



Connie Taylor, Clerk of Superior Court  
Cobb County, Georgia

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

**COLIN BRADY,**

**Petitioner,**

**v.**

**COBB COUNTY, GEORGIA, a political subdivision of the State of Georgia, JANINE EVELER, in her individual and official capacities as Director of the Cobb County Board of Elections and Registration, the COBB COUNTY BOARD OF ELECTIONS AND REGISTRATION, STEVEN F. BRUNING, in his individual and official capacities as a member of the Cobb County Board of Elections and Registration, TORI SILAS, in her individual and official capacities as a member of the Cobb County Board of Elections and Registration, JESSICA BROOKS, in her individual and official capacities as a member of the Cobb County Board of Elections and Registration, PAT GARTLAND, in his individual and official capacities as a member of the Cobb County Board of Elections and Registration, AND JENNIFER MOSBACHER, in her individual and official capacities as a member of the Cobb County Board of Elections and Registration,**

**Civil Action File No.:**

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**Respondents.**

**VERIFIED COMPLAINT**

Petitioner Colin Brady (“Petitioner”), by and through counsel, files this Verified Complaint against Cobb County, Georgia, (“Cobb County”) a political subdivision of the State of Georgia, Janine Eveler (“Director Eveler”) in her capacity as the Director of the

Cobb County Board of Elections and Registration, the Cobb County Board of Elections and Registration, Steven F. Bruning, in his capacity as a member of the Cobb County Board of Elections and Registration, Tori Silas, in her capacity as a member of the Cobb County Board of Elections and Registration, Jessica M. Brooks, in her capacity as a member of the Cobb County Board of Elections and Registration, Pat Gartland, in his capacity as a member of the Cobb County Board of Elections and Registration, and Jennifer Mosbacher, in her capacity as a member of the Cobb County Board of Elections and Registration (collectively “Respondents”). In support thereof, Petitioner states as follows:

#### INTRODUCTION

1. House Bill 841 (2022) (“HB 841”), a local law that provides for the creation and charter of the proposed City of East Cobb within unincorporated Cobb County, was signed into law by Governor Brian Kemp on February 15, 2022. A true and correct copy of HB 841 as enacted by the Georgia General Assembly is attached hereto as Exhibit 1.<sup>1</sup>

2. HB 841 is unconstitutional, and the proposed referendum question for the City of East Cobb should not be allowed on the ballot. The unconstitutional defects go to the heart of the bill, and they cannot be severed without completely defeating the purpose of the law.<sup>2</sup> Petitioner brings this case to compel public officers to remove the

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<sup>1</sup> This Act and each of the other provisions of law cited herein can be judicially noticed by this Honorable Court pursuant to O.C.G.A. § 24-2-201.

<sup>2</sup> “If a statute is in part constitutional and in part unconstitutional, and the objectionable portion is so inseparably connected with the general scheme that, in the event it should be stricken, effect cannot be given to the intention of the Legislature, the result will be that the whole acts fails, and no part of it can be considered as the law.” *Reynolds v. State*, 181 Ga. 547, 551 (1935).

referendum from the ballot, declare HB 841 unconstitutional, and otherwise enjoin the upcoming election referendum on May 24, 2022, that, if passed by the voters, would establish the City of East Cobb. The voters should not be forced to vote for or against a proposed city whose charter is clearly unconstitutional.

3. The proposed City of East Cobb is unconstitutional for three distinct, legally sufficient reasons. First, HB 841 unconstitutionally regulates how the proposed City of East Cobb can use its supplementary powers through a local law, HB 841. These supplementary powers—often termed “Home Rule” powers—can only be regulated or acted upon by general law, not local law. *See* Ga. Const. of 1983, Art. IX, Sec. II, Par. III (c) and (d) (providing that the General Assembly may only “regulate” or “act upon” supplementary powers by general law). HB 841 is a local law, and it seeks to regulate how the proposed City of East Cobb will use its supplementary powers. Specifically, Section 1.12(c) of HB 841 states that numerous supplementary powers<sup>3</sup> can only be utilized by the proposed City of East Cobb upon “resolution for ratification by the electors of the city in a referendum.” HB 841, p. 7, ll. 162–166. This language clearly seeks to regulate supplementary powers through a local law by requiring a separate referendum to authorize the use of numerous Home Rule powers. HB 841, p. 7–8. The supplementary powers are self-executing, and the General Assembly cannot regulate or act upon those powers except by general law.

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<sup>3</sup> The supplementary powers that HB 841 regulates and acts upon—by forcing successive referendums on each power—are numerous. They include animal regulation, building codes, environmental protection (air quality control), fire regulations, general health, safety, and welfare (public health), sanitation, retirement, and roadways. HB 841 unconstitutionally forces a referendum on each one of these supplementary powers. HB 841, p. 3-7.

4. Second, HB 841 is unconstitutional because it takes away the proposed City of East Cobb's discretion to use or not use some of its supplementary powers. Supplementary powers are purely discretionary for counties and municipalities; this discretion is constitutionally protected and cannot be abrogated by local law. *See* Ga. Const. of 1983, Art. IX, Sec. II, Par. III (a). Section 1.12 of HB 841 states that the proposed city "shall exercise [. . .] planning and zoning, code adoption and enforcement, parks and recreation, police and law enforcement services, and fire and emergency services[.]" HB 841, p. 7, ll. 159–161. This provision unconstitutionally removes the proposed City of East Cobb's discretion on what supplementary powers it chooses to use, and it forces the City of East Cobb to affirmatively exercise such powers.

5. Third, HB 841 unconstitutionally regulates Cobb County's own supplementary Home Rule powers in the transition provisions. Section 8.11 of HB 841 forces Cobb County "to provide within the territorial limits of the city all government services and functions" for a period up to December 31, 2025, when the transition ends. HB 841, p. 48, ll. 1070–1081. This provision forces Cobb County—without regard to its own agency or discretion—to use its supplementary powers and provide services in the transition for the benefit of the City of East Cobb. Unquestionably, these transition provisions "regulate" and "act upon" Cobb County's constitutional supplementary powers through a local law—which is explicitly forbidden by the Georgia Constitution of 1983.

6. Fourth, by regulating that the proposed City of East Cobb may not set its millage rate for city property tax to "exceed 1 mill," the General Assembly is again regulating something by local law that it can only do by general law. HB 841, p. 7, ll. 149–150; HB 841, p. 35, ll. 791–797. The Georgia Constitution says a city "may exercise the

power of taxation as authorized by this Constitution or by general law.” See Ga. Const. of 1983, Art. IX, Sec. IV, Par. I(a). By setting a maximum millage rate, HB 841 unconstitutionally sets a limit on taxing powers and restricts the use of supplementary Home Rule powers by local law.

7. To be clear, HB 841 is a local law. A true and correct copy of the Local Ad and Affidavit of HB 841’s sponsor, the Honorable Representative Matt Dollar, District 45, is attached hereto as Exhibit 2.

#### PARTIES

8. Petitioner Colin Brady is a citizen, resident and taxpayer of Cobb County, Georgia, residing within the proposed city limits of the City of East Cobb at 2150 W. Carlyle Ct., Marietta, GA 30062. Mr. Brady is an elector of Cobb County and the proposed City of East Cobb, eligible to vote in the referendum for the City of East Cobb, presently set for May 24, 2022. The property owned by Mr. Brady at 2150 W. Carlyle Ct., Marietta, GA 30062 is and at all times relevant to this Complaint has been subject to taxation by both Cobb County and will be subject to the proposed City of East Cobb, and taxes for such use and benefit have in fact been levied and collected. Because this Verified Complaint involves a public right and this action seeks to force public officials to perform their public duty, and because Mr. Brady is interested in having the laws and Georgia Constitution of 1983 followed and the public duties of the Respondents discharged in a lawful manner, Mr. Brady has standing to bring this action for a Writ of Mandamus pursuant to O.C.G.A. § 9-6-20 *et seq.*, for declaratory judgment, and for an injunction pursuant to O.C.G.A. §§ 9-5-10 and 9-11-65.

9. Respondent Cobb County is a political subdivision of the State of Georgia. Cobb County is a proper party-in-interest in this case as it is responsible for elections in

its jurisdiction. Respondent Cobb County can be served by the Clerk of Cobb County at 100 Cherokee Street, Suite 355, Marietta, GA 30090.

10. Respondent Janine Eveler is the Director of the Cobb County Board of Elections and Registration, and she is sued in her official and individual capacities. She may be served at the office of the Cobb County Board of Elections and Registration at 736 Whitlock Avenue, NW, Suite 400, Marietta, Cobb County, Georgia 30064.

Respondent Eveler is the correct party-in-interest in this action because she is the Cobb County official authorized by law to place a referendum on Cobb County election ballots. Further, HB 841 commands the “election superintendent” of Cobb County to place the City of East Cobb referendum on the ballot for the 2022 general primary election on May 24, 2022.

11. Respondent Cobb County Board of Elections and Registration is sued as the Cobb County election superintendent, and it may be served at 736 Whitlock Avenue, NW, Suite 400, Marietta, Cobb County, Georgia 30064. The Cobb County Board of Elections and Registration is the correct party-in-interest in this action because it is lawful and authorized election superintendent in Cobb County, Georgia. Further, HB 841 commands the “election superintendent” of Cobb County to place the City of East Cobb referendum on the ballot for the 2022 general primary election on May 24, 2022.

12. Respondent Steven F. Bruning is a member of the Cobb County Board of Elections and Registration and is sued in his official and individual capacities. He may be served at the office of the Cobb County Board of Elections and Registration at 736 Whitlock Avenue, NW, Suite 400, Marietta, Cobb County, Georgia 30064.

13. Respondent Tori Silas is a member of the Cobb County Board of Elections and Registration and is sued in her official and individual capacities. She may be served

at the office of the Cobb County Board of Elections and Registration at 736 Whitlock Avenue, NW, Suite 400, Marietta, Cobb County, Georgia 30064.

14. Respondent Jessica M. Brooks is a member of the Cobb County Board of Elections and Registration and is sued in her official and individual capacities. She may be served at the office of the Cobb County Board of Elections and Registration at 736 Whitlock Avenue, NW, Suite 400, Marietta, Cobb County, Georgia 30064.

15. Respondent Pat Gartland is a member of the Cobb County Board of Elections and Registration and is sued in his official and individual capacities. He may be served at the office of the Cobb County Board of Elections and Registration at 736 Whitlock Avenue, NW, Suite 400, Marietta, Cobb County, Georgia 30064.

16. Respondent Jennifer Mosbacher is a member of the Cobb County Board of Elections and Registration and is sued in her official and individual capacities. She may be served at the office of the Cobb County Board of Elections and Registration at 736 Whitlock Avenue, NW, Suite 400, Marietta, Cobb County, Georgia 30064.

#### JURISDICTION AND VENUE

17. This Court has jurisdiction over this case as each Respondent resides in Cobb County, Georgia and this case affects an election that will be placed on the ballot for Cobb County voters. Further this Honorable Court has jurisdiction over Cobb County, the Cobb County Board of Elections and Registration, and its Board members, and Director Eveler.

18. Venue in this action is appropriate in the Superior Court of Cobb County. This Honorable Court has subject matter jurisdiction over this case as it seeks the extraordinary Writ of Mandamus and injunctive relief.

## RELEVANT CONSTITUTIONAL PROVISIONS AND LAW

19. The Georgia Constitution of 1983 provides for broad “Home Rule” powers to counties and municipalities. Ga. Const. of 1983, Art. IX, Sec. II, Par. I and II. A true and correct copy of Article IX of the Georgia Constitution of 1983 is attached hereto as Exhibit 3.

20. Home Rule powers include “supplementary powers” that counties and municipalities<sup>4</sup> “may exercise.” Ga. Const. of 1983, Art. IX, Sec. II, Par. II and III. There are fourteen supplementary powers in the Constitution of 1983. Ga. Const. of 1983, Art. IX, Sec. II, Par. III.

21. These fourteen supplementary powers include: (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, and (14) The power to maintain and modify heretofore existing retirement or pension systems, including such systems heretofore created by general

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<sup>4</sup> Municipalities in Georgia are called cities. There is no other type of municipality.



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. Ga. Const. of 1983, Art. IX, Sec. II, Par. III (a).

22. The Georgia Constitution of 1983 provides that supplementary powers possessed by counties and municipalities may only be regulated by the General Assembly through general law. Ga. Const. of 1983, Art. IX, Sec. II, Par. III (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.”). The specific constitutional authorization to regulate by general law necessarily implies that regulation by local law is not allowed.

23. Even more, the Constitution of 1983 states that “the General Assembly shall act upon the subject matters . . . [contained in the fourteen supplementary powers] of this Paragraph only by general law.” Ga. Const. of 1983, Art. IX, Sec. II, Par. III (d). This provision provides a clear directive that the General Assembly may not act upon supplementary powers by local law.

24. An unofficial Georgia Attorney General Opinion from 1994 accords with the inevitable conclusion that supplementary powers may only be acted upon or regulated by general law. *See* 1994 Ga. Op. Atty Gen. No. U94-8 (April 19, 1994) (“The Constitution prohibits the General Assembly from acting on [supplementary powers]

except by general law.”). A true and correct copy of Ga. Op. Atty Gen. No. U94-8 is attached hereto as Exhibit 4. Further, another unofficial Georgia Attorney General Opinion supports the conclusion that the General Assembly cannot force a municipality to use their discretionary supplementary powers. 1974 Ga. Op. Atty Gen. No. U74-9 (January 25, 1974) (“Under the Constitution, the General Assembly cannot require a municipality to engage in zoning activities if it doesn’t want to.”). A true and correct copy of 1974 Ga. Op. Atty Gen. No. U74-9 is attached hereto as Exhibit 5.

#### FACTS

25. HB 841 was signed by Governor Brian Kemp on February 15, 2022.

26. HB 841 provides that the “election superintendent of Cobb County shall call a special election for the purpose of submitting this Act to the qualified voters of the proposed City of East Cobb for approval or rejection.” HB 841, p. 46, ll. 1022–1029. The Cobb County Board of Elections and Registration is the lawful “election superintendent” as referenced in HB 841.

27. HB 841 calls for referendum election to create the proposed City of East Cobb for voters within its proposed territorial boundaries. This referendum is set for the “date of the general primary.” HB 841, p. 46, ll. 1024–1025. The general primary is set for May 24, 2022.

28. Respondent Eveler and Respondent Cobb County Board of Elections Registration are presently placing the referendum for the proposed City of East Cobb on the ballot for the May 24, 2022, general primary. Upon information and belief, all the individual named Respondents have the authority to set or remove the questions on election referenda within Cobb County, Georgia. Upon information and belief, Respondent Eveler and the named board members of the Cobb County Board of

Elections and Registration have the duty, power, and obligation to remove an unconstitutional referendum from the ballot. Respondent Cobb County has the power and obligation to not violate the Georgia Constitution of 1983 and submit an unconstitutional question to Cobb County voters. The Cobb County Board of Elections and Registration and each of its members have a clear legal duty to remove the unconstitutional referendum called in HB 841.

29. Upon information and belief, the Cobb County Board of Elections and Registration, its board members, Respondent Eveler and Respondent Cobb County have caused ballots to be created for the purpose of complying with HB 841 and submitting the referendum to the qualified voters of the proposed City of East Cobb. Each named Respondent herein has the clear legal duty to remove an unconstitutional ballot question so that the voters are not defrauded.<sup>5</sup> Mandamus lies to compel a clear legal duty to act.

30. It would cause irreparable harm to allow the referendum to go to the qualified voters of the proposed City of East Cobb when the charter for the proposed city is clearly unconstitutional. There is no way that the provisions regulating supplementary powers can survive a constitutional challenge.<sup>6</sup> Further, they are completely essential to the act itself, and they cannot be severed without thwarting the purposes of HB 841—which was demonstrably to create a limited city through local law.

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<sup>5</sup> See *Burton-Callaway v. Carroll County Bd. of Elections*, 279 Ga. 590, 592 (2005) (holding that allowing an unlawful referendum to stand would “open the door to fraud”).

<sup>6</sup> *Reynolds v. State*, 181 Ga. 547, 551 (1935) (holding fatal defects cannot be saved by severability clause).

31. Section 1.12(c) of HB 841 states that numerous supplementary powers can only be utilized by the proposed City of East Cobb upon “resolution for ratification by the electors of the city in a referendum.” HB 841, p. 7, ll. 162–168. This local law unconstitutionally forces the proposed City of East Cobb into referendum after referendum in order to exercise its supplementary powers.

32. HB 841 unconstitutionally regulates the proposed City of East Cobb’s supplementary powers through a local law. This violates the Georgia Constitution of 1983.

33. The transition provisions of HB 841 violate the prohibition of regulating or acting upon Home Rule powers except by general law. Section 8.11 of HB 841 forces Cobb County “to provide within the territorial limits of the city all government services and functions” for a period up to December 31, 2025. HB 841, p. 48, ll. 1070–1081.

34. HB 841 Section 1.12 is unconstitutional because it forces the proposed City of East Cobb to exercise its discretionary supplementary powers. Section 1.12 of HB 841 states that the proposed city “shall exercise [. . .] planning and zoning, code adoption and enforcement, parks and recreation, police and law enforcement services, [and] fire and emergency services[.]” HB 841, p. 7, ll. 157–161.

35. HB 841 unconstitutionally regulates Cobb County’s supplementary Home Rule powers in the transition provisions. In Section 8.11, HB 841 forces Cobb County “provide within the territorial limits of the city all government services and functions” for a period up to December 31, 2025. HB 841, p. 48, ll. 1070–1081. This provision forces Cobb County—without regard to its own agency or discretion—to use its supplementary powers in the transition for the benefit of the City of East Cobb. These

transition provisions “regulate” and “act upon” Cobb County’s constitutional supplementary powers through a local law—which is explicitly forbidden by the Georgia Constitution of 1983. Additionally, by regulating that the proposed City of East Cobb may not set its millage rate for city property tax to “exceed 1 mill,” the General Assembly is again regulating something by local law that it can only do by general law. HB 841, p. 7, ll. 149-150; HB 841, p. 35, ll. 791–797. The Georgia Constitution says a city “may exercise the power of taxation as authorized by this Constitution or by general law.” *See* Ga. Const. of 1983, Art. IX, Sec. IV, Par. I(a). By setting a maximum millage rate, HB 841 unconstitutionally sets a limit on taxing powers and restricts the use of supplementary Home Rule powers by local law.

COUNT I (Writ of Mandamus) to Respondent Janine Eveler, Respondent Steven F.

Bruning, Respondent Tori Silas, Respondent Jessica Brooks,

Respondent Pat Gartland, and Respondent Jennifer Mosbacher

36. The averments of paragraphs 1 through 35 are incorporated by reference herein. This count for a writ of mandamus is against Respondent Janine Eveler in her capacity as Director of the Cobb County Board of Elections and Registration. Further this count for a writ of mandamus is against each of the named board members of the Cobb County Board of Elections and Registration in this action.

37. HB 841 violates the Georgia Constitution of 1983. First it regulates and acts upon the proposed City of East Cobb’s supplementary powers through a local law. Ga. Const. of 1983, Art. IX, Sec. II, Par. III (c) and (d). Second, it forces the City of East Cobb to affirmatively use some of its supplementary powers and removes its constitutionally protected discretion. *See* Ga. Const. of 1983, Art. IX, Sec. II, Par. I. Third, it regulates and acts upon Cobb County’s supplementary powers through a local

law by forcing Cobb to provide services to the proposed City of East Cobb in the transition.

38. Accordingly, because HB 841 is clearly unconstitutional, and each Respondent, in their official capacity as either a board member or the Director of the Cobb County Board of Elections and Registration, must be remove the referendum for the proposed City of East Cobb from the ballot on May 24, 2022. Each Respondent named herein has a clear legal duty not to allow a fraud to be perpetuated on the public by allowing an unconstitutional charter to go to a vote.

39. Petitioner has a clear legal right to have the Georgia Constitution of 1983 followed by Cobb County election officials, including but not limited to Respondent Eveler and each of the named board members of the Cobb County Board of Elections and Registration.

40. Respondent Eveler and each of the Respondent Board members of the Cobb County Board of Elections and Registration have a clear legal duty not to submit an unconstitutional question to Cobb County voters.

41. Accordingly, this Honorable Court should issue the extraordinary writ of mandamus to force the named Respondents to remove the HB 841 referendum on the May 24, 2022, election ballot.

#### COUNT II (Declaratory Relief) (All Respondents)

42. The averments of paragraphs 1 through 41 are incorporated by reference herein.

43. Petitioner brings this action for a declaratory judgment against all the named Respondents pursuant to O.C.G.A. § 9-4-2. Specifically, Ga. Const. Art. I, Sec. 2, Par. V(b) waives sovereign immunity against counties and their officers or agents, and

accordingly, this court has jurisdiction over the Respondents. Further Ga. Const. Art. I, Sec. 2, Par. V(b)(1) states that injunctive relief cannot be awarded until a declaratory judgment is made. Petitioner seeks declaratory relief that HB 841 is unconstitutional and must be wholly struck down.

44. HB 841 violates the Georgia Constitution of 1983. First it unconstitutionally regulates the proposed City of East Cobb's supplementary powers through local law. Ga. Const. of 1983, Art. IX, Sec. II, Par. III (c) and (d). Second, it forces the proposed City of East Cobb to affirmatively use some of its supplementary powers and removes its constitutionally protected discretion. *See* Ga. Const. of 1983, Art. IX, Sec. II, Par. I. Third, it regulates Cobb County's supplementary powers by forcing it to provide services to the proposed City of East Cobb in the transition provisions. Fourth, it unconstitutionally sets a millage rate limit on the City of East Cobb by a local law.

45. The Court should enter a declaratory judgment pursuant to O.C.G.A. § 9-4-2 declaring HB 841 is unconstitutional and that it is unlawful for Respondents to place the unconstitutional referendum on the ballot. The named Respondents are sued in their individual capacity for declaratory judgment pursuant to *Lathrop v. Deal*, 301 Ga. 408 (2017).

46. As a qualified voter for the proposed City of East Cobb, Petitioner has an interest having the Georgia Constitution of 1983 followed. It would be a fraud on the voters for the voters to think that they can vote for the unconstitutional regulations of supplementary powers in HB 841.

47. The Respondents have the legal authority to remove the referendum from the May 24, 2022, ballot of qualified voters for the proposed City of East Cobb.

Accordingly, the Respondents are the correct parties-in-interest for a declaratory judgment action to stop the illegal referendum from taking place.

COUNT III (Injunctive Relief) (All Respondents)

48. The averments of paragraphs 1 through 47 are incorporated by reference herein.

49. Upon entry of a declaratory judgment as to Count II, Petitioner seeks injunctive relief.

50. HB 841 violates the Georgia Constitution of 1983. First it unconstitutionally regulates the proposed City of East Cobb's supplementary powers through local law. Ga. Const. of 1983, Art. IX, Sec. II, Par. III (c) and (d). Second, it forces the proposed City of East Cobb to affirmatively use some of its supplementary powers and removes its constitutionally protected discretion. *See* Ga. Const. of 1983, Art. IX, Sec. II, Par. I. Third, it regulates Cobb County's supplementary powers by forcing it to provide services to the proposed City of East Cobb in the transition provisions.

51. The Court should enter an interlocutory injunction pursuant to O.C.G.A. § 9-11-65 and a permanent injunction pursuant to O.C.G.A. § 9-5-10 restraining and enjoining the Respondents from placing the unconstitutional referendum on the May 24, 2022, ballot. Equity will exercise its jurisdiction to restrain acts of public officers, boards, and commissions which are ultra vires and beyond the scope of their authority, outside their jurisdiction, unlawful or without authority.<sup>7</sup>

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<sup>7</sup> *Cravey v. Southeastern Underwriters Assoc.*, 214 Ga. 450, 459 (1958).



52. Petitioner has an interest as a qualified voter for the proposed City of East Cobb in not having an unconstitutional city be created through referendum. Petitioner and the public will suffer irreparable harm if the vote for the proposed City of East Cobb proceeds. The charter for the proposed City of East Cobb violates the Georgia Constitution of 1983. The voters cannot be asked to vote for a city that will inevitably be struck down. The balance of the equities favors enjoining the May 24, 2022, referendum for the proposed City of East Cobb because HB 841 and the proposed city charter violate the Constitution of 1983.

53. Respondents each have the legal authority to remove the referendum from the May 24, 2022, ballot of qualified voters for the proposed City of East Cobb. Accordingly, Respondents are the correct parties-in-interest for an injunction to stop the illegal referendum from taking place. The named Respondents are sued in their individual capacity for injunctive relief pursuant to *Lathrop v. Deal*, 301 Ga. 408 (2017).

54. The balance of equities favors at least an injunction delaying the referendum to the November 2022 general election so that an unconstitutional city is not created by operation of law on May 24, 2022.

55. Petitioner has a strong likelihood of success on the merits, as this case is a straightforward application of constitutional law and construction. Accordingly, this factor weighs in favor of enjoining the May 24, 2022, referendum.

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

- a) Issue a Writ of Mandamus pursuant to OCGA § 9-6-20 *et seq.*, commanding the Respondent Eveler, the Respondent board members, and the Cobb County Board of Elections and Registration to remove the ballot question on the proposed City of East Cobb presently set for May 24, 2022.

- b) Issue a declaratory judgment declaring HB 841 unconstitutional.
- c) Issue an interlocutory and permanent injunction against Respondents, forcing them remove the ballot question for the City of East Cobb from the general primary election ballot on May 24, 2022.
- d) Issue a Rule Nisi forthwith and schedule a hearing on the merits before May 24, 2022.
- e) Award any other relief this Honorable Court finds just and proper.

Respectfully submitted this 21st day of April 2022.

/s/ Allen Lightcap  
Allen Lightcap                      553459  
Attorney for Petitioner

Mayer & Harper, LLP  
50 Hurt Plaza, Suite 1640  
Atlanta, GA 30303  
T: 404-584-9588  
F: 404-832-8203  
[alightcap@mayerharper.com](mailto:alightcap@mayerharper.com)

/s/ Gerald Weber  
Gerald Weber                      744878  
Attorney for Petitioner

Law Offices of Gerald Weber, LLC  
PO Box 5391  
Atlanta, GA 31107-0391  
T: 404-522-0507  
[wgerryweber@gmail.com](mailto:wgerryweber@gmail.com)

# Exhibit 1

House Bill 841 (AS PASSED HOUSE AND SENATE)

By: Representatives Dollar of the 45<sup>th</sup>, Cooper of the 43<sup>rd</sup>, and Setzler of the 35<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

1 To incorporate the City of East Cobb; to provide a charter; to provide for boundaries and  
2 powers of the city; to provide for a governing authority of such city and the powers, duties,  
3 authority, election, terms, vacancies, compensation, expenses, qualifications, prohibitions,  
4 conflicts of interest, and suspension and removal from office relative to members of such  
5 governing authority; to provide for inquiries and investigations; to provide for oaths,  
6 organization, meetings, quorum, voting, rules, and procedures; to provide for ordinances and  
7 codes; to provide additional notice and hearing requirements; to provide for a mayor and  
8 mayor pro tempore and certain duties, powers, and other matters relative thereto; to provide  
9 for the office of city manager, appointment, removal, powers, and duties thereof; to prohibit  
10 council interference with administration; to provide for administrative affairs and  
11 responsibilities; to provide for boards, commissions, and authorities; to provide for a city  
12 attorney, a city clerk, and other personnel and matters relating thereto; to provide for rules  
13 and regulations; to provide for a municipal court and the judge or judges thereof and other  
14 matters relative to those judges; to provide for the court's jurisdiction, powers, practices, and  
15 procedures; to provide for the right of certiorari; to provide for elections; to provide for  
16 taxation, licenses, and fees; to provide for franchises, service charges, and assessments; to  
17 provide for bonded and other indebtedness; to provide for auditing, accounting, budgeting,  
18 and appropriations; to provide for city contracts and purchasing; to provide for the

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19 conveyance of property and interests therein; to provide for bonds for officials; to provide  
20 for prior ordinances and rules, pending matters, and existing personnel; to provide for  
21 penalties; to provide for definitions and construction; to provide for other matters relative to  
22 the foregoing; to provide for a referendum; to provide effective dates and transitional  
23 provisions governing the transfer of various functions and responsibilities from Cobb County  
24 to the City of East Cobb; to provide for severability; to provide for effective dates; to repeal  
25 conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

27 ARTICLE I.  
28 INCORPORATION AND POWERS

29 SECTION 1.10.

30 Name.

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

34 SECTION 1.11.

35 Corporate boundaries.

36 (a) The boundaries of this city shall be those set forth and described in Appendix A of this  
37 charter, less and except all property owned by the United States government as part of the  
38 Chattahoochee River National Recreation Area in VTD Sope Creek 03 Block 030354  
39 blocks 3006 and 3007 on the effective date of this charter, and said Appendix A is

40 incorporated into and made a part of this charter. The boundaries of this city at all times  
41 shall be shown on a map, a written description, or any combination thereof, to be retained  
42 permanently in the office of the city clerk and to be designated, as the case may be:  
43 "Official Map (or Description) of the corporate limits of the City of East Cobb, Georgia."  
44 Photographic, typed, or other copies of such map or description certified by the city clerk  
45 shall be admitted as evidence in all courts and shall have the same force and effect as with  
46 the original map or description.

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

50 SECTION 1.12.

51 Powers and construction.

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

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

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

- 63 (3) Building regulation. To regulate and to license the erection and construction of  
64 buildings and all other structures; to adopt building, housing, plumbing, electrical, gas,  
65 and heating and air-conditioning codes; and to regulate all housing and building trades;
- 66 (4) Contracts. To enter into contracts and agreements with other governmental entities  
67 and with private persons, firms, and corporations;
- 68 (5) Emergencies. To establish procedures for determining and proclaiming that an  
69 emergency situation exists within or outside the city and to make and carry out all  
70 reasonable provisions deemed necessary to deal with or meet such an emergency for the  
71 protection, safety, health, or well-being of the citizens of the city;
- 72 (6) Environmental protection. To protect and preserve the natural resources,  
73 environment, and vital areas of the state through the preservation and improvement of air  
74 quality, the restoration and maintenance of water resources, the control of erosion and  
75 sedimentation, the management of solid and hazardous waste, and other necessary actions  
76 for the protection of the environment;
- 77 (7) Fire regulations. To fix and establish fire limits and from time to time to extend,  
78 enlarge, or restrict the same; to prescribe fire safety regulations not inconsistent with  
79 general law, relating to both fire prevention and detection and to fire fighting; and to  
80 prescribe penalties and punishment for violations thereof;
- 81 (8) General health, safety, and welfare. To define, regulate, and prohibit any act,  
82 practice, conduct, or use of property which is detrimental to health, sanitation,  
83 cleanliness, welfare, and safety of the inhabitants of the city and to provide for the  
84 enforcement of such standards;
- 85 (9) Gifts. To accept or refuse gifts, donations, bequests, or grants from any source for  
86 any purpose related to powers and duties of the city and the general welfare of its  
87 citizens, on such terms and conditions as the donor or grantor may impose;
- 88 (10) Health and sanitation. To prescribe standards of health and sanitation and to  
89 provide for the enforcement of such standards;

- 90 (11) Jail sentences. To provide that persons given jail sentences in the municipal court  
91 may work out such sentences in any public works or on the streets, roads, drains, and  
92 other public property in the city; to provide for commitment of such persons to any jail;  
93 or to provide for commitment of such persons to any county work camp or county jail by  
94 agreement with the appropriate county officials;
- 95 (12) Municipal agencies and delegation of power. To create, alter, or abolish  
96 departments, boards, offices, commissions, and agencies of the city and to confer upon  
97 such agencies the necessary and appropriate authority for carrying out all the powers  
98 conferred upon or delegated to the same;
- 99 (13) Municipal debts. To appropriate and borrow money for the payment of debts of the  
100 city and to issue bonds for the purpose of raising revenue to carry out any project,  
101 program, or venture authorized by this charter or the laws of the State of Georgia;
- 102 (14) Municipal property ownership. To acquire, dispose of, lease, and hold in trust or  
103 otherwise any real, personal, or mixed property, in fee simple or lesser interest, inside or  
104 outside the property limits of the city;
- 105 (15) Municipal property protection. To provide for the preservation and protection of  
106 property and equipment of the city and the administration and use of same by the public;  
107 and to prescribe penalties and punishment for violations thereof;
- 108 (16) Nuisance. To define a nuisance and provide for its abatement whether on public or  
109 private property;
- 110 (17) Penalties. To provide penalties for violation of any ordinances adopted pursuant to  
111 the authority of this charter and the laws of the State of Georgia;
- 112 (18) Planning and zoning. To provide comprehensive city planning for development by  
113 zoning; and to provide subdivision regulation and the like as the city council deems  
114 necessary and reasonable to ensure a safe, healthy, and esthetically pleasing community;



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

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

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

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

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

135 (24) Roadways. To grant franchises and rights of way throughout the streets and roads  
136 and over the bridges and viaducts for the use of public utilities; and to require real estate  
137 owners to repair and maintain in a safe condition the sidewalks adjoining their lots or  
138 lands and to impose penalties for failure to do so;

139 (25) Special areas of public regulation. To regulate or prohibit junk dealers, pawn shops,  
140 the manufacture, sale, or transportation of any intoxicating liquors, alcoholic beverages,  
141 and the use of firearms; to regulate the transportation, storage, and use of combustible,

142 explosive, and inflammable materials, the use of lighting and heating equipment, and any  
143 other business or situation which may be dangerous to persons or property; to regulate  
144 and control the conduct of peddlers and itinerant traders, theatrical performances,  
145 exhibitions, and shows of any kind, by taxation or otherwise; and to license, tax, regulate,  
146 or prohibit professional fortunetelling, palmistry, adult bookstores, and massage parlors;

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

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

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

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

157 (b) Except as provided in subsection (c) of this section, the city shall exercise the powers  
158 enumerated in subsection (a) of this section only for the purposes of planning and zoning,  
159 code adoption and enforcement, parks and recreation, police and law enforcement services,  
160 fire and emergency services, and those items directly related to the provision of such  
161 services and for the general administration of the city in providing such services.

162 (c) In the event that the city desires to provide services in addition to those services  
163 enumerated in subsection (b) of this section, the city council shall pass a resolution  
164 specifically stating the services sought to be offered by the city and shall submit the  
165 approval of such resolution for ratification by the electors of the city in a referendum. If  
166 the electors of the city vote in favor of ratifying such resolution, then the city shall be  
167 authorized to exercise the powers enumerated in subsection (a) of this section for the  
168 purpose of providing such services stated in such resolution and those items directly related

169 to the provision of such services and for the general administration of the city in providing  
170 such services. If the electors of the city disapprove such resolution, it shall immediately  
171 be null and void and of no force and effect.

172 SECTION 1.13.  
173 Exercise of powers.

174 All powers, functions, rights, privileges, and immunities of the city, its officers, agencies, or  
175 employees shall be carried into execution as provided by this charter. If this charter makes  
176 no provision, such shall be carried into execution as provided by ordinance or as provided  
177 by pertinent laws of the State of Georgia.

178 ARTICLE II.  
179 GOVERNMENT STRUCTURE

180 SECTION 2.10.  
181 City council creation; number; election.

182 (a) The governing authority of the city, except as otherwise specifically provided in this  
183 charter, shall be vested in a city council to be composed of a mayor and six  
184 councilmembers. The mayor and councilmembers shall be elected in the manner provided  
185 by this charter.

186 (b)(1) The mayor shall be limited to serving three full, consecutive four-year terms of  
187 office.

188 (2) Councilmembers shall be limited to serving three full, consecutive terms of office.

189 (3) Persons who serve terms of less than four years as a result of being elected to an  
190 initial term of office under Article VIII of this charter or who fill an unexpired term shall  
191 not be considered to have served a full term of office for the purposes of this subsection.

192 SECTION 2.11.

193 City councilmembers;  
194 terms and qualifications for office.

195 (a) Except as otherwise provided in Article VIII of this charter for the initial terms of  
196 office, the members of the city council shall serve for terms of four years and until their  
197 respective successors are elected and qualified. The term of office of each member of the  
198 city council shall begin on the first day of January immediately following the election of  
199 such member unless general law authorizes or requires the term to begin at the first  
200 organizational meeting in January or upon some other date. No person shall be eligible to  
201 serve as councilmember unless that person shall have been a resident of the city, and the  
202 district from which he or she is elected, for 12 months prior to the date of the election of  
203 members of the city council; each shall continue to reside therein during that person's  
204 period of service and to be registered and qualified to vote in municipal elections of this  
205 city.

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

209 (c) For the purposes of electing members of the city council, the city is divided into three  
210 districts. Each district shall be represented by two posts. One member of the board shall  
211 be elected to each post by a majority of electors of the city voting at large. Post 1 and  
212 Post 2 shall represent District 1. Post 3 and Post 4 shall represent District 2. Post 5 and  
213 Post 6 shall represent District 3. The three numbered districts are described in Appendix B

214 attached to and made a part of this Act and further identified as 'User: H045 Plan Name:  
215 EastCobb-dist-2022 Plan Type: Local'.

216 (d)(1) For the purposes of such plan:

217 (A) The term 'VTD' shall mean and describe the same geographical boundaries as  
218 provided in the report of the Bureau of the Census for the United States decennial  
219 census of 2020 for the State of Georgia. The separate numeric designations in a district  
220 description which are underneath a VTD heading shall mean and describe individual  
221 Blocks within a VTD as provided in the report of the Bureau of the Census for the  
222 United States decennial census of 2020 for the State of Georgia; and

223 (B) Except as otherwise provided in the description of any district, whenever the  
224 description of any district refers to a named city, it shall mean the geographical  
225 boundaries of that city as shown on the census maps for the United States decennial  
226 census of 2020 for the State of Georgia.

227 (2) Any part of the City of East Cobb as described in Appendix B which is not included  
228 in any district described in this plan shall be included within that district contiguous to  
229 such part which contains the least population according to the United States decennial  
230 census of 2020 for the State of Georgia.

231 (3) Any part of City of East Cobb as described in Appendix B as being included in a  
232 particular district shall nevertheless not be included within such district if such part is not  
233 contiguous to such district. Such noncontiguous part shall instead be included within that  
234 district contiguous to such part which contains the least population according to the  
235 United States decennial census of 2020 for the State of Georgia.

236 (4) If any area included within the descriptions of District 1, District 2, or District 3 is  
237 on the effective date of this Act within the municipal boundaries of another municipality  
238 or within a county other than Cobb County, such area shall not be included within the  
239 district descriptions of such districts.

## 240 SECTION 2.12.

241 Vacancy; filling of vacancies; suspensions.

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

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

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

## 256 SECTION 2.13.

257 Compensation and expenses.

258 (a) The mayor shall receive an initial salary of \$9,000.00 per year, paid in equal monthly  
259 installments from the funds of the municipality. Each councilmember shall receive an  
260 initial salary of \$8,000.00 per year, paid in equal monthly installments from the funds of  
261 the municipality.

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

## SECTION 2.14.

264  
265

## Conflicts of interest; holding other offices.

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

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

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

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

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

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

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

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

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

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

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

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



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

323 (h) Penalties for violation.

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

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

331 SECTION 2.15.

332 Inquiries and investigations.

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

339 SECTION 2.16.

340 General power and authority of the city council.

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

343 SECTION 2.17.

344 Organizational meetings.

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

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

353 SECTION 2.18.

354 Meetings.

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

357 (b) Special meetings of the city council may be held on call of the mayor or three members  
358 of the city council. Notice of such special meeting shall be served on all other members  
359 personally, or by telephone personally, at least 48 hours in advance of the meeting. Such  
360 notice to councilmembers shall not be required if the mayor and all councilmembers are

361 present when the special meeting is called. Such notice of any special meeting may be  
362 waived by a councilmember in writing before or after such a meeting and attendance at the  
363 meeting shall also constitute a waiver of notice on any business transacted in such  
364 councilmember's presence. Only the business stated in the call may be transacted at the  
365 special meeting.

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

370 SECTION 2.19.

371 Rules of procedure.

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

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

378 SECTION 2.20.

379 Quorum; voting.

380 The mayor and three councilmembers or four councilmembers shall constitute a quorum and  
381 shall be authorized to transact business of the city council. Voting on the adoption of  
382 ordinances shall be by voice vote and the vote shall be recorded in the journal, but any  
383 councilmember shall have the right to request a roll-call vote and such vote shall be recorded

384 in the journal. Except as otherwise provided in this charter, the affirmative vote of four  
385 councilmembers or three councilmembers and the mayor shall be required for the adoption  
386 of any ordinance, resolution, or motion. An abstention shall be counted as an affirmative  
387 vote.

388 SECTION 2.21.

389 Ordinance form; procedures.

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

394 (b) An ordinance may be introduced by any mayor or councilmember and be read at a  
395 regular or special meeting of the city council. Ordinances shall be considered and adopted  
396 or rejected by the city council in accordance with the rules which it shall establish;  
397 provided, however, that an ordinance shall not be adopted the same day it is introduced,  
398 except for emergency ordinances provided for in Section 2.23 of this charter. Upon  
399 introduction of any ordinance, the clerk shall as soon as possible distribute a copy to the  
400 mayor and to each councilmember and shall file a reasonable number of copies in the office  
401 of the clerk and at such other public places as the city council may designate.

402 SECTION 2.22.

403 Action requiring an ordinance.

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

## 405 SECTION 2.23.

## 406 Emergencies.

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

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

428 SECTION 2.24.  
429 Codes of technical regulations.

- 430 (a) The city council may adopt any standard code of technical regulations by reference  
431 thereto in an adopting ordinance. The procedure and requirements governing such  
432 adopting ordinance shall be as prescribed for ordinances generally except that: (1) the  
433 requirements of subsection (b) of Section 2.21 of this charter for distribution and filing of  
434 copies of the ordinance shall be construed to include copies of any code of technical  
435 regulations, as well as the adopting ordinance; and (2) a copy of each adopted code of  
436 technical regulations, as well as the adopting ordinance, shall be authenticated and recorded  
437 by the clerk pursuant to Section 2.25 of this charter.
- 438 (b) Copies of any adopted code of technical regulations shall be made available by the  
439 clerk for inspection by the public.

440 SECTION 2.25.  
441 Signing; authenticating;  
442 recording; codification; printing.

- 443 (a) The clerk shall authenticate by the clerk's signature and record in full in a properly  
444 indexed book kept for that purpose all ordinances adopted by the city council.
- 445 (b) The city council shall provide for the preparation of a general codification of all the  
446 ordinances of the city having the force and effect of law. The general codification shall be  
447 adopted by the city council by ordinance and shall be published promptly, together with  
448 all amendments thereto and such codes of technical regulations and other rules and  
449 regulations as the city council may specify. This compilation shall be known and cited  
450 officially as "The Code of the City of East Cobb, Georgia." Copies of the code shall be

451 furnished to all officers, departments, and agencies of the city and made available for  
452 purchase by the public at a reasonable price as fixed by the city council.

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

462 SECTION 2.26.

463 Election of mayor; forfeiture; compensation.

464 The mayor shall be elected at large by the voters of the city and except for the initial mayor  
465 elected pursuant to this charter, serve for a term of four years and until a successor is elected  
466 and qualified. The mayor shall be a qualified elector of this city and shall have been a  
467 resident of the city for 12 months prior to the date of election. The mayor shall continue to  
468 reside in this city during the period of service. Vacancies in the office of mayor shall be  
469 addressed in the same manner as provided for councilmembers in Section 2.12 of this charter.  
470 The mayor shall forfeit the office on the same grounds and under the same procedure as for  
471 councilmembers.

472 SECTION 2.27.

473 Mayor pro tempore.

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

481 SECTION 2.28.

482 Powers and duties of mayor.

483 The mayor shall:

- 484 (1) Preside at all meetings of the city council, but shall vote only in the event of a tie;
- 485 (2) Be the head of the city for the purpose of service of process and for ceremonial  
486 purposes and be the official spokesperson for the city and the chief advocate of policy;
- 487 (3) Have the power to administer oaths and to take affidavits;
- 488 (4) Sign as a matter of course on behalf of the city all written and approved contracts,  
489 ordinances, and other instruments executed by the city which by law are required to be  
490 in writing;
- 491 (5) Prepare and submit to the city council a recommended annual operating budget and  
492 recommended capital budget; and
- 493 (6) Fulfill such other executive and administrative duties as the city council shall by  
494 ordinance establish.



495 SECTION 2.29.

496 City manager; appointment; qualifications; compensation.

497 The city council shall appoint a city manager, also known as "the manager," for an indefinite  
498 term and shall fix the manager's compensation. The city manager shall be appointed solely  
499 on the basis of that person's executive and administrative qualifications.

500 SECTION 2.30.

501 Removal of city manager.

502 (a) The city council may remove the manager from office in accordance with the following  
503 procedures:

504 (1) The city council shall adopt by affirmative vote of a majority of all its members a  
505 preliminary resolution which must state the reasons for removal and may suspend the  
506 manager from duty for a period not to exceed 45 days. A copy of the resolution shall be  
507 delivered promptly to the manager;

508 (2) Within five days after a copy of the resolution is delivered to the manager, the  
509 manager may file with the city council a written request for a public hearing. This  
510 hearing shall be held within 30 days after the request is filed. The manager may file with  
511 the council a written reply not later than five days before the hearing; and

512 (3) If the manager has not requested a public hearing within the time specified in  
513 paragraph (2) of this subsection, the city council may adopt a final resolution for removal,  
514 which may be made effective immediately, by an affirmative vote of a majority of all its  
515 members. If the manager has requested a public hearing, the city council may adopt a  
516 final resolution for removal, which may be made effective immediately, by an affirmative  
517 vote of a majority of all its members at any time after the public hearing.

518 (b) The manager may continue to receive a salary until the effective date of a final  
519 resolution of removal.

520 SECTION 2.31.

521 Acting city manager.

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

528 SECTION 2.32.

529 Powers and duties of the city manager.

530 The city manager shall be the chief administrative officer of the city. The city manager shall  
531 be responsible to the city council for the administration of all city affairs placed in the city  
532 manager's charge by or under this charter. As the chief administrative officer, the city  
533 manager shall:

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

- 540 (2) Direct and supervise the administration of all departments, offices, and agencies of  
541 the city, except as otherwise provided by this charter or by law;
- 542 (3) Attend all city council meetings except for closed meetings held for the purposes of  
543 deliberating on the appointment, discipline, or removal of the city manager and have the  
544 right to take part in discussion, but the city manager may not vote;
- 545 (4) See that all laws, provisions of this charter, and acts of the city council, subject to  
546 enforcement by the city manager or by officers subject to the city manager's direction and  
547 supervision, are faithfully executed;
- 548 (5) Prepare and submit the annual operating budget and capital budget to the city  
549 council;
- 550 (6) Submit to the city council and make available to the public a complete report on the  
551 finances and administrative activities of the city as of the end of each fiscal year;
- 552 (7) Make such other reports as the city council may require concerning the operations  
553 of city departments, offices, and agencies subject to the city manager's direction and  
554 supervision;
- 555 (8) Keep the city council fully advised as to the financial condition and future needs of  
556 the city, and make such recommendations to the city council concerning the affairs of the  
557 city as the city manager deems desirable; and
- 558 (9) Perform other such duties as are specified in this charter or as may be required by the  
559 mayor and city council.

560 SECTION 2.33.

561 Council interference with administration.

562 Except for the purpose of inquiries and investigations under Section 2.15 of this charter, the  
563 city council or its members shall deal with city officers and employees who are subject to the  
564 direction and supervision of the city manager solely through the city manager, and neither

565 the city council nor its members shall give orders to any such officer or employee, either  
566 publicly or privately. The city council shall act in all matters as a body and no member shall  
567 seek individually to influence the official acts of the city manager or any other officer or  
568 employee of the city, or direct or request the appointment of any person to, or his or her  
569 removal from, any office or position of employment, or to interfere in any way with the  
570 performance of the duties by the city manager or other officers or employees.

571

## ARTICLE III.

572

## ADMINISTRATIVE AFFAIRS

573

## SECTION 3.10.

574

## Administrative and service departments.

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

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

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

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

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

592

## SECTION 3.11.

593

## Boards, commissions, and authorities.

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

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

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

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

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

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

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

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

623 SECTION 3.12.

624 City attorney.

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

633 SECTION 3.13.

634 City clerk.

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

639 SECTION 3.14.

640 Position classification and pay plans.

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

647 SECTION 3.15.

648 Personnel policies.

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

651 ARTICLE IV.  
652 JUDICIAL BRANCH

653 SECTION 4.10.  
654 Creation; name.

655 There shall be a court to be known as the Municipal Court of the City of East Cobb.

656 SECTION 4.11.  
657 Chief judge; associate judge.

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

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

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

666 (d) Judges may be removed from office as provided by law.

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



671 SECTION 4.12.

672 Convening.

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

674 SECTION 4.13.

675 Jurisdiction; powers.

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

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

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

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

687 (e) The municipal court shall have authority to establish bail and recognizances to ensure  
688 the presence of those charged with violations before such court and shall have discretionary  
689 authority to accept cash or personal or real property as surety for the appearance of persons  
690 charged with violations. Whenever any person shall give bail for that person's appearance  
691 and shall fail to appear at the time fixed for trial, that person's bond shall be forfeited by  
692 the judge presiding at such time and an execution issued thereon by serving the defendant  
693 and the defendant's sureties with a rule nisi at least two days before a hearing on the rule  
694 nisi. In the event that cash or property is accepted in lieu of bond for security for the

695 appearance of a defendant at trial, and if such defendant fails to appear at the time and  
696 place fixed for trial, the cash so deposited shall be on order of the judge declared forfeited  
697 to the city, or the property so deposited shall have a lien against it for the value forfeited  
698 which lien shall be enforceable in the same manner and to the same extent as a lien for city  
699 property taxes.

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

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

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

710 SECTION 4.14.

711 Certiorari.

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

716 SECTION 4.15.

717 Rules for court.

718 With the approval of the city council, the judge shall have full power and authority to make  
719 reasonable rules and regulations necessary and proper to secure the efficient and successful  
720 administration of the municipal court; provided, however, that the city council may adopt in  
721 part or in toto the rules and regulations applicable to municipal courts. The rules and  
722 regulations made or adopted shall be filed with the city clerk, shall be available for public  
723 inspection, and, upon request, a copy shall be furnished to all defendants in municipal court  
724 proceedings at least 48 hours prior to such proceedings.

725 ARTICLE V.

726 ELECTIONS AND REMOVAL

727 SECTION 5.10.

728 Applicability of general law.

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

731 SECTION 5.11.

732 Regular elections; time for holding.

733 Except as otherwise provided in Article VIII of this charter for the initial elections, there  
734 shall be a municipal general election biennially in odd-numbered years on the Tuesday next  
735 following the first Monday in November. There shall be elected a mayor and three  
736 councilmembers at one election and at every other election thereafter. The remaining

737 councilmember seats shall be filled at the election alternating with the first election so that  
738 a continuing body is created.

739 SECTION 5.12.  
740 Nonpartisan elections.

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

743 SECTION 5.13.  
744 Election by majority vote.

745 The mayor and councilmembers shall be elected by a majority vote of the votes cast by the  
746 electors of the city at large.

747 SECTION 5.14.  
748 Special elections; vacancies.

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

756 SECTION 5.15.

757 Other provisions.

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

761 SECTION 5.16.

762 Removal of officers.

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

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

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

777 (2) By an order of the Superior Court of Cobb County following a hearing on a  
778 complaint seeking such removal brought by any resident of the City of East Cobb.

779 ARTICLE VI.

780 FINANCE

781 SECTION 6.10.

782 Property tax.

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

789 SECTION 6.11.

790 Millage rate; due dates; payment methods.

791 (a) The city council by ordinance shall establish a millage rate for the city property tax  
792 which shall not exceed 1 mill, a due date, and the time period within which these taxes  
793 must be paid, unless a higher millage rate is recommended by resolution of the city council  
794 and subsequently approved by a majority of the eligible voters of the city by referendum.

795 (b) The city council by ordinance may provide for the payment of these taxes by  
796 installments or in one lump sum, as well as authorize the voluntary payment of taxes prior  
797 to the time when due.

798 SECTION 6.12.

799 Occupation and business taxes.

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

804 SECTION 6.13.

805 Licenses; permits; fees.

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

811 SECTION 6.14.

812 Franchises.

813 (a) The city council shall have the power to grant franchises for the use of this city's streets  
814 and alleys for the purposes of railroads, street railways, telephone companies, electric  
815 companies, electric membership corporations, cable television and other  
816 telecommunications companies, gas companies, transportation companies, and other  
817 similar organizations. The city council shall determine the duration, terms, whether the  
818 same shall be exclusive or nonexclusive, and the consideration for such franchises;  
819 provided, however, that no franchise shall be granted for a period in excess of 35 years and

820 no franchise shall be granted unless the city receives just and adequate compensation  
821 therefor. The city council shall provide for the registration of all franchises with the city  
822 clerk in a registration book kept by the city clerk. The city council may provide by  
823 ordinance for the registration within a reasonable time of all franchises previously granted.  
824 (b) If no franchise agreement is in effect, the city council has the authority to impose a tax  
825 on gross receipts for the use of this city's streets and alleys for the purposes of railroads,  
826 street railways, telephone companies, electric companies, electric membership  
827 corporations, cable television and other telecommunications companies, gas companies,  
828 transportation companies, and other similar organizations.

829 SECTION 6.15.

830 Service charges.

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

835 SECTION 6.16.

836 Special assessments.

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



841 SECTION 6.17.

842 Construction; other taxes.

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

846 SECTION 6.18.

847 Collection of delinquent taxes and fees.

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

855 SECTION 6.19.

856 General obligation bonds.

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

861 SECTION 6.20.

862 Revenue bonds.

863 Revenue bonds may be issued by the city council as state law now or hereafter provides.

864 Such bonds are to be paid out of any revenue produced by the project, program, or venture

865 for which they were issued.

866 SECTION 6.21.

867 Short-term loans.

868 The city may obtain short-term loans and must repay such loans not later than December 31

869 of each year, unless otherwise provided by law.

870 SECTION 6.22.

871 Lease-purchase contracts.

872 The city may enter into multiyear lease, purchase, or lease-purchase contracts for the

873 acquisition of goods, materials, real and personal property, services, and supplies, provided

874 the contract terminates without further obligation on the part of the municipality at the close

875 of the calendar year in which it was executed and at the close of each succeeding calendar

876 year for which it may be renewed. Contracts must be executed in accordance with the

877 requirements of Code Section 36-60-13 of the O.C.G.A., or other such applicable laws as are

878 or may hereafter be enacted.

879 SECTION 6.23.

880 Fiscal year.

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

884 SECTION 6.24.

885 Budget ordinance.

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

891 SECTION 6.25.

892 Operating budget.

893 On or before a date fixed by the city council but not later than 60 days prior to the beginning  
894 of each fiscal year, the city manager shall submit to the city council a proposed operating  
895 budget for the ensuing fiscal year. The budget shall be accompanied by a message from the  
896 city manager containing a statement of the general fiscal policies of the city, the important  
897 features of the budget, explanations of major changes recommended for the next fiscal year,  
898 a general summary of the budget, and other pertinent comments and information. The  
899 operating budget and the capital budget provided for in Section 6.29 of this charter, the

900 budget message, and all supporting documents shall be filed in the office of the city clerk and  
901 shall be open to public inspection.

902 SECTION 6.26.

903 Action by city council on budget.

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

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

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

922 SECTION 6.27.

923 Levy of taxes.

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

930 SECTION 6.28.

931 Changes in appropriations.

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

936 SECTION 6.29.

937 Capital improvements.

938 (a) On or before the date fixed by the city council, but not later than 60 days prior to the  
939 beginning of each fiscal year, the city manager shall submit to the city council a proposed  
940 capital improvements plan with a recommended capital budget containing the means of  
941 financing the improvements proposed for the ensuing fiscal year. The city council shall  
942 have power to accept, with or without amendments, or reject the proposed plan and budget.  
943 The city council shall not authorize an expenditure for the construction of any building,

944 structure, work, or improvement unless the appropriations for such project are included in  
945 the capital budget, except to meet a public emergency as provided in Section 2.23 of this  
946 charter.

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

954 SECTION 6.30.

955 Audits.

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

961 SECTION 6.31.

962 Procurement and property management.

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

964 (1) It is in writing;

965 (2) It is drawn by or submitted and reviewed by the city attorney and, as a matter of  
966 course, is signed by the city attorney to indicate such drafting or review; and

967 (3) It is made or authorized by the city council and such approval is entered in the city  
968 council journal of proceedings pursuant to Section 2.19 of this charter.

969 SECTION 6.32.

970 Purchasing.

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

973 SECTION 6.33.

974 Sale and lease of property.

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

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

981 (c) Whenever in opening, extending, or widening any street, avenue, alley, or public place  
982 of the city a small parcel or tract of land is cut off or separated by such work from a larger  
983 tract or boundary of land owned by the city, the city council may authorize the mayor to  
984 sell and convey said cut-off or separated parcel or tract of land to an abutting or adjoining  
985 property owner or owners where such sale and conveyance facilitates the highest and best  
986 use of the abutting owner's property. Included in the sales contract shall be a provision for  
987 the rights of way of said street, avenue, alley, or public place. Each abutting property  
988 owner shall be notified of the availability of the property and given the opportunity to  
989 purchase said property under such terms and conditions as set out by ordinance. All deeds

990 and conveyances heretofore and hereafter so executed and delivered shall convey all title  
991 and interest the city has in such property, notwithstanding the fact that no public sale after  
992 advertisement was or is hereafter made.

993 SECTION 6.34.  
994 Apportionment of revenue.

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

- 1000 (1) New revenues from utility franchise fees;  
1001 (2) Fines collected in municipal court; and  
1002 (3) Revenues generated from any additional millage of up to 1 mill above the millage  
1003 rate imposed in the county special service district.

1004 ARTICLE VII.  
1005 GENERAL PROVISIONS

1006 SECTION 7.10.  
1007 Bonds for officials.

1008 The officers and employees of this city, both elected and appointed, shall execute such surety  
1009 or fidelity bonds in such amounts and upon such terms and conditions as the city council  
1010 shall from time to time require by ordinance or as may be provided by law.



1011 SECTION 7.11.  
1012 Construction and definitions.

- 1013 (a) Section captions in this charter are informative only and are not to be considered as a  
1014 part thereof.  
1015 (b) The word "shall" is mandatory and the word "may" is permissive.  
1016 (c) The singular shall include the plural, the masculine shall include the feminine, and vice  
1017 versa.

1018 ARTICLE VIII.  
1019 REFERENDUM AND INITIAL ELECTIONS

1020 SECTION 8.10.  
1021 Referendum and initial election.

1022 (a) The election superintendent of Cobb County shall call a special election for the purpose  
1023 of submitting this Act to the qualified voters of the proposed City of East Cobb for  
1024 approval or rejection. The superintendent shall set the date of such election for the date of  
1025 the 2022 general primary election. The superintendent shall issue the call for such election  
1026 at least 30 days prior to the date thereof. The superintendent shall cause the date and  
1027 purpose of the election to be published once a week for two weeks immediately preceding  
1028 the date thereof in the official organ of Cobb County. The ballot shall have written or  
1029 printed thereon the words:

1030 "( ) YES Shall the Act incorporating the City of East Cobb in Cobb County according  
1031 ( ) NO to the charter contained in the Act be approved?"

1032 All persons desiring to vote for approval of the Act shall vote "Yes," and those persons  
1033 desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes

1034 cast on such question are for approval of the Act, it shall become of full force and effect  
1035 as provided in Section 8.11 of this charter, otherwise it shall be void and of no force and  
1036 effect. The initial expense of such election shall be borne by Cobb County. Within two  
1037 years after the elections if the incorporation is approved, the City of East Cobb shall  
1038 reimburse Cobb County for the actual cost of printing and personnel services for such  
1039 election and for the initial election of the mayor and councilmembers pursuant to this  
1040 charter. It shall be the duty of the superintendent to hold and conduct such election. It  
1041 shall be his or her further duty to certify the result thereof to the Secretary of State.

1042 (b) For the purposes of the referendum election provided for in subsection (a) of this  
1043 section and for the purposes of the special election of the City of East Cobb to be held on  
1044 the Tuesday following the first Monday of November, 2022, the qualified electors of the  
1045 City of East Cobb shall be those qualified electors of Cobb County residing within the  
1046 corporate limits of the City of East Cobb as described by Appendix A of this charter. At  
1047 subsequent municipal elections, the qualified electors of the City of East Cobb shall be  
1048 determined pursuant to the authority of Chapter 2 of Title 21 of the O.C.G.A. known as the  
1049 "Georgia Election Code."

1050 (c) Only for the purposes of holding and conducting the referendum election provided for  
1051 in subsection (a) of this section and holding the special election of the City of East Cobb  
1052 to be held on the Tuesday following the first Monday of November, 2022, the election  
1053 superintendent of Cobb County is vested with the powers and duties of the election  
1054 superintendent of the City of East Cobb and the powers and duties of the governing  
1055 authority of the City of East Cobb.

1056

## SECTION 8.11.

1057

## Effective dates and transition.

1058 (a) The provisions of this Act necessary for the referendum election provided for in  
1059 Section 8.10 of this charter shall become effective immediately upon this Act's approval  
1060 by the Governor or upon its becoming law without such approval.

1061 (b) Those provisions of this Act necessary for the special election provided for in Section  
1062 8.13 of this charter shall be effective upon the certification of the results of the referendum  
1063 election provided for by Section 8.10 of this charter if this Act is approved at such  
1064 referendum election.

1065 (c) Except as provided in Section 8.10 of this charter, the remaining provisions of this Act  
1066 shall become of full force and effect for all purposes at 12:00 Midnight on January 1, 2023,  
1067 except that the initial mayor or councilmembers shall take office immediately following  
1068 their election and by action of a quorum may prior to 12:00 Midnight on January 1, 2023,  
1069 meet and take actions binding on the city.

1070 (d) A period of time will be needed for an orderly transition of various government  
1071 functions from Cobb County to the City of East Cobb. Accordingly there shall be a  
1072 transition period beginning on the date the initial mayor and councilmembers take office  
1073 under this charter, and ending at 12:00 Midnight on December 31, 2025. During such  
1074 transition period, all provisions of this charter shall be effective as law, but not all  
1075 provisions of this charter shall be implemented.

1076 (e) During such transition period, Cobb County shall continue to provide within the  
1077 territorial limits of the city all government services and functions which Cobb County  
1078 provided in that area during the years 2021 and 2022 and at the same actual cost, except  
1079 to the extent otherwise provided in this section; provided, however, that upon at least 60  
1080 days' prior written notice to Cobb County by the City of East Cobb, responsibility for any  
1081 such service or function shall be transferred to the City of East Cobb. During the transition

1082 period, the city shall remain within the Cobb County special services district, but shall be  
1083 removed from such district at the conclusion of such period. Beginning July 1, 2023, the  
1084 City of East Cobb shall collect taxes, fees, assessments, fines and forfeitures, and other  
1085 moneys within the territorial limits of the city in the same manner as authorized  
1086 immediately prior to the effective date of this section; provided, however, that upon at  
1087 least 60 days' prior written notice to Cobb County by the City of East Cobb, the authority  
1088 to collect any tax, fee, assessment, fine or forfeiture, or other moneys shall remain with  
1089 Cobb County after July 1, 2023, until such time as Cobb County receives subsequent notice  
1090 from the City of East Cobb that such authority shall be transferred to the City of East Cobb.

1091 (f) During the transition period, the governing authority of the City of East Cobb:

1092 (1) Shall hold regular meetings and may hold special meetings as provided in this  
1093 charter;

1094 (2) May enact ordinances and resolutions as provided in this charter;

1095 (3) May amend this charter by home rule action as provided by general law;

1096 (4) May accept gifts and grants;

1097 (5) May borrow money and incur indebtedness to the extent authorized by this charter  
1098 and general law;

1099 (6) May levy and collect an ad valorem tax for calendar years 2023 and 2024;

1100 (7) May establish a fiscal year and budget;

1101 (8) May create, alter, or abolish departments, boards, offices, commissions, and agencies  
1102 of the city; appoint and remove officers and employees; and exercise all necessary or  
1103 appropriate personnel and management functions; and

1104 (9) May generally exercise any power granted by this charter or general law, except to  
1105 the extent that a power is specifically and integrally related to the provision of a  
1106 governmental service, function, or responsibility not yet provided or carried out by the  
1107 city.

1108 (g) Except as otherwise provided in this section, during the transition period, the  
1109 Municipal Court of the City of East Cobb shall not exercise its jurisdiction. During the  
1110 transition period, all ordinances of Cobb County shall remain applicable within the  
1111 territorial limits of the city and the appropriate court or courts of Cobb County shall retain  
1112 jurisdiction to enforce such ordinances. However, by mutual agreement and concurrent  
1113 resolutions and ordinances if needed Cobb County and the City of East Cobb may during  
1114 the transition period transfer all or part of such regulatory authority and the appropriate  
1115 court jurisdiction to the City of East Cobb. Any transfer of jurisdiction to the City of East  
1116 Cobb during or at the end of the transition period shall not in and of itself abate any judicial  
1117 proceeding pending in Cobb County or the pending prosecution of any violation of any  
1118 ordinance of Cobb County.

1119 (h) During the transition period, the governing authority of the City of East Cobb may at  
1120 any time, without the necessity of any agreement by Cobb County, commence to exercise  
1121 its planning and zoning powers; provided, however, that the city shall give the county  
1122 notice of the date on which the city will assume the exercise of such powers. Upon the  
1123 governing authority of the City of East Cobb commencing to exercise its planning and  
1124 zoning powers, the Municipal Court of the City of East Cobb shall immediately have  
1125 jurisdiction to enforce the planning and zoning ordinances of the city. The provisions of  
1126 this subsection shall control over any conflicting provisions of any other subsection of this  
1127 section.

1128 (i) Effective upon the termination of the transition period, subsections (b) through (h) of  
1129 this section shall cease to apply except for the last sentence of subsection (g) which shall  
1130 remain effective. Effective upon the termination of the transition period, the City of East  
1131 Cobb shall be a full functioning municipal corporation and subject to all general laws of  
1132 this state.

1133 SECTION 8.12.  
1134 Directory nature of dates.

1135 It is the intention of the General Assembly that this Act be construed as directory rather than  
1136 mandatory with respect to any date prescribed in this Act. If it is necessary to delay any  
1137 action called for in this Act for providential cause or any other reason, it is the intention of  
1138 the General Assembly that the action be delayed rather than abandoned. Any delay in  
1139 performing any action under this Act, whether for cause or otherwise, shall not operate to  
1140 frustrate the overall intent of this Act. Without limiting the generality of the foregoing it is  
1141 specifically provided that:

1142 (1) If it is not possible to hold the referendum election provided for in Section 8.10 of  
1143 this charter on the date specified in that section, then such referendum shall be held as  
1144 soon thereafter as is reasonably practicable; and

1145 (2) If it is not possible to hold the first election provided for in Section 8.13 of this  
1146 charter on the date specified in that section, then there shall be a special election for the  
1147 initial members of the governing authority to be held as soon thereafter as is reasonably  
1148 practicable, and the commencement of the initial terms of office shall be delayed  
1149 accordingly.

1150 SECTION 8.13.  
1151 Special election.

1152 (a) The first election for the mayor and councilmembers shall be a special election held on  
1153 the Tuesday after the first Monday in November, 2022. At such election, the first mayor  
1154 and councilmembers shall be elected to serve for the initial terms of office specified in  
1155 subsections (b) and (c) of this section. Thereafter, the time for holding a regular municipal  
1156 elections shall be on the Tuesday next following the first Monday in November of each

1157 odd-numbered year beginning in 2025. The successors to the first mayor and initial  
1158 councilmembers and future successors shall take office at the first organizational meeting  
1159 in January immediately following their election and shall serve for terms of four years and  
1160 until their respective successors are elected and qualified.

1161 (b) The initial councilmembers elected from Post 2, Post 4, and Post 6 shall serve a term  
1162 of office ending on December 31, 2025, and until their respective successors are elected  
1163 and qualified. The initial mayor and councilmembers elected from Post 1, Post 3, and  
1164 Post 5 shall serve a term of office ending on December 31, 2027, and until their respective  
1165 successors are elected and qualified. Thereafter, successors to such initial mayor and  
1166 councilmembers shall serve four-year terms of office and until their respective successors  
1167 are elected and qualified.

1168

## ARTICLE IX.

1169

## GENERAL REPEALER

1170

## SECTION 9.10.

1171

## General repealer.

1172 All laws and parts of laws in conflict with this Act are repealed.

1173

## APPENDIX A

1174

## LEGAL DESCRIPTION

1175

## CITY OF EAST COBB, GEORGIA

1176 User: H045

1177 Plan Name: EastCobb-2022

1178 Plan Type: Local

1179 District EASTCOBB

1180 County Cobb GA

1181 VTD Chestnut Ridge 01

1182 VTD Dickerson 01

1183 VTD Dodgen 01

1184 VTD Eastside 01

1185 VTD Fullers Park 01

1186 Block 030332:

1187 2006 2007 2008 2009 2010 2012

1188 Block 030366:

1189 1001 2000 2001 2002 2003

1190 VTD Hightower 01

1191 VTD Mount Bethel 01

1192 VTD Mount Bethel 03

1193 VTD Mount Bethel 04

1194 VTD Murdock 01

1195 Block 030331:

1196 3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011



1197 3012 3013 3014 4000 4001 4002 4003 4004 4005 4006 4007  
 1198 VTD Pope 01  
 1199 Block 030327:  
 1200 3000 3001 3002 3003 3004 3005 3011  
 1201 Block 030359:  
 1202 1010 1011  
 1203 VTD Roswell 01  
 1204 Block 030335:  
 1205 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 2002  
 1206 2003 2004 2005 2006 2007 2008 2009 2011 2012 4000 4001 4002  
 1207 4003 4004 4005 4006  
 1208 Block 030360:  
 1209 2000 2001 2002 2003 2004 2005  
 1210 VTD Roswell 02  
 1211 VTD Sewell Mill 01  
 1212 Block 030358:  
 1213 2001 2002 2003 2007 2008  
 1214 VTD Sope Creek 01  
 1215 VTD Sope Creek 03  
 1216 Block 030352:  
 1217 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011  
 1218 1012 1013 1014  
 1219 Block 030354:  
 1220 1000 1001 1002 1003 1004 1005 1006 1007 3000  
 1221 excluding portion of block 3006 that is part of National Park  
 1222 excluding portion of block 3007 that is part of National Park  
 1223 VTD Timber Ridge 01

1224 For the purposes of such plan, EastCobb-2021:

1225 (1) The term 'VTD' shall mean and describe the same geographical boundaries as  
1226 provided in the report of the Bureau of the Census for the United States decennial census  
1227 of 2020 for the State of Georgia. The separate numeric designations in a district  
1228 description which are underneath a VTD heading shall mean and describe individual  
1229 Blocks within a VTD as provided in the report of the Bureau of the Census for the United  
1230 States decennial census of 2020 for the State of Georgia; and

1231 (2) Except as otherwise provided in the description of any district, whenever the  
1232 description of any district refers to a named city, it shall mean the geographical  
1233 boundaries of that city as shown on the census maps for the United States decennial  
1234 census of 2020 for the State of Georgia.

1235 APPENDIX B  
 1236 City Council Districts

1237 User: H045

1238 Plan Name: EastCobb-dist-2022

1239 Plan Type: Local

1240 District 001

1241 County Cobb GA

1242 VTD Chestnut Ridge 01

1243 VTD Hightower 01

1244 VTD Murdock 01

1245 Block 030331:

1246 3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011

1247 3012 3013 3014 4000 4001 4002 4003 4004 4005 4006 4007

1248 VTD Pope 01

1249 Block 030327:

1250 3000 3001 3002 3003 3004 3005 3011

1251 Block 030359:

1252 1010 1011

1253 VTD Roswell 01

1254 Block 030335:

1255 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 2002

1256 2003 2004 2005 2006 2007 2008 2009 2011 2012 4000 4001 4002

1257 4003 4004 4005 4006

1258 Block 030360:

1259 2000 2001 2002 2003 2004 2005

1260 VTD Roswell 02  
 1261 Block 030331:  
 1262 2000 2001 2002 2003 2004 2005 2006 2007  
 1263 Block 030369:  
 1264 2002 2003  
  
 1265 District 002  
 1266 County Cobb GA  
 1267 VTD Dickerson 01  
 1268 VTD Dodgen 01  
 1269 VTD Eastside 01  
 1270 VTD Fullers Park 01  
 1271 Block 030332:  
 1272 2006 2007 2008 2009 2010 2012  
 1273 Block 030366:  
 1274 1001 2000 2001 2002 2003  
 1275 VTD Mount Bethel 01  
 1276 Block 030370:  
 1277 1004 1005 1006 3000 3002  
 1278 VTD Roswell 02  
 1279 Block 030369:  
 1280 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011  
 1281 1012 1013 1014 1015 1016 1017 2000 2001 2004 2005 2006  
 1282 VTD Sewell Mill 01  
 1283 Block 030358:  
 1284 2001 2002 2003 2007 2008  
 1285 VTD Timber Ridge 01

1286 District 003  
 1287 County Cobb GA  
 1288 VTD Mount Bethel 01  
 1289 Block 030319:  
 1290 1000 1001 1002 1003 1004  
 1291 Block 030337:  
 1292 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011  
 1293 2012 2013 2014 2015 2016 2017 2018 2019 3000 3001 3002 3003  
 1294 3004 3005 3006 3007 3008 3009 3010  
 1295 Block 030370:  
 1296 3004  
 1297 VTD Mount Bethel 03  
 1298 VTD Mount Bethel 04  
 1299 VTD Sope Creek 01  
 1300 VTD Sope Creek 03  
 1301 Block 030352:  
 1302 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011  
 1303 1012 1013 1014  
 1304 Block 030354:  
 1305 1000 1001 1002 1003 1004 1005 1006 1007 3000  
 1306 excluding portion of block 3006 that is part of National Park  
 1307 excluding portion of block 3007 that is part of National Park

1308

APPENDIX C

1309

CERTIFICATE AS TO MINIMUM STANDARDS

1310

FOR INCORPORATION OF A NEW MUNICIPAL CORPORATION

1311 I, Representative Matt Dollar, Georgia State Representative from the 45th District and the  
 1312 author of this bill introduced at the 2021 session of the General Assembly of Georgia, which  
 1313 grants an original municipal charter to the City of East Cobb, do hereby certify that this bill  
 1314 is in compliance with the minimum standards required by Chapter 31 of Title 36 of the  
 1315 O.C.G.A. in that the area embraced within the original incorporation in this bill is in all  
 1316 respects in compliance with the minimum standards required by Chapter 31 of Title 36 of the  
 1317 O.C.G.A. This certificate is executed to conform to the requirements of Code  
 1318 Section 36-31-5 of the O.C.G.A.

1319 So certified this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

1320

\_\_\_\_\_

1321

1322

Honorable Matt Dollar

1323

Representative, 45th District

1324

Georgia State House of Representatives

# Exhibit 2

**NOTICE OF INTENTION TO  
INTRODUCE LOCAL LEGISLATION**

Notice is given that there will be introduced at the regular 2021 session of the General Assembly of Georgia a bill to incorporate the City of East Cobb; and for other purposes.

**AFFIDAVIT**

GEORGIA, FULTON COUNTY

I, Matt Dollar, Representative from District 45, state on oath as follows:

- (1) I am the author of the local bill to which this affidavit is attached.
- (2) In accordance with O.C.G.A. § 28-1-14, the notice requirements for the local bill to which this affidavit is attached have been satisfied, including but not limited to the following:
  - (A) The Notice of Intention to Introduce Local Legislation which is attached to such local bill was published in the Marietta Daily Journal, which is the official organ of Cobb County, on the 26th of March, 2021; and
  - (B) If the local bill amends the charter of a municipality or the enabling Act of the governing authority of a county or consolidated government, then a copy of the Notice of Intention to Introduce Local Legislation was mailed, transmitted by facsimile, or otherwise provided to the governing authority of such municipality, county, or consolidated government:
    - (i) During the calendar week in which the Notice was published in the official organ; or
    - (ii) During the seven days immediately following the date of publication of such Notice.

s/ MATT DOLLAR  
Affiant

Sworn to and subscribed at the  
State Capitol in Atlanta, Georgia,  
This 29<sup>th</sup> of March, 2021,  
Before me:

s/ JENNIFER BURGESS  
Jennifer Burgess  
Notary Public, Fulton County, Georgia  
My Commission Expires December 2, 2022  
[SEAL]



# Exhibit 3



*Ga. Const. Art. IX, § II*

Current through the 2021 Regular and Special Sessions of the General Assembly.

*Official Code of Georgia Annotated > CONSTITUTION OF THE STATE OF GEORGIA > Article IX  
Counties and Municipal Corporations > Section II Home Rule for Counties and Municipalities*

## **Section II Home Rule for Counties and Municipalities**

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Official Code of Georgia Annotated

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End of Document

*Ga. Const. Art. IX, § II, Para. I*

Current through the 2021 Regular and Special Sessions of the General Assembly.

*Official Code of Georgia Annotated > CONSTITUTION OF THE STATE OF GEORGIA > Article IX  
Counties and Municipal Corporations > Section II Home Rule for Counties and Municipalities*

**Paragraph I. Home rule for counties.**

---

(a) The governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto. Any such local law shall remain in force and effect until amended or repealed as provided in subparagraph (b). This, however, shall not restrict the authority of the General Assembly by general law to further define this power or to broaden, limit, or otherwise regulate the exercise thereof. The General Assembly shall not pass any local law to repeal, modify, or supersede any action taken by a county governing authority under this section except as authorized under subparagraph (c) hereof.

(b) Except as provided in subparagraph (c), a county may, as an incident of its home rule power, amend or repeal the local acts applicable to its governing authority by following either of the procedures hereinafter set forth:

(1) Such local acts may be amended or repealed by a resolution or ordinance duly adopted at two regular consecutive meetings of the county governing authority not less than seven nor more than 60 days apart. A notice containing a synopsis of the proposed amendment or repeal shall be published in the official county organ once a week for three weeks within a period of 60 days immediately preceding its final adoption. Such notice shall state that a copy of the proposed amendment or repeal is

## Ga. Const. Art. IX, § II, Para. I

on file in the office of the clerk of the superior court of the county for the purpose of examination and inspection by the public. The clerk of the superior court shall furnish anyone, upon written request, a copy of the proposed amendment or repeal. No amendment or repeal hereunder shall be valid to change or repeal an amendment adopted pursuant to a referendum as provided in (2) of this subparagraph or to change or repeal a local act of the General Assembly ratified in a referendum by the electors of such county unless at least 12 months have elapsed after such referendum. No amendment hereunder shall be valid if inconsistent with any provision of this Constitution or if provision has been made therefor by general law.

(2) Amendments to or repeals of such local acts or ordinances, resolutions, or regulations adopted pursuant to subparagraph (a) hereof may be initiated by a petition filed with the judge of the probate court of the county containing, in cases of counties with a population of 5,000 or less, the signatures of at least 25 percent of the electors registered to vote in the last general election; in cases of counties with a population of more than 5,000 but not more than 50,000, at least 20 percent of the electors registered to vote in the last general election; and, in cases of a county with a population of more than 50,000, at least 10 percent of the electors registered to vote in the last general election, which petition shall specifically set forth the exact language of the proposed amendment or repeal. The judge of the probate court shall determine the validity of such petition within 60 days of its being filed with the judge of the probate court. In the event the judge of the probate court determines that such petition is valid, it shall be his duty to issue the call for an election for the purpose of submitting such amendment or repeal to the registered electors of the county for their approval or rejection. Such call shall be issued not less than ten nor more than 60 days after the date of the filing of the petition. He shall set the date of such election for a day not less than 60 nor more than 90 days after the date of such filing. The judge of the probate court shall cause a notice of the date of said election to be published in the official organ of the county once a week for three weeks immediately preceding such date. Said notice shall also contain a synopsis of the proposed amendment or repeal and shall state that a copy thereof is on file in the office of the judge of the probate court of the county for the purpose of examination and inspection by the

## Ga. Const. Art. IX, § II, Para. I

public. The judge of the probate court shall furnish anyone, upon written request, a copy of the proposed amendment or repeal. If more than one-half of the votes cast on such question are for approval of the amendment or repeal, it shall become of full force and effect; otherwise, it shall be void and of no force and effect. The expense of such election shall be borne by the county, and it shall be the duty of the judge of the probate court to hold and conduct such election. Such election shall be held under the same laws and rules and regulations as govern special elections, except as otherwise provided herein. It shall be the duty of the judge of the probate court to canvass the returns and declare and certify the result of the election. It shall be his further duty to certify the result thereof to the Secretary of State in accordance with the provisions of subparagraph (g) of this Paragraph. A referendum on any such amendment or repeal shall not be held more often than once each year. No amendment hereunder shall be valid if inconsistent with any provision of this Constitution or if provision has been made therefor by general law.

In the event that the judge of the probate court determines that such petition was not valid, he shall cause to be published in explicit detail the reasons why such petition is not valid; provided, however, that, in any proceeding in which the validity of the petition is at issue, the tribunal considering such issue shall not be limited by the reasons assigned. Such publication shall be in the official organ of the county in the week immediately following the date on which such petition is declared to be not valid.

(c) The power granted to counties in subparagraphs (a) and (b) above shall not be construed to extend to the following matters or 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 this Constitution:

(1) Action affecting any elective county office, the salaries thereof, or the personnel thereof, except the personnel subject to the jurisdiction of the county governing authority.

## Ga. Const. Art. IX, § II, Para. I

- (2) Action affecting the composition, form, procedure for election or appointment, compensation, and expenses and allowances in the nature of compensation of the county governing authority.
  - (3) Action defining any criminal offense or providing for criminal punishment.
  - (4) Action adopting any form of taxation beyond that authorized by law or by this Constitution.
  - (5) Action extending the power of regulation over any business activity regulated by the Georgia Public Service Commission beyond that authorized by local or general law or by this Constitution.
  - (6) Action affecting the exercise of the power of eminent domain.
  - (7) Action affecting any court or the personnel thereof.
  - (8) Action affecting any public school system.
- (d) The power granted in subparagraphs (a) and (b) of this Paragraph shall not include the power to take any action affecting the private or civil law governing private or civil relationships, except as is incident to the exercise of an independent governmental power.
- (e) Nothing in subparagraphs (a), (b), (c), or (d) shall affect the provisions of subparagraph (f) of this Paragraph.
- (f) The governing authority of each county is authorized to fix the salary, compensation, and expenses of those employed by such governing authority and to establish and maintain retirement or pension systems, insurance, workers' compensation, and hospitalization benefits for said employees.
- (g) No amendment or revision of any local act made pursuant to subparagraph (b) of this section shall become effective until a copy of such amendment or revision, a copy of the required notice of publication, and an affidavit of a duly authorized representative of the newspaper in which such notice was published to the effect that said notice has been published as provided in said subparagraph has been filed with the Secretary of State. The Secretary of State shall provide for the publication and distribution of all such amendments and revisions at least annually.

Ga. Const. Art. IX, § II, Para. I

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*Ga. Const. Art. IX, § II, Para. II*

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*Official Code of Georgia Annotated > CONSTITUTION OF THE STATE OF GEORGIA > Article IX  
Counties and Municipal Corporations > Section II Home Rule for Counties and Municipalities*

**Paragraph II. Home rule for municipalities.**

---

The 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.

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*Ga. Const. Art. IX, § II, Para. III*

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*Official Code of Georgia Annotated > CONSTITUTION OF THE STATE OF GEORGIA > Article IX  
Counties and Municipal Corporations > Section II Home Rule for Counties and Municipalities*

### **Paragraph III. Supplementary powers.**

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(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.

## Ga. Const. Art. IX, § II, Para. III

- (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. IX, § II, Para. III

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*Ga. Const. Art. IX, § II, Para. IV*

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Counties and Municipal Corporations > Section II Home Rule for Counties and Municipalities*

**Paragraph IV. Planning and zoning.**

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The governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning. This authorization shall not prohibit the General Assembly from enacting general laws establishing procedures for the exercise of such power.

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[Ga. Const. Art. IX, § II, Para. V](#)

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Counties and Municipal Corporations > Section II Home Rule for Counties and Municipalities*

## Paragraph V. Eminent domain.

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The governing authority of each county and of each municipality may exercise the power of eminent domain for any public purpose subject to any limitations on the exercise of such power as may be provided by general law. Notwithstanding the provisions of any local amendment to the Constitution continued in effect pursuant to Article XI, Section I, Paragraph IV or any existing general law, each exercise of eminent domain by a nonelected housing or development authority shall be first approved by the elected governing authority of the county or municipality within which the property is located.

## History

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[Ga. Const. 1983, Art. 9, § 2, Para. 5](#); Ga. L. 2006, p. 1111, § 2/HR 1306.

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*Ga. Const. Art. IX, § II, Para. VI*

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Counties and Municipal Corporations > Section II Home Rule for Counties and Municipalities*

## **Paragraph VI. Special districts.**

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As hereinafter provided in this Paragraph, special districts may be created for the provision of local government services within such districts; and fees, assessments, and taxes may be levied and collected within such districts to pay, wholly or partially, the cost of providing such services therein and to construct and maintain facilities therefor. Such special districts may be created and fees, assessments, or taxes may be levied and collected therein by any one or more of the following methods:

- (a) By general law which directly creates the districts.
- (b) By general law which requires the creation of districts under conditions specified by such general law.
- (c) By municipal or county ordinance or resolution, except that no such ordinance or resolution may supersede a law enacted by the General Assembly pursuant to subparagraphs (a) or (b) of this Paragraph.

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*Ga. Const. Art. IX, § II, Para. VII*

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**Paragraph VII. Community redevelopment.**

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(a) Each condemnation of privately held property for redevelopment purposes must be approved by vote of the elected governing authority of the city within which the property is located, if any, or otherwise by the governing authority of the county within which the property is located. The power of eminent domain shall not be used for redevelopment purposes by any entity, except for public use, as defined by general law.

(a.1) The General Assembly may authorize any county, municipality, or housing authority to undertake and carry out community redevelopment.

(b) The General Assembly is also authorized to grant to counties or municipalities for redevelopment purposes and in connection with redevelopment programs, as such purposes and programs are defined by general law, the power to issue tax allocation bonds, as defined by such law, and the power to incur other obligations, without either such bonds or obligations constituting debt within the meaning of Section V of this article, and the power to enter into contracts for any period not exceeding 30 years with private persons, firms, corporations, and business entities. Such general law may authorize the use of county, municipal, and school tax funds, or any combination thereof, to fund such redevelopment purposes and programs, including the payment of debt service on tax allocation bonds, notwithstanding Section VI of Article VIII or any other provision of this Constitution and regardless of whether any county, municipality, or local board of education approved the use of such tax funds for such purposes and programs before

## Ga. Const. Art. IX, § II, Para. VII

January 1, 2009. No county, municipal, or school tax funds may be used for such purposes and programs without the approval by resolution of the applicable governing body of the county, municipality, or local board of education. No school tax funds may be used for such purposes and programs except as authorized by general law after January 1, 2009; provided, however, that any school tax funds pledged for the repayment of tax allocation bonds which have been judicially validated pursuant to general law shall continue to be used for such purposes and programs. Notwithstanding the grant of these powers pursuant to general law, no county or municipality may exercise these powers unless so authorized by local law and unless such powers are exercised in conformity with those terms and conditions for such exercise as established by that local law. The provisions of any such local law shall conform to those requirements established by general law regarding such powers. No such local law, or any amendment thereto, shall become effective unless approved in a referendum by a majority of the qualified voters voting thereon in the county or municipality directly affected by that local law.

(c) The General Assembly is authorized to provide by general law for the creation of enterprise zones by counties or municipalities, or both. Such law may provide for exemptions, credits, or reductions of any tax or taxes levied within such zones by the state, a county, a municipality, or any combination thereof. Such exemptions shall be available only to such persons, firms, or corporations which create job opportunities within the enterprise zone for unemployed, low, and moderate income persons in accordance with the standards set forth in such general law. Such general law shall further define enterprise zones so as to limit such tax exemptions, credits, or reductions to persons and geographic areas which are determined to be underdeveloped as evidenced by the unemployment rate and the average personal income in the area when compared to the remainder of the state. The General Assembly may by general law further define areas qualified for creation of enterprise zones and may provide for all matters relative to the creation, approval, and termination of such zones.

(d) The existence in a community of real property which is maintained in a blighted condition increases the burdens of state and local government by increasing the need for governmental services, including but not limited to social services, public safety services, and code enforcement services. Rehabilitation of blighted property decreases the need



## Ga. Const. Art. IX, § II, Para. VII

for such governmental services. In recognition of such service needs and in order to encourage community redevelopment, the counties and municipalities of this state are authorized to establish community redevelopment tax incentive programs as authorized in this subparagraph. A community redevelopment tax incentive program shall be established by ordinance of the county or municipality. Any such program and ordinance shall include the following elements:

- (1) The ordinance shall specify ascertainable standards which shall be applied in determining whether property is maintained in a blighted condition. The ordinance shall provide that property shall not be subject to official identification as maintained in a blighted condition and shall not be subject to increased taxation if the property is a dwelling house which is being used as the primary residence of one or more persons; and
- (2) The ordinance shall establish a procedure for the official identification of real property in the county or municipality which is maintained in a blighted condition. Such procedure shall include notice to the property owner and the opportunity for a hearing with respect to such determination.
- (3) The ordinance shall specify an increased rate of ad valorem taxation to be applied to property which has been officially identified as maintained in a blighted condition. Such increase in the rate of taxation shall be accomplished through application of a factor to the millage rate applied to the property, so that such property shall be taxed at a higher millage rate than the millage rate generally applied in the county or municipality, or otherwise as may be provided by general law.
- (4) The ordinance may, but shall not be required to, segregate revenues arising from any increased rate of ad valorem taxation and provide for use of such revenues only for community redevelopment purposes;
- (5) The ordinance shall specify ascertainable standards for rehabilitation through remedial actions or redevelopment with which the owner of property may comply in order to have the property removed from identification as maintained in a blighted condition. As used herein, the term "blighted condition" shall include, at a minimum, property that constitutes endangerment to public health or safety;

## Ga. Const. Art. IX, § II, Para. VII

(6) The ordinance shall specify a decreased rate of ad valorem taxation to be applied for a specified period of time after the county or municipality has accepted a plan submitted by the owner for remedial action or redevelopment of the blighted property and the owner is in compliance with the terms of the plan. Such decrease in the rate of taxation shall be accomplished through application of a factor to the millage rate applied to the property, so that such property shall be taxed at a lower millage rate than the millage rate generally applied in the county or municipality, or otherwise as may be provided by general law.

(7) The ordinance may contain such other matters as are consistent with the intent and provisions of this subparagraph and general law.

Variations in rate of taxation as authorized under this subparagraph shall be a permissible variation in the uniformity of taxation otherwise required. The increase or decrease in rate of taxation accomplished through a change in the otherwise applicable millage rate shall affect only the general millage rate for county or municipal maintenance and operations. A county and one or more municipalities in the county may, but shall not be required to, establish a joint community redevelopment tax incentive program through the adoption of concurrent ordinances. No Act of the General Assembly shall be required for counties and municipalities to establish community redevelopment tax incentive programs. However, the General Assembly may by general law regulate, restrict, or limit the powers granted to counties and municipalities under this subparagraph.

## History

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[\*Ga. Const. 1983, Art. 9, Sec. 2, Para. 7\*](#); Ga. L. 1984, p. 1709, § 1/HR 444; Ga. L. 1996, p. 1666, § 1/SR 64; Ga. L. 2002, p. 1497, § 1/HR 391; Ga. L. 2006, p. 1111, § 1/HR 1306; Ga. L. 2008, p. 1211, § 1/SR 996.

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Ga. Const. Art. IX, § II, Para. VII

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*Ga. Const. Art. IX, § II, Para. VIII*

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*Official Code of Georgia Annotated > CONSTITUTION OF THE STATE OF GEORGIA > Article IX  
Counties and Municipal Corporations > Section II Home Rule for Counties and Municipalities*

**Paragraph VIII. Limitation on the taxing power and contributions of counties, municipalities, and political subdivisions.**

---

The General Assembly shall not authorize any county, municipality, or other political subdivision of this state, through taxation, contribution, or otherwise, to appropriate money for or to lend its credit to any person or to any nonpublic corporation or association except for purely charitable purposes.

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Counties and Municipal Corporations > Section II Home Rule for Counties and Municipalities*

**Paragraph IX. Immunity of counties, municipalities, and school districts.**

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The General Assembly may waive the immunity of counties, municipalities, and school districts by law.

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# Exhibit 4



## 1994 Ga. AG LEXIS 28

Office of the Attorney General of the State of Georgia

1994 Ga. Op. Att'y Gen. 781994 Ga. Op. Atty Gen. No. U94-8

### *GA Attorney General Opinions*

#### **Reporter**

1994 Ga. AG LEXIS 28 \*; 1994 Ga. Op. Att'y Gen. 78; 1994 Ga. Op. Atty Gen. No. U94-8

#### **U94-8**

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April 19, 1994

#### **Core Terms**

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constitutional provision, local law, municipality, assembly, water distribution, subject matter, city charter, nondiscriminatory, unofficial, enumerate, charter, sewer

#### **Syllabus**

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**[\*1]**

RE: House Bill 1074 amending the charter of a municipality may be in violation of the constitutional provision which requires the General Assembly to so act only by general law.

**Request By:** Honorable Bobby Lawson

Representative, 20th District

Post Office Box 53

Gainesville, Georgia 30503

**Opinion By:** MICHAEL J. BOWERS, Attorney General  
**Prepared by:** JOHN E. HENNELLY,  
Assistant Attorney General

## Opinion

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I am writing in response to your request for my unofficial opinion as to the constitutionality of House Bill 1074, which seeks to amend the charter of the City of Gainesville to require the city to charge "fair and nondiscriminatory" rates for water, sewer, and other services provided outside the city limits. For the reasons stated below, it is my unofficial opinion that such a local law may be found by the courts to be unconstitutional.

The Constitution of the State of Georgia authorizes municipalities to exercise powers and provide such services as "sewage collection and disposal systems" and the "[d]evelopment, storage, treatment, purification, and distribution of water." 1983 [Ga. Const. Art. IX, Sec. II, Para. III \(a\)\(6\)](#) and (a)(7). Unless otherwise provided by law, the municipality is limited to exercising [\*2] this power within its own boundaries; except that it can contract with other local governments to provide such services outside its boundaries. 1983 [Ga. Const. Art. IX, Sec. II, Para. III \(b\)](#). The Constitution prohibits the General Assembly from acting on these "subject matters" ***except by general law.*** 1983 [Ga. Const. Art. IX, Sec. II, Para. III \(c\)](#) and (d). The purpose of this constitutional provision is to provide uniformity of municipal powers which the General Assembly "may not remove . . . in a random fashion." [City of Mountain View v. Clayton County, 242 Ga. 163, 167 \(1978\)](#).

House Bill 1074 seeks to amend the charter of the City of Gainesville by requiring the city to "apply fair and nondiscriminatory charges and fees" for, inter alia, waterworks and sewerage services to customers outside its official limits. It seems clear that this legislation acts on the subject matter of the enumerated services of water distribution and sewer systems identified in the constitutional provision discussed above. See [Coweta County v. City of Newnan, 253 Ga. 457 \(1984\)](#) (need for contract between city and county for city to provide water services outside its boundaries discussed [\*3] in light of this constitutional provision) . In addition, by amending the charter of a single city, House Bill 1074 is a local, rather than general, law. See [Hood v.](#)



[\*Burson, 194 Ga. 30, 33 \(1942\)\*](#). Therefore, as a local law acting on the services identified in the Constitution as subject only to general law, the act in question appears to be unconstitutional.

Furthermore, consistent with the foregoing analysis, the Constitution states that the General Assembly is not prohibited from "restricting . . . the exercise of the [enumerated] powers" by general law. 1983 [\*Ga. Const. Art. IX, Sec. II, Para. III \(c\)\*](#). House Bill 1074 appears to be restrictive in nature by adding a conditional paragraph which did not exist in the original charter of the City of Gainesville. Since the Constitution only authorizes restricting such powers by general law, the attempt to do so by local law is an additional reason that the act is likely to be considered unconstitutional.

This 19th day of April, 1994.

**Load Date:** 2014-07-05

GA Attorney General Opinions

# Exhibit 5

This section would allow the board to permit an individual to join the fund as a volunteer fireman who, for “. . . providential or other cause beyond his control . . .” will not be able to attend 75 percent of the drills, meetings and fires in a calendar year. It would not operate to allow the board, looking back, to excuse a volunteer fireman, already a member, from certain years in which he did not achieve the required attendance percentage. Again, I am reading the law as I see it plainly stated. *Barnes v. Carter*, supra.

Therefore, based on the foregoing rationale and authorities, it is my opinion that volunteer firemen may not receive credit under the Georgia Firemen's Pension Fund for calendar years of service in which they did not attend 75 percent of all drills, meetings and fires. The fact that certain volunteers have had ineligible years credited to their retirement accounts, unfortunately, makes no difference. The board of trustees is not estopped, upon learning the true facts, to make a later determination of ineligibility and effect a cessation of benefit payments. *McCallum v. Almand*, 213 Ga. 701 (1957); *Board of Commissioners v. Clay*, 214 Ga. 70 (1958).

To the extent this opinion may affect any volunteer firemen presently receiving benefit payments, I am genuinely sorry. As your legal advisor by statutory designation, this office's duty, in response to your question, is to state its opinion on the applicable law in order to protect the board and its members from any potential liability. See, e.g., *American Surety Co. of N. Y. v. NeSmith, et al.*, 49 Ga. App. 40 (1934).

### UNOFFICIAL OPINION U74-9

To: Representative, District 50

January 25, 1974

Re: Under the State Constitution zoning powers are exercisable solely by the governing authorities of municipalities and counties; in the absence of constitutional authorization, the General Assembly cannot exercise zoning powers through general or local legislation.

This is in response to your letter of December 14, 1973, in which you ask for my opinion on three questions, all of which relate to the authority and power of the General Assembly over zoning matters. The questions you have presented are in fact far more complex than they might appear to be on their face and before responding to each in turn, I think that a few observations on the general nature of the power to zone in *Georgia* are in order—if not indispensable.

Historically speaking, the Supreme Court of Georgia took a hostile view quite early to the intrusion of the state's police power upon the right of a property owner to use his property any way he saw fit. Zoning statutes enacted by the General Assembly and implementing

ordinances of local governmental bodies which attempted to bar the erection of buildings or conduct of businesses which were not per se nuisances were uniformly held to be violative of the property rights secured to the owner by the "due process" clauses of both the State and Federal Constitutions. See, e.g., *Howden v. Mayor & Aldermen of Savannah*, 172 Ga. 833, 841 (1931); *Morrow v. City of Atlanta*, 162 Ga. 228 (1926); *Smith v. City of Atlanta*, 161 Ga. 769, 776-779 (1926). While the Supreme Court of the United States rejected this view insofar as the "due process" clause of the United States Constitution is concerned in *Village of Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926),<sup>1</sup> the Supreme Court of Georgia wasted little time in announcing that it would not follow the Supreme Court's lead in connection with its own prerogatives concerning interpretation of "due process" under the State Constitution. See *City of Atlanta v. Smith*, 165 Ga. 146 (1927). The rule in Georgia remained that the police powers of the state could not be used to enact zoning legislation or ordinances which would interfere with a property owner's right to use his property for any purpose he saw fit (so long as the use was not a nuisance per se). The legal consequence was, and so far as I am aware still is, that in the State of Georgia no general zoning power can exist in any governmental body beyond that which is expressly provided for by the various constitutional amendments ratified by the people of Georgia subsequent to the State Supreme Court's 1927 decision in *City of Atlanta v. Smith*, supra. See, e.g., *Hunt v. McCollum*, 214 Ga. 809, 810 (1959); *Howden v. Mayor & Aldermen of Savannah*, 172 Ga. 833, 841-843 (1931). It is in light of this constitutional framework that I respond to each of your three questions in turn.

1. Does the General Assembly have the power and authority to enact general laws dealing with planning and zoning matters that would have the effect of changing planning and zoning procedures previously adopted by local ordinances of local governments involving the same?

The earlier of the two general constitutional provisions pertaining to zoning is Art. III, Sec. VII, Par. XXIII of the Constitution of the State of Georgia of 1945 (Ga. Code Ann. § 2-1923). It provides that:

"The General Assembly of the state shall have authority to grant the governing authorities of the municipalities and counties authority to pass zoning and planning laws whereby such cities or counties may be zoned or districted for various uses and other or different uses prohibited therein, and regulating the use for which said zones or districts may be set apart, and regulating the plans for development and improvements on real estate therein."

<sup>1</sup> The court held that zoning regulations constitute a permissible exercise of a state's police power so long as they have some reasonable relationship to public health, safety, morals or general welfare.

It seems clear that under this provision the only governmental bodies which may be authorized to exercise zoning powers are the governing authorities of the municipalities and counties of this state. As the Supreme Court of Georgia put it in *Hunt v. McCollum*, 214 Ga. 809, 810 (1959):

“Sight must never be lost of the fact that the Constitution (Code Ann. § 2-1923) confers the power to zone upon the ‘governing authorities’ [of municipalities and counties] and none other. Without constitutional sanction no one could exercise such power. Therefore it logically follows that the foregoing attempt by the legislature to confer such power . . . [elsewhere] . . . is beyond constitutional limits and is void.”

However, the fact that the legislature may not exercise zoning powers itself under the above constitutional provision does not mean that it is prohibited *by this particular constitutional provision* from either withdrawing such power from municipal and county authorities [even though if so withdrawn the power cannot be placed elsewhere] or from fixing the dimensions of the power or the procedures to be followed by local governments in its exercise. The power to authorize would unquestionably be held by the courts to include the power to revoke the authorization or to fix its limits and the means of its exercise. Thus, looking at Art. III, Sec. VII, Par. XXIII, alone, it would seem that while the General Assembly could not itself exercise zoning powers, it could regulate the means and procedures by which municipal and county governments exercise the zoning powers they have been given by the General Assembly. Insofar as municipalities are concerned the General Assembly has long since specified the procedures they must use in the exercise of their zoning powers. See Ga. Laws 1946, p. 191 et seq. (Ga. Code Ann. Ch. 69-8).

At this point, however, the matter becomes more complex by virtue of a subsequent constitutional amendment relating to “home rule.” See Art. XV, Sec. II-A, Par. III (Ga. Code Ann. § 2-8404). This provision provides with respect to *counties* [but note *not* with respect to municipalities] that:

“The governing authority of each county is empowered to enact for unincorporated areas of the county appropriate planning and zoning ordinances for public safety, historic, health, business, residential, and recreational purposes. Such governing authority is hereby authorized to establish planning and zoning commissions separately or in conjunction with any combination of other counties and municipalities of this state and adjoining states. The General Assembly is hereby authorized to provide by law for such joint planning and zoning commissions and provide the

powers and duties thereof. Such governing authority is hereby authorized to participate in the costs of such planning commission."

The obvious conflict between the two constitutional provisions (*county* governments no longer receiving their zoning powers by virtue of constitutionally authorized legislative grants under the former but directly from the Constitution itself under the latter) came before the Supreme Court in *Johnston v. Hicks*, 225 Ga. 576 (1969), where the court held that the latter Home Rule Amendment (i.e., § 2-8404) impliedly repealed the earlier constitutional provision (i.e., § 2-1923) *insofar as it applied to unincorporated areas*. The court said:

"The General Assembly has no authority to grant a county the authority to enact zoning and planning laws except by constitutional provision. Under the express provisions of the Home Rule for Counties Amendment, direct authority is granted to the counties to enact planning and zoning laws for unincorporated areas. It was the intent of the General Assembly in submitting this amendment that the legislature, upon its ratification, would no longer have the authority to enact local laws concerning planning and zoning for unincorporated areas."

Although I recognize that *Johnston v. Hicks*, *supra*, dealt with attempts to modify a county's zoning power by *local* law, the rationale of the court's decision (and indeed much of its language) is equally applicable to any attempt to interfere with a county's constitutional powers in the matter through *general* legislation. For the foregoing reasons I conclude as follows with respect to your initial question:

(1) Insofar as *county government* is concerned their zoning powers are *constitutionally* vested (§ 2-8404) and cannot be limited, restricted or interfered with by any *legislative* enactment (general or local) of the General Assembly.

(2) Insofar as *municipal government* is concerned the zoning powers which they have been authorized by the General Assembly to exercise (§ 2-1923) can be withdrawn by the General Assembly (although in such event these zoning powers are not capable of being placed elsewhere by the General Assembly) and can be subjected to such limitations and procedural requisites as the General Assembly may reasonably think proper.

2. May a "local" constitutional amendment repeal or change (or authorize the General Assembly by local Act to repeal or change) a planning or zoning ordinance adopted by local governmental authority.

Yes. As the Supreme Court put it in *Johnston v. Hicks*, supra, at 580: "A constitutional amendment may amend, modify or repeal a prior constitutional provision." The rule of preemption which the State Constitution imposes upon special or local legislation as to matters which have been provided for by general legislation (see Art. I, Sec. IV, Par. I of the Constitution of the State of Georgia of 1945 (Ga. Code Ann. § 2-401)), has no application with respect to the construction of *constitutional* provisions. In point of fact I note that the General Assembly has already proposed an amendment to the State Constitution which would authorize the General Assembly to provide by local law for the exercise of planning and zoning powers within Cobb County (thus terminating the applicability of § 2-8404 within that county). See Ga. Laws 1973, p. 1527.

3. May the General Assembly by general law "require" each municipality and county to appoint a planning commission and adopt a land use plan?

Insofar as municipalities are concerned we have already discussed the fact that since their power to exercise zoning powers under Code § 2-1923 depends upon precisely what the General Assembly authorizes under that constitutional provision, this power, although it cannot be vested elsewhere (e.g., in a "planning commission"), can be subjected to various procedural requisites. Hence, the General Assembly may, and indeed already has required, that *if* a municipal government exercises its zoning powers it must do so "in accordance with a comprehensive plan designed for the purposes, among others, of lessening congestion in the roads and streets . . . [and other enumerated purposes] . . .", and that *if* a municipality exercises its zoning powers it must appoint a "municipal planning board" which plays a specified role in developing the plan for consideration by the municipal authorities. See Ga. Laws 1946, p. 191, as amended (Ga. Code Ann. Ch. 69-8). It should be emphasized, of course, that this power of the General Assembly to prescribe the *procedure* a municipality must follow *if* the municipality chooses to exercise its zoning powers is *not* to be equated with the power to compel a municipality to exercise zoning powers. Under the Constitution, the General Assembly cannot require a municipality to engage in zoning activities if it doesn't want to.

With respect to counties, the direct constitutional grant of zoning powers to "the governing authority of each county" under Code § 2-8404 would seem to preclude the possibility of legislatively *requiring* a county, even as a matter of procedure, to appoint such a commission or to adopt a land use plan. In this limited area the Constitution places the power to legislate in county government rather than the General Assembly. Cf. *Johnston v. Hicks*, 225 Ga. 576, 580 (1969).

## ADDENDUM of February 4, 1974:

It has come to my attention that some question may exist as to the intended scope of the unofficial opinion on county and municipal zoning which we rendered you on January 25, 1974. In specificity it has been asked whether the opinion was intended to extend to the authority of the state itself to engage in planning or control over "land use."

To resolve any possible doubt on this point, I would like to make it quite clear that the opinion was intended to deal solely with the questions asked, all of which revolved around the power of the General Assembly to control or interfere with the exercise of zoning powers by county and municipal governments. I am writing this addendum to emphasize the fact that the unofficial opinion of January 25 was: (1) *not* intended to cover or extend to the question of whether the term "land use" differs from or is broader than the term "zoning"; and (2) *not* intended to deal with the extent to which the state may engage in land use planning and control to the extent that the terms may differ. The opinion of January 25 is not to be taken as an expression of views one way or the other as to these perhaps quite different and certainly equally complex issues.

**UNOFFICIAL OPINION U74-10**

To: District Attorney, Ogeechee  
Judicial Circuit

January 25, 1974

Re: Georgia Laws 1968, p. 992, authorizes the governing authority of any county to pay all necessary expenses incident to the operation of the district attorney's office for that county's superior court.

This is in response to your letter of January 10, 1974, requesting our opinion as to whether the four counties in your judicial circuit could make monthly payments to your office in order to provide for the operating expenses as provided in Section 7 of Georgia Laws 1968, p. 992 (Ga. Code Ann. § 24-2928).

The question which you have posed primarily concerns the authority of any county to pay out county funds without specific local legislation authorizing the expenditure. This question is particularly pertinent because the law in Georgia is that one who draws money out of the treasury of a county or the state must be able to point to a law that clearly authorizes the expenditure. See *Houston County v. Kersh and Wynne*, 82 Ga. 252 (1888).

However, the Georgia Constitution, Art. VII, Sec. IV, Par. II (Ga. Code Ann. § 2-5702 (a)), authorizes the governing authority of