



Connie Taylor, Clerk of Superior Court  
Cobb County, Georgia

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

**WEST COBB ADVOCATE, INC, AND  
DORA LOCKLEAR,  
Petitioners,**

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**

Petitioners West Cobb Advocate, Inc., and Dora Locklear (“Petitioners”), by and through counsel, file 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, Petitioners state as follows:

#### INTRODUCTION

1. House Bill 826 (2022) (“HB 826”), a local law that provides for the creation and charter of the proposed City of Lost Mountain within unincorporated Cobb County, was signed into law by Governor Brian Kemp on February 22, 2022. A true and correct copy of HB 826 as enacted by the Georgia General Assembly is attached hereto as Exhibit 1.<sup>1</sup>

2. HB 826 is unconstitutional, and the proposed referendum question for the City of Lost Mountain should not be allowed on the ballot. These 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> Petitioners bring this case to compel public officers to

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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).

remove the referendum from the ballot, declare HB 826 unconstitutional, and otherwise enjoin the upcoming election referendum on May 24, 2022, that, if passed by the voters, would establish the City of Lost Mountain. The voters should not be forced to vote for or against a proposed city whose charter is clearly unconstitutional.

3. The proposed City of Lost Mountain is unconstitutional for three distinct, legally sufficient reasons. First, HB 826 unconstitutionally regulates how the proposed City of Lost Mountain can use its supplementary powers through a local law, HB 826. 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 826 is a local law, and it seeks to regulate how the proposed City of Lost Mountain will forever use its supplementary powers. Specifically, Section 1.12(c) of HB 826 states that numerous supplementary powers<sup>3</sup> can only be utilized by the proposed City of Lost Mountain upon “resolution for ratification by the electors of the city in a referendum.” HB 826, p. 7, ll. 165–166. 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 826, p. 7, ll. 163–169. 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 826 regulates and acts upon—by forcing successive referendums on each power—are numerous. They include animal regulation, building codes, fire, environmental protection (air quality control), public health, sanitation, planning and zoning, retirement, and roadways. HB 826 unconstitutionally forces a referendum on each one of these supplementary powers. HB 826, p. 3-7.

4. Second, HB 826 is unconstitutional because it takes away the proposed City of Lost Mountain'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 826 states that the proposed city "shall exercise [. . .] planning and zoning, code adoption and enforcement, and solid waste management services[.]" HB 826, p. 7, ll. 159–161. This provision unconstitutionally removes the proposed City of Lost Mountain's discretion on what supplementary powers it chooses to use, and it forces the City of Lost Mountain to affirmatively exercise such powers.

5. Third, HB 826 unconstitutionally regulates Cobb County's own supplementary Home Rule powers in the transition provisions. Section 8.11 of HB 826 forces Cobb County "to provide within the territorial limits of the city all government services and functions" for a period up to December 31, 2024. HB 826, p. 50, ll. 1114–1119. 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 Lost Mountain. 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. To be clear, HB 826 is a local law. A true and correct copy of the Local Ad and Affidavit of HB 826's sponsor, the Honorable Representative Ginny Ehrhart, District 36, is attached hereto as Exhibit 2.

## PARTIES

7. Petitioner West Cobb Advocate, Inc., is a Georgia nonprofit advocacy organization. Its primary place of business is 1720 Mars Hill Rd. Ste. 124-398, Acworth, GA 30101. Its board members are voters in the proposed boundaries for the proposed City of Lost Mountain. Further, West Cobb Advocate, Inc. will expend resources to challenge HB 826 in this legal proceeding and would have spent the money otherwise.

8. Petitioner Dora Locklear is a citizen, resident and taxpayer of Cobb County, Georgia, residing within the proposed city limits of the City of Lost Mountain at 5589 Karingway Ct. NW Kennesaw, GA 30152. Ms. Locklear is an elector of Cobb County and the proposed City of Lost Mountain, eligible to vote in the referendum for the City of Lost Mountain, presently set for May 24, 2022. The property owned by Ms. Locklear at 5589 Karingway Ct. NW Kennesaw, GA 30152 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 Lost Mountain, 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 Ms. Locklear is interested in having the laws and Georgia Constitution of 1983 followed and the public duties of the Respondents discharged in a lawful manner, Ms. Locklear 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 826 commands the “election superintendent” of Cobb County to place the City of Lost Mountain 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 826 commands the “election superintendent” of Cobb County to place the City of Lost Mountain 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 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

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



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 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 826 was signed by Governor Brian Kemp on February 22, 2022.

26. HB 826 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 Lost Mountain for approval or rejection.” HB 826, p. 48, ll. 1059–1061. The Cobb County Board of Elections and Registration is the lawful “election superintendent” as referenced in HB 826.

27. HB 826 calls for referendum election to create the proposed City of Lost Mountain for voters within its proposed territorial boundaries. This referendum is set for the “date of the general primary.” HB 826, p. 48, ll. 1062–1063. 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 Lost 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.

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 826 and submitting the referendum to the qualified voters of the proposed City of Lost Mountain. 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 Lost Mountain when the charter for the proposed city is clearly unconstitutional. There is no way that the provisions regulating

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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”).

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 826—which was demonstrably to create a limited city through local law.

31. Section 1.12(c) of HB 826 states that numerous supplementary powers can only be utilized by the proposed City of Lost Mountain upon “resolution for ratification by the electors of the city in a referendum.” HB 826, p. 7, ll. 165–166. This local law unconstitutionally forces the proposed City of Lost Mountain into referendum after referendum in order to exercise its supplementary powers.

32. HB 826 unconstitutionally regulates the proposed City of Lost Mountain’s supplementary powers through a local law. This violates the Georgia Constitution of 1983.

33. The transition provisions of HB 826 violate the prohibition of regulating or acting upon Home Rule powers except by general law. Section 8.11 of HB 826 forces Cobb County “to provide within the territorial limits of the city all government services and functions” for a period up to December 31, 2024. HB 826, p. 50, ll. 1114–1119.

34. HB 826 Section 1.12 is unconstitutional because it forces the proposed City of Lost Mountain to exercise its discretionary supplementary powers. Section 1.12 of HB 826 states that the proposed city “shall exercise [. . .] planning and zoning, code adoption and enforcement, and solid waste management services[.]” HB 826, p. 7, ll. 159–161.

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

35. HB 826 unconstitutionally regulates Cobb County’s supplementary Home Rule powers in the transition provisions. In Section 8.11, HB 826 forces Cobb County “provide within the territorial limits of the city all government services and functions” for a period up to December 31, 2024. HB 826, p. 49, ll. 1097–1120. 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 Lost Mountain. 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.

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 826 violates the Georgia Constitution of 1983. First it regulates and acts upon the proposed City of Lost Mountain’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 Lost Mountain 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 Lost Mountain in the transition.

38. Accordingly, because HB 826 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 Lost Mountain 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. Petitioners have 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 826 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. Petitioners bring 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. Petitioners seek declaratory relief that HB 826 is unconstitutional and must be wholly struck down.

44. HB 826 violates the Georgia Constitution of 1983. First it unconstitutionally regulates the proposed City of Lost Mountain'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 Lost Mountain 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 Lost Mountain in the transition provisions.

45. The Court should enter a declaratory judgment pursuant to O.C.G.A. § 9-4-2 declaring HB 826 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 Lost Mountain, Petitioners have 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 826.

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 Lost Mountain.

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, Petitioners seek injunctive relief.

50. HB 826 violates the Georgia Constitution of 1983. First it unconstitutionally regulates the proposed City of Lost Mountain'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 Lost Mountain 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 Lost Mountain 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. Petitioners have an interest as a qualified voter for the proposed City of Lost Mountain in not having an unconstitutional city be created through referendum. Petitioners and the public will suffer irreparable harm if the vote for the proposed City of Lost Mountain proceeds. The charter for the proposed City of Lost Mountain 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 Lost Mountain because HB 826 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 Lost Mountain. 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. Petitioners have 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, Petitioners respectfully request 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 Lost Mountain presently set for May 24, 2022.

- b) Issue a declaratory judgment declaring HB 826 unconstitutional.
- c) Issue an interlocutory and permanent injunction against Respondents, forcing them remove the ballot question for the City of Lost Mountain 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 13th day of April 2022.

/s/ Allen Lightcap  
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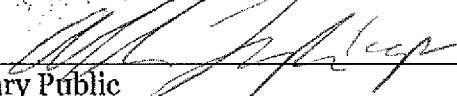
**VERIFICATION**

Personally appeared before the undersigned officer duly authorized to administer oaths, DORA LOCKLEAR, who after being duly sworn and deposed on oath states that the facts set forth in the above Verified Complaint are true and correct and within her personal knowledge.

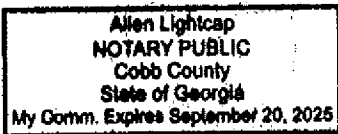
  
\_\_\_\_\_  
DORA LOCKLEAR

Sworn to and subscribed before me

this 13<sup>th</sup> day of April 2022.

  
\_\_\_\_\_  
Notary Public

My commission expires: 9/20/2025



# Exhibit 1

House Bill 826 (AS PASSED HOUSE AND SENATE)

By: Representatives Ehrhart of the 36<sup>th</sup>, Reeves of the 34<sup>th</sup>, Setzler of the 35<sup>th</sup>, Seabaugh of the 34<sup>th</sup>, and Dollar of the 45<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

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

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

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

28 ARTICLE I.  
29 INCORPORATION AND POWERS

30 SECTION 1.10.  
31 Name.

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

36 SECTION 1.11.  
37 Corporate boundaries.

38 (a) The boundaries of this city shall be those set forth and described in Appendix A of this  
39 charter, and said Appendix A is incorporated into and made a part of this charter. The

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

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

49 SECTION 1.12.

50 Powers and construction.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

173 SECTION 1.13.  
174 Exercise of powers.

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

179 SECTION 1.14.  
180 Property Owners' Bill of Rights.

181 (a) Notwithstanding any other provision of this charter to the contrary, and to the maximum  
182 extent permitted by Georgia law, the mayor, city council, city manager, and all departments  
183 and employees of the city shall be guided by the provisions of this property owners' bill of  
184 rights.

185 (b) In respect to all ordinances and the enforcement of codes, the owners of all properties  
186 of two or more acres located within the city shall be afforded the continued use and  
187 enjoyment of their property to the same extent as allowed under the ordinances, zoning code,  
188 land use plan, and written procedures of Cobb County that are in effect on the date the results  
189 of the referendum election provided for by Section 8.10 of this charter are certified.  
190 Examples of such rights shall include, but are not limited to:

- 191 (1) Farming, the keeping of livestock, and other agricultural activities;
- 192 (2) Outdoor burning of vegetative waste in a manner consistent with state law;

- 193 (3) Recreational firearm uses and the lawful discharging of weapons; and  
194 (4) Hunting and fishing activities.

195 ARTICLE II.  
196 GOVERNMENT STRUCTURE

197 SECTION 2.10.  
198 City council creation; number; election.

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

202 SECTION 2.11.  
203 City councilmembers;  
204 terms and qualifications for office.

205 (a) Except as otherwise provided in Article VIII of this charter for the initial terms of  
206 office, the members of the city council shall serve for terms of four years and until their  
207 respective successors are elected and qualified. The term of office of each member of the  
208 city council shall begin on the first day of January immediately following the election of  
209 such member unless general law authorizes or requires the term to begin at the first  
210 organizational meeting in January or upon some other date. No person shall be eligible to  
211 serve as councilmember unless that person shall have been a resident of the city, and the  
212 district from which he or she is elected, for 12 months prior to the date of the election of  
213 members of the city council; each shall continue to reside therein during that person's

214 period of service and to be registered and qualified to vote in municipal elections of this  
215 city.

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

219 (c) For the purposes of electing members of the city council, the city is divided into three  
220 districts. Each district shall be represented by two posts. One member of the board shall  
221 be elected from each post. Post 1 and Post 2 shall represent District 1. Post 3 and Post 4  
222 shall represent District 2. Post 5 and Post 6 shall represent District 3. The three numbered  
223 districts as described in the districting plan attached to and made a part of this Act and  
224 further identified as "User: HD36 Plan Name: LostMtn-cc-2022 Plan Type: Local".

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

226 (A) The term "VTD" shall mean and describe the same geographical boundaries as  
227 provided in the report of the Bureau of the Census for the United States decennial  
228 census of 2020 for the State of Georgia. The separate numeric designations in a district  
229 description which are underneath a VTD heading shall mean and describe individual  
230 Blocks within a VTD as provided in the report of the Bureau of the Census for the  
231 United States decennial census of 2020 for the State of Georgia; and

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

236 (2) Any part of the City of Lost Mountain as described in Appendix B which is not  
237 included in any district described in this plan shall be included within that district  
238 contiguous to such part which contains the least population according to the United States  
239 decennial census of 2020 for the State of Georgia.

240 (3) Any part of the City of Lost Mountain as described in Appendix B as being included  
241 in a particular district shall nevertheless not be included within such district if such part  
242 is not contiguous to such district. Such noncontiguous part shall instead be included  
243 within that district contiguous to such part which contains the least population according  
244 to the United States decennial census of 2020 for the State of Georgia.

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

249 SECTION 2.12.

250 Vacancy; filling of vacancies; suspensions.

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

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

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

264 SECTION 2.13.  
265 Compensation and expenses.

266 (a) The mayor shall receive an initial salary of \$9,000.00 per year, paid in equal monthly  
267 installments from the funds of the municipality. Each councilmember shall receive an  
268 initial salary of \$8,000.00 per year, paid in equal monthly installments from the funds of  
269 the municipality.

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

272 SECTION 2.14.  
273 Conflicts of interest; holding other offices.

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

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

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

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

286 (3) Disclose confidential information, including information obtained at meetings which  
287 are closed pursuant to Chapter 14 of Title 50 of the O.C.G.A., concerning the property,



288 government, or affairs of the governmental body by which that person is engaged without  
289 proper legal authorization or use such information to advance the financial or other  
290 private interest of that person or others;

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

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

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

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

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

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

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

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

331 (h) Penalties for violation.

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

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

339 SECTION 2.15.  
340 Inquiries and investigations.

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

347 SECTION 2.16.  
348 General power and authority of the city council.

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

351 SECTION 2.17.  
352 Organizational meetings.

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

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

360 SECTION 2.18.

361 Meetings.

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

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

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

377 SECTION 2.19.

378 Rules of procedure.

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

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

385 SECTION 2.20.

386 Quorum; voting.

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

394 SECTION 2.21.

395 Ordinance form; procedures.

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

400 (b) An ordinance may be introduced by any councilmember and be read at a regular or  
401 special meeting of the city council. Ordinances shall be considered and adopted or rejected  
402 by the city council in accordance with the rules which it shall establish; provided, however,  
403 that an ordinance shall not be adopted the same day it is introduced, except for emergency  
404 ordinances provided for in Section 2.23 of this charter. Upon introduction of any

405 ordinance, the clerk shall as soon as possible distribute a copy to the mayor and to each  
406 councilmember and shall file a reasonable number of copies in the office of the clerk and  
407 at such other public places as the city council may designate.

408 SECTION 2.22.

409 Action requiring an ordinance.

410 (a) Acts of the city council which have the force and effect of law shall be enacted by  
411 ordinance.

412 (b) In addition to any other notice or hearing provision of state law, prior to the adoption  
413 of any ordinance or resolution changing any rate of taxation, amending the city's land use  
414 plan, or approving the issuance of a general obligation or revenue bond the city shall:

415 (1) Publish notice of such proposed action for two consecutive weeks in the legal organ  
416 of the county;

417 (2) Publish notice of such proposed action of any and all websites and social media  
418 accounts maintained by the city; and

419 (3) Conduct two public hearings on the proposed actions.

420 SECTION 2.23.

421 Emergencies.

422 (a) To meet a public emergency affecting life, health, property, or public peace, the city  
423 council may convene on call of the mayor or three councilmembers and may promptly  
424 adopt an emergency ordinance, but such ordinance may not levy taxes; grant, renew, or  
425 extend a franchise; regulate the rate charged by any public utility for its services; or  
426 authorize the borrowing of money except for loans to be repaid within 30 days. An  
427 emergency ordinance shall be introduced in the form prescribed for ordinances generally,

428 except that it shall be plainly designated as an emergency ordinance and shall contain, after  
429 the enacting clause, a declaration stating that an emergency exists and describing the  
430 emergency in clear and specific terms. An emergency ordinance may be adopted, with or  
431 without amendment, or rejected at the meeting at which it is introduced, but the affirmative  
432 vote of at least three councilmembers shall be required for adoption. It shall become  
433 effective upon adoption or at such later time as it may specify. Every emergency ordinance  
434 shall automatically stand repealed 30 days following the date upon which it was adopted,  
435 but this shall not prevent reenactment of the ordinance in the manner specified in this  
436 section if the emergency still exists. An emergency ordinance may also be repealed by  
437 adoption of a repealing ordinance in the same manner specified in this section for adoption  
438 of emergency ordinances.

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

443 SECTION 2.24.

444 Codes of technical regulations.

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

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

455 SECTION 2.25.

456 Signing; authenticating;  
457 recording; codification; printing.

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

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

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



477

## SECTION 2.26.

478

Election of mayor; forfeiture; compensation.

479 The mayor shall be elected at large by the voters of the city and serve for a term of four years  
480 and until a successor is elected and qualified. The mayor shall be a qualified elector of this  
481 city and shall have been a resident of the city for 12 months prior to the date of election. The  
482 mayor shall continue to reside in this city during the period of service. Vacancies in the  
483 office of mayor shall be addressed in the same manner as provided for councilmembers in  
484 Section 2.12 of this charter. The mayor shall forfeit the office on the same grounds and  
485 under the same procedure as for councilmembers. No person shall serve more than two  
486 consecutive terms as mayor.

487

## SECTION 2.27.

488

Mayor pro tempore.

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

## SECTION 2.28.

496  
497

## Powers and duties of mayor.

498 (a) The mayor shall:

499 (1) Preside at all meetings of the city council, and shall vote only in the event of a tie;

500 (2) Veto, approve, or fail to approve ordinances and resolutions of the city council as  
501 provided in subsection (b) of this section;502 (3) Be the head of the city for the purpose of service of process and for ceremonial  
503 purposes and be the official spokesperson for the city and the chief advocate of policy;

504 (4) Have the power to administer oaths and to take affidavits;

505 (5) Sign as a matter of course on behalf of the city all written and approved contracts,  
506 ordinances, and other instruments executed by the city which by law are required to be  
507 in writing;508 (6) Prepare and submit to the city council a recommended annual operating budget and  
509 recommended capital budget; and510 (7) Fulfill such other executive and administrative duties as the city council shall by  
511 ordinance establish.512 (b) Every official act of the city council having the force and effect of law shall be by  
513 ordinance or resolution. Any such ordinance or resolution adopted or approved by the city  
514 council shall be submitted to the mayor within two calendar days following its adoption or  
515 approval. The mayor shall approve or veto the ordinance or resolution within eight  
516 calendar days after adoption or approval, and no ordinance or resolution shall become  
517 effective without the mayor's approval except as provided in this subsection. If the mayor  
518 vetoes an ordinance or resolution, the mayor shall within two business days of such veto  
519 return it to the city council accompanied by a written statement of the reasons for that veto.  
520 If the city council shall pass the ordinance or resolution by a vote of two-thirds of its  
521 members at the meeting next held after the ordinance or resolution has been returned with

522 the mayor's veto, it shall become law without the mayor's approval. In the event the mayor  
523 does not approve or veto the ordinance or resolution within the time required, it shall  
524 become law without the mayor's approval. The mayor may veto any item or items of any  
525 ordinance or resolution making appropriations; the part or parts of any ordinance or  
526 resolution making an appropriation not vetoed shall become law, and the part or parts  
527 vetoed shall not become law unless passed by the city council over the mayor's veto as  
528 provided in this subsection with respect to the passage of a vetoed ordinance or resolution.

529 SECTION 2.29.

530 Mayor and mayor pro tempore term limits.

531 (a) The mayor shall be limited to two consecutive terms of office as mayor.

532 (b) The mayor pro tempore shall be limited to two consecutive terms of office as mayor  
533 pro tempore. After being out of the office of mayor pro tempore for at least four years, a  
534 councilmember shall again be eligible to serve as mayor pro tempore.

535 SECTION 2.30.

536 City manager; appointment; qualifications; compensation.

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

540 SECTION 2.31.  
541 Removal of city manager.

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

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

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

552 (3) If the manager has not requested a public hearing within the time specified in  
553 paragraph (2) of this subsection, the city council may adopt a final resolution for removal,  
554 which may be made effective immediately, by an affirmative vote of a majority of all its  
555 members. If the manager has requested a public hearing, the city council may adopt a  
556 final resolution for removal, which may be made effective immediately, by an affirmative  
557 vote of a majority of all its members at any time after the public hearing.

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

560 SECTION 2.32.  
561 Acting city manager.

562 By letter filed with the city clerk, the city manager shall designate, subject to approval of the  
563 city council, a qualified city administrative officer to exercise the powers and perform the

564 duties of city manager during the city manager's temporary absence or physical or mental  
565 disability. During such absence or disability, the city council may revoke such designation  
566 at any time and appoint another officer of the city to serve until the city manager shall return  
567 or the city manager's disability shall cease.

568

## SECTION 2.33.

569

## Powers and duties of the city manager.

570 The city manager shall be the chief administrative officer of the city. The city manager shall  
571 be responsible to the city council for the administration of all city affairs placed in the city  
572 manager's charge by or under this charter. As the chief administrative officer, the city  
573 manager shall:

- 574 (1) Appoint and, when the city manager deems it necessary for the good of the city,  
575 suspend or remove all city employees and administrative officers the city manager  
576 appoints, except as otherwise provided by law or personnel ordinances adopted pursuant  
577 to this charter. The city manager may authorize any department director or administrative  
578 officer who is subject to the city manager's direction and supervision to exercise these  
579 powers with respect to subordinates in that officer's department, office, or agency;
- 580 (2) Direct and supervise the administration of all departments, offices, and agencies of  
581 the city, except as otherwise provided by this charter or by law;
- 582 (3) Attend all city council meetings except for closed meetings held for the purposes of  
583 deliberating on the appointment, discipline, or removal of the city manager and have the  
584 right to take part in discussion but the city manager may not vote;
- 585 (4) See that all laws, provisions of this charter, and acts of the city council, subject to  
586 enforcement by the city manager or by officers subject to the city manager's direction and  
587 supervision, are faithfully executed;
- 588 (5) Prepare and submit the annual operating budget and capital budget to the city council;

- 589 (6) Submit to the city council and make available to the public a complete report on the  
590 finances and administrative activities of the city as of the end of each fiscal year;
- 591 (7) Make such other reports as the city council may require concerning the operations of  
592 city departments, offices, and agencies subject to the city manager's direction and  
593 supervision;
- 594 (8) Keep the city council fully advised as to the financial condition and future needs of  
595 the city, and make such recommendations to the city council concerning the affairs of the  
596 city as the city manager deems desirable; and
- 597 (9) Perform other such duties as are specified in this charter or as may be required by the  
598 mayor and city council.

599

## SECTION 2.34.

600

## Council interference with administration.

601 Except for the purpose of inquiries and investigations under Section 2.15 of this charter, the  
602 city council or its members shall deal with city officers and employees who are subject to the  
603 direction and supervision of the city manager solely through the city manager, and neither  
604 the city council nor its members shall give orders to any such officer or employee, either  
605 publicly or privately. The city council shall act in all matters as a body and no member shall  
606 seek individually to influence the official acts of the city manager or any other officer or  
607 employee of the city, or direct or request the appointment of any person to, or his or her  
608 removal from, any office or position of employment, or to interfere in any way with the  
609 performance of the duties by the city manager or other officers or employees.

610 ARTICLE III.  
611 ADMINISTRATIVE AFFAIRS

612 SECTION 3.10.  
613 Administrative and service departments.

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

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

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

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

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

## SECTION 3.11.

## Boards, commissions, and authorities.

- 633 (a) The city council shall create by ordinance such boards, commissions, and authorities  
634 to fulfill any investigative, quasi-judicial, or quasi-legislative function the city council  
635 deems necessary and shall by ordinance establish the composition, period of existence,  
636 duties, and powers thereof.
- 637 (b) All members of boards, commissions, and authorities of the city shall be appointed by  
638 the mayor and council for such terms of office and in such manner as shall be provided by  
639 ordinance, except where other appointing authority, terms of office, or manner of  
640 appointment is prescribed by this charter or by law.
- 641 (c) The city council by ordinance may provide for the compensation and reimbursement  
642 for actual and necessary expenses of the members of any board, commission, or authority.
- 643 (d) Except as otherwise provided by charter or by law, no member of any board,  
644 commission, or authority shall hold any elective office in the city.
- 645 (e) Any vacancy on a board, commission, or authority of the city shall be filled for the  
646 unexpired term in the manner prescribed in this charter for original appointment, except as  
647 otherwise provided by this charter or by law.
- 648 (f) No member of a board, commission, or authority shall assume office until that person  
649 has executed and filed with the clerk of the city an oath obligating that person to perform  
650 faithfully and impartially the duties of that person's office; such oath shall be prescribed by  
651 ordinance and administered by the mayor.
- 652 (g) All members of boards, commissions, or authorities of the city serve at will and may  
653 be removed at any time by the mayor and council unless otherwise provided by law.
- 654 (h) Except as otherwise provided by this charter or by law, each board, commission, or  
655 authority of the city shall elect one of its members as chairperson and one member as vice  
656 chairperson and may elect as its secretary one of its own members or may appoint as



657 secretary an employee of the city. Each board, commission, or authority of the city  
658 government may establish such bylaws, rules, and regulations, not inconsistent with this  
659 charter, ordinances of the city, or law, as it deems appropriate and necessary for the  
660 fulfillment of its duties or the conduct of its affairs. Copies of such bylaws, rules, and  
661 regulations shall be filed with the clerk of the city.

662 SECTION 3.12.

663 City attorney.

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

672 SECTION 3.13.

673 City clerk.

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

677 SECTION 3.14.

678 Position classification and pay plans.

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

685 SECTION 3.15.

686 Personnel policies.

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

689 ARTICLE IV.

690 JUDICIAL BRANCH

691 SECTION 4.10.

692 Creation; name.

693 There shall be a court to be known as the Municipal Court of the City of Lost Mountain.

694 SECTION 4.11.

695 Chief judge; associate judge.

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

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

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

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

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

709 SECTION 4.12.

710 Convening.

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

712 SECTION 4.13.

713 Jurisdiction; powers.

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

- 716 (b) The municipal court shall have authority to punish those in its presence for contempt,  
717 provided that such punishment shall not exceed \$200.00 or ten days in jail.
- 718 (c) The municipal court may fix punishment for offenses within its jurisdiction not  
719 exceeding a fine of \$1,000.00 or imprisonment for 180 days or both such fine and  
720 imprisonment or may fix punishment by fine, imprisonment, or alternative sentencing, as  
721 now or hereafter provided by law.
- 722 (d) The municipal court shall have authority to establish a schedule of fees to defray the  
723 cost of operation and shall be entitled to reimbursement of the cost of meals, transportation,  
724 and caretaking of prisoners bound over to superior courts for violations of state law.
- 725 (e) The municipal court shall have authority to establish bail and recognizances to ensure  
726 the presence of those charged with violations before such court and shall have discretionary  
727 authority to accept cash or personal or real property as surety for the appearance of persons  
728 charged with violations. Whenever any person shall give bail for that person's appearance  
729 and shall fail to appear at the time fixed for trial, that person's bond shall be forfeited by  
730 the judge presiding at such time and an execution issued thereon by serving the defendant  
731 and the defendant's sureties with a rule nisi at least two days before a hearing on the rule  
732 nisi. In the event that cash or property is accepted in lieu of bond for security for the  
733 appearance of a defendant at trial, and if such defendant fails to appear at the time and  
734 place fixed for trial, the cash so deposited shall be on order of the judge declared forfeited  
735 to the city, or the property so deposited shall have a lien against it for the value forfeited  
736 which lien shall be enforceable in the same manner and to the same extent as a lien for city  
737 property taxes.
- 738 (f) The municipal court shall have the same authority as superior courts to compel the  
739 production of evidence in the possession of any party; to enforce obedience to its orders,  
740 judgments, and sentences; and to administer such oaths as are necessary.

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

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

748 SECTION 4.14.

749 Certiorari.

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

754 SECTION 4.15.

755 Rules for court.

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

763 ARTICLE V.  
764 ELECTIONS AND REMOVAL

765 SECTION 5.10.  
766 Applicability of general law.

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

769 SECTION 5.11.  
770 Regular elections; time for holding.

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

776 SECTION 5.12.  
777 Nonpartisan elections.

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

780 SECTION 5.13.  
781 Election by majority vote.

782 Councilmembers shall be elected by a majority vote of the votes cast by the electors of the  
783 city at large.

784 SECTION 5.14.  
785 Special elections; vacancies.

786 In the event that the office of councilmember shall become vacant as provided in Section  
787 2.12 of this charter, the city council or those remaining shall order a special election to fill  
788 the balance of the unexpired term of such official; provided, however, that, if such vacancy  
789 occurs within 12 months of the expiration of the term of that office, the city council or those  
790 members remaining shall appoint a successor for the remainder of the term. In all other  
791 respects, the special election shall be held and conducted in accordance with Chapter 2 of  
792 Title 21 of the O.C.G.A., the "Georgia Election Code," as now or hereafter amended.

793 SECTION 5.15.  
794 Other provisions.

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

798 SECTION 5.16.  
799 Removal of officers.

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

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

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

814 (2) By an order of the Superior Court of Cobb County following a hearing on a  
815 complaint seeking such removal brought by any resident of the City of Lost Mountain.



816 ARTICLE VI.

817 FINANCE

818 SECTION 6.10.

819 Property tax.

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

826 SECTION 6.11.

827 Millage rate; due dates; payment methods.

828 The city council by ordinance shall establish a millage rate for the city property tax, a due  
829 date, and the time period within which these taxes must be paid. The city council by  
830 ordinance may provide for the payment of these taxes by installments or in one lump sum,  
831 as well as authorize the voluntary payment of taxes prior to the time when due.

832 SECTION 6.12.

833 Occupation and business taxes.

834 The city council by ordinance shall have the power to levy such occupation or business taxes  
835 as are not denied by law. The city council may classify businesses, occupations, or

836 professions for the purpose of such taxation in any way which may be lawful and may  
837 compel the payment of such taxes as provided in Section 6.18 of this charter.

838 SECTION 6.13.

839 Licenses; permits; fees.

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

845 SECTION 6.14.

846 Franchises.

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

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

863 SECTION 6.15.

864 Service charges.

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

869 SECTION 6.16.

870 Special assessments.

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

875 SECTION 6.17.

876 Construction; other taxes.

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

880 SECTION 6.18.

881 Collection of delinquent taxes and fees.

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

889 SECTION 6.19.

890 General obligation bonds.

891 The city council shall have the power to issue bonds for the purpose of raising revenue to  
892 carry out any project, program, or venture authorized under this charter or the laws of the  
893 state. Such bonding authority shall be exercised in accordance with the laws governing bond  
894 issuance by municipalities in effect at the time said issue is undertaken, provided that no  
895 general obligation bonds shall be issued by the city unless the issuance of such specific bond

896 series is approved by the voters of the city at a referendum called for approval of such  
897 issuance.

898 SECTION 6.20.

899 Revenue bonds.

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

903 SECTION 6.21.

904 Short-term loans.

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

907 SECTION 6.22.

908 Lease-purchase contracts.

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

916 SECTION 6.23.

917 Fiscal year.

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

921 SECTION 6.24.

922 Budget ordinance.

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

928 SECTION 6.25.

929 Operating budget.

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

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

939

## SECTION 6.26.

940

## Action by city council on budget.

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

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

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

959 SECTION 6.27.

960 Levy of taxes.

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

967 SECTION 6.28.

968 Changes in appropriations.

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

973 SECTION 6.29.

974 Capital improvements.

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



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

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

991 SECTION 6.30.

992 Audits.

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

998 SECTION 6.31.

999 Procurement and property management.

1000 No contract with the city shall be binding on the city unless:

1001 (1) It is in writing;

1002 (2) It is drawn by or submitted and reviewed by the city attorney and, as a matter of  
1003 course, is signed by the city attorney to indicate such drafting or review; and

1004 (3) It is made or authorized by the city council and such approval is entered in the city  
1005 council journal of proceedings pursuant to Section 2.19 of this charter.

1006 SECTION 6.32.

1007 Purchasing.

1008 The city council shall by ordinance prescribe procedures for a system of centralized  
1009 purchasing for the city.

1010 SECTION 6.33.

1011 Sale and lease of property.

1012 (a) The city council may sell and convey or lease any real or personal property owned or  
1013 held by the city for governmental or other purposes as now or hereafter provided by law.

1014 (b) The city council may quitclaim any rights it may have in property not needed for public  
1015 purposes upon report by the city manager and adoption of a resolution, both finding that  
1016 the property is not needed for public or other purposes and that the interest of the city has  
1017 no readily ascertainable monetary value.

1018 (c) Whenever in opening, extending, or widening any street, avenue, alley, or public place  
1019 of the city a small parcel or tract of land is cut off or separated by such work from a larger  
1020 tract or boundary of land owned by the city, the city council may authorize the mayor to  
1021 sell and convey said cut-off or separated parcel or tract of land to an abutting or adjoining  
1022 property owner or owners where such sale and conveyance facilitates the highest and best  
1023 use of the abutting owner's property. Included in the sales contract shall be a provision for  
1024 the rights of way of said street, avenue, alley, or public place. Each abutting property  
1025 owner shall be notified of the availability of the property and given the opportunity to  
1026 purchase said property under such terms and conditions as set out by ordinance. All deeds

1027 and conveyances heretofore and hereafter so executed and delivered shall convey all title  
1028 and interest the city has in such property, notwithstanding the fact that no public sale after  
1029 advertisement was or is hereafter made.

1030 SECTION 6.34.  
1031 Apportionment of revenue.

1032 Except as otherwise agreed pursuant to Chapter 70 of Title 36 of the O.C.G.A., the city is  
1033 authorized to pay all revenues collected by Cobb County on behalf of the city to the county  
1034 in exchange for continuation of services during the transition period provided in Section 8.11  
1035 of this charter and beyond, with the exception of the following revenues, which shall stay  
1036 with the city:

- 1037 (1) New revenues from utility franchise fees;  
1038 (2) Fines collected in municipal court; and  
1039 (3) Revenues generated from any additional millage above the millage rate imposed in  
1040 the county special service district.

1041 ARTICLE VII.  
1042 GENERAL PROVISIONS

1043 SECTION 7.10.  
1044 Bonds for officials.

1045 The officers and employees of this city, both elected and appointed, shall execute such surety  
1046 or fidelity bonds in such amounts and upon such terms and conditions as the city council  
1047 shall from time to time require by ordinance or as may be provided by law.

1048 SECTION 7.11.  
1049 Construction and definitions.

- 1050 (a) Section captions in this charter are informative only and are not to be considered as a  
1051 part thereof.  
1052 (b) The word "shall" is mandatory and the word "may" is permissive.  
1053 (c) The singular shall include the plural, the masculine shall include the feminine, and vice  
1054 versa.

1055 ARTICLE VIII.  
1056 REFERENDUM AND INITIAL ELECTIONS

1057 SECTION 8.10.  
1058 Referendum and initial election.

1059 (a) The election superintendent of Cobb County shall call a special election for the purpose  
1060 of submitting this Act to the qualified voters of the proposed City of Lost Mountain for  
1061 approval or rejection. The superintendent shall set the date of such election for the date of  
1062 the 2022 general primary. The superintendent shall issue the call for such election at least  
1063 30 days prior to the date thereof. The superintendent shall cause the date and purpose of  
1064 the election to be published once a week for two weeks immediately preceding the date  
1065 thereof in the official organ of Cobb County. The ballot shall have written or printed  
1066 thereon the words:

1067 "( ) YES Shall the Act incorporating the City of Lost Mountain in Cobb County  
1068 ( ) NO according to the charter contained in the Act be approved?"

1069 All persons desiring to vote for approval of the Act shall vote "Yes," and those persons  
1070 desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes

1071 cast on such question are for approval of the Act, it shall become of full force and effect  
1072 as provided in Section 8.11 of this charter, otherwise it shall be void and of no force and  
1073 effect.

1074 The initial expense of such election shall be borne by Cobb County. Within two years after  
1075 the elections if the incorporation is approved, the City of Lost Mountain shall reimburse  
1076 Cobb County for the actual cost of printing and personnel services for such election and for  
1077 the initial election of the councilmembers pursuant to this charter. It shall be the duty of the  
1078 superintendent to hold and conduct such election. It shall be his or her further duty to certify  
1079 the result thereof to the Secretary of State.

1080 (b) For the purposes of the referendum election provided for in subsection (a) of this section  
1081 and for the purposes of the special election of the City of Lost Mountain to be held on the  
1082 Tuesday after the first Monday in November, 2022, the qualified electors of the City of Lost  
1083 Mountain shall be those qualified electors of Cobb County residing within the corporate  
1084 limits of the City of Lost Mountain as described by Appendix A of this charter. At  
1085 subsequent municipal elections, the qualified electors of the City of Lost Mountain shall be  
1086 determined pursuant to the authority of Chapter 2 of Title 21 of the O.C.G.A. known as the  
1087 "Georgia Election Code."

1088 (c) Only for the purposes of holding and conducting the referendum election provided for  
1089 in subsection (a) of this section and holding the special election of the City of Lost Mountain  
1090 to be held on the Tuesday after the first Monday in November, 2022, the election  
1091 superintendent of Cobb County is vested with the powers and duties of the election  
1092 superintendent of the City of Lost Mountain and the powers and duties of the governing  
1093 authority of the City of Lost Mountain.

1094 SECTION 8.11.  
1095 Effective dates and transition.

1096 (a) The provisions of this Act necessary for the referendum election provided for in  
1097 Section 8.10 of this charter shall become effective immediately upon this Act's approval  
1098 by the Governor or upon its becoming law without such approval.

1099 (b) Those provisions of this Act necessary for the special election provided for in Section  
1100 8.13 of this charter shall be effective upon the certification of the results of the referendum  
1101 election provided for by Section 8.10 of this charter if this Act is approved at such  
1102 referendum election.

1103 (c) Except as provided in Section 8.10 of this charter, the remaining provisions of this Act  
1104 shall become of full force and effect for all purposes at 12:00 Midnight on January 1, 2023,  
1105 except that the initial councilmembers shall take office immediately following their election  
1106 and by action of a quorum may prior to 12:00 Midnight on January 1, 2023, meet and take  
1107 actions binding on the city.

1108 (d) A period of time will be needed for an orderly transition of various government  
1109 functions from Cobb County to the City of Lost Mountain. Accordingly there shall be a  
1110 transition period beginning on the date the initial mayor and councilmembers take office  
1111 under this charter, and ending at 12:00 Midnight on December 31, 2024. During such  
1112 transition period, all provisions of this charter shall be effective as law, but not all  
1113 provisions of this charter shall be implemented.

1114 (e) During such transition period, Cobb County shall continue to provide within the  
1115 territorial limits of the city all government services and functions which Cobb County  
1116 provided in that area during the years 2021 and 2022 and at the same actual cost, except  
1117 to the extent otherwise provided in this section; provided, however, that upon at least 60  
1118 days' prior written notice to Cobb County by the City of Lost Mountain, responsibility for  
1119 any such service or function shall be transferred to the City of Lost Mountain. During the

1120 transition period, the city shall remain within the Cobb County special services district, but  
1121 shall be removed from such district at the conclusion of such period. Beginning  
1122 July 1, 2023, the City of Lost Mountain shall collect taxes, fees, assessments, fines and  
1123 forfeitures, and other moneys within the territorial limits of the city in the same manner as  
1124 authorized immediately prior to the effective date of this section; provided, however, that  
1125 upon at least 60 days' prior written notice to Cobb County by the City of Lost Mountain,  
1126 the authority to collect any tax, fee, assessment, fine or forfeiture, or other moneys shall  
1127 remain with Cobb County after July 1, 2023, until such time as Cobb County receives  
1128 subsequent notice from the City of Lost Mountain that such authority shall be transferred  
1129 to the City of Lost Mountain.

1130 (f) During the transition period, the governing authority of the City of Lost Mountain:

1131 (1) Shall hold regular meetings and may hold special meetings as provided in this  
1132 charter;

1133 (2) May enact ordinances and resolutions as provided in this charter;

1134 (3) May amend this charter by home rule action as provided by general law;

1135 (4) May accept gifts and grants;

1136 (5) May borrow money and incur indebtedness to the extent authorized by this charter  
1137 and general law;

1138 (6) May levy and collect an ad valorem tax for calendar years 2023 and 2024;

1139 (7) May establish a fiscal year and budget;

1140 (8) May create, alter, or abolish departments, boards, offices, commissions, and agencies  
1141 of the city; appoint and remove officers and employees; and exercise all necessary or  
1142 appropriate personnel and management functions; and

1143 (9) May generally exercise any power granted by this charter or general law, except to  
1144 the extent that a power is specifically and integrally related to the provision of a  
1145 governmental service, function, or responsibility not yet provided or carried out by the  
1146 city.

1147 (g) Except as otherwise provided in this section, during the transition period, the Municipal  
1148 Court of the City of Lost Mountain shall not exercise its jurisdiction. During the transition  
1149 period, all ordinances of Cobb County shall remain applicable within the territorial limits  
1150 of the city and the appropriate court or courts of Cobb County shall retain jurisdiction to  
1151 enforce such ordinances. However, by mutual agreement and concurrent resolutions and  
1152 ordinances if needed Cobb County and the City of Lost Mountain may during the transition  
1153 period transfer all or part of such regulatory authority and the appropriate court jurisdiction  
1154 to the City of Lost Mountain. Any transfer of jurisdiction to the City of Lost Mountain  
1155 during or at the end of the transition period shall not in and of itself abate any judicial  
1156 proceeding pending in Cobb County or the pending prosecution of any violation of any  
1157 ordinance of Cobb County.

1158 (h) During the transition period, the governing authority of the City of Lost Mountain may  
1159 at any time, without the necessity of any agreement by Cobb County, commence to  
1160 exercise its planning and zoning powers; provided, however, that the city shall give the  
1161 county notice of the date on which the city will assume the exercise of such powers. Upon  
1162 the governing authority of the City of Lost Mountain commencing to exercise its planning  
1163 and zoning powers, the Municipal Court of the City of Lost Mountain shall immediately  
1164 have jurisdiction to enforce the planning and zoning ordinances of the city. Effective upon  
1165 the certification of the results of the referendum election provided for by Section 8.10 of  
1166 this charter, Cobb County shall not alter, amend, change, modify, or rezone the zoning or  
1167 land use classification of, or issue any special use permit for, any property located within  
1168 the territory of the City of Lost Mountain. Any amendment made by Cobb County to its  
1169 zoning ordinance after the certification of the results of the referendum election provided  
1170 for by Section 8.10 of this charter shall not apply to any property located within the  
1171 territory of the City of Lost Mountain, and all such property shall be governed by the  
1172 zoning ordinance and land use plan of Cobb County in place on the day the results of such  
1173 referendum are certified until so amended or changed by the governing authority of the



1174 City of Lost Mountain. The provisions of this subsection shall control over any conflicting  
1175 provisions of any other subsection of this section.

1176 (i) Effective upon the termination of the transition period, subsections (b) through (h) of  
1177 this section shall cease to apply except for the last sentence of subsection (g) which shall  
1178 remain effective. Effective upon the termination of the transition period, the City of Lost  
1179 Mountain shall be a full functioning municipal corporation and subject to all general laws  
1180 of this state.

1181 SECTION 8.12.  
1182 Directory nature of dates.

1183 It is the intention of the General Assembly that this Act be construed as directory rather than  
1184 mandatory with respect to any date prescribed in this Act. If it is necessary to delay any  
1185 action called for in this Act for providential cause or any other reason, it is the intention of  
1186 the General Assembly that the action be delayed rather than abandoned. Any delay in  
1187 performing any action under this Act, whether for cause or otherwise, shall not operate to  
1188 frustrate the overall intent of this Act. Without limiting the generality of the foregoing it is  
1189 specifically provided that:

1190 (1) If it is not possible to hold the referendum election provided for in Section 8.10 of  
1191 this charter on the date specified in that section, then such referendum shall be held as  
1192 soon thereafter as is reasonably practicable; and

1193 (2) If it is not possible to hold the first election provided for in Section 8.13 of this  
1194 charter on the date specified in that section, then there shall be a special election for the  
1195 initial members of the governing authority to be held as soon thereafter as is reasonably  
1196 practicable, and the commencement of the initial terms of office shall be delayed  
1197 accordingly.

1198 SECTION 8.13.  
1199 Special election.

1200 (a) The first election for councilmembers shall be a special election held on the Tuesday  
1201 after the first Monday in November, 2022. At such election, the first councilmembers shall  
1202 be elected to serve for the initial terms of office specified in subsections (b) and (c) of this  
1203 section. Thereafter, the time for holding regular municipal elections shall be on the Tuesday  
1204 next following the first Monday in November of each odd-numbered year beginning in 2025.  
1205 The successors to the first mayor and initial councilmembers and future successors shall take  
1206 office at the first organizational meeting in January immediately following their election and  
1207 shall serve for terms of four years and until their respective successors are elected and  
1208 qualified.

1209 (b) The initial councilmembers elected from Post 2, Post 4, and Post 6 shall serve a term of  
1210 office ending on December 31, 2025, and until their respective successors are elected and  
1211 qualified. The initial councilmembers elected from Post 1, Post 3, and Post 5 shall serve a  
1212 term of office ending on December 31, 2027, and until their respective successors are elected  
1213 and qualified. Thereafter, successors to such initial councilmembers shall serve four-year  
1214 terms of office and until their respective successors are elected and qualified.

1215 ARTICLE IX.  
1216 GENERAL REPEALER

1217 SECTION 9.10.  
1218 General repealer.

1219 All laws and parts of laws in conflict with this Act are repealed.

1220

## APPENDIX A

1221

## LEGAL DESCRIPTION

1222

## CITY OF LOST MOUNTAIN, GEORGIA

1223 User: HD36

1224 Plan Name: LostMtn-2022

1225 Plan Type: Local

1226 District LOSTMTN

1227 County Cobb GA

1228 VTD Cheatham Hill 02

1229 Block 030251:

1230 1000 1001 1002 1003 1006 2000 2001 2002 2003 2004 2005 2006

1231 2007 2008 2009 2010 2011 2012

1232 Block 030256:

1233 1013 1020 1021

1234 VTD Cheatham Hill 03

1235 Block 030262:

1236 3002 3003 3004 3005 3006 3007

1237 VTD Dowell 01

1238 Block 030233:

1239 3000

1240 Block 030270:

1241 1002 1003 1005 1006 1007 1008 1009 1010 1012 1013

1242 VTD Durham 01

1243 VTD Ford 01

1244 VTD Frey 01  
1245 Block 030108:  
1246 2003 2005  
1247 Block 030244:  
1248 2000 2001 2002 2003 2004 2005 2006 2007 3000 3001 3002 3003  
1249 3004 3005 3006  
1250 VTD Harrison 01  
1251 VTD Hayes 01  
1252 Block 030265:  
1253 2000  
1254 VTD Kemp 01  
1255 VTD Kemp 02  
1256 VTD Kemp 03  
1257 VTD Lost Mountain 01  
1258 VTD Lost Mountain 02  
1259 VTD Lost Mountain 03  
1260 VTD Lost Mountain 04  
1261 VTD Marietta 4C  
1262 Block 030257:  
1263 3015  
1264 VTD Mars Hill 01  
1265 Block 030108:  
1266 1012 1013 1015 1016  
1267 VTD McClure 01  
1268 Block 030108:  
1269 2004 2007  
1270 Block 030241:

1271 2002 2003 2006  
 1272 VTD Oregon 01  
 1273 VTD Oregon 05  
 1274 VTD Pine Mountain 01  
 1275 VTD Pine Mountain 02  
 1276 Block 030250:  
 1277 1000 1001 1002 1003 1005 1008 1009 1010 1011 1012 2000 2001  
 1278 2002 2003 2004  
 1279 Block 030256:  
 1280 1006 1007 1008 1009  
 1281 VTD Vaughan 01

1282 For the purposes of such plan, LostMtn-2022:

1283 (1) The term "VTD" shall mean and describe the same geographical boundaries as  
 1284 provided in the report of the Bureau of the Census for the United States decennial census  
 1285 of 2020 for the State of Georgia. The separate numeric designations in a district  
 1286 description which are underneath a "VTD" heading shall mean and describe individual  
 1287 blocks within a VTD as provided in the report of the Bureau of the Census for the United  
 1288 States decennial census of 2020 for the State of Georgia; and  
 1289 (2) Except as otherwise provided in the description of any district, whenever the  
 1290 description of any district refers to a named city, it shall mean the geographical  
 1291 boundaries of that city as shown on the census maps for the United States decennial  
 1292 census of 2020 for the State of Georgia.

1293

## APPENDIX B

1294

## City Council Districts

1295 User: HD36

1296 Plan Name: LostMtn-cc-2022

1297 Plan Type: Local

1298 District 001

1299 County Cobb GA

1300 VTD Durham 01

1301 VTD Ford 01

1302 VTD Frey 01

1303 Block 030108:

1304 2003 2005

1305 Block 030244:

1306 2000 2001 2002 2003 2004 2005 2006 2007 3000 3001 3002 3003

1307 3004 3005 3006

1308 VTD Lost Mountain 02

1309 Block 030236:

1310 2000 2001 2002 2003 2004 2005 2006 2007 2008

1311 Block 030252:

1312 2000 2001 2002 2003 2004 2005 2006

1313 VTD Lost Mountain 04

1314 Block 030244:

1315 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011

1316 1012 1013

1317 VTD Mars Hill 01

1318 Block 030108:  
1319 1012 1013 1015 1016  
1320 VTD McClure 01  
1321 Block 030108:  
1322 2004 2007  
1323 Block 030241:  
1324 2002 2003 2006  
1325 VTD Vaughan 01  
  
1326 District 002  
1327 County Cobb GA  
1328 VTD Cheatham Hill 02  
1329 Block 030251:  
1330 1000 1001 1002 1003 1006 2000 2001 2002 2003 2004 2005 2006  
1331 2007 2008 2009 2010 2011 2012  
1332 Block 030256:  
1333 1013 1020 1021  
1334 VTD Harrison 01  
1335 VTD Hayes 01  
1336 Block 030265:  
1337 2000  
1338 VTD Kemp 01  
1339 VTD Kemp 03  
1340 VTD Lost Mountain 02  
1341 Block 030252:  
1342 3000 3001 3002 3003 3004 3005  
1343 VTD Lost Mountain 03

1344 Block 030276:  
1345 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013  
1346 2014 2015 2016 2017 2018 2019  
1347 VTD Lost Mountain 04  
1348 Block 030264:  
1349 1000 1001 1002  
1350 VTD Marietta 4C  
1351 Block 030257:  
1352 3015  
1353 VTD Pine Mountain 01  
1354 VTD Pine Mountain 02  
1355 Block 030250:  
1356 1000 1001 1002 1003 1005 1008 1009 1010 1011 1012 2000 2001  
1357 2002 2003 2004  
1358 Block 030256:  
1359 1006 1007 1008 1009  
  
1360 District 003  
1361 County Cobb GA  
1362 VTD Cheatham Hill 03  
1363 Block 030262:  
1364 3002 3003 3004 3005 3006 3007  
1365 VTD Dowell 01  
1366 Block 030233:  
1367 3000  
1368 Block 030270:  
1369 1002 1003 1005 1006 1007 1008 1009 1010 1012 1013



1370 VTD Kemp 02  
1371 VTD Lost Mountain 01  
1372 VTD Lost Mountain 03  
1373 Block 030268:  
1374 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011  
1375 1012 1013 1014 2000 2001 2002 2003 2004 2005 2006 2007 2008  
1376 2009  
1377 Block 030269:  
1378 1000 1001 1002 1003 1017 2000 2001 2002 2003 2004 2005 2006  
1379 2007 2008 2009 2010 2011  
1380 VTD Oregon 01  
1381 VTD Oregon 05

1382

APPENDIX C

1383

CERTIFICATE AS TO MINIMUM STANDARDS

1384

FOR INCORPORATION OF A NEW MUNICIPAL CORPORATION

1385 I, Representative Ginny Ehrhart, Georgia State Representative from the 36th District and the  
 1386 author of this bill introduced at the 2021 session of the General Assembly of Georgia, which  
 1387 grants an original municipal charter to the City of Lost Mountain, do hereby certify that this  
 1388 bill is in compliance with the minimum standards required by Chapter 31 of Title 36 of the  
 1389 O.C.G.A. in that the area embraced within the original incorporation in this bill is in all  
 1390 respects in compliance with the minimum standards required by Chapter 31 of Title 36 of the  
 1391 O.C.G.A. This certificate is executed to conform to the requirements of Code  
 1392 Section 36-31-5 of the O.C.G.A.

1393 So certified this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

1394

\_\_\_\_\_

1395

1396

Honorable Ginny Ehrhart

1397

Representative, 36th District

1398

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 Lost Mountain; and for other purposes.

**AFFIDAVIT**

GEORGIA, FULTON COUNTY

I, Ginny Ehrhart, Representative from District 36, 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 12th 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/ GINNY EHRHART  
Affiant

Sworn to and subscribed at the  
State Capitol in Atlanta, Georgia,  
This 25<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.**

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(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.

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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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**Paragraph III. Supplementary powers.**

---

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

- (1) Police and fire protection.
- (2) Garbage and solid waste collection and disposal.
- (3) Public health facilities and services, including hospitals, ambulance and emergency rescue services, and animal control.
- (4) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof.
- (5) Parks, recreational areas, programs, and facilities.
- (6) Storm water and sewage collection and disposal systems.
- (7) Development, storage, treatment, purification, and distribution of water.
- (8) Public housing.
- (9) Public transportation.
- (10) Libraries, archives, and arts and sciences programs and facilities.

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

---

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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**Paragraph VII. Community redevelopment.**

---

(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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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**

---

**[\*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

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# 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