion concerning House Bill 660—the proposed city charter
for the City of Sharon Springs**

Dear Mr. Chairman:

I have been asked to provide a legal opinion concerning House Bill 660, which proposes to incorporate the City of Sharon Springs as a “limited-service city” in Forsyth County, Georgia. The specific question posed is whether the proposed charter of Sharon Springs, as presented through House Bill 660, complies with the Georgia Constitution. As explained below, my opinion is that House Bill 660 violates the Georgia Constitution. But with that said, it is also my opinion that if passed, House Bill 660 would establish Sharon Springs as a Georgia municipality—just without the power and service restrictions contained in House Bill 660.

1. Georgia law concerning the powers and services that are available to cities to exercise and provide.

Generally speaking, a city is created when the General Assembly passes a local law, which, in effect, approves the city charter. *See* O.C.G.A. § 36-35-2(a); *see also* *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 66 n.11 (2011) (“a city charter is a local law, not a general law”). In contrast to a city charter that is local in nature and only applies to that specific city, a general law is one that applies uniformly across the state. *See* Ga. Const., Art III, Sec. VI, Para. IV (“Laws of a general nature shall have uniform operation throughout this state....”). This distinction between local laws and general laws is important with respect to how the General Assembly can restrict municipal powers and services.

The Georgia Constitution specifically lists 14 powers and services that a municipality may exercise or provide. *See* GA. CONST., Art. IX, Sec. II, Para. III (a) (“In addition to and supplementary of all powers possessed by or conferred upon any county, municipality, or any combination thereof, any county, municipality, or any combination thereof may exercise the following powers and provide the following services”). This constitutional provision is referred to as the “Supplementary Powers Clause.”

After identifying what powers and services a municipality may exercise or provide, the Supplementary Powers Clause states that the General Assembly may regulate, restrict, or limit the powers and services that municipality may exercise or provide by “**general law.**” GA. CONST., Art. IX, Sec. II, Para. III(c) (emphasis added). But the Georgia Constitution explicitly prohibits the General Assembly from “withdraw[ing] any such powers”—regardless of whether

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the withdrawal is attempted through a general law or a local law. *Id.* According to the Attorney General of Georgia, “[t]he purpose of the [Supplementary Powers Clause] is to provide uniformity of municipal powers which the General Assembly may not remove ... in a random fashion.” Ga. Op. Atty. Gen. No. U94-8 (1994).

Thus, the General Assembly may regulate, restrict, or limit the powers and services of a municipality through a general law—i.e., a law that applies uniformly across the State—but it cannot withdraw any of the enumerated powers or services available to municipalities absent a constitutional amendment.

2. Application of the Supplementary Powers Clause to House Bill 660.

While no reported Georgia opinion has discussed or examined the Supplementary Powers Clause in the context of a “limited-service city,” the plain terms of the Supplementary Powers Clause itself shows that the General Assembly may regulate, restrict, and/or limit the powers and services of municipalities through a **general law**. And the General Assembly has exercised this constitutional power. For example, the General Assembly recently passed the Sunday sales legislation, which regulates how counties and municipalities may locally approve the sale of alcohol on Sundays and differentiates the approval procedure based on the population of the county or municipality. Compare O.C.G.A. § 3-3-7(b) (establishing Sunday sales approval procedure for county “having a population of 800,000 or more”) with O.C.G.A. § 3-3-7(d) (establishing Sunday sales approval procedure for county “having a population of not less than 153,000 nor more than 165,000”). These are general laws, which “regulate, restrict, and/or limit” how municipalities can approve Sunday sales and apply uniformly across the state of Georgia.

But the question here is whether the General Assembly can pass a local law—a city charter—that explicitly limits the scope of the powers and services to accomplish (1) planning and zoning, (2) code adoption and enforcement, and (3) solid waste management services. There is a question as to whether city charters, like proposed House Bill 660, “limit” the powers and services of a municipality or if such charters “withdraw” those powers and services so that they are no longer available. See MERRIAM-WEBSTER DICTIONARY (defining withdraw as “to take (something) back so that it is no longer available”) (available at <http://www.merriam-webster.com/dictionary/withdraw>). A strong argument can be made that House Bill 660 “withdraws” powers and services from the City of Sharon Springs because a city must act consistently with its charter. See O.C.G.A. § 36-35-3(a).¹ The powers and services enumerated by the Supplementary Powers Clause that are not also contained in the charter are no longer available to the City of Sharon Springs; thus, those powers and services have been “withdrawn.”

¹ Under the Home Rule Statute, “The governing authority of each municipal corporation shall have the legislative power to adopt clearly reasonable ordinances, resolution, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto.” O.C.G.A. § 36-35-3(a).

But even if House Bill 660 was viewed as “limiting, restricting, or regulating” the powers and services of the City of Sharon Springs, House Bill 660 nonetheless violates the Supplementary Powers Clause of the Georgia Constitution because the General Assembly can only place “limitations” on a municipality through general law. It is undisputed that city charters are local laws. See *City of Atlanta*, 311 Ga. App. at 66 n.11 (“a city charter is a local law, not a general law”). Thus, because House Bill 660 is not a general law, it violates the Georgia Constitution.

3. Assuming the General Assembly passes House Bill 660 with its constitutional infirmities, is the local law entirely void or does the City of Sharon Springs exist without the restrictions placed on it by the local law?

While it is preferable to pass a local law that has no constitutional problems, if—for political or other reasons—House Bill 660 is approved by the General Assembly as currently presented, it is likely that the unconstitutional provisions—the power and service restrictions—would be severed from the city charter. See *Brown v. City of Marietta*, 220 Ga. 826, 829-30 (1965) (citing *Hancock v. State*, 114 Ga. 439 (1901); *Bass v. Lawrence*, 124 Ga. 75 (1905); *Edalgo v. Southern Ry. Co.*, 129 Ga. 258 (1907); *Lee v. Tucker*, 130 Ga. 43 (1908); *Sister Felicitas v. Hartridge*, 148 Ga. 832 (1919)).

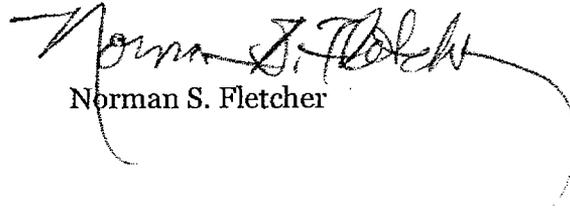
In *Brown*, a charter provision that exempted all personal and real property used for agricultural purposes from municipal taxation was deemed unconstitutional and void. 220 Ga. at 829. But without referencing a severability clause that may or may not have been contained in the charter, the Supreme Court of Georgia severed the unconstitutional provision of the charter and allowed the valid provisions of the charter—and thus the municipality—to remain in existence: “The invalidity of a charter provision purporting to exempt property used for agricultural purposes from taxation does not vacate, annul, or repeal the valid charter provisions of the city or municipality.” *Id.*

Here, House Bill 660 contains no severability clause to sever any void provisions while leaving the remaining in tact. That would be preferable since “the presence of a severability clause in an Act reverses the usual presumption that the legislature intends the Act to be an entirety, and creates an opposite presumption of separability.” *City Council of Augusta v. Mangelly*, 243 Ga. 358, 363 (1979). But based on *Brown*, even without a severability clause, it is likely that “the invalidity” of the restrictions in the charter do not “vacate, annul, or repeal the valid charter provisions” of the City of Sharon Springs. Thus, it is likely that the City of Sharon Springs will remain as a recognized municipality of the state of Georgia if the power and service restrictions are deemed unconstitutional—but with the unconstitutional provisions of its charter no longer in effect.

Ralph J. Amos, Chairman
September 11, 2015
Page Four

Should you or the rest of the Commission have any questions, do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Norman S. Fletcher". The signature is written in black ink and is positioned above the printed name.

Norman S. Fletcher

cc: Ken Jarrard, Esq.

Wayne R. Allen
Legislative Counsel



316 State Capitol, S.W.
Atlanta, Georgia 30334
(404) 656-5000

**Office of Legislative Counsel
General Assembly of Georgia**

October 21, 2015

Honorable Elena Parent
Senator, District 42
321-B Coverdell Legislative Office Building
Atlanta, GA 30334

Dear Senator Parent:

This letter is in response to your request for an opinion on the legality of imposing ad valorem millage rate caps in municipal charters. These caps usually take the form of a provision that limits the millage rate that a municipality may impose without some further action being taken, such as approval of an increase in the cap by the voters of the municipality in a referendum. A millage rate cap shares some aspects of a "city lite," which is a term commonly used to denote a municipality which is created with the intention that the municipality provide only a limited number of services to reduce the cost of operating the municipality. As you know, I have previously expressed some reservations in hearings before the Senate Annexation, Deannexation, and Incorporation Study Committee which you chair about the "city lite" concept. Like a "city lite," a millage rate cap is designed also to limit the burden on the taxpayers of a municipality and to reduce the scope of government of a municipality by reducing the funds available to the municipality.

However, there are differences between the "city lite" concept and millage rate cap provisions. The "city lite" provisions purport to give a municipality all of the powers of a full-fledged municipality, but condition the use of certain powers upon certain procedural actions, such as seeking the approval of the voters of the municipality. As I have previously stated before your study committee, the device of requiring referendum approval before exercising a power by a municipality seems to me to be imposing a limitation on the powers of such a municipality through a local law which would appear to run afoul of Article IX, Section II, Paragraph III(c) of the State Constitution. That provision of the State Constitution prohibits the General Assembly from limiting by local law certain supplementary powers

Honorable Elena Parent
October 21, 2015
Page 2

which are enumerated in subparagraph (a) of that provision. Any limitation or regulation of such supplementary powers can only be accomplished by general law. It would be difficult to say that such "city lite" limitation does not, in actuality, regulate, restrict, or limit the exercise of the powers by a municipality by local law and thereby would contravene the constitutional provision.

The millage cap provision does not fall within the same analysis as the "city lite" concept since ad valorem taxation is not one of the supplementary powers enumerated in Article IX, Section II, Paragraph III(a) of the State Constitution. Consequently, the prohibition regarding the regulation of such taxation through a local law does not appear to be applicable to ad valorem taxation.

It is instructive that the Attorney General, when asked if a municipality which had a millage rate cap in its charter could remove such cap through its municipal home rule powers, did not question the legality of such a millage rate cap. Op. Att'y Gen. U83-191. Instead, the Attorney General accepted the legality of the cap and analyzed the question based upon whether the municipality was prohibited from removing such millage rate cap by O.C.G.A. § 36-36-6. That Code section contains limitations on the use of home rule power by municipalities and expressly limits municipalities from taking any action under home rule regarding, among other things, "adopting any form of taxation beyond that authorized by law or by the Constitution". The Attorney General interpreted the language "form of taxation" to mean a type of taxation, such as ad valorem taxation, and not to mean limitations on a type of taxation, such as a millage cap. The Attorney General then concluded that the municipality had the power under home rule to remove the millage rate cap from its charter.

Therefore, it appears that millage rate caps are permissible with the caveat that they are subject to being removed by the municipality under its home rule powers.

I trust that this has been responsive to your inquiry.

Sincerely,



H. Jeff Lanier
Deputy Legislative Counsel

Approved for release: 

UNOFFICIAL OPINION U83-19

To: City Attorney

May 5, 1983

Re: Under the Municipal Home Rule Act (O.C.G.A. § 36-35-1 et seq.; Ga. Code Ann. § 69-1015 et seq.) a city has home rule power to amend its charter by ordinance so as to remove from the charter a limitation on the millage rate which the city may use in levying ad valorem taxes.

This is in response to your letter of April 13, 1983 to the Attorney General requesting an opinion regarding the City of Albany's authority to enact an ordinance amending its charter under the Municipal Home Rule Act (O.C.G.A. § 36-35-1 et seq.; Ga. Code Ann. § 69-1015 et seq.).

I understand from your letter that the City of Albany's current charter contains a provision prohibiting the city from exceeding a certain millage rate in levying and collecting ad valorem taxes. You ask whether this limitation may be removed from the charter under the city's home rule power to amend its charter by city ordinance, as prescribed in O.C.G.A. § 36-35-3 (Ga. Code Ann. § 69-1017), in light of the limitations placed upon that power by O.C.G.A. § 36-35-6 (Ga. Code Ann. § 69-1018). O.C.G.A. § 36-35-6 (Ga. Code Ann. § 69-1018) provides in part that:

“(a) The power granted to municipal corporations in subsections (a) and (b) of Code Section 36-35-3 shall not be construed to extend to the following matters or to any other matters which the General Assembly by general law has preempted or may hereafter preempt; but such matters shall be the subject of general law or the subject of local Acts of the General Assembly to the extent that the enactment of such local Acts is otherwise permitted under the Constitution:

“(3) Action adopting any form of taxation beyond that authorized by law or by the Constitution.”

I am aware of no general law which restricts or limits the millage rates which municipal corporations in Georgia may use in levying and collecting ad valorem taxes.

Furthermore, the proposed ordinance removing the limitation from Albany's current charter would not in my view constitute the adoption of a “form of taxation beyond that authorized by law or by the Constitution.” The “form of taxation” at issue is ad valorem

taxation, which municipal corporations are expressly authorized by law to impose. The proposed ordinance affects only the rate of ad valorem taxation.

Finally, you inquire whether the proposed ordinance would comply with O.C.G.A. § 36-35-3 (a) (Ga. Code Ann. § 69-1017 (a)). That provision authorizes a city to adopt "clearly reasonable" ordinances relating to its property, affairs and local government so long as those ordinances are not inconsistent with the city's charter, the Constitution or provisions of general law.

Since the proposed ordinance at issue would amend the city charter, the question of whether it is authorized must be based upon an analysis of O.C.G.A. §§ 36-35-3 (b) and 36-35-6 (Ga. Code Ann. §§ 69-1017 (b) and 69-1018). See *Bruck v. City of Temple*, 240 Ga. 411, 416 (1977).

Based upon the foregoing, it is my unofficial opinion that under the Municipal Home Rule Act, O.C.G.A. § 36-35-1 et seq. (Ga. Code Ann. § 69-1015 et seq.), a city has home rule power to amend its charter by ordinance so as to remove from the charter a limitation on the millage rate which the city may use in levying ad valorem taxes.



Angie Fiese
Acting Director

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Atlanta, Georgia 30334

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**THE FINAL REPORT OF THE
SENATE ANNEXATION, DEANNEXATION, AND INCORPORATION
STUDY COMMITTEE**

COMMITTEE MEMBERS

**Senator Elena Parent – Chair
District 42**

**Senator John Albers
District 56**

**Senator Charlie Bethel
District 54**

**Senator Frank Ginn
District 47**

**Senator Fran Millar
District 40**

Prepared by the Senate Research Office
2015

COMMITTEE FOCUS, CREATION, AND DUTIES

The Senate Annexation, Deannexation, and Incorporation Study Committee was created by Senate Resolution 609 to review current annexation, deannexation, and municipal incorporation laws and procedures; consider ways of addressing negative impacts; and ensure that the process is clear, open, equitable, and in the best interest of the citizens of Georgia.

Senator Elena Parent of the 42nd chaired the Committee. The other members included Senator John Albers of the 56th, Senator Charlie Bethel of the 54th, Senator Frank Ginn of the 47th, and Senator Fran Millar of the 40th.

The Committee held four meetings at the State Capitol and met on August 24, 2015, September 22, 2015, October 21, 2015, and November 3, 2015.

The Committee heard official testimony from the following: Mr. Jeff Lanier, Deputy Legislative Counsel of the Office of Legislative Counsel; Mr. Todd Edwards, Associate Legislative Director for the Association County Commissioners of Georgia (ACCG); Mr. Tom Gehl, Director of Governmental Relations for the Georgia Municipal Association (GMA); Mr. Ken Jarrard, of Jarrard & Davis, LLP; Mr. Brian Johnson, Director of the Office of Planning & Environmental Management for the Department of Community Affairs (DCA); Mr. Jon West, Senior Planner, Local & Intergovernmental Programs for DCA; Ms. Sharon Whitmore, CFO of Fulton County; Ms. Jerolyn Ferrari, Supervising Attorney for Fulton County; Dr. Laura Wheeler, Senior Research Associate, Fiscal Research Center & Center for State and Local Finance, Andrew Young School of Public Policy, Georgia State University; Mr. Ted Baggett, Associate Director, Strategic Operations & Planning Assistance Carl Vinson Institute of Government, University of Georgia; Dr. Alfred Meek, Director, Innovation Strategy & Impact, The Georgia Tech Enterprise Innovation Institute; Mr. Alexander Azarian, Principal Policy Analyst of the Senate Research Office; Ms. Gina Wright, Executive Director of the Legislative and Congressional Reapportionment Office; and Mr. Robert Highsmith, of Holland & Knight.

BACKGROUND

Incorporation

Municipal incorporation is the process of forming a city with corporate powers from unincorporated territory of a county. The process shifts some local government responsibility for an unincorporated area under the jurisdiction of a county commission to a newly established city council. Reasons for pursuing incorporation vary but are usually sought for one or more of the following reasons:

1. Dissatisfaction with the county government;
2. A sense that representation is disproportionate to population;
3. To create a politically accountable governing body in a limited geographic area;
4. To improve local public services;
5. To capture revenues to support local services;
6. To give a community local control over land use planning;
7. To pursue local policy goals;
8. Local identity; and
9. A means to prevent annexation by nearby municipalities.

The laws for incorporating a city in Georgia are codified in O.C.G.A. § 36-31-1 through O.C.G.A. § 36-31-12 and are outlined below:

- The proposed area must have a population of at least 200 persons and an average population of at least 200 persons per square mile.
- Sixty percent of the area must be developed for residential, commercial, industrial, institutional, recreational, or governmental purposes.
- The enabling legislation establishing the municipal corporation is the municipal charter.
- All municipal incorporations must be passed by local or general legislation by the General Assembly.
- After successful adoption by the General Assembly, registered voters in the proposed area must adopt, by majority vote, a measure to incorporate (Not Codified).
- The incorporating legislation may provide for a transition period of up to 24 months for the orderly transition of governmental functions from the county to the new municipal corporation.

- O.C.G.A. § 36-31-11.1 specifies that the incorporating municipality may purchase county park land within the incorporated boundaries for \$100 per acre and fire stations for \$5,000 each.

Although not part of the municipal incorporation statute, O.C.G.A. § 36-30-7.1(b)(1) requires each municipality to provide at least three of the following services, either directly or by contract:

1. Law enforcement;
2. Fire protection (which may be furnished by a volunteer fire force) and fire safety;
3. Road and street construction or maintenance;
4. Solid waste management;
5. Water supply or distribution or both;
6. Waste-water treatment;
7. Storm-water collection and disposal;
8. Electric or gas utility services;
9. Enforcement of building, housing, plumbing, and electrical codes and other similar codes;
10. Planning and zoning; and
11. Recreational facilities.

Additionally, O.C.G.A. § 36-31-7.1 requires a new city to assume the ownership, control, care, and maintenance of county road rights of way located within its boundaries, unless the city and county agree otherwise by joint resolution.

Also of note, the House Governmental Affairs Committee and the House Intragovernmental Coordination Committee have adopted a rule that requires all municipal incorporation legislation to be introduced in the first year of a biennium so that the proposal can be properly studied over a two-year span. Such bills cannot be voted out of Committee until the proposed city is found economically viable as determined by its feasibility study. The Senate State and Local Governmental Operations Committee has no such rule.

Since 2005, the General Assembly has adopted ten municipal incorporation bills, eight of which were adopted by voters in their respective referenda:

1. Sandy Springs – 2005;
2. Johns Creek – 2006
3. Milton – 2006;
4. Chattahoochee Hills – 2006;
5. City of South Fulton – 2006 (Referendum Failed);
6. Dunwoody – 2008;
7. Peachtree Corners – 2011;
8. Brookhaven – 2012;
9. LaVista Hills – 2015 (Referendum Failed); and
10. Tucker – 2015 (Referendum Adopted; City is in Transition).

Annexation and Deannexation

Georgia law provides four different methods for municipalities to annex additional land into their boundaries. These procedures are outlined in O.C.G.A. § 36-36-1 through O.C.G.A. § 36-36-119.

100 Percent of Landowners (Annexation and Deannexation)

Under this approach, municipalities have the authority to annex qualified contiguous property when 100 percent of the property owners request inclusion into the municipal boundaries. The annexing property must abut the municipal boundary by a minimum of 1/8th of the total external boundary of the annexing property, or 50 feet. This method may be used to extend the municipal boundaries into a county in which it does not currently exist only if the county posts no objection. This method also applies in the case of qualifying contiguous properties requesting deannexation.

Owners of 60 Percent of Land and 60 Percent of Voters

Under this method of annexation, the municipality is allowed to annex qualifying contiguous properties if the owners representing at least 60 percent of the land area and 60 percent of the registered voters of the annexing area request inclusion into the municipal boundaries. This method is not applicable in cases where the annexing property lies across a

county boundary in which the municipality does not already extend. This method also requires the municipality to have plans for extending services at the time of annexation into the newly annexed area.

Annexation Pursuant to Resolution and Referendum

While very uncommon, this method can be used in cases where the property is found to be contiguous to the municipal boundary; is not currently receiving water, sewer, fire or police from another government entity other than from the annexing city; and is, in general, developed for urban purposes. Moreover, the annexing municipality must prepare a report for service delivery so that the major municipal services will be available to the newly annexed area as of the date of annexation. To annex property via this method, the municipality must adopt a resolution to hold a referendum on the annexation. Only the registered voters residing in the proposed annexed area are eligible to vote.

Local Legislation of the General Assembly (Annexation and Deannexation)

This method is applicable in cases where the acreage of the annexed area is more than 50 percent residential in nature. The local legislation must include a referendum if the number of residents of the annexed land exceeds 3 percent of the annexing municipality's population or there are at least 500 persons in the area to be annexed. This method also applies in the case of qualifying contiguous properties requesting deannexation.

Annexing Unincorporated Islands

In addition to annexing new areas, municipalities are authorized, but not required, to annex areas of unincorporated islands that have been in existence since January 1, 1991. In this type of annexation case, the municipality must notify the property owner and the ordinance to annex must be adopted within 30 days. In cases of island annexation, the municipality is not required to extend municipal services to newly annexed land on any particular time frame.

County Objection Procedure

Currently, O.C.G.A. § 36-36-110 through § 36-36-119 establishes the county objection procedure for municipal annexations. This objection procedure is applicable to all annexation methods except in the case of annexation by local legislation.

O.C.G.A. § 36-36-113 states that the county objection must be because the annexation would lead to an increased burden on the county directly related to a proposed change in zoning or land use, a proposed increase in density, or increased demands on infrastructure. This objection must be supported with evidence of the increase in cost in infrastructure, or evidence of a significant change in use intensity compared to its current use. In general, the basis of the objection rests on the premise that the proposed use is sufficiently different than what is currently allowed under the county land use plan and that such alternative use would result in a significant burden to the county. The county objection must be delivered to the municipality within 30 days of the municipal notice to annex property.

If the county objects to the proposed annexation, DCA will appoint an arbitration panel. The decision of the arbitration panel is binding, but may be appealed by either party in superior court under limited grounds. The county is required to pay 75 percent of the cost of the arbitration proceedings while the remaining 25 percent is split between the county and the municipality as determined by the panel.

COMMITTEE FINDINGS

Alternatives to the General Assembly's Role in Incorporating Cities

Believing that the General Assembly's role in reviewing and approving incorporation proposals is entangled in too much politics, the Committee reviewed how creating new cities is addressed in other states. Testimony and presentations revealed that no two states approach municipal incorporation the exact same way.¹ Many states require the process to be reviewed and approved by the county commission while others may leave the review and approval process up to a local or statewide judiciary, a local or statewide review board, the General Assembly, or even an executive officer such as the Governor or Secretary of State. A summary of findings revealed the following:

- 43 states have a municipal incorporation process in statute while the other 7 states have no codified procedures for municipal incorporation due to a limited amount of, or lack of, unincorporated territory.
- 22 states authorize the county commission to review and rule on all incorporation proposals.
- 11 states authorize a statewide or local Judiciary to review and rule on all incorporation proposals.
- 7 states authorize a statewide or local boundary review board to review and rule on all incorporation proposals.
- 7 states, including Georgia, authorize the General Assembly to review and rule on incorporation proposals.
- 3 states authorize an Executive Officer, such as the Governor, to review and rule on all incorporation proposals.
- Of the 43 states that allow proposed incorporations, Georgia is the only state that does not provide for any method to petition for incorporation.²

In many states, the petition process involves much more than gathering signatures. Some states use the process to require the petitioners to prove that their proposed city can function properly, provide necessary services, and raise adequate revenue. In Iowa, for example, the petition must be signed by at least 1/3 of the voters and include:

1. A description of the area prepared by a professional land surveyor;
2. A statement of the plans for providing police and fire protection, maintaining the streets, providing water and sewer services, garbage collection, and providing administrative services, with an estimate of the costs and sources of revenue; and
3. A map that shows the existing dedicated streets, sewer interceptors and outfalls, and their proposed extensions.

In North Carolina, the petition must be submitted to the General Assembly (Municipal Incorporations Subcommittee) at least 60 days before the next regular legislative session, and must contain:

1. The signature of at least 15 percent of the voters in the proposed area;
2. A proposed charter; a statement of the estimated population and population density; assessed valuation; and degree of development;
3. A statement that the proposed city will have a budget ordinance with an ad valorem tax levy of at least 5 cents per \$100 of all taxable property; and
4. A statement that the proposed municipality will offer four services no later than the first day of the city's third fiscal year.

Although the lack of a petition requirement is almost unique to Georgia, the Committee members could not all agree that a petition process should be adopted in Georgia at the present time.

The Feasibility Study

Although every municipal incorporation proposal since Sandy Springs in 2005 has been accompanied by a feasibility study, the study is not required under Georgia law. Additionally, there are no set guidelines for what must be included in a feasibility study, what must be evaluated, and how it is evaluated. The Committee did examine how other states review proposed incorporations in the hope that the information could help in defining what should be included in a statute

¹ Testimony presented on September 22, 2015 by Dr. Laura Wheeler, Senior Research Associate, Fiscal Research Center & Center for State and Local Finance, Andrew Young School of Public Policy, Georgia State University; Mr. Ted Baggett, Associate Director, Strategic Operations & Planning Assistance Carl Vinson Institute of Government, University of Georgia; and on October 21, 2015 by Mr. Alexander Azarian, Principal Policy Analyst of the Senate Research Office.

² Like Georgia, Alaska (not codified), Florida (except for Miami-Dade), Nevada, New York (not codified), and Maine authorize the General Assembly to approve municipal incorporations without a petition. However, they do have alternative methods for incorporation that do require petitioning. North Carolina requires its Legislature to be petitioned directly.

requiring a feasibility study.³ For example, 16 states require the approving entity to consider the impact the proposed incorporation will have on the unincorporated areas of the county and sometimes even neighboring cities.⁴

In Florida, Iowa, Kansas, Michigan, Minnesota, Missouri, and Oregon, the approving entity must take into consideration the level and cost of services being presently provided, compared to the potential level and cost of proposed services.

Oregon requires the submitted feasibility study to contain the proposed first and third year budgets for the new city demonstrating its economic feasibility.

Tennessee requires petitioners to submit a proposed five-year operational budget, including projected revenues and expenditures with the petition to incorporate.

Florida requires proposed cities to submit a five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.

The Impact of Annexation and Municipal Incorporation on the County and Surrounding Cities

ACCG testified on the potential impact a new city or annexation has on a county and surrounding existing cities.⁵ Generally after a municipal incorporation occurs, whatever services are either shared or divided between cities and counties, or what services are left to the county, often lead to tension over the sharing and redistribution of revenues. ACCG did acknowledge that counties will still receive the overall property tax and that the county is required to provide fewer services to the newly incorporated area, but the loss of other revenue is still significant to the county. Especially harmful to the county are situations in which it must continue to provide the bulk of costly services, yet the revenue used to provide them is now redirected to the new city that provides very few services. Major revenues that counties rely on to finance the delivery of services, but are ultimately redirected to city treasuries, include the following:

- Local Option Sales Tax (LOST) Distribution – Renegotiation is triggered whenever a new city is created. Depending on whether the relative proportion of incorporated population (including the new city) to the total population in the county is less or more than 80 percent, the existing LOST proceeds to either the county or other cities will be reduced and transferred to the new city.
- Business Occupation Tax – A county can only levy this tax in the unincorporated area, so businesses located in the new city or annexed area will no longer be subject to taxation by the county even if the city chooses not to levy a business and occupation tax.
- Insurance Premium Tax – This tax is collected by the Insurance Commissioner and distributed to local governments. The proceeds received by a county are based on the population of the unincorporated area of each county relative to the municipal population in the county. Proceeds to the county can only be used to fund services to the unincorporated area of the county (or for a reduction in ad valorem taxes in the unincorporated area if certain services are not provided). Proceeds to the cities have no use restrictions.
- Local Maintenance and Improvement Grants – The funds are made available to counties and cities based on a ratio of the county/city public road mileage and population to total public road mileage and population in the state. County roads could be in a city and maintained by the county unless the city establishes its own road system. Cities receive grant funding based solely on population regardless of whether they provide road services.
- Hotel-Motel Tax – If a new city is created, or an area is annexed, in a county which levies this tax, the county hotel-motel tax ceases in the city limits if the city chooses to impose its own levy.
- Alcohol Taxes – Cities collect taxes on alcoholic beverages sold in the city while counties collect this tax on retailers located in the unincorporated area.

³ Testimony presented by Mr. Alexander Azarian, Principal Policy Analyst of the Senate Research Office; October 21, 2015.

⁴ California, Florida, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nevada, North Carolina, North Dakota, Ohio, West Virginia, Washington, and Wisconsin.

⁵ Testimony presented by Mr. Todd Edwards, Associate Legislative Director of ACCG; August 24, 2015.

- Alcoholic Beverage Licenses – In addition to the excise tax on alcoholic beverages, county governing authorities are authorized to impose an annual license fee, with the limitation that they may not charge dealers in distilled spirits more than \$5,000 annually for each license. These license fees go to a city when issued within municipal boundaries.
- Cable Franchise Fees – The fee is intended to reimburse the county for the use of public right-of-way and for other public services associated with the operation of cable television. Cities collect these fees for areas within the corporate limits even if they do not maintain their road system/right-of-way. The county fees must terminate in areas that incorporate.
- Sales Tax Portion of TAVT Distribution – The tax is collected by the county tax commissioner and dispersed to the state, county, school district, and cities based upon the formulas prescribed by law. The distribution essentially follows sales tax distribution so in many cases, if a new city is created, that county’s share of TAVT will decrease.
- Energy Excise Tax – A county energy excise tax that is in place when a new city is created continues to be levied in the city limits as long as the new city does not levy the tax. Since the amount distributed to the county and each city is determined by the distribution of LOST and SPLOST proceeds to each, energy excise taxes distributed to the county and existing cities are proportionately reduced to provide the proceeds to the new city.
- Impact Fees – Development impact fees are charged to new developments at the time a building permit is issued and are used to finance public facilities (water, sewer, roads, bridges, storm-water management, parks, greenspace, police, fire, emergency medical, rescue, and libraries) that are impacted by the growth. Even though current law permits cities to allow counties to levy county impact fees within city limits, as a rule, counties only collect these fees in unincorporated areas while cities collect them within municipal boundaries even if the fees were being collected by the county for facilities built by the county in the newly-incorporated areas.

City Lite Concept

The Committee heard testimony on the legality of the “City Lite” concept.⁶ Although there is no legal definition for a “City Lite,” it is generally considered a city whose charter expressly restricts the number of services the city may provide to only certain limited services, unless voter approval is granted through a referendum for the city to provide additional services. Under Georgia law, a city must provide at least three of the services listed in O.C.G.A. § 36-30-7.1(b).

Under the Georgia Constitution, a city possesses certain supplementary powers regarding the provision of local government services under the Supplementary Powers Clause.⁷ The Clause provides that these powers may be regulated, restricted, or limited by the General Assembly only by “general law,” but it may not withdraw any such powers.⁸ A general law is one that operates uniformly statewide while a local law operates only within a limited area of the state, such as a city charter or a law affecting a specific county. Thus, the General Assembly may regulate, restrict, or limit the powers and services of a city, but it cannot withdraw any of the enumerated powers or services available to cities without a constitutional amendment.

Although the one existing “City Lite,” Peachtree Corners, as well as the City of Tucker (in transition), and the proposed City of Sharon Springs (House Bill 660) all provide for the minimum requirement of three services, these municipalities are limited in providing services beyond those authorized in the charter without voter approval in a referendum. Proponents of this method argue that requirement for voter approval of the exercise of a power is not a regulation, restriction, or limit on the power but a procedural mechanism for the use of the power. That is, the city has the power to perform the act if it chooses and the actual power itself is not regulated, restricted, or limited. However, Mr. Jeff Lanier, Deputy Legislative Counsel of the Office of Legislative Counsel, indicated that the stronger argument would appear to be that the process of requiring voter approval before a city may provide a specific service is a limitation on the powers of the city by a local law, which would run afoul of the Supplementary Powers Clause since the General Assembly is authorized to regulate, restrict, or limit the powers and services of a city only by a general law.

⁶The Committee was provided with written legal opinions on the “City Lite” concept from Mr. Jeff Lanier, Deputy Legislative Counsel of the Office of Legislative Counsel; Mr. Ken Jarrard, of Jarrard & Davis, LLP; and Mr. Norman S. Fletcher of Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP which can be found at <http://www.senate.ga.gov/committees/en-US/CurrentStudyCommittees.aspx>. The Committee also heard testimony from Mr. Jeff Lanier and Mr. Ken Jarrard ; August 24, 2015 and November 3, 2015.

⁷ Article IX, Section II, Paragraph III(a)

⁸ Article IX, Section II, Paragraph III(c)

Mr. Lanier surmised that in the event a court finds the “City Lite” concept unconstitutional, it would likely strike that provision from the city’s charter and allow the charter to remain in existence without the limitations of power.

Millage Rate Caps

Ad valorem millage rate caps usually take the form of a provision in a city charter that limits the millage rate that a city may impose without some further action being taken, such as voter approval.⁹ Like the “City Lite” concept, a millage cap is designed to limit the burden on the taxpayers of a city while reducing the scope of a city’s government by reducing the funds available to it. The Committee questioned the legality of a millage cap and also inquired if a city council can alter or remove such a cap. Citing an Attorney General opinion (Op. Att’y Gen. U83-191), Mr. Jeff Lanier of Legislative Counsel confirmed that millage caps do not appear to be prohibited in Georgia.¹⁰ Citing the same Attorney General opinion, he indicated that the limitations of municipal home rule found in O.C.G.A. § 36-35-6 do not preclude a city council from altering or even removing a millage cap through home rule powers.

Ambiguous Annexation Arbitration Process

As explained earlier, when a county objects to a proposed annexation, DCA empanels a group to arbitrate the dispute. DCA testified that the statutes detailing the arbitration process are vague and need clarifying.¹¹ For example, when the county provides notice of its objection to the city, neither party is statutorily required to notify DCA and formally request arbitration. Oftentimes, DCA is expected to appoint a panel to hear the dispute while having never actually received notice that an annexation is proposed or that a county objected to it. Additionally, no attempt is made to review and validate the grounds for the county objection until the appointed panel itself validates them after considerable investment of time and resources in a process that may result in them being groundless from the start.

Service Delivery Strategy Renegotiations after Incorporation Occurs

DCA also commented on one particular problem involving the creation of a new city and the need to renegotiate a new Service Delivery Strategy Agreement. Under O.C.G.A. § 36-70-28, each county is required to collaborate with its municipalities to formulate a Service Delivery Strategy, or SDS. This document is the description of all of the intergovernmental agreements, contracts, and other arrangements established between the governments for delivering public services. The “creation, abolition, or consolidation of local governments” is a trigger to review and revise the SDS.¹² Most of the Acts creating new cities in recent years have a two-year transitional period for the orderly transition of various government functions and services. The SDS must be revised and updated to reflect the creation of the new city within that transitional period. DCA pointed out that this has caused issues in at least one newly created city when Peachtree Corners and Gwinnett County failed to update their SDS prior to the expiration of the transitional period due mainly to a lack of understanding and awareness of the requirement.

⁹ Charters containing ad valorem millage rate caps include Sandy Springs, Johns Creek, Milton, Dunwoody, Peachtree Corners, Brookhaven, LaVista Hills, and Tucker. The bills creating South Fulton, Stonecrest, Greenhaven, and Sharon Springs as they presently exist also contain caps.

¹⁰ Testimony presented by Mr. Jeff Lanier, Deputy Legislative Counsel of the Office of Legislative Counsel; November 3, 2015.

¹¹ Testimony presented by Mr. Brian Johnson, Director of the Office of Planning & Environmental Management of DCA and by Mr. Jon West, Senior Planner, Local & Intergovernmental Programs for DCA; September 22, 2015.

¹² O.C.G.A. § 36-70-28(b)(4)

RECOMMENDATIONS

Future Study of Township/Village Concept

In light of the potential unconstitutionality of the City Lite concept, the Committee recommends that an alternative to creating fully-functioning cities should be studied. This new concept may include the development of a Township/Village model that cannot exercise any municipal powers or services other than the power to control land use and local zoning. The Township/Village may be governed by a Board of Town Supervisors. A similar attempt to create this model was attempted in 2008 when Senate Bill 89 was adopted by the Senate, approved by the House Governmental Affairs Committee, but failed to reach the House Floor.

Codify Feasibility Study

Although a feasibility study has been conducted for every newly created city since Sandy Springs, the study is not required under Georgia law. The Committee recommends that a study requirement should be codified with general guidelines on what should be addressed in a study, such as:

- Potential revenue;
- Impact on the county, neighboring cities, and other local government entities; and
- The current and projected costs of providing services to the territory proposed to be incorporated.

A feasibility study should also be included for any annexation that has a land mass of more than 20 percent of the annexing city.

Codify House Committee Rule on Municipal Incorporation Legislation

Currently, the House Governmental Affairs Committee and the House Intragovernmental Coordination Committee have adopted a rule that requires all municipal incorporation legislation to be introduced in the first year of a biennium so that the proposal can be properly studied over a two-year span. Such bills cannot be voted out of Committee until the proposed city is found economically viable as determined by its feasibility study. The Committee recommends that this House Rule be codified into state law.

Referendum Process

Although municipal incorporation bills include a provision requiring the voters in the territory proposed to be incorporated to vote on the incorporation, there is nothing in state law explicitly requiring a referendum. The Committee recommends that a referendum requirement be codified.

Prohibit the City Lite Concept

Although there is no legal definition for a "City Lite," it is generally considered a city whose charter expressly restricts the number of services the city may provide unless voter approval is granted through a referendum to provide additional services. It is Legislative Counsel's opinion that the City Lite concept appears to be unconstitutional because the process of requiring voter approval before a city may provide a specific service is a limitation on the powers of the city by a local law, which would run afoul of the Supplementary Powers Clause since only the General Assembly is authorized to regulate, restrict, or limit the powers and services of a city by general law.

In light of this, the Committee recommends prohibiting the "City Lite" concept from being included in future municipal incorporation proposals. Additionally, the "City Lite" provisions should be closely reviewed in the charters of Peachtree Corners, Tucker, and in any pending incorporation proposals.

Proposed Incorporation Bills Containing a Millage Rate Cap Should Specify that the Cap can be Adjusted

It was brought to the Committee's attention by Legislative Counsel that although imposing an ad valorem millage rate cap in a municipal charter is constitutionally permissible, it can be removed by the municipality under its home rule powers. This may inadvertently mislead some voters who are voting on a proposed incorporation into thinking that the cap cannot be increased without a referendum. Because of the potential for confusion, the Committee recommends that language be inserted into charters including a millage cap that clarifies that the caps can indeed be increased by a city council through its home rule powers and without voter approval.

Local Legislation – Direct Notification and Legal Notices

The Committee recommends that every affected local government should be directly notified whenever local legislation is proposed. Moreover, the requirements for publishing legal notices for proposed local legislation should be enhanced to include more detailed information as to what the local legislation's proposed purpose is and to ensure that every affected local government can review the actual notice.

Clarify Annexation Arbitration Process

Under current law, when a county objects to a proposed annexation, it notifies the annexing city of its objection. The Committee recommends that the objecting county must also notify the Department of Community Affairs to help facilitate the arbitration process. The Committee also recommends that the arbitration process should be clarified to indicate that it is an obligatory process in which both parties must participate in good faith once an objection has been made. Currently, a city may refuse to participate in the process without penalty.

Service Delivery Strategy Renegotiations after Incorporation Occurs

Under current law, the creation of a new city is a trigger to review, and if necessary, revise an existing Service Delivery Strategy (SDS). Most of the Acts creating new cities in recent years have a two-year transitional period for the orderly transition of various government functions and services. The SDS must be revised and updated to reflect the creation of the new city within that transitional period. This has caused issues in at least one newly created city when Peachtree Corners and Gwinnett County failed to update their SDS prior to the expiration of the transitional period. The Committee recommends following the model used in the recent Macon-Bibb consolidation legislation, which clearly states that a new Service Delivery Agreement must be adopted before the end of the transitional period.

Orderly Transfer of Property after an Annexation or Incorporation Occurs

After an annexation or incorporation occurs, there are times when property or facilities of a county may fall within the boundaries of a city in which the city may have no need. Although this issue is addressed narrowly in O.C.G.A. § 36-31-11.1, which specifies that the incorporating municipality may purchase county park land within the incorporated boundaries for \$100 per acre and fire stations for \$5,000 each, it does not address other facilities or property. Further, O.C.G.A. § 36-36-7 provides that county land and buildings falling within municipal boundaries due to annexations remain county property. However, if the property is no longer suitable for county use, the municipality must purchase the property based on a fair market value. This Code section fails to address a situation in which territory containing a county school is annexed into a city operating an independent school system.

The Committee recommends that the current process of transfer and compensation of property due to annexations and incorporation be studied further in order to establish a more uniform and equitable method.

Respectfully Submitted,

**THE SENATE ANNEXATION, DEANNEXATION, AND INCORPORATION
STUDY COMMITTEE**

**Senator Elena Parent – Chair
District 42**