



Connie Taylor, Clerk of Superior Court
Cobb County, Georgia

**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

JOSEPH YOUNG,

Petitioner,

v.

**COBB COUNTY, GEORGIA, a
political subdivision of the
State of Georgia,
and JANINE EVERLER, in her
capacity as Director of the Cobb
County Board of Elections and
Registration,**

Respondents.

Civil Action File No.:

VERIFIED COMPLAINT

Petitioner Joseph Young (“Petitioner”), by and through counsel, files this Verified Complaint against Cobb County, Georgia, (“Cobb County”) a political subdivision of the State of Georgia, and Janine Everler (“Director Everler”) (collectively “Respondents”), in her individual and official capacities as the Director of the Cobb County Board of Elections and Registration. In support thereof, Petitioner states as follows:

INTRODUCTION

1. House Bill 840 (2022) (“HB 840”), a local law that provides for the creation of the proposed City of Vinings within unincorporated Cobb County, was signed

into law by Governor Kemp on February 23, 2022. A true and correct copy of the enacted HB 840 is attached hereto as Exhibit 1.¹

2. HB 840 is unconstitutional and fatally defective. These defects go to the root, and they cannot be saved by any severability clause. Petitioner brings this case to prohibit or otherwise enjoin the upcoming election referendum on May 24, 2022, that, if passed by the voters, would establish the City of Vinings. The voters should not be forced to vote for or against a City whose charter is clearly unconstitutional.

3. The proposed City of Vinings is unconstitutional for two distinct, legally sufficient reasons. First, HB 840 unconstitutionally regulates how the proposed City of Vinings can use its supplementary powers through a local law, HB 840. 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 840 is a local law, and it seeks to regulate how the proposed City of Vinings will forever use its supplementary powers. Specifically, Section 1.12 of HB 840 states that many supplementary powers “shall be provided by the city contracting with service providers via intergovernmental agreements or contracts with private parties.” HB 840, p. 3–9. This language clearly seeks to regulate supplementary powers through a local law by mandating that certain powers will be used through “intergovernmental agreements” or “contracts with private parties.” HB 840, p. 3, ll. 59–60.

¹ 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.

4. Second, HB 840 is unconstitutional because it takes away the proposed City of Vinings' 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). HB 840 Section 1.12 states that the city “shall exercise the powers . . . providing [for] planning and zoning, code adoption and enforcement, and parks and recreation services . . . [.]” (emphasis added). HB 840, p. 3, ll. 55–55. This provision unconstitutionally removes the proposed City of Vinings' discretion on what supplementary powers it chooses to use, and it forces the City of Vinings to affirmatively “exercise” such powers.

5. To be clear, HB 840 is a local law. A true and correct copy of the Local Ad and Affidavit of HB 840's sponsor, the Honorable Representative Joseph Carson, District 46, is attached hereto as Exhibit 2.

PARTIES

6. Petitioner Joseph Young is a citizen, resident and taxpayer of Cobb County, Georgia, residing within the proposed city limits of the City of Vinings at 4150 Brookview Dr. SE, Atlanta, GA 30339. Mr. Young is an elector of Cobb County and the proposed City of Vinings, eligible to vote in the referendum for the City of Vinings, presently set for May 24, 2022. The property owned by Mr. Young at 4150 Brookview Dr. SE, Atlanta, GA 30339 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 Vinings, and taxes for such use and benefit have in fact been levied and collected. Because Verified Complaint involves a public right and this action seeks to prevent a public official—the Respondent—from performing an unlawful public duty, and because Mr. Young is

interested in having the laws and Georgia Constitution of 1983 followed and the public duties of the Respondent not discharged in an unlawful manner, Mr. Young has standing to bring this action for a Writ of Prohibition pursuant to O.C.G.A. § 9-6-40 *et seq.* and for an injunction pursuant to O.C.G.A. §§ 9-5-10 and 9-11-65.

7. 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 Cobb County Clerk at 100 Cherokee St., Suite 355, Marietta, GA 30090.

8. Respondent Janine Everler 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 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 840 commands the “election superintendent” of Cobb County to place the City of Vinings referendum on the ballot for the 2022 general primary election on May 24, 2022.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Respondent because she is the Director of the Cobb County Board of Elections and Registration, which is a political subdivision of the State of Georgia located within Cobb County in the State of Georgia. This Court also has jurisdiction over Cobb County, Georgia.

10. 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 Prohibition and injunctive relief.

RELEVANT CONSTITUTIONAL PROVISIONS AND LAW

11. 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.

12. Home Rule powers include “supplementary powers” that counties and municipalities² “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.

13. 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

² 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).

14. 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.

15. 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.

16. 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

17. HB 840 was signed by Governor Kemp on February 23, 2022.

18. HB 840 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 Vinings for approval or rejection.” HB 840, p. 47, ll. 1060–1062.

19. This referendum election is set for the “date of the general primary.” HB 840, p. 47, ll. 1062–1063. The general primary is set for May 24, 2022.

20. The referendum for the proposed City of Vinings is presently being placed on the ballot by Respondent Everler in her official capacity as the Director of the Cobb County Board of Elections and Registration. Respondent Everler is the Director of the Cobb County Board of Elections. Upon information and belief, she has the authority to set the questions on election referenda within Cobb County, Georgia. Upon information and belief, Respondent Everler has the power and obligation to not violate the Georgia

Constitution of 1983 and submit an unconstitutional question to Cobb County voters. Upon information and belief, 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.

21. Upon information and belief, Respondent Everler and Respondent Cobb County have caused ballots to be created for the purpose of complying with HB 840 and submitting the referendum to the qualified voters of the proposed City of Vinings.

22. It would cause irreparable harm to allow the referendum to go to the qualified voters of the proposed City of Vinings when the charter for the proposed city is clearly unconstitutional. There is no way that the provisions regulating supplementary powers can survive a constitutional challenge. Further, they are completely essential to the act itself, and they cannot be severed without thwarting the purposes of HB 840—which was demonstrably to create a limited city through local law.

23. Section 1.12 of HB 840 states that many supplementary powers “shall be provided by the city contracting with service providers via intergovernmental agreements or contracts with private parties.” HB 840, p. 3–9. Section 1.13 of HB 840 purports to regulate numerous supplementary powers. HB 840, p. 4–9 (*e.g.* fire, animal control, police, waste management).

24. HB 840 unconstitutionally regulates the proposed City of Vinings’ supplementary powers through a local law. This violates the Georgia Constitution of 1983.

25. HB 840 Section 1.12 states that the city “shall exercise the powers . . . providing [for] planning and zoning, code adoption and enforcement, and parks and recreation services . . . [.]” HB 840, p. 3, ll. 54–55.

26. HB 840 Section 1.12 is unconstitutional because it forces the proposed City of Vinings to exercise its discretionary supplementary powers.

COUNT I (Writ of Prohibition) to Respondent Everler

27. The averments of paragraphs 1 through 26 are incorporated by reference herein. This count for a writ of prohibition is against Respondent Everler in her capacity as Director of the Cobb County Board of Elections and Registration.

28. HB 840 violates the Georgia Constitution of 1983. First it regulates the proposed City of Vinings' supplementary powers through local law. Ga. Const. of 1983, Art. IX, Sec. II, Par. III (c) and (d). Second, it forces the City of Vinings 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.

29. Accordingly, because HB 840 is clearly unconstitutional, Respondent Everler, in her official capacity as Director of the Cobb County Board of Elections and Registration, must be prohibited from placing the HB 840 referendum to the qualified voters of the proposed City of Vinings.

30. Petitioner has a clear legal right to have the Georgia Constitution of 1983 followed by Cobb County election officials, including but not limited to Respondent Everler and her office.

31. Respondent Everler has a clear legal duty not to submit an unconstitutional question to Cobb County voters.

32. Accordingly, this Honorable Court should issue the extraordinary writ of prohibition to prohibit Respondent from placing the HB 840 referendum on the May 24, 2022, election ballot.

COUNT II (Declaratory Relief)

33. The averments of paragraphs 1 through 32 are incorporated by reference herein.

34. Petitioner brings this action for a declaratory judgment against both Respondent Everler and Respondent Cobb County pursuant to O.C.G.A. § 9-4-2. Specifically, the Ga. Const. Art. I, Sec. II, 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. II, Par. V(b)(1) states that injunctive relief cannot be awarded until a declaratory judgment is made.

35. HB 840 violates the Georgia Constitution of 1983. First it unconstitutionally regulates the proposed City of Vinings' 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 Vinings 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.

36. The Court should enter a declaratory judgment pursuant to O.C.G.A. § 9-4-2 declaring HB 840 is unconstitutional and that it is unlawful for Respondents to place the unconstitutional referendum on the ballot.

37. Petitioner has an interest as a qualified voter for the proposed City of Vinings in not having an unconstitutional city be created through referendum.

38. Respondent Everler, in her capacity as Director of the Cobb County Board of Elections and Registration, has the legal authority to remove the referendum from the May 24, 2022, ballot of qualified voters for the proposed City of Vinings. Accordingly, she is the correct party-in-interest for a declaratory judgment action to stop the illegal

referendum from taking place. Further, Cobb County has the legal authority to remove the referendum from the May 24, 2022, ballot of qualified voters for the proposed City of Vinings.

COUNT III (Injunctive Relief)

39. The averments of paragraphs 1 through 38 are incorporated by reference herein.

40. Upon entry of a declaratory judgment as to Count II, Petitioner seeks injunctive relief against both Respondents.

41. HB 840 violates the Georgia Constitution of 1983. First it unconstitutionally regulates the proposed City of Vinings' 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 Vinings 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.

42. 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 Respondent from placing the unconstitutional referendum on the May 24, 2022, ballot.

43. Petitioner has an interest as a qualified voter for the proposed City of Vinings in not having an unconstitutional city be created through referendum. Petitioner and the public will suffer irreparable harm if the vote for the proposed City of Vinings proceeds. As shown here, the charter for the proposed City of Vinings 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 Vinings because HB 840 and the proposed city charter violate the Constitution of 1983.

44. Respondent Everler, in her official capacity as Director of the Cobb County Board of Elections and Registration, has the legal authority to remove the referendum from the May 24, 2022, ballot of qualified voters for the proposed City of Vinings. Accordingly, she is the correct party-in-interest for an injunction to stop the illegal referendum from taking place. Further Respondent Cobb County has the legal authority to remove the referendum from the May 24, 2022, ballot of qualified voters for the proposed City of Vinings.

45. The relative equities favor 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.

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

WHEREFORE, Petitioners respectfully request that this Honorable Court:

- a) Issue a Writ of Prohibition pursuant to OCGA § 9-6-40 *et seq.*, prohibiting the Respondent Director Everler from placing the City of Vinings on the general primary election ballot on May 24, 2022.
- b) Issue a declaratory judgment against Respondents, declaring that the referendum vote on May 24, 2022 is unlawful and violates the Georgia Constitution of 1983.

- c) Issue an interlocutory and permanent injunction against Respondents, restraining them from placing the City of Vinings on 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 4th day of April, 2021.

/s/ Allen Lightcap
Allen Lightcap 553459
Attorney for Petitioner

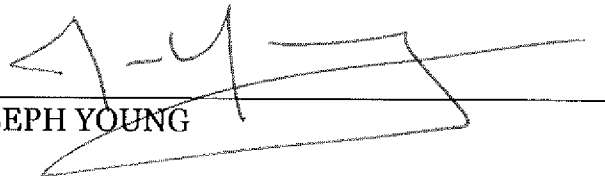
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VERIFICATION

Personally appeared before the undersigned officer duly authorized to administer oaths, JOSEPH YOUNG, 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 his personal knowledge.



JOSEPH YOUNG

Sworn to and subscribed before me

this 3rd day of April, 2022.



Notary Public

My commission expires: 9/20/2025

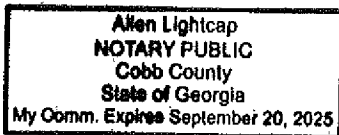


Exhibit 1

House Bill 840 (AS PASSED HOUSE AND SENATE)

By: Representatives Carson of the 46th and Dollar of the 45th

A BILL TO BE ENTITLED

AN ACT

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

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

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

27 ARTICLE I.
28 INCORPORATION AND POWERS

29 SECTION 1.10.

30 Name.

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

34 SECTION 1.11.

35 Corporate boundaries.

36 (a) The boundaries of this city shall be those set forth and described in Appendix A of this
37 charter, and said Appendix A is incorporated into and made a part of this charter. The
38 boundaries of this city at all times shall be shown on a map, a written description, or any
39 combination thereof, to be retained permanently in the office of the city clerk and to be

40 designated, as the case may be: "Official Map (or Description) of the corporate limits of
41 the City of Vinings, Georgia." Photographic, typed, or other copies of such map or
42 description certified by the city clerk shall be admitted as evidence in all courts and shall
43 have the same force and effect as with the original map or description.

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

47 SECTION 1.12.

48 Powers and construction.

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

53 (b) The city shall exercise the powers enumerated in Section 1.13 of this charter for the
54 purposes of directly providing planning and zoning, code adoption and enforcement, and
55 parks and recreation services and those items directly related to the provision of such
56 services and for the general administration of the city in providing such services.

57 (c) Except for the services enumerated in subsection (b) of this section, the provision of
58 services and exercise of powers enumerated in Section 1.13 of this charter shall be
59 provided by the city contracting with service providers via intergovernmental agreements
60 or contracts with private parties.

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

SECTION 1.13.

Examples of powers.

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

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

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

78 (4) Business regulation and taxation. To levy and to provide for the collection of
79 regulatory fees and taxes on privileges, occupations, trades, and professions, as
80 authorized by Title 48 of the O.C.G.A., or other such applicable laws as are or may
81 hereafter be enacted; to permit and regulate the same; to provide for the manner and
82 method of payment of such regulatory fees and taxes; and to revoke such permits after
83 due process for failure to pay any city taxes or fees;

84 (5) Condemnation. To condemn property, inside or outside the corporate limits of the
85 city, for present or future use and for any corporate purpose deemed necessary by the
86 governing authority, utilizing procedures enumerated in Title 22 of the O.C.G.A., or such
87 other applicable laws as are or may hereafter be enacted;

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

- 90 (7) Emergencies. To establish procedures for determining and proclaiming that an
91 emergency situation exists within or outside the city and to make and carry out all
92 reasonable provisions deemed necessary to deal with or meet such an emergency for the
93 protection, safety, health, or well-being of the citizens of the city;
- 94 (8) Environmental protection. To protect and preserve the natural resources,
95 environment, and vital areas of the state through the preservation and improvement of air
96 quality, the restoration and maintenance of water resources, the control of erosion and
97 sedimentation, the management of solid and hazardous waste, and other necessary actions
98 for the protection of the environment;
- 99 (9) Fire regulations. To fix and establish fire limits and, from time to time, extend,
100 enlarge, or restrict the same; to prescribe fire safety regulations not inconsistent with
101 general law, relating to both fire prevention and detection and to fire fighting; and to
102 prescribe penalties and punishment for violations thereof;
- 103 (10) Garbage fees. To levy, fix, assess, and collect a garbage, refuse and trash collection
104 and disposal, and other sanitary service charge, tax, or fee for such services as may be
105 necessary in the operation of the city from all individuals, firms, and corporations
106 residing in the city or doing business therein benefiting from such services; to enforce the
107 payment of such charges, taxes, or fees; and to provide for the manner and method of
108 collecting such service charges;
- 109 (11) General health, safety, and welfare. To define, regulate, and prohibit any act,
110 practice, conduct, or use of property which is detrimental to health, sanitation,
111 cleanliness, welfare, and safety of the inhabitants of the city and to provide for the
112 enforcement of such standards;
- 113 (12) Gifts. To accept or refuse gifts, donations, bequests, or grants from any source for
114 any purpose related to powers and duties of the city and the general welfare of its
115 citizens, on such terms and conditions as the donor or grantor may impose;

- 116 (13) Health and sanitation. To prescribe standards of health and sanitation and to
117 provide for the enforcement of such standards;
- 118 (14) Jail sentences. To provide that persons given jail sentences in the municipal court
119 may work out such sentences in any public works or on the streets, roads, drains, and
120 other public property in the city; to provide for commitment of such persons to any jail;
121 or to provide for commitment of such persons to any county work camp or county jail by
122 agreement with the appropriate county officials;
- 123 (15) Motor vehicles. To regulate the operation of motor vehicles and exercise control
124 over all traffic, including parking upon or across the streets, roads, alleys, and walkways
125 of the city;
- 126 (16) Municipal agencies and delegation of power. To create, alter, or abolish
127 departments, boards, offices, commissions, and agencies of the city and to confer upon
128 such agencies the necessary and appropriate authority for carrying out all the powers
129 conferred upon or delegated to the same;
- 130 (17) Municipal debts. To appropriate and borrow money for the payment of debts of the
131 city and to issue bonds for the purpose of raising revenue to carry out any project,
132 program, or venture authorized by this charter or the laws of the State of Georgia;
- 133 (18) Municipal property ownership. To acquire, dispose of, lease, and hold in trust or
134 otherwise any real, personal, or mixed property, in fee simple or lesser interest, inside or
135 outside the property limits of the city;
- 136 (19) Municipal property protection. To provide for the preservation and protection of
137 property and equipment of the city and the administration and use of same by the public;
138 and to prescribe penalties and punishment for violations thereof;
- 139 (20) Municipal utilities. To acquire, lease, construct, operate, maintain, sell, and dispose
140 of public utilities, including but not limited to a system of waterworks, sewers and drains,
141 sewage disposal, storm-water management, gas works, electric light panels, cable
142 television and other telecommunications, transportation facilities, public airports, and any

143 other public utility; and to fix the taxes, charges, rates, fares, fees, assessments,
144 regulations, and penalties and provide for the withdrawal of service for refusal or failure
145 to pay the same;

146 (21) Nuisance. To define a nuisance and provide for its abatement, whether on public
147 or private property;

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

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

153 (24) Police and fire protection. To exercise the power of arrest through duly appointed
154 police officers, and to establish, operate, or contract for police and firefighting agencies;

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

158 (26) Public improvements. To provide for the acquisition, construction, building,
159 operation, and maintenance of parks and playgrounds, public grounds, recreational
160 facilities, public buildings, and charitable, cultural, educational, recreational,
161 conservation, and sports institutions, agencies, and facilities; and to regulate the use of
162 public improvements;

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

168 (28) Regulation of roadside areas. To prohibit or regulate and control the erection,
169 removal, and maintenance of signs, billboards, trees, shrubs, fences, buildings, and any

170 and all other structures or obstructions upon or adjacent to the rights of way of streets and
171 roads or within view thereof, within or abutting the corporate limits of the city; and to
172 prescribe penalties and punishment for violation of such ordinances;

173 (29) Retirement. To provide and maintain a retirement plan for officers and employees
174 of the city;

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

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

189 (32) Solid waste disposal. To provide for the collection and disposal of garbage, rubbish,
190 and refuse, and to regulate the collection and disposal of garbage, rubbish, and refuse by
191 others; and to provide for the separate collection of glass, tin, aluminum, cardboard,
192 paper, and other recyclable materials, and to provide for the sale of such items;

193 (33) Special areas of public regulation. To regulate or prohibit junk dealers, pawn shops,
194 the manufacture, sale, or transportation of any intoxicating liquors, alcoholic beverages,
195 and use of firearms; to regulate the transportation, storage, and use of combustible,
196 explosive, and inflammable materials, the use of lighting and heating equipment, and any

197 other business or situation which may be dangerous to persons or property; to regulate
198 and control the conduct of peddlers and itinerant traders, theatrical performances,
199 exhibitions, and shows of any kind, by taxation or otherwise; and to license, tax, regulate,
200 or prohibit professional fortunetelling, palmistry, adult bookstores, and massage parlors;
201 (34) Special assessments. To levy and provide for the collection of special assessments
202 to cover the costs for any public improvements;
203 (35) Taxes: ad valorem. To levy and provide for the assessment, valuation, revaluation,
204 and collection of taxes on all property subject to taxation;
205 (36) Taxes: other. To levy and collect such other taxes as may be allowed, now or in the
206 future, by law;
207 (37) Taxicabs. To regulate and license vehicles operated for hire in the city; to limit the
208 number of such vehicles; to require the operators thereof to be licensed; to require public
209 liability insurance on such vehicles in the amounts to be prescribed by ordinance; and to
210 regulate the parking of such vehicles;
211 (38) Urban redevelopment. To organize and operate an urban redevelopment program;
212 and
213 (39) Other powers. To exercise and enjoy all other powers, functions, rights, privileges,
214 and immunities necessary or desirable to promote or protect the safety, health, peace,
215 security, good order, comfort, convenience, or general welfare of the city and its
216 inhabitants; to exercise all implied powers necessary or desirable to carry into execution
217 all powers granted in this charter as fully and completely as if such powers were fully
218 stated herein; to exercise all powers now or in the future authorized to be exercised by
219 other municipal governments under other laws of the State of Georgia; and no listing of
220 particular powers in this charter shall be held to be exclusive of others, nor restrictive of
221 general words and phrases granting powers, but shall be held to be in addition to such
222 powers, unless expressly prohibited to municipalities under the Constitution or applicable
223 laws of the State of Georgia.

224 SECTION 1.14.

225 Exercise of powers.

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

230 ARTICLE II.

231 GOVERNMENT STRUCTURE

232 SECTION 2.10.

233 City council creation; number; election.

234 The governing authority of the city, except as otherwise specifically provided in this charter,
235 shall be vested in a city council to be composed of a mayor and four councilmembers. The
236 councilmembers shall be elected in the manner provided by this charter.

237 SECTION 2.11.

238 City councilmembers;

239 Terms and qualifications for office.

240 (a) Except as otherwise provided in Article VIII of this charter for the initial terms of
241 office, the mayor and the members of the city council shall serve for terms of four years
242 and until their respective successors are elected and qualified. The term of office of the
243 mayor and of each member of the city council shall begin on the first day of January
244 immediately following the election of such member unless general law authorizes or

245 requires the term to begin at the first organizational meeting in January or upon some other
246 date. No person shall be eligible to serve as councilmember unless that person shall have
247 been a resident of the city for 12 months prior to the date of the election of members of the
248 city council; each shall continue to reside therein during that person's period of service and
249 to be registered and qualified to vote in municipal elections of this city. No person shall
250 serve more than two consecutive terms as a councilmember.

251 (b) For the purposes of electing members of the city council, the city is divided into four
252 districts. One member of the city council shall be elected from each district by the electors
253 of the city voting at large. The four numbered districts are described in Appendix B
254 attached to and made a part of this Act and further identified as 'User: HD46 Plan Name:
255 vinings-cc-2022 Plan Type: Local'.

256 (c)(1) For the purposes of such plan:

257 (A) The term 'VTD' shall mean and describe the same geographical boundaries as
258 provided in the report of the Bureau of the Census for the United States decennial
259 census of 2020 for the State of Georgia. The separate numeric designations in a district
260 description which are underneath a VTD heading shall mean and describe individual
261 Blocks within a VTD as provided in the report of the Bureau of the Census for the
262 United States decennial census of 2020 for the State of Georgia; and

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

267 (2) Any part of the City of Vinings as described in Appendix B which is not included in
268 any district described in this plan shall be included within that district contiguous to such
269 part which contains the least population according to the United States decennial census
270 of 2020 for the State of Georgia.

271 (3) Any part of the City of Vinings as described in Appendix B as being included in a
272 particular district shall nevertheless not be included within such district if such part is not
273 contiguous to such district. Such noncontiguous part shall instead be included within that
274 district contiguous to such part which contains the least population according to the
275 United States decennial census of 2020 for the State of Georgia.

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

280 SECTION 2.12.

281 Vacancy; filling of vacancies; suspensions.

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

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

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

296

SECTION 2.13.

297

Compensation and expenses.

298

(a) The mayor shall receive an initial salary of \$9,000 per year. Each councilmember shall receive an initial salary of \$8,000.00 per year. The mayor and councilmembers shall be paid in equal monthly installments from the funds of the municipality.

299

300

301

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

302

303

(c) The mayor and councilmembers shall be reimbursed for actual expenses necessarily incurred in connection with their service.

304

305

SECTION 2.14.

306

Conflicts of interest; holding other offices.

307

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

308

309

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

310

311

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

312

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315

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

316

317

318

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

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

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

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

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

344 (d) Use of public property. No elected official, appointed officer, or employee of the city
345 or any agency or entity to which this charter applies shall use property owned by such

346 governmental entity for personal benefit, convenience, or profit except in accordance with
347 policies promulgated by the city council or the governing body of such agency or entity.

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

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

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

364 (h) Penalties for violation.

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

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

372 SECTION 2.15.
373 Inquiries and investigations.

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

380 SECTION 2.16.
381 General power and authority of the city council.

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

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

391 SECTION 2.17.
392 Organizational meetings.

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

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

400 SECTION 2.18.
401 Meetings.

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

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

413 (c) All meetings of the city council shall be public to the extent required by law, and notice
414 to the public of special meetings shall be made as fully as is reasonably possible as

415 provided by Code Section 50-14-1 of the O.C.G.A. or other such applicable laws as are or
416 may hereafter be enacted.

417 SECTION 2.19.
418 Rules of procedure.

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

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

425 SECTION 2.20.
426 Quorum; voting.

427 Three councilmembers, or two councilmembers and the mayor, shall constitute a quorum
428 and shall be authorized to transact business of the city council. Voting on the adoption of
429 ordinances shall be by voice vote and the vote shall be recorded in the journal, but any
430 councilmember shall have the right to request a roll-call vote and such vote shall be
431 recorded in the journal. Except as otherwise provided in this charter, the affirmative vote
432 of three councilmembers, or two councilmembers and the mayor, shall be required for the
433 adoption of any ordinance, resolution, or motion. An abstention shall be counted as an
434 affirmative vote.

435

SECTION 2.21.

436

Ordinance form; procedures.

437

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

441

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

449

SECTION 2.22.

450

Action requiring an ordinance.

451

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

453

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

456

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

- 458 (2) Publish notice of such proposed action on any and all websites and social media
459 accounts maintained by the city; and
460 (3) Conduct two public hearings on the proposed actions.

461 SECTION 2.23.

462 Emergencies.

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

480 (b) Such meetings shall be open to the public to the extent required by law and notice to
481 the public of emergency meetings shall be made as fully as is reasonably possible in

482 accordance with Code Section 50-14-1 of the O.C.G.A. or such other applicable laws as
483 are or may hereafter be enacted.

484 SECTION 2.24.

485 Codes of technical regulations.

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

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

496 SECTION 2.25.

497 Signing; authenticating;
498 recording; codification; printing.

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

501 (b) The city council shall provide for the preparation of a general codification of all the
502 ordinances of the city having the force and effect of law. The general codification shall be
503 adopted by the city council by ordinance and shall be published promptly, together with
504 all amendments thereto and such codes of technical regulations and other rules and

505 regulations as the city council may specify. This compilation shall be known and cited
506 officially as "The Code of the City of Vinings, Georgia." Copies of the code shall be
507 furnished to all officers, departments, and agencies of the city and made available for
508 purchase by the public at a reasonable price as fixed by the city council.

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

518 SECTION 2.26.

519 City manager; appointment; qualifications; compensation.

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

523 SECTION 2.27.

524 Removal of city manager.

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

527 SECTION 2.28.

528 Acting city manager.

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

534 SECTION 2.29.

535 Powers and duties of the city manager.

536 The city manager shall be the chief administrative officer of the city. The city manager shall
537 be responsible to the city council for the administration of all city affairs placed in the city
538 manager's charge by or under this charter. As the chief administrative officer, the city
539 manager shall:

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

546 (2) Direct and supervise the administration of all departments, offices, and agencies of
547 the city, except as otherwise provided by this charter or by law;

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

- 551 (4) See that all laws, provisions of this charter, and acts of the city council, subject to
552 enforcement by the city manager or by officers subject to the city manager's direction and
553 supervision, are faithfully executed;
- 554 (5) Prepare and submit the annual operating budget and capital budget to the city
555 council;
- 556 (6) Submit to the city council and make available to the public a complete report on the
557 finances and administrative activities of the city as of the end of each fiscal year;
- 558 (7) Make such other reports as the city council may require concerning the operations
559 of city departments, offices, and agencies subject to the city manager's direction and
560 supervision;
- 561 (8) Keep the city council fully advised as to the financial condition and future needs of
562 the city, and make such recommendations to the city council concerning the affairs of the
563 city as the city manager deems desirable; and
- 564 (9) Perform other such duties as are specified in this charter or as may be required by the
565 mayor and city council.

566 SECTION 2.30.

567 Council interference with administration.

568 Except for the purpose of inquiries and investigations under Section 2.15 of this charter, the
569 city council or its members shall deal with city officers and employees who are subject to the
570 direction and supervision of the city manager solely through the city manager, and neither
571 the city council nor its members shall give orders to any such officer or employee, either
572 publicly or privately. The city council shall act in all matters as a body, and no member shall
573 seek individually to influence the official acts of the city manager or any other officer or
574 employee of the city, or direct or request the appointment of any person to, or his or her

575 removal from, any office or position of employment, or to interfere in any way with the
576 performance of the duties by the city manager or other officers or employees.

577 SECTION 2.31.

578 Election of mayor; forfeiture.

579 The mayor shall be elected at large by the voters of the city and serve for a term of four years
580 and until a successor is elected and qualified. The mayor shall be a qualified elector of this
581 city and shall have been a resident of the city for 12 months prior to the date of election. The
582 mayor shall continue to reside in this city during the period of service. Vacancies in the
583 office of mayor shall be addressed in the same manner as provided for councilmembers in
584 Section 2.12 of this charter. The mayor shall forfeit the office on the same grounds and
585 under the same procedure as for councilmembers. No persons shall serve more than two
586 consecutive terms as mayor.

587 SECTION 2.32.

588 Mayor pro tem.

589 The city council at the first regular meeting after the newly elected councilmembers have
590 taken office following each election shall elect a councilmember to serve as mayor pro tem.
591 The mayor pro tem shall be elected by a majority vote of the city council. The mayor pro
592 tem shall assume the duties and powers of the mayor during the mayor's physical or mental
593 disability, suspension from office, or absence. Any such disability of the mayor shall be
594 declared by a majority vote of the city council. The mayor pro tem shall sign all contracts
595 and ordinances in which the mayor has a disqualifying financial interest as provided in
596 Section 2.14 of this charter. When acting as mayor, the mayor pro tem shall be entitled to
597 vote as a member of the council.

598 SECTION 2.33.
599 Powers and duties of mayor.

600 The mayor shall:

- 601 (1) Preside at all meetings of the city council;
602 (2) Be the head of the city for the purpose of service of process and for ceremonial
603 purposes, and be the official spokesperson for the city and the chief advocate of policy;
604 (3) Have the power to administer oaths and to take affidavits;
605 (4) Sign as a matter of course on behalf of the city all written and approved contracts,
606 ordinances, resolutions, and other instruments executed by the city which by law are
607 required to be in writing;
608 (5) Vote on matters before the city council;
609 (6) If no city manager has been appointed, prepare and submit to the city council a
610 recommended annual operating budget and recommended capital budget; and
611 (7) Perform such other duties as may be required by law, this charter, or by ordinance.

612 ARTICLE III.
613 ADMINISTRATIVE AFFAIRS

614 SECTION 3.10.
615 Administrative and service departments.

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

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

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

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

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

633 SECTION 3.11.

634 Boards, commissions, and authorities.

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

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

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

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

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

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

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

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

664 SECTION 3.12.

665 City attorney.

666 The city council shall appoint a city attorney, together with such assistant city attorneys as
667 may be authorized, and shall provide for the payment of such attorney or attorneys for
668 services rendered to the city. The city attorney shall be responsible for providing for the
669 representation and defense of the city in all litigation in which the city is a party; may be the

670 prosecuting officer in the municipal court; shall attend the meetings of the city council as
671 directed; shall advise the mayor and council and other officers and employees of the city
672 concerning legal aspects of the city's affairs; and shall perform such other duties as may be
673 required by virtue of such person's position as city attorney.

674 SECTION 3.13.
675 City clerk.

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

680 SECTION 3.14.
681 Position classification and pay plans.

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

688 SECTION 3.15.
689 Personnel policies.

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

692 ARTICLE IV.
693 JUDICIAL BRANCH

694 SECTION 4.10.
695 Creation; name.

696 There shall be a court to be known as the Municipal Court of the City of Vinings.

697 SECTION 4.11.
698 Chief judge; associate judge.

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

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

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

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

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

712 SECTION 4.12.

713 Convening.

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

715 SECTION 4.13.

716 Jurisdiction; powers.

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

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

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

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

728 (e) The municipal court shall have authority to establish bail and recognizances to ensure
729 the presence of those charged with violations before such court and shall have discretionary
730 authority to accept cash or personal or real property as surety for the appearance of persons

731 charged with violations. Whenever any person shall give bail for that person's appearance
732 and shall fail to appear at the time fixed for trial, that person's bond shall be forfeited by
733 the judge presiding at such time and an execution issued thereon by serving the defendant
734 and the defendant's sureties with a rule nisi at least two days before a hearing on the rule
735 nisi. In the event that cash or property is accepted in lieu of bond for security for the
736 appearance of a defendant at trial, and if such defendant fails to appear at the time and
737 place fixed for trial, the cash so deposited shall be on order of the judge declared forfeited
738 to the city, or the property so deposited shall have a lien against it for the value forfeited
739 which lien shall be enforceable in the same manner and to the same extent as a lien for city
740 property taxes.

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

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

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

751 SECTION 4.14.

752 Certiorari.

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

757 SECTION 4.15.

758 Rules for court.

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

766 ARTICLE V.

767 ELECTIONS AND REMOVAL

768 SECTION 5.10.

769 Applicability of general law.

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

772 SECTION 5.11.

773 Regular elections; time for holding.

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

780 SECTION 5.12.

781 Nonpartisan elections.

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

784 SECTION 5.13.

785 Election by majority.

786 The candidate receiving a majority of the votes cast for any city office shall be elected.

787 SECTION 5.14.

788 Special elections; vacancies.

789 In the event that the office of mayor or councilmember shall become vacant as provided in
790 Section 2.12 of this charter, the city council or those remaining shall order a special election
791 to fill the balance of the unexpired term of such official; provided, however, that, if such

792 vacancy occurs within 12 months of the expiration of the term of that office, the city council
793 or those members remaining shall appoint a successor for the remainder of the term. In all
794 other respects, the special election shall be held and conducted in accordance with Chapter 2
795 of Title 21 of the O.C.G.A., the "Georgia Election Code," as now or hereafter amended.

796 SECTION 5.15.
797 Other provisions.

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

801 SECTION 5.16.
802 Removal of officers.

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

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

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

815 Superior Court of Cobb County. Such appeal shall be governed by the same rules as
816 govern appeals to the superior court from the probate court; or
817 (2) By an order of the Superior Court of Cobb County following a hearing on a
818 complaint seeking such removal brought by any resident of the City of Vinings.

819 ARTICLE VI.
820 FINANCE

821 SECTION 6.10.
822 Property tax.

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

829 SECTION 6.11.
830 Millage rate; due dates; payment methods.

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

835 SECTION 6.12.
836 Occupation and business taxes.

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

841 SECTION 6.13.
842 Licenses; permits; fees.

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

848 SECTION 6.14.
849 Franchises.

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

857 no franchise shall be granted unless the city receives just and adequate compensation
858 therefor. The city council shall provide for the registration of all franchises with the city
859 clerk in a registration book kept by the city clerk. The city council may provide by
860 ordinance for the registration within a reasonable time of all franchises previously granted.

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

866 SECTION 6.15.

867 Service charges.

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

872 SECTION 6.16.

873 Special assessments.

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

878 SECTION 6.17.

879 Construction; other taxes.

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

883 SECTION 6.18.

884 Collection of delinquent taxes and fees.

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

892 SECTION 6.19.

893 General obligation bonds.

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

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 15 days prior to the end of the current fiscal year. If the city
948 council fails to adopt the budget by said date, the amounts appropriated for operation for
949 the then current fiscal year shall be deemed adopted for the ensuing fiscal year on a
950 month-to-month basis, with all items prorated accordingly, until such time as the city
951 council adopts a budget for the ensuing fiscal year. Adoption of the budget shall take the
952 form of an appropriations ordinance setting out the estimated revenues in detail by sources
953 and making appropriations according to fund and by organizational unit, purpose, or
954 activity as set out in the budget preparation ordinance adopted pursuant to Section 6.24 of
955 this charter.

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

960 SECTION 6.27.

961 Levy of taxes.

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

968 SECTION 6.28.

969 Changes in appropriations.

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

974 SECTION 6.29.

975 Capital improvements.

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

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

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

992 SECTION 6.30.

993 Audits.

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

999 SECTION 6.31.

1000 Procurement and property management.

1001 No contract with the city shall be binding on the city unless:

1002 (1) It is in writing;

1003 (2) It is drawn by or submitted and reviewed by the city attorney and, as a matter of
1004 course, is signed by the city attorney to indicate such drafting or review; and

1005 (3) It is made or authorized by the city council and such approval is entered in the city
1006 council journal of proceedings pursuant to Section 2.19 of this charter.

1007 SECTION 6.32.

1008 Purchasing.

1009 The city council shall by ordinance prescribe procedures for a system of centralized
1010 purchasing for the city.

1011 SECTION 6.33.

1012 Sale and lease of property.

1013 (a) The city council may sell and convey or lease any real or personal property owned or
1014 held by the city for governmental or other purposes as now or hereafter provided by law.

1015 (b) The city council may quitclaim any rights it may have in property not needed for public
1016 purposes upon report by the city manager and adoption of a resolution, both finding that
1017 the property is not needed for public or other purposes and that the interest of the city has
1018 no readily ascertainable monetary value.

1019 (c) Whenever in opening, extending, or widening any street, avenue, alley, or public place
1020 of the city a small parcel or tract of land is cut off or separated by such work from a larger
1021 tract or boundary of land owned by the city, the city council may authorize the mayor to
1022 sell and convey said cut-off or separated parcel or tract of land to an abutting or adjoining
1023 property owner or owners where such sale and conveyance facilitates the highest and best
1024 use of the abutting owner's property. Included in the sales contract shall be a provision for
1025 the rights of way of said street, avenue, alley, or public place. Each abutting property
1026 owner shall be notified of the availability of the property and given the opportunity to
1027 purchase said property under such terms and conditions as set out by ordinance. All deeds

1028 and conveyances heretofore and hereafter so executed and delivered shall convey all title
1029 and interest the city has in such property, notwithstanding the fact that no public sale after
1030 advertisement was or is hereafter made.

1031 SECTION 6.34.

1032 Apportionment of revenue.

1033 Except as otherwise agreed pursuant to Chapter 70 of Title 36 of the O.C.G.A., the city is
1034 authorized to pay all revenues collected by Cobb County on behalf of the city to the county
1035 in exchange for continuation of services during the transition period provided in Section 8.11
1036 of this charter and beyond, with the exception of the following revenues, which shall stay
1037 with the city:

- 1038 (1) New revenues from utility franchise fees;
1039 (2) Fines collected in municipal court; and
1040 (3) Revenues generated from any additional millage above the millage rate imposed in
1041 the county special service district.

1042 ARTICLE VII.

1043 GENERAL PROVISIONS

1044 SECTION 7.10.

1045 Bonds for officials.

1046 The officers and employees of this city, both elected and appointed, shall execute such surety
1047 or fidelity bonds in such amounts and upon such terms and conditions as the city council
1048 shall from time to time require by ordinance or as may be provided by law.

SECTION 7.11.

1049

1050

Construction and definitions.

1051

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

1052

1053

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

1054

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

1055

ARTICLE VIII.

1056

1057

REFERENDUM AND INITIAL ELECTIONS

SECTION 8.10.

1058

1059

Referendum and initial election.

1060

(a) 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 Vinings for approval or rejection. The superintendent shall set the date of such election for the date of the 2022 general primary. The superintendent shall issue the call for such election at least 30 days prior to the date thereof. The superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of Cobb County. The ballot shall have written or printed thereon the words:

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"() YES Shall the Act incorporating the City of Vinings in Cobb County according

1069

() NO to the charter contained in the Act be approved?"

1070

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

1071

1072 cast on such question are for approval of the Act, it shall become of full force and effect
1073 as provided in Section 8.11 of this charter, otherwise it shall be void and of no force and
1074 effect.

1075 The initial expense of such election shall be borne by Cobb County. Within two years after
1076 the elections if the incorporation is approved, the City of Vinings shall reimburse Cobb
1077 County for the actual cost of printing and personnel services for such election and for the
1078 initial election of the councilmembers pursuant to this charter. It shall be the duty of the
1079 superintendent to hold and conduct such election. It shall be his or her further duty to
1080 certify the result thereof to the Secretary of State.

1081 (b) For the purposes of the referendum election provided for in subsection (a) of this
1082 section and for the purposes of the special election of the City of Vinings to be held on the
1083 Tuesday after the first Monday in November, 2022, the qualified electors of the City of
1084 Vinings shall be those qualified electors of Cobb County residing within the corporate
1085 limits of the City of Vinings as described by Appendix A of this charter. At subsequent
1086 municipal elections, the qualified electors of the City of Vinings shall be determined
1087 pursuant to the authority of Chapter 2 of Title 21 of the O.C.G.A. known as the "Georgia
1088 Election Code."

1089 (c) Only for the purposes of holding and conducting the referendum election provided for
1090 in subsection (a) of this section and holding the special election of the City of Vinings to
1091 be held on the Tuesday after the first Monday in November, 2022, the election
1092 superintendent of Cobb County is vested with the powers and duties of the election
1093 superintendent of the City of Vinings and the powers and duties of the governing authority
1094 of the City of Vinings.

SECTION 8.11.

1095

1096

Effective dates and transition.

1097

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

1098

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1100

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

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

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

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

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

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

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
1148 Municipal Court of the City of Vinings shall not exercise its jurisdiction. During the
1149 transition period, all ordinances of Cobb County shall remain applicable within the
1150 territorial limits of the city and the appropriate court or courts of Cobb County shall retain
1151 jurisdiction to enforce such ordinances. However, by mutual agreement and concurrent
1152 resolutions and ordinances if needed Cobb County and the City of Vinings may during the
1153 transition period transfer all or part of such regulatory authority and the appropriate court
1154 jurisdiction to the City of Vinings. Any transfer of jurisdiction to the City of Vinings
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 Vinings may at any
1159 time, without the necessity of any agreement by Cobb County, commence to exercise its
1160 code enforcement and planning and zoning powers; provided, however, that the city shall
1161 give the county notice of the date on which the city will assume the exercise of such
1162 powers. Upon the governing authority of the City of Vinings commencing to exercise its
1163 code enforcement and planning and zoning powers, the Municipal Court of the City of
1164 Vinings shall immediately have jurisdiction to enforce the code enforcement and planning
1165 and zoning ordinances of the city. The provisions of this subsection shall control over any
1166 conflicting provisions of any other subsection of this section.

1167 (i) Effective upon the termination of the transition period, subsections (b) through (h) of
1168 this section shall cease to apply except for the last sentence of subsection (g) which shall
1169 remain effective. Effective upon the termination of the transition period, the City of
1170 Vinings shall be a full functioning municipal corporation and subject to all general laws of
1171 this state.

1172 SECTION 8.12.

1173 Directory nature of dates.

1174 It is the intention of the General Assembly that this Act be construed as directory rather than
1175 mandatory with respect to any date prescribed in this Act. If it is necessary to delay any
1176 action called for in this Act for providential cause or any other reason, it is the intention of
1177 the General Assembly that the action be delayed rather than abandoned. Any delay in
1178 performing any action under this Act, whether for cause or otherwise, shall not operate to
1179 frustrate the overall intent of this Act. Without limiting the generality of the foregoing it is
1180 specifically provided that:

1181 (1) If it is not possible to hold the referendum election provided for in Section 8.10 of
1182 this charter on the date specified in that section, then such referendum shall be held as
1183 soon thereafter as is reasonably practicable; and

1184 (2) If it is not possible to hold the first election provided for in Section 8.13 of this
1185 charter on the date specified in that section, then there shall be a special election for the
1186 initial members of the governing authority to be held as soon thereafter as is reasonably
1187 practicable, and the commencement of the initial terms of office shall be delayed
1188 accordingly.

1189 SECTION 8.13.

1190 Special election.

1191 (a) The first election for councilmembers shall be a special election held on the Tuesday
1192 after the first Monday in November, 2022. At such election, the first mayor and
1193 councilmembers shall be elected to serve for the initial terms of office specified in
1194 subsections (b) and (c) of this section. Thereafter, the time for holding regular municipal
1195 elections shall be on the Tuesday next following the first Monday in November of each

1196 odd-numbered year beginning in 2025. The successors to the first initial councilmembers
1197 and future successors shall take office at the first organizational meeting in January
1198 immediately following their election and shall serve for terms of four years and until their
1199 respective successors are elected and qualified.

1200 (b) The initial members elected by a majority vote of the qualified electors of the city at
1201 large from District 2 and District 4 shall serve a term of office of three years and until their
1202 respective successors are elected and qualified. The initial members elected by a majority
1203 vote of the qualified electors of the city at large from District 1 and District 3 and the
1204 mayor shall serve a term of office of five years and until their respective successors are
1205 elected and qualified. Thereafter, successors to such initial members shall serve four-year
1206 terms of office and until their respective successors are elected and qualified.

1207 ARTICLE IX.

1208 GENERAL REPEALER

1209 SECTION 9.10.

1210 General repealer.

1211 All laws and parts of laws in conflict with this Act are repealed.

1212

APPENDIX A

1213

LEGAL DESCRIPTION

1214

CITY OF VININGS, GEORGIA

1215 User: HD46

1216 Plan Name: vinings-2022

1217 Plan Type: Local

1218 District VININGS

1219 County Cobb GA

1220 VTD Nickajack 01

1221 Block 031213:

1222 1009 2013

1223 Block 031214:

1224 1000 1002 1003 1011 1012 1013 1014 1015 1022 1023

1225 VTD Vinings 01

1226 Block 031207:

1227 4010 4011 4012 4013 4017

1228 Block 031212:

1229 2005 2007 2008 2009 2010

1230 VTD Vinings 02

1231 Block 031207:

1232 1016 1017

1233 Block 031218:

1234 2000 2001 2002 2003 2004 2005 3000 3001 3002 3005

1235 VTD Vinings 03

1236 Block 031213:

1237 1007 1008 2006 2007 2008 2009 2010 2011 2012

1238 Block 031214:

1239 2000

1240 VTD Vinings 04

1241 Block 031212:

1242 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011

1243 1012 1013 1014 2000 2001 2002 2003 2004 2006 2011 2012

1244 Block 031213:

1245 2000 2001 2002 2003 2004 2005 2014 2015

1246 For the purposes of such plan, vinings-2022:

1247 (1) The term "VTD" shall mean and describe the same geographical boundaries as
 1248 provided in the report of the Bureau of the Census for the United States decennial census
 1249 of 2020 for the State of Georgia. The separate numeric designations in a district
 1250 description which are underneath a "VTD" heading shall mean and describe individual
 1251 blocks within a VTD as provided in the report of the Bureau of the Census for the United
 1252 States decennial census of 2020 for the State of Georgia; and

1253 (2) Except as otherwise provided in the description of any district, whenever the
 1254 description of any district refers to a named city, it shall mean the geographical
 1255 boundaries of that city as shown on the census maps for the United States decennial
 1256 census of 2020 for the State of Georgia.

1257 APPENDIX B
 1258 City Council Districts

1259 User: HD46

1260 Plan Name: vinings-cc-2022

1261 Plan Type: Local

1262 District 001

1263 County Cobb GA

1264 VTD Vinings 01

1265 Block 031207:

1266 4010 4011 4012 4013 4017

1267 Block 031212:

1268 2005 2009 2010

1269 VTD Vinings 04

1270 Block 031212:

1271 1001 1002 1003 1004 1005 1006 2000 2001 2002 2003 2004 2006

1272 2011 2012

1273 District 002

1274 County Cobb GA

1275 VTD Vinings 01

1276 Block 031212:

1277 2007 2008

1278 VTD Vinings 02

1279 Block 031207:

1280 1016 1017

1281 Block 031218:
 1282 2000 2001 2002 2003 2004 2005 3000 3001 3002 3005

 1283 District 003
 1284 County Cobb GA
 1285 VTD Nickajack 01
 1286 Block 031213:
 1287 1009 2013
 1288 VTD Vinings 03
 1289 Block 031213:
 1290 1007 1008 2007 2008 2009 2010 2011 2012
 1291 Block 031214:
 1292 2000

 1293 District 004
 1294 County Cobb GA
 1295 VTD Nickajack 01
 1296 Block 031214:
 1297 1000 1002 1003 1011 1012 1013 1014 1015 1022 1023
 1298 VTD Vinings 03
 1299 Block 031213:
 1300 2006
 1301 VTD Vinings 04
 1302 Block 031212:
 1303 1000 1007 1008 1009 1010 1011 1012 1013 1014
 1304 Block 031213:
 1305 2000 2001 2002 2003 2004 2005 2014 2015

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APPENDIX C

1307

CERTIFICATE AS TO MINIMUM STANDARDS

1308

FOR INCORPORATION OF A NEW MUNICIPAL CORPORATION

1309

I, Representative John Carson, Georgia State Representative from the 46th District and the

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author of this bill introduced at the 2021 session of the General Assembly of Georgia, which

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grants an original municipal charter to the City of Vinings, do hereby certify that this bill is

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in compliance with the minimum standards required by Chapter 31 of Title 36 of the

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O.C.G.A. in that the area embraced within the original incorporation in this bill is in all

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respects in compliance with the minimum standards required by Chapter 31 of Title 36 of the

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O.C.G.A. This certificate is executed to conform to the requirements of Code

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Section 36-31-5 of the O.C.G.A.

1317

So certified this _____ day of _____, 2022.

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1319

1320

Honorable John Carson

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Representative, 46th District

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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 Vinings; and for other purposes.

AFFIDAVIT

GEORGIA, FULTON COUNTY

I, John Carson, Representative from District 46, state on oath as follows:

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

s/ JOHN CARSON
Affiant

Sworn to and subscribed at the
State Capitol in Atlanta, Georgia,
This 29th 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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Ga. Const. Art. IX, § II, Para. I

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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 I. Home rule for counties.

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

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

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

Ga. Const. Art. IX, § II, Para. I

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

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

Ga. Const. Art. IX, § II, Para. I

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

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

(c) The power granted to counties in subparagraphs (a) and (b) above shall not be construed to extend to the following matters or any other matters which the General Assembly by general law has preempted or may hereafter preempt, but such matters shall be the subject of general law or the subject of local acts of the General Assembly to the extent that the enactment of such local acts is otherwise permitted under this Constitution:

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

Ga. Const. Art. IX, § II, Para. I

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

Ga. Const. Art. IX, § II, Para. I

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Ga. Const. Art. IX, § II, Para. II

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

Paragraph II. Home rule for municipalities.

The General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly.

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Ga. Const. Art. IX, § II, Para. III

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

Paragraph III. Supplementary powers.

(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.

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

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Ga. Const. Art. IX, § II, Para. V

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

Paragraph V. Eminent domain.

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

Ga. Const. 1983, Art. 9, § 2, Para. 5, Ga. L. 2006, p. 1111, § 2/HR 1306.

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Ga. Const. Art. IX, § II, Para. VI

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

Paragraph VI. Special districts.

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

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

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Ga. Const. Art. IX, § II, Para. VII

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*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 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

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

End of Document



Ga. Const. Art. IX, § II, Para. VIII

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 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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Ga. Const. Art. IX, § II, Para. IX

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

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

Official Code of Georgia Annotated

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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

April 19, 1994

Core Terms

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

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),¹ 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."

¹ 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