

Georgia Model Municipal
Charter

Fifth Edition

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FOREWORD

The Georgia Municipal Association is pleased to provide this revised *Georgia Model Municipal Charter* as an aid to city officials who wish to modernize their existing city charter and as a guide to communities considering incorporation as a Georgia city. While some changes to a city's charter, including provisions addressing the form of government, size of the governing body and continuance in office, require action by the General Assembly, many amendments can be accomplished by a mayor and council acting pursuant to the Home Rule Act of 1965.

This fourth edition is primarily the product of Ms. Mandy Aldrich, 2007 GMA Legal Intern. Mandy is a second year law student at the University of Georgia. A special note of thanks is due to GMA General Counsel Susan Moore for her editing of the Charter. Any inquiries, comments or suggestions for improvement are appreciated.

Jim Higdon
Executive Director

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THE LAW

INTRODUCTION

In many states, the terms "city," "town," or "village" connote different grades or types of municipal corporations, but in Georgia, there is no legal distinction between the terms "city" and "town."¹ Cities and towns are all municipal corporations. The 1933 Code of Georgia defined a municipal corporation as follows: "[a] public corporation is one having for its object the administration of a portion of the powers of government delegated to it for that purpose...."² Black's Law Dictionary defines it as "a city, town, or other local political entity formed by charter from the state and having the autonomous authority to administer the state's local affairs."³ Finally, court cases recognize that a municipal corporation is a legal institution created by a charter granted by a sovereign power to a populous community of a designated area for the purpose of providing a subordinate self-governing body politic to solve local problems.⁴ As a result, municipal corporations are public corporations, i.e., legal institutions, created for political purposes and endowed with political powers to further the interests of the public.

Municipal corporations are local governments which are governed by elected officials and which have the power of taxation and possess self-governing characteristics.⁵ One distinguishing characteristic of this form of government, however, is that it is created by a charter enacted into law by the state legislature. The charter establishes the political structure or framework of the municipal corporation, contains a number of detailed provisions granting general or specific powers, divides powers and duties, establishes specific prohibitions, and proclaims general or

¹ O.C.G.A. § 36-30-1 (2006). *See also*, *Holloway v. Mayor of Whitesburg*, 225 Ga. 152, 166 S.E.2d 576 (1969).

² 1933 Code of Georgia, § 22-103 (2190). This definition was repealed in the 1960's when a new corporate code was adopted.

³ BLACK'S LAW DICTIONARY 1037 (7th ed. 1999).

⁴ *See, e.g.*, *Howard v. City of Atlanta*, 190 Ga. 730, 10 S.E.2d 190 (1940).

⁵ C. RHYNE, *THE LAW OF LOCAL GOVERNMENT OPERATIONS* 2 (1980).

specific guides to the proper conduct of local affairs. Since it is a legal creature of the state, the municipal corporation's nature and existence can be altered or terminated by the state.⁶

Legal Controls

Municipal corporations in Georgia are governed by several levels of law: federal and state constitutions, general laws and local laws. The Constitutions of the United States and Georgia limit the powers of municipal corporations through protections for freedom of religion, speech and the press, the right to due process of law, and guarantees of equal protection. Municipal action is also limited by the federal Constitution with respect to interstate commerce. The Georgia Constitution is also an important source of authorizations and limitations for Georgia cities.

One oddity of Georgia law is that the 1945 and the 1976 Georgia Constitutions permitted local constitutional amendments. These were amendments to the state constitution that were applicable to one or just a few political subdivisions of the state and voted on by the people in those areas. The 1983 Georgia Constitution prohibited the enactment of future local constitutional amendments but provided a mechanism for continuing existing ones.⁷ Thus, some municipalities may be subject to local constitutional amendments which are not published as part of the Georgia Constitution. Local governing bodies may be unaware of these laws.

Though municipalities are controlled by general state and federal laws, an important source of authorization and control over the operation of a municipal corporation is its local charter. In the past, the charter was a document of enumerated powers to which the city was limited, but since the acceptance of the "home rule" idea in Georgia, the charter can be an instrument that grants broad powers over local affairs.⁸

⁶ Porter v. City of Atlanta, 259 Ga. 526, 384 S.E.2d 631, *cert. denied*, 110 S.Ct. 1297 (1989); City of Mountain View v. Clayton County, 242 Ga. 163, 249 S.E.2d 541 (1978), *appeal denied*, 440 U.S. 902 (1979); Pierce v. Powell, 188 Ga. 481, 4 S.E.2d 192 (1939).

⁷ Ga. Const. Art. XI, Sec. I, Par. IV (1983). Local constitutional amendments may be repealed by referendum but may not be amended.

⁸ See generally, Howard, Home Rule in Georgia: An Analysis of State and Local Power, 9 GA. L. REV.

Municipal Charters

The creative act establishing the municipal corporation is usually called the municipal charter. In English law, the municipal charter was a written instrument which contained a grant from the crown to a community of people specifying the corporate powers, privileges, rights and duties.⁹ Today, the charter is the organic law which governs and controls the municipality.

In Georgia, the charter may be enacted or repealed with or without requiring a referendum.¹⁰ In order to be incorporated, certain minimum requirements dealing with the area and population must be met.¹¹ Once a charter is granted, it may be amended in two ways: (1) by local act,¹² or (2) by "home rule" charter amendment.¹³ However, changes "affecting the composition and form of the municipal governing authority, the procedures for election or appointment of the members thereof, and the continuance in office and limitation thereon for such members" may only be accomplished by action of the General Assembly.¹⁴

757 (1975).

⁹ C. RHYNE, *THE LAW OF LOCAL GOVERNMENT OPERATIONS* 48 (1980).

¹⁰ *See City of Mountain View v. Clayton County*, 242 Ga. 163, 249 S.E.2d 541 (1978); GA. CONST. art. IX, sec. II, para. II (1983); O.C.G.A. § 36-35-2 (2006).

¹¹ O.C.G.A. tit. 36, ch. 31 (2006). Under state law, the geographic area proposing incorporation must have a population of at least 200 persons and an average residential population of at least 200 persons per square mile for the total area. At least 60% of the area must be developed, with the area subdivided into lots and tracts so that at least 60% of the total acreage consists of lots five acres or less in size. The author of the bill granting a municipal charter must certify and provide evidence that the statutory requirements have been met. Also, municipalities must maintain minimum standards, such as providing at least three of a list of services, to remain "active".

¹² O.C.G.A. §§ 36-35-2, 36-35-6 (2006).

¹³ O.C.G.A. § 36-35-3 (2006).

¹⁴ *See Jackson v. Inman*, 232 Ga. 566, 207 S.E.2d 475 (1974); O.C.G.A. § 36-35-6(a)(1) (2006).

Some of the features commonly found in municipal charters include:¹⁵

- (1) Provisions governing incorporation, boundaries and powers;
- (2) Provisions governing the structure and form of the government;
- (3) Administrative organization and function;
- (4) Judicial powers and procedures;
- (5) Election procedures and regulations;
- (6) Financial procedures; and
- (7) General provisions.

The following sections present drafts of alternative charter provisions relative to incorporation and to powers of municipal government. They should be carefully tailored by the municipal attorney to meet the needs of each locality.

PROCESS

After the minimum legal requirements of incorporation are met, the residents of the area to be incorporated must make some basic decisions about their proposed municipality; namely, the name of the new city, its boundaries, and the form of government it will have.¹⁶ After making those basic decisions, the individuals wishing to incorporate must visit their local legislative delegation. It is a state legislator who must sponsor the local Act creating the municipal charter. Using both the decisions made by the residents and various “boilerplate” provisions, members of the delegation working with legislative counsel then draft an Act to incorporate the area, and the Act may be sent back to the local residents for approval. If approved, the local delegation checks the Act again and then signs off on it. Such acts are typically then put on the consent agenda as a common courtesy and automatically pass, as it is unlikely that other delegates would be opposed to the Act.

¹⁵ See generally, NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER (8th ed. 2003).

¹⁶ See discussion on specific forms of Government below and after Section 2.26.

Specific Forms of Government

In Georgia, there are three basic forms of municipal government: the council-manager form; the weak mayor-council form; and the strong mayor-council form.¹⁷ These are basic, broad categories only and within each of these forms of government there are many variations.¹⁸

The three forms represent a continuum dividing powers and duties between the mayor and the council. Under the council-manager form of government, typically the mayor is primarily a councilmember who is first among equals and who serves as ceremonial leader of the city. In the weak mayor-council form, the mayor has some administrative tasks but is primarily involved as a member of the council. A clear separation of powers, as in our national government, comes into operation under the strong mayor-council form of government.¹⁹

The following pages contain a more detailed discussion of each of the three general forms of city government. Once the local residents choose a form of government, they, along with their local delegation, may choose from the alternative charter sections to establish each plan. The alternative charter sections that coincide with these forms are discussed at length in Article II, Government Structure, Provisions for Specific Forms of Government. Further discussion of the various forms of government also may be found in the National Civic League's Model Charter.²⁰

A. Council-Manager Form of Government.²¹

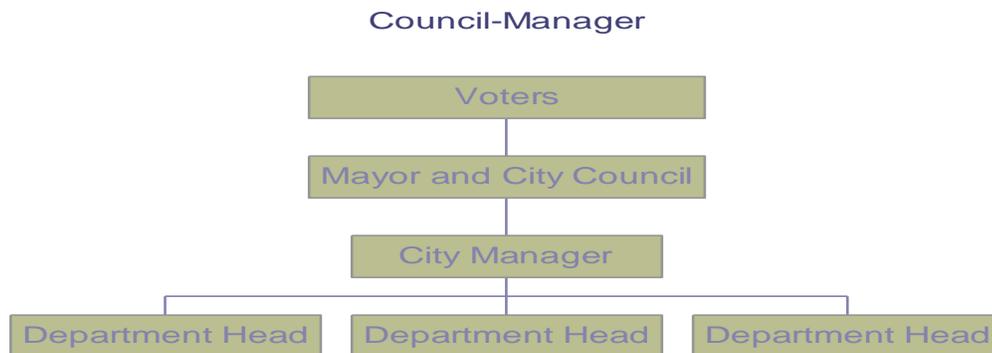
¹⁷ See generally, F. GIBSON AND T. HAMMOCK, FORMS OF CITY GOVERNMENT IN GEORGIA (1957). City Commissions exist in a few jurisdictions. The Commission form of government has some similarities to the weak mayor-council form of government.

¹⁸ For a good discussion of the reasoning behind the various plans, distributions of power, and methods of elections, see R. BOYNTON, City Councils: Their Role in the Legislative System, THE MUNICIPAL YEARBOOK 67-77 (1976).

¹⁹ See ADRIAN AND PRESS, GOVERNING URBAN AMERICA 186-204 (1968).

²⁰ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER, 22-26, 61-68 (8th ed. 2003).

²¹ The council-manager form of government is strongly endorsed by the National Civic League. NATIONAL



The council-manager form of government first appeared on the local government scene in the early 1900's.²² This particular form of government derives its name from the fact that a professional city manager is hired to administer the daily affairs of the city with the oversight of the city council. The councils are usually small in size, and are responsible for establishing governmental policy and for supervising the city manager. The council-manager approach is a very popular form of government in a number of our nation's medium-size cities.²³

One of the more favorable characteristics of this form of government is the fact that all of the administrative authority is concentrated in one individual. This person is usually much more qualified to manage the day-to-day affairs of the city than the average city official because of

CIVIC LEAGUE, MODEL CITY CHARTER iii, 22-26 (8th ed. 2003).

²² Carl Vinson Institute of Government, Forms and Features of City Government 13 (1984) (unpublished manuscript).

²³ *Id.* at 13, 14.

specialized experience and training in the area of city management. In addition, if the manager is found to be incompetent or inefficient, the council has the power of appointment and removal.²⁴

The council-manager plan also serves to separate politics from actual administration of government. Although this seems to be an obvious advantage, it leads to a major criticism of this system. Some people feel that a person who is not elected by the people should not be given such enormous responsibility and authority.²⁵

Usually, a separate charter article or group of sections outlines the various powers and duties of the manager. The charter should also contain prohibitions against councilmembers' unreasonable interference with the duties of the city manager.²⁶ Under this form of government, the mayor is usually little more than the ceremonial head of the city. The mayor usually sits on the council and presides over meetings but has no veto, appointive, or removal powers.²⁷

Commentary

Some mayor-council cities choose to have a CAO ("chief administrative officer"), or a city administrator. The CAO may act as an extension of the mayor's office or as a bridge between the mayor and council, depending on how much power is given the mayor in the Charter.²⁸ The CAO may perform numerous duties, such as preparing the budget, coordinating administration, or assisting the council in making policy. While this is advantageous for mayor-council governments in some regards, such as administration by a professional manager, it is important to keep in mind the difference between a city manager and CAO.²⁹

²⁴ *Id.* at 15.

²⁵ *Id.* at 16.

²⁶ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 22-26, 69-70 (8th ed. 2003).

²⁷ Carl Vinson Institute of Government, Forms and Features of City Government 15 (1984) (unpublished manuscript).

²⁸ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 63 (8th ed. 2003).

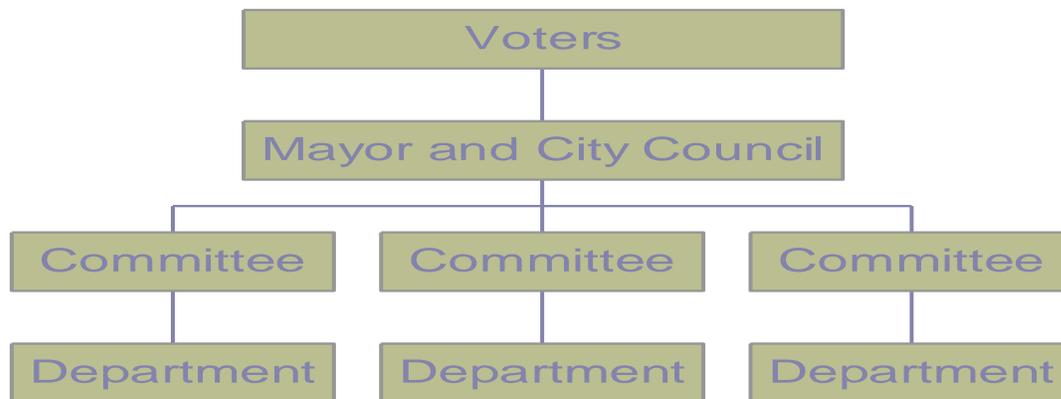
²⁹ *Id.* at 65-70.

City managers have duties delegated in the Charter, whereas the duties of CAO's or city administrators are typically not specified in the Charter. This distinction is crucial, as certain actions are not delegable. If the Charter gives the mayor and council the power to hire and fire or to create and present the budget, it becomes a slippery slope. In Georgia, cities may not change the form of government established in their Charter without a local Act by the General Assembly. If duties already delegated in the Charter begin to be assigned to a CAO, at some point the city may be impermissibly changing its form of government.³⁰

²⁹ See *generally* Krieger v. Walton County Board of Commissioners, 506 S.E.2d 366 (1998).

B. Mayor-Council Form of Government (Weak Mayor).

Mayor-Council (Weak Mayor)



In the past, many Georgia communities have made use of the weak mayor form of government.³¹ In this form of government the majority of executive powers, as well as legislative powers, are vested in the city council. Numerous disadvantages of this plan are the reason for its decline in popularity and use.³² The governmental power is vested in a city council instead of a mayor. Major decisions must be made by these people, all of whom have different views and interests. Different factions on the council may make efficient decision-making rather difficult.³³

³¹ See Griffin v. City of Milledgeville, 279 Ga. 835 (2005); see generally, F. GIBSON AND T. HAMMOCK, FORMS OF CITY GOVERNMENT IN GEORGIA 33-36 (1957); MCQUILLIN'S MUN. CORP. § 9.20 (3rd ed. 1988).

³² Carl Vinson Institute of Government, Forms and Features of City Government 6 (1984) (unpublished manuscript).

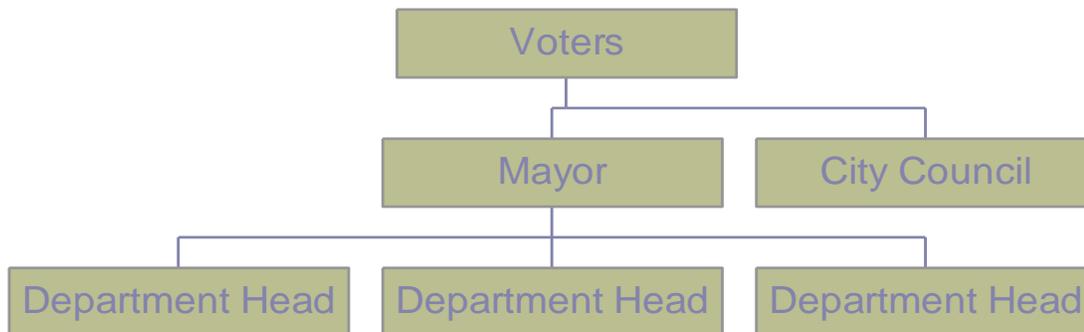
³³ *Id.* at 6-7.

The main advantage of this system is that it keeps control of the government out of the hands of any single person, so a corrupt or inept individual could do little to harm the city and its citizens.³⁴

³⁴ *Id.* at 7.

C. Mayor-Council Form of Government (Strong Mayor).

Mayor-Council (Strong Mayor)



Some Georgia cities have what is called the strong mayor form of government. This plan usually provides for an elected mayor for a fixed term with appointive and removal powers over department heads, powers over financial affairs, and some control over the budget. The city council remains responsible for enacting municipal legislation in the form of ordinances and resolutions and has the role of enacting municipal policy, while administrative and operational responsibilities are retained by the mayor. Normally, there is a sharp separation of powers between the mayor as the chief executive and the council as the legislative branch. Often, there is a limited system of checks and balances similar to our national government such as mayoral veto power and the council's ability to override vetoes.³⁵

Under the strong mayor form of government, the powers of the mayor generally include strong financial and appointive powers. The mayor is not only chief executive in form but also in

³⁵ See generally, ADRIAN AND PRESS, GOVERNING URBAN AMERICA 192, 194 (1968); F. GIBSON AND T. HAMMOCK, FORMS OF CITY GOVERNMENT IN GEORGIA 15-18 (1957).

substance. The mayor is the administrative head of the executive branch as well as the ceremonial representative of the government.³⁶ Examples of sections granting the necessary broad powers to the mayor may be found in Article II.

D. City Commission

The city commission is a fourth form of municipal government similar to the weak mayor-council plan. A typical city commission consists of three to nine members, each of which also serves as a director of one of the city's administrative departments. A mayor is selected from the membership of the commission and serves as the presiding officer and the ceremonial head of the city, but the mayor typically has no further executive duties.³⁷ The benefit of such a plan is that it divides duties so that no one person becomes too powerful and allows the mayor to focus on being responsive to citizens. The disadvantage to this form of government is similar to that of the weak mayor, in that the lack of a central decision-maker makes coming to a resolution more difficult. Additionally, this form of government has been criticized for placing direct management of city departments in the hands of individual elected officials who usually are not experts trained in the field they are supervising.

Preclearance

Finally, Section 5 of the Voting Rights Act of 1965 must be mentioned. The language of this Act required federal preclearance whenever Georgia or one of its political subdivisions enacted or sought to administer "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1,

³⁶ *Id.*

³⁷ *See generally*, F. GIBSON AND T. HAMMOCK, FORMS OF CITY GOVERNMENT IN GEORGIA 33-36 (1957); MCQUILLIN'S MUN. CORP. § 9.20 (3rd ed. 1988).

1972".³⁸ However, the United States Supreme Court, in Shelby County, Alabama v. Holder, 133 S.Ct. 2612 (2013), held that Section 4 of the Voting Rights Act of 1965, which set out the formula used to previously require Georgia and its political subdivisions to comply with the Section 5 preclearance requirements unconstitutional. As a result, federal preclearance under Section 5 of the Voting Rights Act of 1965 has been rendered inoperable. The Shelby decision, however, did not affect Section 2 or Section 3 of the Voting Rights Act. Importantly, Section 3 grants the Department of Justice the ability to require preclearance from jurisdictions with a history of discrimination.

³⁸ 42 U.S.C.S. § 1973c (2000 & Supp. 2004).

THE CHARTER

GENERALLY

After the form of government, name, and boundaries of the new city have been determined, the Charter must be written in order to be passed by the General Assembly as a Local Act. The following charter provides examples and alternative provisions for those wishing to incorporate or re-incorporate. These illustrations should be tailored to fit the needs of the proposed municipality.

ARTICLE I INCORPORATION AND POWERS

NAME

The initial feature of the charter is the provision for incorporation or reincorporation of the municipality as a body politic and corporate under a particular name and style.

Section 1.10. Name.

This city and the inhabitants thereof, are [re]incorporated by the enactment of this charter and are hereby constituted and declared a body politic and corporate under the name and style _____, Georgia, and by that name shall have perpetual succession.

BOUNDARIES

Following the initial provision for incorporation, most city charters set forth a lengthy and detailed metes and bounds description of the city limits. Such descriptions, based upon an

official survey, can run on for several pages, adding considerable length to the charter. Upon annexation of new territory and expansion of the city's physical area, the metes and bounds description in the charter immediately becomes obsolete and out-of-date and needs to be updated.

A better approach is to incorporate in the charter the boundaries of the city by reference to an official map, written description with such map, or written description to be retained permanently in the office of an administrative official of the city. As alterations of the corporate boundaries are made because of annexation, appropriate entries could be made on the official map or official description under the direction of an appropriate officer of the city. The official map or description of the boundaries of the city could be made admissible as evidence in a court of law.³⁹ Such incorporation by reference is proper if the document or map is sufficiently identified, if it is an accessible public record, and if the adoption gives notice of its public nature and its location.⁴⁰

Alternative 1

A provision providing that the metes and bounds description be contained on an official map or written description of a map located in an administrative office may resemble the following:

Section 1.11 Corporate Boundaries.

- (a) The boundaries of this city shall be those existing on the effective date of the adoption of this charter with such alterations as may be made from time to time in the manner provided by law. The

³⁹ R. G. Foster & Co. v. Fountain, 216 Ga. 113, 114 S.E.2d 863 (1960); Georgia Power Co. v. Green, 207 Ga. 250, 61 S.E.2d 146 (1950).

⁴⁰ City Council of Augusta v. Irwin, 109 Ga.App. 598, 137 S.E.2d 82 (1964); Friedman v. Goodman, 219 Ga. 152, 132 S.E.2d 60 (1963); Wood v. City of Rome, 172 Ga. 696, 158 S.E. 585 (1931).

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

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

In the event the traditional metes and bounds approach for describing the city boundaries is followed, a preferable drafting approach would be to present the description in an appendix to the charter. There is little reason for placing excessive detail of this nature within the basic body of the charter. At best, metes and bounds descriptions are difficult to read, and they tend to detract from the basic organization of the charter. There is little reason to confront a citizen or interested party desiring to learn about the form, structure, and powers of the government, with the several pages of metes and bounds descriptions which usually appear in the first part of most charters.

Alternative 2

An illustration of a charter provision that refers to an appendix for the metes and bounds description of corporate boundaries and provides for a simple method of updating follows:

Section 1.11. Corporate Boundaries.

- (a) The corporate boundaries of this city shall be as described and set forth in Appendix A attached hereto.

- (b) The city council may provide for changes in Appendix A by ordinance to reflect lawful changes in the corporate boundaries.

Alternative 3

The proposed municipality may also choose to include an Appendix in the Charter and provide for an official map to detail any boundary changes:

Section 1.11 Corporate Boundaries

- (a) The corporate boundaries of this city shall be as described and set forth in Appendix A of this charter, and said Appendix A is incorporated into and made a part of this charter.
- (b) The [city manager] [city clerk] [city counsel] shall maintain a current map and written legal description of the corporate boundaries of the city, and such map and description shall incorporate any changes which may hereafter be made in such corporate boundaries.

MUNICIPAL POWERS

Municipal corporations possess the following general powers: (1) those powers expressly granted; (2) those powers necessarily or fairly implied in or incident to the powers expressly granted; and (3) those powers which are essential to the declared objects and purposes of the corporation, not simply convenient but indispensable.⁴¹ An express power has been said to be an

⁴¹ Blackmon Health Resort v. City of Atlanta, 151 Ga. 507, 107 S.E. 525 (1921); DILLON'S MUNICIPAL CORPORATIONS § 237 (5th ed. 1911); C. RHYNE, THE LAW OF LOCAL GOVERNMENT OPERATIONS 64 (1980).

authority to do an act which is set forth and declared exactly, plainly, and directly. The constitution and statutes of the state and the corporate charter will usually enumerate these express powers at length.⁴² Traditionally, Georgia courts strictly construe grants of powers to municipalities.⁴³ This is particularly true with respect to powers such as taxation and the imposition of criminal penalties.⁴⁴

In an effort to grant cities more authority to address local problems, a "home rule" movement developed. The story of "home rule" in Georgia began in 1951 with a statute⁴⁵ intended to implement a directive in the 1945 Georgia Constitution for the General Assembly to "provide for uniform systems of county and municipal government."⁴⁶ After this statute was declared unconstitutional by the Georgia Supreme Court in 1953,⁴⁷ the 1945 Constitution was amended to permit legislative delegations of power under home rule to questions of "self-government".⁴⁸ In 1962 the General Assembly enacted what is sometimes referred to as the "Municipal Home Rule Act of 1962" which authorizes municipalities to exercise certain powers.⁴⁹ However, when "The Municipal Home Rule Act of 1965" was adopted pursuant to the "self-

⁴² MCQUILLIN'S MUN. CORP. § 10.10 (3rd ed. 1988).

⁴³ *Porter v. City of Atlanta*, 259 Ga. 526, 384 S.E.2d 631 (1989); *Jewel Tea Co. v. City Council of Augusta*, 59 Ga.App. 260, 200 S.E. 503 (1938).

⁴⁴ *See, e.g., Mobley v. Polk County*, 242 Ga. 798, 251 S.E.2d 538 (1979); *Beazley v. DeKalb County*, 210 Ga. 41, 77 S.E.2d 740 (1953).

⁴⁵ GA. LAWS 1951, at 116.

⁴⁶ GA. CONST. art. XV, sec. I, para. I (1945).

⁴⁷ *Phillips v. City of Atlanta*, 210 Ga. 72, 77 S.E.2d 723 (1953).

⁴⁸ GA. CONST. art. XV, sec. I, para. I (1945) [presently found at GA. CONST. art. IX, sec. II, para. II (1983)].

⁴⁹ GA. LAWS 1962, at 140 (codified in O.C.G.A. tit. 36, ch. 34). Since the Act does not grant municipalities the power to originate, frame and adopt their own charter, it is incorrect to consider this a home rule Act.

government" amendment to the 1945 Constitution the age of "home rule" in Georgia truly began.⁵⁰

Although the 1965 Act gives municipalities the power to adopt "clearly reasonable" measures relating to the "property, affairs, and local government" of the city,⁵¹ the main restriction on this grant of home rule power is the legislature's reservation of powers.⁵² While the legislature cannot pass local laws in the areas granted to municipalities even if the municipality has failed to exercise its power,⁵³ the reservation of power in the 1965 Act to modify the home rule grant allows the legislature to pass general acts affecting matters of local concern.⁵⁴ The General Assembly, by general law, can define, further, broaden, limit or regulate the exercise of home rule power.⁵⁵ In addition, general authority over changes in the composition or form of the local governing body, local elections, criminal law, adoption of new forms of taxation, business activity regulated by the Public Service Commission, non-municipal courts, independent school systems, and condemnation has been retained by the legislature exclusively unless specifically granted to the municipalities by local or general acts.⁵⁶

Now that home rule is a part of Georgia law, traditional ideas on municipal power have been altered to an extent. Home rule has had quite an impact on the old presumption of "Dillon's Rule" that municipalities cannot perform a function unless they are expressly or

⁵⁰ GA. LAWS 1965, at 298 (codified in O.C.G.A. tit. 36, ch. 35). For a complete discussion of home rule in Georgia, see R.P. SENTELL, Home Rule Benefits or Homemade Problems for Georgia Local Government? STUDIES IN GEORGIA LOCAL GOVERNMENT LAW 385-398 (3rd ed. 1977).

⁵¹ GA. LAWS 1965, at 299 (O.C.G.A. § 36-35-3).

⁵² GA. LAWS 1965, at 302 (O.C.G.A. § 36-35-6).

⁵³ O.C.G.A. §§ 36-34-7, 36-34-8 and 36-35-7 (2006).

⁵⁴ GA. LAWS 1965, at 300 (O.C.G.A. § 36-35-3).

⁵⁵ *Id.*

⁵⁶ GA. LAWS 1965, at 302-303 (O.C.G.A. § 36-35-6).

specifically given the right to do so.⁵⁷ Home rule gives the municipality a presumption of proper authority unless a specific exception is stated in the grant.⁵⁸

In 1972, an amendment to the Georgia Constitution created an enumeration of powers granted to municipalities as part of their home rule without impairing the General Assembly's legislative power.⁵⁹ The General Assembly still has the power to regulate, restrict or limit the exercise of these powers by general law.⁶⁰

The current status of planning and zoning power deserves special mention. Under the 1983 Constitution of the State of Georgia, planning and zoning powers are self-executing powers that are reserved to local governing authorities. The General Assembly, however, is still able to enact general laws limited to establishing planning and zoning procedures.⁶¹ The General Assembly has provided for minimum procedures which local governments must follow in carrying out their zoning functions.⁶²

Although the full impact of these home rule provisions is still developing, it is safe to conclude that municipalities have a much greater opportunity to address local problems without specific General Assembly authorization than was available in the past.

The following provision eliminates the lengthy enumeration of powers generally found in most municipal charters. It takes full advantage of the authority offered by home rule and attempts to vest in the municipality all powers now vested in municipal corporations by general or

⁵⁷ DILLON'S MUNICIPAL CORPORATIONS § 237 (5th ed. 1911).

⁵⁸ Howard, Home Rule in Georgia: An Analysis of State and Local Power, 9 GA. L. REV. 757 (1975); but *see*, *City of Doraville v. Southern Railway Co.*, 227 Ga. 504, 181 S.E.2d 346 (1971).

⁵⁹ GA. CONST. art. IX, sec. II, para. III (1983). *See, e.g.*, *Hope v. State*, 259 Ga. 526, 384 S.E.2d 631 (1989).

⁶⁰ 1980 OP. ATTY. GEN. No. 80-102.

⁶¹ GA. CONST. art. IX, sec. II, para. IV (1983).

⁶² O.C.G.A. tit. 36, ch. 66 (2006).

local law or by the Constitution of the State of Georgia, as such laws now exist and as they might hereafter exist.⁶³

Section 1.12. Powers and Construction.

- (a) This city shall have all powers possible for a city to have under the present or future constitution and laws of this state as fully and completely as though they were specifically enumerated in this charter. This city shall have all the powers of self-government not otherwise prohibited by this charter or by general law.
- (b) The powers of this city shall be construed liberally in favor of the city. The specific mention or failure to mention particular powers shall not be construed as limiting in any way the powers of this city.

A list of examples could be included in the body of the charter or as an appendix describing some of the specific powers contained in the broad grant under home rule and other grants of power. A failure to list a particular power desired by the city was fatal prior to home rule since the courts held that a failure to list a particular power represented an intention not to authorize the power.⁶⁴ The following is intended to serve as a checklist to give laypeople who read the charter examples of the powers included and to give courts examples of powers intended to be granted. These are some of the “boilerplate” provisions that may be added during the drafting of the charter with the delegation.

⁶³ It is proper to incorporate future changes in the law. See *Camp v. Metropolitan Atlanta Rapid Transit Authority*, 229 Ga. 35, 189 S.E.2d 56 (1972).

⁶⁴ *Irwin v. Torbert*, 204 Ga. 111, 49 S.E.2d 70 (1948); *Beazley v. DeKalb County*, 210 Ga. 41, 77 S.E.2d 740 (1953).

*Section 1.13. Examples of Powers.*⁶⁵

(a) Animal Regulations.

To regulate and license or to prohibit the keeping or running at-large of animals and fowl, and to provide for the impoundment of same if in violation of any ordinance or lawful order; to provide for the disposition by sale, gift or humane destruction of animals and fowl when not redeemed as provided by ordinance; and to provide punishment for violation of ordinances enacted hereunder;

(b) Appropriations and Expenditures.

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

(c) Building Regulation.

To regulate and to license the erection and construction of buildings and all other structures; to adopt building, housing, plumbing, fire safety, electrical, gas, and heating and air conditioning codes; and to regulate all housing, and building trades;

(d) Business Regulation and Taxation.

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

⁶⁵ City of Sandy Springs Charter art. 1, para. 3.

(e) Condemnation.

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

(f) Contracts.

To enter into contracts and agreements with other governmental entities and with private persons, firms and corporations;

(g) Emergencies.

To establish procedures for determining and proclaiming that an emergency situation exists within or without the city, and to make and carry out all reasonable provisions deemed necessary to deal with or meet such an emergency for the protection, safety, health or well-being of the citizens of the city;

(h) Environmental Protection.

To protect and preserve the natural resources, environment and vital areas of the city, the region, and the state through the preservation and improvement of air quality, the restoration and maintenance of water resources, the control of erosion and sedimentation, the management of stormwater and establishment of a stormwater utility, the management of solid and hazardous waste, and other necessary actions for the protection of the environment;

(i) Fire Regulations.

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

(j) Garbage Fees.

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

(k) General Health, Safety and Welfare.

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

(l) Gifts.

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

(m) Health and Sanitation.

To prescribe standards of health and sanitation and to provide for the enforcement of such standards;

(n) Jail Sentences.

To provide that persons given jail sentences in the city's court may work out such sentences in any public works or on the streets, roads, drains and other public property in the city, to provide for commitment of such persons to any jail, to provide for the use of pretrial diversion and any alternative sentencing allowed by law, or to provide for commitment of such persons to any county work camp or county jail by agreement with the appropriate county officials;

(o) Motor Vehicles.

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

(p) Municipal Agencies and Delegation of Power.

To create, alter or abolish departments, boards, offices, commissions and agencies of the city, and to confer upon such agencies the necessary and appropriate authority for carrying out all the powers conferred upon or delegated to the same;

(q) Municipal Debts.

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

(r) Municipal Property Ownership.

To acquire, dispose of, lease, and hold in trust or otherwise, any real, personal, or mixed property, in fee simple or lesser interest, inside or outside the property limits of the city;

(s) Municipal Property Protection.

To provide for the preservation and protection of property and equipment of the city, and the administration and use of same by the public; and to prescribe penalties and punishment for violations thereof;

(t) Municipal Utilities.

To acquire, lease, construct, operate, maintain, sell and dispose of public utilities, including but not limited to a system of waterworks, sewers and drains, sewage disposal, stormwater management, gas works, electric light plants,

cable television and other telecommunications, transportation facilities, public airports, and any other public utility; and to fix the taxes, charges, rates, fares, fees, assessments, regulations and penalties, and to provide for the withdrawal of service for refusal or failure to pay the same;

(u) Nuisance.

To define a nuisance and provide for its abatement whether on public or private property;

(v) Penalties.

To provide penalties for violation of any ordinances adopted pursuant to the authority of this charter and the laws of the State of Georgia;

(w) Planning and Zoning.⁶⁶

To provide comprehensive city planning for development by zoning; and to provide subdivision regulation and the like as the city council deems necessary and reasonable to insure a safe, healthy, and aesthetically pleasing community;

(x) Police and Fire Protection.

To exercise the power of arrest through duly appointed police officers, and to establish, operate, or contract for a police and a firefighting agency;

(y) Public Hazards: Removal.

To provide for the destruction and removal of any building or other structure which is or may become dangerous or detrimental to the public;

(z) Public Improvements.

⁶⁶ See discussion of present status of municipalities' planning and zoning power on p. 18-19.

To provide for the acquisition, construction, building, operation and maintenance of public ways, parks and playgrounds, recreational facilities, cemeteries, markets and market houses, public buildings, libraries, public housing, airports, hospitals, terminals, docks, parking facilities, or charitable, cultural, educational, recreational, conservation, sport, curative, corrective, detentional, penal and medical institutions, agencies and facilities; and to provide any other public improvements, inside or outside the corporate limits of the city; to regulate the use of public improvements; and for such purposes, property may be acquired by condemnation under Title 22 of the Official Code of Georgia Annotated, or such other applicable laws as are or may hereafter be enacted;

(aa) Public Peace.

To provide for the prevention and punishment of loitering, disorderly conduct, drunkenness, riots, and public disturbances;

(bb) Public Transportation.

To organize and operate such public transportation systems as are deemed beneficial;

(cc) Public Utilities and Services.

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

(dd) Regulation of Roadside Areas.

To prohibit or regulate and control the erection, removal, and maintenance of signs, billboards, trees, shrubs, fences, buildings and any and all other structures or obstructions upon or adjacent to the rights-of-way of streets and

roads or within view thereof, within or abutting the corporate limits of the city; and to prescribe penalties and punishment for violation of such ordinances;

(ee) Retirement.

To provide and maintain a retirement plan and other employee benefit plans and programs for officers and employees of the city;

(ff) Roadways.

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

(gg) Sewer Fees.

To levy a fee, charge, or sewer tax as necessary to assure the acquiring, constructing, equipping, operating, maintaining, and extending of a sewage disposal plant and sewerage system, and to levy on those to whom sewers and sewerage systems are made available a sewer service fee, charge or sewer tax for the availability or use of the sewers;⁶⁷ to provide for the manner and method of collecting such service charges and for enforcing payment of the same; and to charge, impose and collect a sewer connection fee or fees to those connected with the system;

(hh) Solid Waste Disposal.

⁶⁷ There are restrictions on availability fees however. See O.C.G.A. §§ 36-34-5, 36-60-17.1 (2007).

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

(ii) Special Areas of Public Regulation.

To regulate or prohibit junk dealers, the manufacture and sale of intoxicating liquors; to regulate the transportation, storage and use of combustible, explosive and inflammable materials, the use of lighting and heating equipment, and any other business or situation which may be dangerous to persons or property; to regulate and control the conduct of peddlers and itinerant traders, theatrical performances, exhibitions, and shows of any kind, by taxation or otherwise; to license and tax professional fortunetelling, palmistry, and massage parlors; and to restrict adult bookstores to certain areas;

(jj) Special Assessments.

To levy and provide for the collection of special assessments to cover the costs for any public improvements;

(kk) Taxes: Ad Valorem.

To levy and provide for the assessment, valuation, revaluation, and collection of taxes on all property subject to taxation;

(ll) Taxes: Other.

To levy and collect such other taxes as may be allowed now or in the future by law;

(mm) Taxicabs.

To regulate and license vehicles operated for hire in the city; to limit the number of such vehicles; to require the operators thereof to be licensed; to

require public liability insurance on such vehicles in the amounts to be prescribed by ordinance; and to regulate the parking of such vehicles;

(nn) Urban Redevelopment.

To organize and operate an urban redevelopment program;

(oo) Other Powers.

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

EXERCISE OF POWERS

It may be desirable to include a provision in the charter for the exercise of powers. Otherwise, where no provision is made in the charter for the exercise of a particular function, right, power, or privilege, the general law would prevail. A provision for the exercise of powers is illustrated as follows:

Section 1.14. Exercise of Powers.

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

OTHER PROVISIONS

Some charters authorize the city to exercise its powers and to perform its functions jointly or in cooperation by contract or otherwise with the state or any other political subdivision or agency thereof.⁶⁸ In Georgia, a Charter provision of this nature is not necessary since the Georgia Constitution contains a broad grant of intergovernmental contractual authority.⁶⁹

Additional subsections under examples of powers could be added now or in the future by home rule amendment to "codify," to some extent, local and general legislation on municipal powers. The power to adopt an ordinance amending the charter can only be derived from subsection (b) of O.C.G.A. § 36-35-3. This subsection provides for two methods by which municipalities may amend their charters without any intervention on the part of the General Assembly. Under O.C.G.A. § 36-35-3 (b), the charter may be amended either by ordinance or after a petition stating the proposed amendment is submitted to the governing authority by a

⁶⁸ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 3 (8th ed. 2003).

⁶⁹ GA. CONST. art. IX, sec. III, para. I (1983).

certain percentage of the registered voters⁷⁰ and approved by a majority of such voters. Charter amendments are ineffective until a copy is provided to the Secretary of State's office.⁷¹

⁷⁰ The percent requirement varies based upon population.

⁷¹ O.C.G.A. § 36-35-5 (2006).

ARTICLE II

GOVERNMENT STRUCTURE

GENERALLY

The plan of government is one of the primary decisions that must be made prior to contacting the local delegation. Provisions to establish the form of government typically fall under Article II of the Charter. Standard examples of sections that set forth the details about city council and mayor follow, as do illustrative provisions specific to the forms of government used in Georgia.

LEGISLATIVE BRANCH

A. Creation of Offices.

Section 2.10. City Council Creation; Number; Election.

The legislative authority of the government of this city, except as otherwise specifically provided in this charter, shall be vested in a city council to be composed of [a mayor and] ___ councilmembers. The city council established shall in all respects be a successor to and continuation of the governing authority under prior law. The [mayor and] councilmembers shall be elected in the manner provided by general law and this charter.

The phrase [a mayor and] as used in the previous section and later sections is generally meant to be included in the council-manager and weak mayor-council plans. It may be excluded in the strong mayor-council form as part of the general separation of powers in that plan.

The size of the governing body of municipalities in Georgia varies from three to sixteen members. Excluding the mayor, the most popular sizes for municipal governing bodies in Georgia are four, five and six members; the National Civic League recommends the council be fairly small, between five and nine members.⁷² There are several factors to consider in setting the size of the city council. It is argued that smaller legislative bodies are more prompt and efficient decision makers. They can make quicker decisions due to the involvement of fewer numbers. Nevertheless, small governing bodies increase the danger of too limited a debate and an absence of diversity of views on vital issues. On the other hand, large governing bodies may tend to become unwieldy and require the use of committees for the discharge of specific responsibilities. Further, smaller districts are typically represented if there is a large council, thus resulting in “log-rolling”—bargaining for and exchanging votes on a quid pro quo basis,⁷³ to the detriment of the overall city. In determining the appropriate size, the diversity of population to be represented as well as the size of the city should be taken into account.⁷⁴ The following example provisions are offered by the National Civic League.⁷⁵

⁷² GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS, 2006 MUNICIPAL GOVERNMENT INFORMATION CATALOG, CHAPTER 8; NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 7 (8th ed. 2003).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 7-10 (8th ed. 2003).

Alternative 1

Council Elected At Large; Mayor Elected by Council

The council shall be composed of [odd number] members elected by the voters of the city at large in accordance with provisions of Article V. The mayor shall be elected as provided in § 2.32, Alternative 1.

Alternative 2

Council At Large; Mayor Elected Separately

The council shall be composed of [even number] members elected by the voters of the city at large in accordance with provisions of Article V. The mayor shall be elected as provided in § 2.32, Alternative 2.

Alternative 3

Council Elected At Large with District Residency Requirement; Mayor Elected by Council

The council shall be composed of [odd number] members elected by the voters of the city at large in accordance with provisions of Article V. Not more than one council member shall reside in each district. The mayor shall be elected as provided in § 2.32, Alternative 1.

Alternative 4

Council Elected At Large with District Residency Requirement; Mayor Elected Separately

The council shall be composed of [even number] members elected by the voters of the city at large in accordance with provisions of Article V. Not more than one council member shall reside in each district. The mayor shall be elected as provided in § 2.32, Alternative 2.

Alternative 5

Mixed At-Large and Single Member District System; Mayor Elected by Council

The council shall be composed of [odd number] of council members elected by the voters of the city at large and one member from each of the even-numbered council districts elected by the voters of those districts, as provided in Article V. The mayor shall be elected from among the at-large members as provided in § 2.32, Alternative 1.

Alternative 6

Mixed At-Large and Single Member District System; Mayor Elected Separately

The council shall be composed of [even number] members elected by the voters of the city at large and one member from each of the even-numbered council districts elected by the voters of those districts, as provided in Article V. The mayor shall be elected as provided in § 2.32, Alternative 2.

Alternative 7

Single-Member District System

The council shall be composed of an even number of members each of whom shall be elected by district by the voters in that district. The mayor shall be elected in accordance with the provisions of § 2.32, Alternative 2.

The benefit of an at-large system is that it allows citizens “to choose councilmembers best qualified to represent the interest of the city as a whole”.⁷⁶ However, in some circumstances, such as very large cities or cities with vast demographic differences, it may be helpful to establish districts so that citizens may have more equitable representation.⁷⁷

⁷⁶ NATIONAL CIVIC LEAGUE MODEL CITY CHARTER 7 (8th ed. 2003).

An option to allow more equitable representation is to have a district residency requirement, where districts of equal population are established and one council member resides in each district.⁷⁸ The city may also choose to have a mixed system, with some councilmembers elected at large and some elected by and from districts. However, if a mixed system is selected, all members should have equal status on the council, regardless of the method of election, to avoid any perception of superiority of at-large members.⁷⁹ The ratio of at-large to district councilmembers is simply a matter of local preference.

A final option is the single-member district system, with the mayor elected at-large. Some cities prefer this method as a way to elect minority councilmembers and to reduce the cost of campaigns.⁸⁰ However, this system does present the problem that district-specific concerns may override citywide issues. Additionally, the use of at-large seats, residency districts or voting districts must comport with the constitutional requirement of “one person, one vote” and Section 2 of the Voting Rights Act which requires that minority groups have an equal opportunity to participate in the political process.⁸¹ For additional information on districting and redistricting see the GMA publication “2001 Georgia Municipal Redistricting Guide.”

⁷⁷ *Id.* at 8.

⁷⁸ *Id.*

⁷⁹ *Id.* at 9.

⁸⁰ *Id.* at 9-10.

⁸¹ See 42 U.S.C. § 1973; *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964). It is important to note that Section 2 of the Voting Rights Act of 1965 was not affected by the decision of the United States Supreme Court in *Shelby County, Alabama v. Holder*, 133 S.Ct. 2612 (2013).

B. Terms and Qualifications for Office.

Section 2.11. City Council Terms and Qualifications for Office.

The [mayor and] members of the city council shall serve for terms of 4 years and until their respective successors are elected and qualified. No person shall be eligible to serve as [mayor or] councilmember unless that person shall have been a resident of the city for 12 months prior to the date of election of [mayor or] members of the council; each shall continue to reside therein during that member's period of service and to be registered and qualified to vote in municipal elections of this city.

Alternative: Residence Requirements

If the city chooses to designate council districts,⁸² the following provisions may be desirable:

Section 2.11 City Council Terms and Qualifications for Office continued

In addition to the above requirements, no person shall be eligible to serve as a councilmember representing a council district unless that person has been a resident of the district such person seeks to represent for a continuous period of at least six months immediately prior to the date of the election for councilmember and continues to reside in such district during that person's period of service.

A general state law provides that the term of office for all city officials shall be four years; however, the General Assembly is authorized to provide by local law for two year terms

⁸² For more information regarding council districts, see Art. V.

as authorized by O.C.G.A. § 21-2-541.2.⁸³ Note that code section 1-3-11 requires a referendum to lengthen or shorten the term of office or abolish an office during the term of office for which the person has been elected.⁸⁴

Qualifications for membership on the municipal governing body may vary since most municipal charters prescribe prerequisites for holding a municipal elective office. In addition to such charter requirements, general state law sets forth certain qualifications for candidates for municipal office by describing persons who are ineligible to hold civil office.⁸⁵

Currently, general law imposes a 12 month residency requirement unless a different period of time is specified in the charter.⁸⁶ While a city may choose to set reelection limits, it is highly recommended that no limits be set so that citizens may reelect officials they feel do a good job.⁸⁷ The National Civic League also suggests four-year staggered terms to avoid dramatic changes in the council at each election.⁸⁸

C. Vacancies in Office.

Section 2.12. Vacancy; Filling of Vacancies.

⁸³ O.C.G.A. § 21-2-541.1; 21-2-541.2 (2003).

⁸⁴ Griffin v. City of Milledgeville, 621 S.E.2d 734 (2005); Burton-Callaway v. Carroll County Board of Elections, 619 S.E.2d (2005).

⁸⁵ O.C.G.A. § 45-2-1 (2002 & Supp. 2006).

⁸⁶ O.C.G.A. § 45-2-1(a) (2002 & Supp. 2006).

⁸⁷ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 6 (8th ed. 2003).

⁸⁸ *Id.*

- (a) Vacancies - The office of mayor or councilmember shall become vacant upon the incumbent's death, resignation, forfeiture of office, or occurrence of any event specified by the Constitution of the State of Georgia, Title 45 of the Official Code of Georgia Annotated, or such other applicable laws as are or may hereafter be enacted.
- (b) Filling of Vacancies - A vacancy in the office of mayor or councilmember shall be filled for the remainder of the unexpired term, if any, by appointment by the city council or those members remaining if less than 12 months remains in the unexpired term. If such vacancy occurs 12 months or more prior to the expiration of the term of that office, it shall be filled for the remainder of the unexpired term by a special election, as provided for in Section 5.14 of this charter and in accordance with Titles 21 and 45 of the Official Code of Georgia Annotated, or other such laws as are or may hereafter be enacted.
- (c) This provision shall also apply to a temporary vacancy created by the suspension from office of the mayor or any councilmember.

A 1983 Constitutional amendment, ratified in 1984, provides that vacancies are created when an elected official qualifies for any state, county or municipal elective office, or for the House of Representatives or Senate, more than 30 days prior to the expiration of the present municipal office.⁸⁹ Re-qualification for a municipal seat currently held, however, does not create a vacancy. Offices may also be vacated by the death or resignation of the incumbent, by the decision of a competent tribunal, by an act or misfortune of the incumbent which renders that person no longer eligible for office, by the incumbent ceasing to be a resident or

⁸⁹ GA. CONST. art. II, sec. II, para. V (1983).

abandoning office, or upon the occurrence of other events enumerated in Title 45 of the Official Code of Georgia Annotated.⁹⁰ Except upon the death, resignation or felony conviction of an incumbent, notice must be provided to the person whose office is vacated at least 10 days before filling the vacancy or calling for an election, and the decision to fill the vacancy is subject to appeal to the superior court.⁹¹ If the vacancy is filled by election, the procedures for special elections in Title 21, Chapter 2 of the Official Code of Georgia Annotated must be followed.

Vacancies in elective offices may also be created by a recall election initiated by a certain percentage of the electorate. A general law provides the grounds for recall and the manner in which a recall election is held.⁹² Vacancies created by recall are to be filled by special election in the manner provided by law.⁹³

Subsection (c) in the provision on filling of vacancies is important if the local governing body wants to ensure that the charter is clear on their ability to appoint someone to fill the vacancy of an elected official suspended from office after felony indictment and commission recommendation.⁹⁴

D. Compensation and Expenses.

The following general provision allows the amount of compensation for members of the governing body to be fixed by ordinance. State law protects the public by placing limitations and

⁹⁰ O.C.G.A. § 45-5-1(a) (2002 & Supp. 2006). *See generally*, O.C.G.A. §§ 45-5-1 et. seq. (2002 & Supp. 2006).

⁹¹ *Id.* (b).

⁹² O.C.G.A. §§ 21-4-3 (7)(B) (2003 & Supp. 2006), 21-4-4 (2003).

⁹³ O.C.G.A. § 21-4-13 (g) (2003).

⁹⁴ *See* GA. CONST. Art. V, Sec. II, Par. VIII(a); O.C.G.A. § 45-5-6 (2002).

procedural requirements on the adoption of salary adjustments for elected municipal officials.⁹⁵ It may be useful, however, to set the actual salary of the first council in the charter itself.⁹⁶

Section 2.13. Compensation and Expenses.

The mayor and councilmembers shall receive compensation and expenses for their services as provided by ordinance.

E. Prohibitions.

Alternative 1

Section 2.14. Holding Other Office; Voting When Financially Interested.

- (a) Elected and appointed officers of the city are trustees and servants of the residents of the city and shall act in a fiduciary capacity for the benefit of such residents.
- (b) Except as authorized by law, the mayor or any councilmember shall not hold any other city office or city employment during the term for which that person was elected.
- (c) Neither the mayor nor any member of the city council shall vote upon, sign or veto any ordinance, resolution, contract or other matter in which that person is financially interested.

According to a 1983 Constitutional amendment, no municipal elected official can hold another state, county, or municipal elective office, or serve in the United States Senate or

⁹⁵ O.C.G.A. § 36-35-4 (2006).

⁹⁶ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 13 (8th ed. 2003).

*House of Representatives.*⁹⁷ *In addition, councilmembers are ineligible to hold other municipal offices during their term of office unless they resign from their original office.*⁹⁸ *Furthermore, Georgia courts have held that municipal elected officers are ineligible as a matter of public policy to be salaried employees of the municipality.*⁹⁹

*O.C.G.A. § 36-30-6 provides that "it is improper and illegal for a member of the city council to vote upon any question, brought before the council, in which he is personally interested". The term "personal interest" has been construed by the courts to mean financial interest with respect to such issues as contracts, the naming of city depositories, and ownership of land which might be affected by public improvements.*¹⁰⁰

*The term "financial interest" may have little meaning when applied to a given fact situation not encountered by the courts. Consequently, it may be desirable to go further and spell out specific standards in order to give meaning to the term. The following alternative section may be included to provide guidelines or a standard by which city officials and employees should conduct their personal and business affairs.*¹⁰¹ *This could also help to ensure sound, honest administration of government affairs.*

⁹⁷ GA. CONST. art. II, sec. II, para. V (1983).

⁹⁸ O.C.G.A. § 36-30-4 (2006). *See, e.g.,* Hughley v. City of Thomaston, 180 Ga.App. 207, 348 S.E.2d 570 (1986); Fowler v. Mitcham, 249 Ga. 400, 291 S.E.2d 400 (1982); 1982 OP. ATTY. GEN. U82-27.

⁹⁹ *See, e.g.,* Welsch v. Wilson, 218 Ga. 843, 131 S.E.2d 194 (1963).

¹⁰⁰ DOT v. Brooks, 254 Ga. 303, 328 S.E.2d 705 (1985); Story v. City of Macon, 205 Ga. 590, 54 S.E.2d 396 (1949); Trainer v. City of Covington, 183 Ga. 759, 189 S.E. 842 (1937); Cochran v. City of Thomasville, 167 Ga. 579, 146 S.E. 462 (1928); Montgomery v. City of Atlanta, 162 Ga. 534, 134 S.E. 152 (1926); Mayor of Hogansville v. Planters Bank, 27 Ga.App. 384, 108 S.E. 480 (1921); Smith v. City of Winder, 22 Ga. App. 278, 96 S.E. 14 (1918); Hardy v. Mayor of Gainesville, 121 Ga. 327, 48 S.E. 921 (1904).

¹⁰¹ *See generally,* GEORGIA MUNICIPAL ASSOCIATION, ETHICS IN GOVERNMENT: FINDING THE RIGHT COURSE (1993).

Alternative 2

Section 2.14. Conflicts of Interest; Holding Other Offices.

- (a) Elected and appointed officers of the city are trustees and servants of the residents of the city and shall act in a fiduciary capacity for the benefit of such residents.
- (b) Conflict of Interest - No elected official, appointed officer, or employee of the city or any agency or political entity to which this charter applies shall knowingly:
 - (1) Engage in any business or transaction, or have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of that person's official duties or which would tend to impair the independence of the official's judgment or action in the performance of those official duties;
 - (2) Engage in or accept private employment, or render services for private interests when such employment or service is incompatible with the proper discharge of that person's official duties or would tend to impair the independence of the official's judgment or action in the performance of those official duties;
 - (3) Disclose confidential information, including information obtained at meetings which are closed pursuant to Title 50, chapter 14 of the Official Code of Georgia Annotated, concerning the property, government, or affairs of the governmental body by which the official is engaged without proper legal authorization; or use such

information to advance the financial or other private interest of the official or others;

- (4) Accept any valuable gift, whether in the form of service, loan, thing, or promise, from any person, firm or corporation which to the official's knowledge is interested, directly or indirectly, in any manner whatsoever, in business dealings with the governmental body by which the official is engaged; provided, however, that an elected official who is a candidate for public office may accept campaign contributions and services in connection with any such campaign;
 - (5) Represent other private interests in any action or proceeding against this city or any portion of its government; or
 - (6) Vote or otherwise participate in the negotiation or in the making of any contract with any business or entity in which the official has a financial interest.
- (c) Disclosure - Any elected official, appointed officer, or employee who shall have any financial interest, directly or indirectly, in any contract or matter pending before or within any department of the city shall disclose such interest to the city council. The mayor or any councilmember who has a financial interest in any matter pending before the city council shall disclose such interest and such disclosure shall be entered on the records of the city council, and that official shall disqualify himself or herself from participating in any decision or vote relating thereto. Any elected official, appointed officer, or employee of any agency or political entity to which this charter applies who shall have any financial interest, directly or indirectly, in

any contract or matter pending before or within such entity shall disclose such interest to the governing body of such agency or entity.

- (d) Use of Public Property - No elected official, appointed officer, or employee of the city or any agency or entity to which this charter applies shall use property owned by such governmental entity for personal benefit or profit but shall use such property only in their capacity as an officer or employee of the city.
- (e) Contracts Voidable and Rescindable - Any violation of this section which occurs with the knowledge, express or implied, of a party to a contract or sale shall render said contract or sale voidable at the option of the city council.
- (f) Ineligibility of Elected Official - Except where authorized by law, neither the mayor nor any councilmember shall hold any other elective or appointive office in the city or otherwise be employed by said government or any agency thereof during the term for which that official was elected. No former mayor and no former councilmember shall hold any appointive office in the city until one year after the expiration of the term for which that official was elected.
- (g) Political Activities of Certain Officers and Employees - No appointive officer of the city shall continue in such employment upon qualifying as a candidate for nomination or election to any public office.¹⁰² No employee of the city shall continue in such employment upon qualifying for or election to any public office in this city or any other public office which is inconsistent, incompatible or in conflict with the

¹⁰² See GA. CONST. art. II, sec. II, para. V (1983), O.C.G.A. § 36-30-4 (2006) and the earlier discussion following Sections 2.12 and 2.14 (alternative 1) for the prohibition on the political activities of elected municipal officials.

duties of the city employee.¹⁰³ Such determination shall be made by the [mayor and] council either immediately upon election or at any time such conflict may arise.

(h) Penalties for Violation

- (1) Any city officer or employee who knowingly conceals such financial interest or knowingly violates any of the requirements of this section shall be guilty of malfeasance in office or position and shall be deemed to have forfeited that person's office or position.
- (2) Any officer or employee of the city who shall forfeit an office or position as described in paragraph (1) above, shall be ineligible for appointment or election to or employment in a position in the city government for a period of three years thereafter.

This section prevents potential conflicts of interest in governmental decision-making, promotes independence of judgment and action in government, protects confidential information and prevents the use thereof for private benefit, requires disclosure of unknown financial interest, restricts the use of government property, and provides for punishment in case of violations of any of these provisions. One issue that has arisen regarding the disclosure of confidential information involves a situation where one official disagrees with the remainder of the council regarding the course of litigation involving the city and chooses to leak information helpful to the opposition. Such actions place the city at a disadvantage and fail to fulfill the official's fiduciary duty to the city as a whole. This section is intended to

¹⁰³ See *Segars v. Fulton County*, 644 F.Supp. 682 (N.D. Ga. 1986); *MacKenzie v. Snow*, 675 F.Supp. 1333 (N.D. Ga. 1987); *Morial v. Judiciary Commission*, 565 F.2d 295 (5th Cir. 1977) (en banc) *cert. denied*, 435 U.S. 1013 (1978).

prohibit this and similar releases of confidential information which could harm the city and/or benefit the dissident official.

A general state law provides certain procedural requirements that must be followed when the mayor or a member of the municipal governing authority is removed for malfeasance in office or position pursuant to that code section.¹⁰⁴ Some charters contain additional provisions allowing for impeachment or removal from office for causes other than those enumerated in state law.

It is important to note that O.C.G.A. § 16-10-6 prohibits any local government officer or employee from selling any personal property to the city of which that person is an officer or employee, or to any agency thereof, and makes a violation of this section punishable by one to five years imprisonment. This prohibition does not apply to sales of less than \$200 per calendar quarter, to sales made under competitive sealed bids, or to sales of real property when requirements for disclosure set forth in the Code Section are followed. However, such transactions, while not a criminal offense, may be void and improper as a common law conflict of interest.

Cities may also choose to include ethics provisions dealing with such topics as the “hiring of relatives; acting in an official capacity on matters affecting a prior employer within a designated time period after leaving the employer; accepting outside employment while in office; and accepting employment with an employer over whom the official or employee acted in an official capacity, within a designated time period after leaving office”; or even acting in an official capacity over persons who donated a specified amount to the official’s campaign.¹⁰⁵

F. Inquiries and Investigations.

Section 2.15. Inquiries and Investigations.

¹⁰⁴ O.C.G.A. § 45-11-4 (2002 & Supp. 2006).

¹⁰⁵ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 54 (8th ed. 2003).

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

This provision is intended to allow the council to conduct comprehensive investigations of the city's affairs as well as the conduct of any of its departments, offices, or agencies so as to maintain proper legislative oversight of city government. The inquiries and investigations authorized may only be conducted by the council, not individual council members, and only for the purposes of an official investigation. Additionally, these powers should be limited to use by the elected governing body and the council should not attempt to delegate them to boards or panels composed of private citizens.¹⁰⁶

G. General Power and Authority.

Section 2.16. General Power and Authority of the City Council.

- (a) Except as otherwise provided by law or this charter, the city council shall be vested with all the powers of government of this city.
- (b) In addition to all other powers conferred upon it by law, the council shall have the authority to adopt and provide for the execution of such ordinances, resolutions, rules, and regulations, not inconsistent with this charter and the Constitution and the laws of the State of Georgia, which it shall deem necessary, expedient, or helpful for the peace, good order, protection of life and property, health, welfare,

¹⁰⁶ Atlanta Journal v. Hill, 359 S.E.2d 913 (1987).

sanitation, comfort, convenience, prosperity, or well-being of the inhabitants of the City of _____ and may enforce such ordinances by imposing penalties for violation thereof.

This section confers upon the council the various governmental and corporate powers and builds flexibility into the charter by providing that residual powers, not otherwise specifically granted to others by the charter, are to be held by the council.

H. Eminent Domain.

Section 2.17. Eminent Domain.

The city council is hereby empowered to acquire, construct, operate and maintain public ways, parks, public grounds, cemeteries, markets, market houses, public buildings, libraries, sewers, drains, sewage treatment, waterworks, electrical systems, gas systems, airports, hospitals, and charitable, educational, recreational, sport, curative, corrective, detentional, penal and medical institutions, agencies and facilities, and any other public improvements inside or outside the city, and to regulate the use thereof, and for such purposes, property may be condemned under procedures established under general law applicable now or as provided in the future.

ORGANIZATION AND PROCEDURES

The following sections set forth draft language with respect to organizing the council and the procedures for the conduct of its affairs. Items covered are the initial organizational meeting of the council, the calling of regular and special meetings, and the requirements for a quorum, voting, and adoption of ordinances.

A. Meetings.

Section 2.18. Organizational Meetings.

The city council shall hold an organizational meeting on _____. The meeting shall be called to order by the [mayor-elect or] city clerk and the oath of office shall be administered to the newly elected members by a judicial officer authorized to administer oaths and shall, to the extent that it comports with federal and state law, be as follows:

"I do solemnly (swear)(affirm) that I will faithfully perform the duties of (mayor)(councilmember) of this city and that I will support and defend the charter thereof as well as the constitution and laws of the State of Georgia and of the United States of America. "I am not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof. I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which I by the laws of the State of Georgia am prohibited from holding. I am otherwise qualified to hold said office according to the Constitution and laws of Georgia. I have been a resident [of my district and] the City of _____ for the time required by the Constitution and laws of this state and by the municipal charter. I will perform the duties of my office in the best interest of the City of _____ to the best of my ability without fear, favor, affection, reward, or expectation thereof."¹⁰⁷

¹⁰⁷ O.C.G.A. § 45-3-1.

Section 2.19. Regular and Special Meetings.

- (a) The city council shall hold regular meetings at such times and places as shall be prescribed by ordinance.
- (b) Special meetings of the city council may be held on call of the mayor or ___ members of the city council. Notice of such special meetings shall be served on all other members personally, or by telephone personally, at least 48 hours in advance of the meeting. Such notice to councilmembers shall not be required if the mayor and all councilmembers are present when the special meeting is called. Such notice of any special meeting may be waived by a councilmember in writing before or after such a meeting, and attendance at the meeting shall also constitute a waiver of notice on any business transacted in such councilmembers presence. Only the business stated in the call may be transacted at the special meeting.
- (c) All meetings of the city council shall be public to the extent required by law and notice to the public of special meetings shall be made fully as is reasonably possible as provided by section 50-14-1 of the Official Code of Georgia Annotated, or other such applicable laws as are or may hereafter be enacted.

These last subsections consider the need for prompt, unscheduled special meetings which are for business short of an emergency but which should be handled before the next meeting. The importance of the special meeting must be measured against the need to give sufficient notice to all councilmembers as well as the public. Any matter which requires council action in less than 48 hours will probably fall under the emergency provisions in Section 2.24 below.

Georgia law requires any meetings of the local governing authority to be open to the public and held at a regularly scheduled time.¹⁰⁸ If a regularly scheduled meeting is changed or a special meeting is called, due notice shall be given to the public.¹⁰⁹ In unusual circumstances a special meeting may be held with less than 24 hours notice by giving notice of the meeting and subjects to be considered as is reasonable under the circumstances. The reason for such meeting and the nature of the notice given must be recorded in the city journal provided for in Section 2.20.¹¹⁰

B. Procedures.

Section 2.20. Rules of Procedure.

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

¹⁰⁸ O.C.G.A. § 50-14-1(d) (2006). *See generally*, GEORGIA MUNICIPAL ASSOCIATION, GOVERNMENT IN THE SUNSHINE: A GUIDE TO GEORGIA'S OPEN MEETINGS AND OPEN RECORDS LAWS FOR MUNICIPAL OFFICIALS (6th edition 2004); Bolt, The Open Meetings Law: How Does It Impact on Your City, URBAN GEORGIA 41 (May 1985).

¹⁰⁹ "Due notice" consists of posting written notice for at least 24 hours at the place of the regular meetings and providing written or oral notice at least 24 hours in advance of the meeting to the legal organ, or other newspaper with equivalent distribution, in the county in which the regular meetings are held. O.C.G.A. § 50-14-1(d) (2006).

¹¹⁰ *Id.*

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

Subparagraph (b) of Section 2.20 regarding committees should be tailored to fit the individual city's needs. This power of appointment and removal may be delegated to the president of the city council, if such office is created, to provide true separation of the executive and legislative branches in a strong mayor-council form of government. Also, Robert's Rules of Order may prove too unwieldy for local legislative bodies, so when adopting rules of procedure, a city council may want to consult a procedure guide simplified and adapted for use by local governments.¹¹¹

Section 2.21. Quorum: Voting.

A quorum is the number of members of the governing body that must be in attendance for official business to be conducted. Once a quorum is present, there are three basic options as to the necessary votes to pass a proposition. The charter may require adoption by a majority of the entire body (not just those in attendance), by a majority of a quorum or a majority of those present and voting, or by a supermajority composed of some percentage of the governing body. The charter may attempt to address the use of abstentions to prevent potential abuse. In the absence of a conflict of interest, generally courts will not allow a member to attend a meeting but refuse to act if such an abstention will preclude the governmental body from acting.¹¹²

¹¹¹ See GEORGIA MUNICIPAL ASSOCIATION, PARLIAMENTARY PROCEDURE GUIDEBOOK (2007).

¹¹² Laurel E. Henderson, Vagaries of Voting: The Oblique Approach (unpublished paper) (2000 GMA City Attorneys Section Seminar).

Alternative 1: Abstention Allowed

Section 2.21 Quorum: Voting

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

Alternative 2: Abstention Prohibited

It is highly recommended that cities include the following language barring abstention without cause, as it is possible for abstention to be strategically abused.

Section 2.21 Quorum: Voting

- (a) ___ councilmembers shall constitute a quorum and shall be authorized to transact business of the city council. Voting on the adoption of ordinances shall be by voice vote and the vote shall be recorded in the journal, but any member of the city council shall have the right to request a roll call vote and such vote shall be recorded in the journal. Except as otherwise provided in this charter, the affirmative vote of ___ councilmembers shall be required for the adoption of any ordinance, resolution, or motion.

(b) No member of the city council shall abstain from voting on any matter properly brought before the council for official action except when such councilmember has a conflict of interest which is disclosed in writing prior to or at the meeting and made a part of the minutes. Any member of the city council present and eligible to vote on a matter and refusing to do so for any reason other than a properly disclosed and recorded conflict of interest shall be deemed to have acquiesced or concurred with the members of the majority who did vote on the question involved.

*A quorum of the membership of the governing body is generally required by charter to be present in order to transact business, and Georgia courts consider such quorum requirements to be mandatory upon the governing body.*¹¹³

C. Ordinances.

Section 2.22. Ordinance Form; Procedures.

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

¹¹³ See *Roberts v. Dancer*, 144 Ga. 341, 87 S.E. 287 (1915); R.P. SENTELL, *The Legislative Process in Georgia Local Government Law*, STUDIES IN GEORGIA LOCAL GOVERNMENT LAW 350-355 (3rd ed. 1977).

- (b) An ordinance may be introduced by any councilmember and be read at a regular or special meeting of the city council. Ordinances shall be considered and adopted or rejected by the city council in accordance with the rules which it shall establish; provided, however, an ordinance shall not be adopted the same day it is introduced, except for emergency ordinances provided in Section 2.24. Upon introduction of any ordinance, the clerk shall as soon as possible distribute a copy to the mayor and to each councilmember and shall file a reasonable number of copies in the office of the clerk and at such other public places as the city council may designate.

*If such form and procedure requirements are established by ordinance, they are not mandatory. As a result, enforceable prohibitions and restrictions on procedures must be placed in the charter.*¹¹⁴

Section 2.23. Action Requiring An Ordinance.

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

*Unless the charter requires the act to be done by ordinance, it generally may be done by resolution. In general, ordinances are enacted for legislative acts and resolutions are for the administrative measures of the municipality.*¹¹⁵

¹¹⁴ See City of Rome v. Reese, 19 Ga. App. 559, 91 S.E. 880 (1917); Moore v. City of Thomasville, 17 Ga. App. 285, 86 S.E. 641 (1915).

¹¹⁵ Atkinson v. City of Roswell, 203 Ga. App. 192, 416 S.E.2d 550 (1992).

Section 2.24. Emergencies.

- (a) To meet a public emergency affecting life, health, property or public peace, the city council may convene on call of the mayor or ___ councilmembers and promptly adopt an emergency ordinance, but such ordinance may not levy taxes; grant, renew or extend a franchise; regulate the rate charged by any public utility for its services; or authorize the borrowing of money except for loans to be repaid within 30 days. An emergency ordinance shall be introduced in the form prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists, and describing the emergency in clear and specific terms. An emergency ordinance may be adopted, with or without amendment, or rejected at the meeting at which it is introduced, but the affirmative vote of at least ___ councilmembers shall be required for adoption. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance shall automatically stand repealed 30 days following the date upon which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.
- (b) Such meetings shall be open to the public to the extent required by law and notice to the public of emergency meetings shall be made as fully as is reasonably possible in accordance with section 50-14-1 of the Official Code of Georgia Annotated, or such other applicable laws as are or may hereafter be enacted.

This section sets up a third type of meeting for a council that may be called promptly to address an emergency problem. Safeguards against abuse are provided by the fact that a quorum would still be required, an affirmative number of votes by councilmembers are needed, and the ordinance lapses automatically after thirty days or less. At a minimum the city must give notice of the emergency meeting to the legal organ or other appropriate newspaper of general circulation in the county to satisfy the requirement of due notice to the public.¹¹⁶

Section 2.25. Codes of Technical Regulations.

- (a) The city council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such adopting ordinance shall be as prescribed for ordinances generally except that: (1) the requirements of Section 2.22(b) for distribution and filing of copies of the ordinance shall be construed to include copies of any code of technical regulations, as well as the adopting ordinance; and (2) a copy of each adopted code of technical regulations, as well as the adopting ordinance, shall be authenticated and recorded by the clerk pursuant to Section 2.26.
- (b) Copies of any adopted code of technical regulations shall be made available by the clerk for inspection by the public.

Section 2.26. Signing; Authenticating; Recording; Codification; Printing.

¹¹⁶ O.C.G.A. § 50-14-1(d) (2006).

- (a) The clerk shall authenticate by the clerk's signature and record in full in a properly indexed book kept for that purpose, all ordinances adopted by the council.
- (b) The city council shall provide for the preparation of a general codification of all the ordinances of the city having the force and effect of law. The general codification shall be adopted by the city council by ordinance and shall be published promptly, together with all amendments thereto and such codes of technical regulations and other rules and regulations as the city council may specify. This compilation shall be known and cited officially as "The Code of the City of _____, Georgia." Copies of the code shall be furnished to all officers, departments and agencies of the city, and made available for purchase by the public at a reasonable price as fixed by the city council.

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

Charters should contain provisions for signing, authentication, recording and codification of ordinances. The normal practice is to adopt by ordinance a general codification of all ordinances having the effect of law. The failure of city councils to require a codification of ordinances results in confusion as to what the law is, misplacement of essential ordinances, duplication in the passage of ordinances, and similar undesirable practices. In fact, state law requires codification or compilation of ordinances and resolutions.¹¹⁷

EXAMPLE PROVISIONS FOR SPECIFIC FORMS OF GOVERNMENT

Some provisions included in the Charter depend upon which form of government was chosen for the municipality. Most plans of government do not expressly fit within one of the basic three forms enumerated here, so the following

¹¹⁷ O.C.G.A. § 36-80-19 (2006).

provisions provide only models for residents in drafting a charter and should be tailored to establish the plan of government desired by the municipality.

A. Council-Manager Form of Government.¹¹⁸

The provisions below offer alternatives for those municipalities operating with a city manager.

City Manager

Section 2.27. City Manager; Appointment; Qualifications; Compensation.

The city council shall appoint a city manager for an indefinite term and shall fix the manager's compensation. The manager shall be appointed solely on the basis of executive and administrative qualifications.

The level of qualifications will vary depending on the size of the city and sophistication of its services, but a useful guideline for the minimum qualifications of a city manager follows:

A master's degree with a concentration in public administration, public affairs or public policy and two years' experience in an appointed managerial or administrative position in a local government or a bachelor's degree and 5 years of such experience.¹¹⁹

¹¹⁸ The council-manager form of government is strongly endorsed by the National Civic League. NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER iii, 22-26 (8th ed. 2003).

¹¹⁹ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 23 (8th ed. 2003).

*Residency requirements are prohibited by state law.*¹²⁰

Alternative 1

This section provides for treating the city manager as an at-will employee, removable at any time. However, if the council so desires, it may provide for specified procedures to be followed for removal of the city manager.¹²¹ To retain maximum flexibility, all city employees, including the city manager, should be at-will employees. A sample removal procedure is provided by the following alternative section.

Section 2.28. Removal of City Manager.

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

¹²⁰ O.C.G.A. § 45-2-5

¹²¹ See discussion of due process in the Personnel Administration part of Article III.

Alternative 2

Section 2.28. Removal of City Manager.

- (a) The city council may remove the manager from office in accordance with the following procedures:
 - (1) The city council shall adopt by affirmative vote of a majority of all its members a preliminary resolution which must state the reasons for removal and may suspend the manager from duty for a period not to exceed 45 days. A copy of the resolution shall be delivered promptly to the manager.
 - (2) Within five (5) days after a copy of the resolution is delivered to the manager, the manager may file with the city council a written request for a public hearing. This hearing shall be held within 30 days after the request is filed. The manager may file with the council a written reply not later than five (5) days before the hearing.
 - (3) If the manager has not requested a public hearing within the time specified in paragraph (2) above, the city council may adopt a final resolution for removal, which may be made effective immediately, by an affirmative vote of a

majority of all its members. If the manager has requested a public hearing, the city council may adopt a final resolution for removal, which may be made effective immediately, by an affirmative vote of a majority of all its members at any time after the public hearing.

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

Section 2.29. Acting City Manager.

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

Section 2.30. Powers and Duties of the City Manager.

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

- (a) appoint and, when the manager deems it necessary for the good of the city, suspend or remove all city employees and administrative officers the manager appoints, except as otherwise provided by law or personnel ordinances adopted pursuant to this charter. The manager may authorize any administrative officer who is subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;
- (b) direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law;
- (c) attend all city council meetings except for closed meetings held for the purposes of deliberating on the appointment, discipline or removal of the city manager and have the right to take part in discussion but not vote;
- (d) see that all laws, provisions of this charter, and acts of the city council, subject to enforcement by the manager or by officers subject to the manager's direction and supervision, are faithfully executed;
- (e) prepare and submit the annual operating budget and capital budget to the city council;
- (f) submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;

- (g) make such other reports as the city council may require concerning the operations of city departments, offices and agencies subject to the manager's direction and supervision;
- (h) keep the city council fully advised as to the financial condition and future needs of the city, and make such recommendations to the city council concerning the affairs of the city as the manager deems desirable; and
- (i) perform other such duties as are specified in this charter or as may be required by the city council.

Council

Section 2.31. Council Interference with Administration.

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

Mayor and Mayor Pro Tem

Alternative 1: Mayor Elected by Council

Section 2.32. Selection of Mayor and Mayor Pro Tem.

By a majority vote of all its members, the city council shall elect councilmembers to serve as mayor and mayor pro tem, and both shall serve at the pleasure of the city council. Both shall continue to vote and otherwise participate as councilmembers.

Alternative 2: Mayor Elected at Large

Section 2.32. Selection of Mayor and Mayor Pro Tem.

At each regular election the voters of the city shall elect a mayor at large for a term of [the same term as other council members] years. The council shall elect from among its members a mayor pro tem who shall act as mayor during the absence or disability of the mayor, but shall only vote once on matters before the council, and, if a vacancy occurs, shall become mayor for the remainder of the expired term.¹²²

Section 2.33. Powers and Duties of Mayor.

The mayor shall:

- (a) preside at all meetings of the city council;
- (b) be the head of the city for the purpose of service of process and for ceremonial purposes, and be the official spokesperson for the city and the chief advocate of policy;
- (c) have power to administer oaths and to take affidavits;

and

¹²² NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 10 (8th ed. 2003).

- (d) sign as a matter of course on behalf of the city all written and approved contracts, ordinances and other instruments executed by the city which by law are required to be in writing.

The National Civic League offers the option of an at-large election for the mayor and recommends a more active role for the mayor as a liaison between the council and the manager, as a provider of policy guidance and as an ambassador dealing with other governments and the public.¹²³ If an at-large election is selected, the city may choose to allow the mayor to vote and otherwise participate as a councilmember or to limit voting participation to ties or where such vote will provide the affirmative vote needed for approval of a matter.¹²⁴

Section 2.34. Position of Mayor Pro Tem.

During the absence or physical or mental disability of the mayor for any cause, the mayor pro tem, or in the mayor pro tem's absence or disability for any reason, any one of the councilmembers chosen by a majority vote of the city council, shall be clothed with all the rights and privileges of the mayor and shall perform the duties of the office of the mayor so long as such absence or disability shall

¹²³ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 10-12 (8th ed. 2003). The suggested duties of the mayor include representing the city in intergovernmental relations, appointing members of citizen advisory boards and commissions with the advice and consent of the council and presenting an annual state of the city message.

¹²⁴ See City of Sandy Springs Charter art. 2, para. 10.

continue. Any such absence or disability shall be declared by majority vote of all councilmembers. The mayor pro tem or selected councilmember shall sign all contracts and ordinances in which the mayor has a disqualifying financial interest as provided in Section 2.14. When acting as mayor, the mayor pro tem shall continue to have only vote as a member of the council.

B. Mayor-Council Form of Government (Weak Mayor).

The provisions listed below offer charter provision options for those municipalities with a Weak Mayor form of government.

Mayor and Mayor Pro Tem

Section 2.27. Election of Mayor; Forfeiture; Compensation.

The mayor shall be elected and serve for a term of 4 years and until a successor is elected and qualified. The mayor shall be a qualified elector of this city and shall have been a resident of the city for 12 months prior to the election. The mayor shall continue to reside in this city during the period of service. The mayor shall forfeit the office on the same grounds and under the same procedure as for councilmembers. The compensation of the mayor shall be established in the same manner as for councilmembers.

Section 2.28. Mayor Pro Tem.

By a majority vote, the city council shall elect a councilmember to serve as mayor pro tem. The mayor pro tem shall assume the

duties and powers of the mayor during the mayor's physical or mental disability, suspension from office or absence. Any such disability or absence shall be declared by a majority vote of the city council. The mayor pro tem shall sign all contracts and ordinances in which the mayor has a disqualifying financial interest as provided in Section 2.14. When acting as mayor, the mayor pro tem shall continue to have only vote as a member of the council.

Section 2.29. Powers and Duties of Mayor.

The mayor shall:

- (a) preside at all meetings of the city council;
- (b) be the head of the city for the purpose of service of process and for ceremonial purposes, and be the official spokesperson for the city and the chief advocate of policy;
- (c) have the power to administer oaths and to take affidavits;
- (d) sign as a matter of course on behalf of the city all written and approved contracts, ordinances and other instruments executed by the city which by law are required to be in writing;
- (e) vote on matters before the city council and be counted toward a quorum as any other councilmember;
- (f) prepare and submit to the city council a recommended annual operating budget and recommended capital budget; and
- (g) fulfill such other executive and administrative duties as the city council shall by ordinance establish.

C. Mayor-Council Form of Government (Strong Mayor).

The subsequent provisions may act as a guide to those municipalities governed by a form similar to the Strong Mayor plan of government.

Mayor and Mayor Pro Tem

Section 2.27 Election of Mayor; Forfeiture; Compensation.

The mayor shall be elected and serve for a term of 4 years and until a successor is elected and qualified. The mayor shall be a qualified elector of this city and shall have been a resident of the city for 12 months preceding the election. The mayor shall continue to reside in this city during the period of service. The mayor shall forfeit the office on the same grounds and under the same procedure as for councilmembers. The compensation of the mayor shall be established in the same manner as for councilmembers.

Section 2.28. Chief Executive Officer.

The mayor shall be the chief executive of this city. The mayor shall possess all of the executive and administrative power granted to the city under the constitution and laws of the State of Georgia, and all the executive and administrative powers contained in this charter.

Section 2.29. Powers and Duties of Mayor.

As the chief executive of this city, the mayor shall:

- (a) see that all laws and ordinances of the city are faithfully executed;
- (b) appoint and remove all officers, department heads, and employees of the city, except as otherwise provided in this charter;
- (c) exercise supervision over all executive and administrative work of the city and provide for the coordination of administrative activities;
- (d) prepare and submit to the city council a recommended operating budget and capital budget;
- (e) submit to the city council at least once a year a statement covering the financial conditions of the city, and from time to time, such other information as the city council may request;
- (f) recommend to the city council such measures relative to the affairs of the city, improvement of the government, and promotion of the welfare of its inhabitants as the mayor may deem expedient;
- (g) call special meetings of the city council as provided for in Section 2.19(b);
- (h) approve or disapprove ordinances as provided in Section 2.31;
- (i) provide for an annual audit of all accounts of the city;
- (j) require any department or agency of the city to submit written reports whenever the mayor deems it expedient; and
- (k) perform such other duties as may be required by law, this charter, or by ordinance.

Section 2.30. Limitation on Terms of Service.

No mayor elected and qualified for ___ consecutive terms shall be eligible for the succeeding term.

The local jurisdiction may desire to limit the successive term(s) of office to one term, to two terms, or to three terms or more. This is a discretionary matter, but it is suggested that reelection not be limited so that citizens may keep in office those councilmembers of whom they approve.¹²⁵ Term limits are not a matter that can be revised in the charter by home rule but are a matter requiring a local act of the legislature.¹²⁶

Section 2.31. Submission of Ordinances to the Mayor; Veto Power.

- (a) Every ordinance adopted by the city council shall be presented promptly by the clerk to the mayor.
- (b) The mayor, within ten (10) calendar days of receipt of an ordinance, shall return it to the clerk with or without the mayor's approval, or with the mayor's disapproval. If the ordinance has been approved by the mayor, it shall become law upon its return to the clerk; if the ordinance is neither approved nor disapproved, it shall become law at twelve o'clock noon on the tenth calendar day after its adoption; if the ordinance is disapproved, the mayor shall submit to the city council

¹²⁵ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 6 (8th ed. 2003).

¹²⁶ O.C.G.A. § 36-35-6(a)(1) (2006).

through the clerk a written statement of reasons for the veto. The clerk shall record upon the ordinance the date of its delivery to and receipt from the mayor.

- (c) Ordinances vetoed by the mayor shall be presented by the clerk to the city council at its next meeting. If the city council then or at its next meeting adopts the ordinance by an affirmative vote of ___ members, it shall become law.
- (d) The mayor may disapprove or reduce any item or items of appropriation in any ordinance. The approved part or parts of any ordinance making appropriations shall become law, and the part or parts disapproved shall not become law unless subsequently passed by the city council over the mayor's veto as provided herein. The reduced part or parts shall be presented to city council as though disapproved and shall not become law unless overridden by the council as provided in subsection (c) above.

This section requires the approval or inaction of the mayor before any ordinance enacted by the council shall become law; however, this section provides for an ordinance to become law over a mayor's veto if the council takes additional action to override the veto.¹²⁷ The council is usually authorized to

¹²⁷ Veto powers must be expressly authorized in the charter. Georgia courts strictly construe such charter provisions. See *Haight v. City of Blue Ridge*, 132 Ga. App. 545, 208 S.E.2d 357 (1974); R.P. SENTELL, *The Legislative Process in Georgia Local Government Law*, STUDIES IN GEORGIA LOCAL GOVERNMENT LAW 373-378 (3rd

override a veto by a vote of two-thirds of the council. In this section, the mayor is also given power to veto items in appropriation ordinances. The purpose of this is so the mayor will not be forced to accept appropriation items which the mayor deems unwise simply because they are in the same ordinance as other necessary appropriation items. The disadvantages of the line item veto are that it may make appropriation ordinances too complicated to enact, or it may even become a tool for political bargaining.

In some strong mayor plans, the mayor is not a member of the council. In such cases, the presiding officer of the council is a person selected by the governing body from its own membership or a person such as vice-mayor elected from the community at-large. Examples of each are presented below.

ed. 1977). In addition, the veto is the hallmark of the strong-mayor system, so if the city later chooses to take the mayor's veto power away, it would be well-advised to do so through the General Assembly to avoid a claim that it is impermissibly changing the form of the government in the Charter.

Alternative 1

Section 2.32. Mayor Pro Tem; Selection; Duties.

By a majority vote, the city council shall elect a councilmember to serve as mayor pro tem. The mayor pro tem shall preside at all meetings of the city council and shall assume the duties and powers of the mayor upon the mayor's physical or mental disability, suspension from office or absence. The city council by a majority vote shall elect a new presiding officer from among its members for any period in which the mayor pro tem is disabled, absent or acting as mayor. Any such absence or disability shall be declared by majority vote of all councilmembers. When serving as mayor, the mayor pro tem shall not also vote as a member of the council.

Alternative 2

Section 2.32. Vice-Mayor; Election; Duties.

The vice-mayor shall be elected and serve for the term of 4 years and until a successor is elected and qualified. The vice-mayor shall have the same qualifications as the mayor and shall be compensated in the same manner as for councilmembers. The vice-mayor shall preside at all meetings of the city council and shall assume the duties and powers of the mayor upon the mayor's physical or mental disability or absence. By a majority vote, the city council shall elect a new presiding officer from among its members for any period in which the vice-mayor is disabled, absent or acting as mayor. The vice-mayor shall be subject to forfeiture of office in the same grounds and under the same procedure as for councilmembers. Any such absence or disability shall be declared by majority vote of all councilmembers. When serving as mayor, the mayor pro tem shall not also vote as a member of the council.

ARTICLE III

ADMINISTRATIVE AFFAIRS

GENERALLY

Administrative responsibilities of local governments should be distinguished from legislative responsibilities. Legislative responsibilities relate to the determination of overall policy of the government through the enactment of various ordinances, resolutions and regulations. Administrative responsibilities deal with the implementation of policies and procedures established by the governing body.

Some charters tend to confuse administrative and legislative responsibilities. In some cases, the legislative branch of the local government is charged with various executive or administrative responsibilities as in the weak mayor-council form of government. In some cities, this arrangement may be desirable, but, as the administrative load grows, delegation of administrative power will become increasingly necessary to enable the mayor and council to devote time to establishing policy. Ideally, administrative responsibilities should be the duty of an executive official of the government whether it be the mayor, the city manager, or the chief administrative officer, and should be carried out by the various departments, agencies, boards and commissions which normally make up the operational branch of local government. The following sections illustrate models for drafting charter provisions that relate to the administrative responsibility of local governments.

ORGANIZATIONAL AND GENERAL PROVISIONS

In strong mayor-council and council-manager plans, it is advised that provisions for department directors and their removal be included. One person should be in charge of and held responsible for each department. The following subsections give examples of appropriate provisions.¹²⁸ Of course, in a weak mayor-council plan, the departments of city government are often operated by a committee of the council, and charter provisions for a director are not needed even though the departments may have a director.

With regard to departments, there is no need to specifically designate or enumerate the operations and duties of each department or agency of the local government; however, any specific prohibitions on the council, mayor or city manager could be placed here. This approach allows greater flexibility than the alternative of setting out the details of every department and agency of local government.¹²⁹ Nevertheless, specific boards and departments can be named in the charter. Examples of some common departments are public works, parks and recreation, police, fire, health, library, and public utilities. Other common staff departments are finance, personnel, and planning. Examples of common boards are zoning review, retirement, library, civil service, and licenses.¹³⁰

Section 3.10. Administrative and Service Departments.

¹²⁸ See N. MATTHEWS, MUNICIPAL CHARTERS 50-52 (1914); PUBLIC RESEARCH AND MANAGEMENT, INC., ANNOTATED CITY CHARTER OF THE CITY OF ATLANTA 15-16 (1973).

¹²⁹ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 26-30 (8th ed. 2003); N. MATTHEWS, MUNICIPAL CHARTERS 50-53 (1914).

¹³⁰ *Id.*

- (a) Except as otherwise provided in this charter, the city council, by ordinance, shall prescribe the functions or duties, and establish, abolish, alter, consolidate or leave vacant all nonelective offices, positions of employment, departments, and agencies of the city, as necessary for the proper administration of the affairs and government of this city.
- (b) Except as otherwise provided by this charter or by law, the directors of departments and other appointed officers of the city shall be appointed solely on the basis of their respective administrative and professional qualifications.
- (c) All appointive officers and directors of departments shall receive such compensation as prescribed by ordinance or resolution.
- (d) There shall be a director of each department or agency who shall be its principal officer. Each director shall, subject to the direction and supervision of the [mayor][city manager], be responsible for the administration and direction of the affairs and operations of that director's department or agency.
- (e) All appointive officers and directors under the supervision of the [mayor][city manager] shall be nominated by the [mayor][city manager] with confirmation of appointment by the city council. All appointive officers and directors shall be employees at-will and subject to removal or suspension at any time by the [mayor][city manager] unless otherwise provided by law or ordinance.

Subsection (e) provides that appointive officers and directors are employed at-will. This means that the relationship between the city and the officer or director may be terminated at any time, with or without cause. To retain flexibility in hiring and removing personnel the at-will system of employment is recommended. Note that if a city has an at-will employment system stated in the charter, the council cannot by ordinance or policy establish a “for cause” system of employee removal.¹³¹ A similar provision is made for board members in Section 3.11 (g).

While the service departments need one chief administrator, certain functions like zoning review require policy decisions which demand the joint decisions of a board. Such areas are quasi-judicial or quasi-legislative in nature; they require first that the facts of the complex situation are agreed upon and then that the law is applied to those facts. The existence of multiple opinions protects this process of sifting through the facts and law and demands control by a group of officials sitting as a unit. The following provisions provide for such bodies.

Section 3.11. Boards, Commissions and Authorities.

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

¹³¹ Pope v. Buchanan, 476 S.E.2d 53 (Ga. App. 1996); See also the due process discussion under Personnel Administration, below.

- (b) All members of boards, commissions and authorities of the city shall be appointed by the city council for such terms of office and in such manner as shall be provided by ordinance, except where other appointing authority, terms of office, or manner of appointment is prescribed by this charter or by law.
- (c) The city council, by ordinance, may provide for the compensation and reimbursement for actual and necessary expenses of the members of any board, commission or authority.
- (d) Except as otherwise provided by charter or by law, no member of any board, commission or authority shall hold any elective office in the city.
- (e) Any vacancy on a board, commission or authority of the city shall be filled for the unexpired term in the manner prescribed herein for original appointment, except as otherwise provided by this charter or by law.
- (f) No member of a board, commission or authority shall assume office until that person has executed and filed with the clerk of the city an oath obligating himself to faithfully and impartially perform the duties of that member's office, such oath to be prescribed by ordinance and administered by the mayor.
- (g) All board members serve at-will and may be removed at any time by a vote of ___ members of the city council unless otherwise provided by law.
- (h) Except as otherwise provided by this charter or by law, each board, commission or authority of the city shall elect one of its members as chair and one member as

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

ADMINISTRATIVE OFFICERS

A minimum list of appointed administrative officials can be placed in the charter to serve as a guide and to incorporate any prohibitions desired for these positions. The council may consolidate or leave vacant these positions as provided in Section 3.10 unless the offices are otherwise required in the charter. Of course, in larger cities, these officials may be the head of a department in their area.

With respect to the city attorney, where the city is using outside counsel to serve as the city attorney there are several steps the city can take to reduce the chances that the Internal Revenue Service may regard the city attorney as an employee of the city. First, the city charter should affirmatively state that the city attorney is not a public official of the city and does not take an oath of office. Second, the charter can expressly state that the city attorney is an independent contractor and allow designation of a law firm as the city attorney. Third, the representation agreement between the city and the city attorney should unambiguously state that the city attorney is an independent contractor, not an employee, and will receive a Form 1099. Finally, the city should not provide

employee benefits to the city attorney or, if they are made available to the city attorney, the attorney should be required to pay for them at fair market value. Sample provisions incorporating some of these suggestions are set forth below.

Section 3.12. City Attorney.

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

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

Section 3.13. City Clerk.

The [city council][mayor][city manager] shall appoint a city clerk who shall not be a councilmember. The city clerk shall be custodian of the official city seal and city records; maintain city

council records required by this charter; and perform such other duties as may be required by the city council.

*The city may also choose to include the positions of Tax Collector or City Accountant in the Charter.*¹³²

PERSONNEL ADMINISTRATION

A charter statement on personnel administration is desirable since relatively few cities employ effective personnel policies and practices. A detailed civil service system can be established in the charter, but for most cities, this is unnecessary.¹³³ The following draft sections centralize the responsibility for personnel administration and set minimum procedures for a personnel program.

The following section should be included only if the municipality wishes to provide for position classification and pay plans. A section such as this may be unnecessary for cities with few employees.

Section 3.14. Position Classification and Pay Plans.

The [city manager][mayor] shall be responsible for the preparation of a position classification and pay plan which shall be submitted to the city council for approval. Such plan may apply to all employees of the city and any of its agencies, departments, boards,

¹³² See City of Sandy Springs Charter, art. 3, para. 10-11.

¹³³ See generally, PUBLIC RESEARCH AND MANAGEMENT, INC., ANNOTATED CITY CHARTER OF THE CITY OF ATLANTA 19-20 (1973).

commissions or authorities. When a pay plan has been adopted, the city council shall not increase or decrease the salary range applicable to any position except by amendment of such pay plan. For purposes of this section, all elected and appointed city officials are not city employees.

The charter may designate either that employees are at-will or may only be dismissed for cause. Since at-will employees may be dismissed at any time it is preferable to make all employment at-will in the charter and specify any desired procedural protections for employees by policy. Note that these procedural protections cannot override a substantive employment at-will provision in the charter. Such procedural protections provide a way for employees to appeal employment decisions without establishing a right to a particular outcome. If employment may be terminated only for cause, notice and dismissal hearings are required by the due process clause of the United States Constitution since a property interest is involved.¹³⁴

Liberty and property interests are both constitutionally protected once they have been initially recognized and protected by state law.¹³⁵ Thus, although there is no property interest in at-will employment, there may be a reputational liberty interest involved.¹³⁶ A post-termination hearing should be made available

¹³⁴ See Perry v. Sindermann, 408 U.S. 593 (1972); Board of Regents v. Roth, 408 U.S. 564 (1972); Daniel v. Porter, 391 F.Supp. 1006 (W.D.N.C. 1975); Smith and Gebula, Job Security for Public Employees, 31 WASH. & LEE L. REV. 545 (1974); but see, Bishop v. Wood, 426 U.S. 341 (1976).

¹³⁵ Paul v. Davis, 424 U.S. 693 (1976).

¹³⁶ See, e.g., Buxton v. City of Plant City, 871 F.2d 1037 (11th Cir. 1989), holding that a discharged police officer's liberty interest was violated when false, stigmatizing information was placed in his personnel file and an internal affairs report without a

to all employees for a chance to clear their names and thus to safeguard the reputational liberty interests at stake. For cities with a for-cause removal system, a quick routine procedure with prior notice of charges, a hearing with compulsory process for witnesses, cross-examination of those witnesses, and a decision based on a record by an impartial magistrate or hearing officer is advisable in order to avoid litigation.

Section 3.15. Personnel Policies.

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

Municipalities may adopt personnel policies or ordinances to provide for (1) the method of employee selection, promotion and transfer; (2) hours of work, vacation, sick leave, and other leaves of absence, overtime pay, and the manner in which layoffs shall be effected; (3) a for cause removal system; and (4) other personnel policies.

name clearing hearing. *Campbell v. Pierce County*, 741 F.2d 1342 (11th Cir. 1985), *cert. denied*, 470 U.S. 1052, which provided that a discharged at-will, county employee had a liberty interest in reputation when it was combined with employment termination and a right to a post-termination hearing; *Williams v. Butler*, 863 F.2d 1398 (8th Cir. 1984), *cert. denied*, 492 U.S. 906, holding a municipality liable for the unconstitutional dismissal of a court clerk by the municipal court judge since the judge possessed the final policymaking authority, as opposed to discretionary authority, with respect to employment matters.

ARTICLE IV

JUDICIAL BRANCH

GENERALLY

Municipal court systems are a very important part, not only of our local government, but of our judicial system as a whole. They represent the lowest level of our judicial hierarchy and, as such, are the courts most likely to be encountered by the average citizen. For these reasons, it is most important that the citizens of the city and the defendants before the court be impressed with the dignity and justice of the proceedings. Several ways in which these objectives can be realized are having an attorney serve as judge, having simple, comprehensible rules of procedure, and dispensing judgments and sentences without favor or partiality.

Municipal courts have the authority to try offenses against the laws of municipalities as well as a number of state misdemeanor offenses and impose fines, jail terms, probation, or community service upon persons convicted of such offenses.¹³⁷ Judges of these courts are also given the same powers and authorities as magistrates in matters pertaining to criminal cases.¹³⁸ Judges are prohibited from holding any municipal office or appointment in the city where the court is held,¹³⁹ and elected municipal officers are ineligible to hold other municipal offices¹⁴⁰. In 1994, the Judicial Qualifications Commission (JQC) issued an opinion as to whether the mayor of a city may serve as judge of that city's municipal court.¹⁴¹ The JQC concluded that the practice of mayors serving as judges resulted in "a loss of public confidence in the integrity and impartiality of the judiciary" in violation of Canon 2 of the Code of Judicial Ethics.¹⁴² The opinion states further

¹³⁷ O.C.G.A. § 36-32-5 (2006).

¹³⁸ O.C.G.A. § 36-32-3 (2006). For an enumeration of such powers, see O.C.G.A. § 15-10-2 (2005).

¹³⁹ O.C.G.A. § 15-8-2 (2005). See 1982 OP. ATTY. GEN. U82-25 including city attorneys and judges of recorder's or police courts within the prohibition.

¹⁴⁰ O.C.G.A. § 36-30-4 (2006). See *Fowler v. Mitcham*, 249 Ga. 400, 291 S.E.2d 515 (1982), holding the section need not apply only to elected officials; 1982 OP. ATTY. GEN. U82-27 providing all elected officials are included in the prohibition.

¹⁴¹ Judicial Opinion No. 196 of the Judicial Qualifications Commission, issued June 28, 1994 by John E. James.

¹⁴² *Id.* See, *Ward v. City of Monroeville*, 409 U.S. 57 (1972), holding that the mayor or a member of the governing body of a municipality is disqualified on due process grounds from serving as a municipal court judge where the municipality derives a substantial portion of its income from the fines, forfeitures, costs and fees imposed by the court; *Starks v. City of Kingsland*, No. 83V-478 (Superior Court of Camden Co. Oct. 19, 1983), a case in which the court held that a mayor presiding over the

that the practice will no longer be sanctioned and any individual serving in a dual capacity must choose which office to occupy within one year of the date of the Opinion.¹⁴³

It is, however, highly recommended that the judge be a qualified attorney. One issue that may arise is the question of whether or not the city attorney should also serve as municipal court judge. This option also seems foreclosed by the prohibition against judges holding another municipal office.¹⁴⁴ In addition, this may not be an ideal selection since the city may need the city attorney's representation in that very court. Even if such representation were never required, there is always the possibility of the appearance of collusion and partiality since the municipal court judge may be judging ordinances drafted by the city attorney and challenged by defendants.¹⁴⁵

Another issue that might arise in municipal court concerns the right to appointed counsel. Although there is no model provision in this article, a provision or ordinance on how the right to counsel in municipal courts will be handled should be considered. If the offense charged carries a possibility of jail time, the advice as to the right to have counsel appointed must be given and an attorney must be

municipal court violated the constitutional rights of a defendant appearing in that court.

¹⁴³ *Id.*

¹⁴⁴ O.C.G.A. § 15-8-2 (2005); *See* 1982 OP. ATTY. GEN. U82-25.

¹⁴⁵ In Judicial Opinion No. 52 of the Judicial Qualifications Commission, issued July 6, 1983, H.H. Perry Jr. opined that under Canon 2 of the Code of Judicial Ethics it was inappropriate for a member of a firm which represents a municipality to serve as judge of the city or recorder's court of the municipality. *See also*, *Alabama v. Shelton*, 535 U.S. 654 (2002) (finding indigent counsel must be offered if jail time is even possible).

appointed for indigents where requested.¹⁴⁶ Additionally, in order for a municipal court to retain the authority to issue sentences involving incarceration or probation, the court must provide indigent counsel.¹⁴⁷

The following sections of this chapter present draft provisions for the creation of a municipal court. These provisions cover jurisdiction, powers, and procedures for operation of the court.

MUNICIPAL COURT

Section 4.10. Creation; Name.

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

Section 4.11. Chief Judge; Associate Judge.

- (a) The municipal court shall be presided over by a chief judge and such part-time, full-time, or stand-by judges as shall be provided by ordinance.
- (b) No person shall be qualified or eligible to serve as a judge on the municipal court unless that person shall have attained the age of 21 years, shall be a member of the State Bar of Georgia and shall possess all qualifications required by law. All judges shall be

¹⁴⁶ Alabama v. Shelton, 122 S.Ct. 1764 (2002); see also Argersinger v. Hamlin, 407 U.S. 25 (1972).

¹⁴⁷ O.C.G.A. § 36-32-1(f).

appointed by the city council and shall serve until a successor is appointed and qualified.

- (c) Compensation of the judges shall be fixed by ordinance.
- (d) Judges serve at-will and may be removed from office at any time by the city council unless otherwise provided by ordinance.
- (e) Before assuming office, each judge shall take an oath, given by the mayor, that the judge will honestly and faithfully discharge the duties of the office to the best of that person's ability and without fear, favor or partiality. The oath shall be entered upon the minutes of the city council journal required in Section 2.20.

Cities may alternatively choose to provide for a one year or longer judicial appointment and prohibit removal without cause under subsection (d) of the above provision [Section 4.11].

Section 4.12. Convening.

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

*Section 4.13. Jurisdiction; Powers.*¹⁴⁸

¹⁴⁸ For general jurisdiction of municipal courts, *see* GA. CONST. art. VI, sec. I, para. I (1983); O.C.G.A. tit. 36, ch. 32 (2006).

- (a) The municipal court shall have jurisdiction and authority to try and punish violations of this charter, all city ordinances, and such other violations as provided by law.
- (b) The municipal court shall have authority to punish those in its presence for contempt, provided that such punishment shall not exceed two hundred dollars (\$200.00) or ten (10) days in jail.
- (c) The municipal court may fix punishment for offenses within its jurisdiction not exceeding a fine of 1,000 dollars (\$1,000.00) or imprisonment for 180 days or both such fine and imprisonment or may fix punishment by fine, imprisonment or alternative sentencing as now, or hereafter provided by law.¹⁴⁹
- (d) The municipal court shall have authority to establish a schedule of fees to defray the cost of operation, and shall be entitled to reimbursement of the cost of meals, transportation, and caretaking of prisoners bound over to superior courts for violations of state law.
- (e) The municipal court shall have authority to establish bail and recognizances to ensure the presence of those

¹⁴⁹ Generally, fines may not exceed \$1000.00 and the maximum confinement period which may be imposed is six months. O.C.G.A. § 36-35-6(2) (2006). General laws provide some exceptions to the maximum punishments such as for lack of emission inspection, O.C.G.A. § 36-32-8 (2006), driving with a suspended or revoked license, O.C.G.A. § 40-5-121 (2004 & Supp. 2006), hit and run, O.C.G.A. § 40-6-270 (2004 & Supp. 2006), driving under the influence, O.C.G.A. § 40-6-391 (2004 & Supp. 2006), and fleeing or attempting to elude a police officer, O.C.G.A. § 40-6-395 (2004 & Supp. 2006).

charged with violations before said court, and shall have discretionary authority to accept cash or personal or real property as surety for the appearance of persons charged with violations. Whenever any person shall give bail for that person's appearance and shall fail to appear at the time fixed for trial, the bond shall be forfeited by the judge presiding at such time, and an execution issued thereon by serving the defendant and the defendant's sureties with a rule nisi, at least two (2) days before a hearing on the rule nisi. In the event that cash or property is accepted in lieu of bond for security for the appearance of a defendant at trial, and if such defendant fails to appear at the time and place fixed for trial, the cash so deposited shall be on order of the judge declared forfeited to the city, or the property so deposited shall have a lien against it for the value forfeited which lien shall be enforceable in the same manner and to the same extent as a lien for city property taxes.

- (f) The municipal court shall have the same authority as superior courts to compel the production of evidence in the possession of any party; to enforce obedience to its orders, judgments and sentences; and to administer such oaths as are necessary.
- (g) The municipal court may compel the presence of all parties necessary to a proper disposal of each case by the issuance of summonses, subpoenas, and warrants which may be served as executed by any officer as authorized by this charter or by law.

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

Section 4.14. Certiorari.

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

Section 4.15. Rules for Court.

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

ARTICLE V

ELECTIONS AND REMOVAL

ELECTIONS

Municipal elections serve a variety of purposes. Some examples of these purposes are the election of city officials, referendums, and amendments to the city charter. Regardless of the reason, the election must be specifically authorized since a municipality has no inherent power to hold an election.¹⁵⁰ Municipal elections are usually provided for either by the state constitution, a general statute, or local charter provisions.¹⁵¹

Many older city charters in Georgia contain lengthy, detailed provisions with respect to the substance, procedure and conduct of municipal elections. Prior to 1968, municipalities in Georgia had not experienced the benefits of uniform general election laws. As a result, the legislature found it necessary to set forth specific procedural details governing elections in the local charter.

In 1968, the General Assembly enacted a uniform election law entitled the "Georgia Municipal Election Code,"¹⁵² but it has since been rolled into the general election statute.¹⁵³ The Code applies to any general or special election held in any municipal corporation of the state to fill any municipal office. It also applies to any

¹⁵⁰ C. RHYNE, THE LAW OF LOCAL GOVERNMENT OPERATIONS 97 (1980).

¹⁵¹ *Id.*

¹⁵² O.C.G.A. tit. 21, ch. 3 (1993) (repealed).

¹⁵³ O.C.G.A. tit. 21, ch. 2 (2003 & Supp. 2006).

general or special municipal primary used for the purpose of nominating candidates to office. The provisions of the Georgia Municipal Election Code take precedence over municipal charter provisions except in those instances where the Code specifically provides to the contrary. There have been several amendments to the election code since its enactment. Municipalities are no longer able to maintain their own voter registration lists and must instead obtain the lists from the county board of registrars.¹⁵⁴ Any municipalities maintaining their own lists had to turn them over to the county board of registrars along with a map of the municipal boundaries, precinct boundaries and voting district boundaries by January 1, 1995.¹⁵⁵

Since Georgia now has a general election law, there is no longer a need to set forth the procedural details for conducting municipal elections in local charters. The charter should cover only those areas in which the general election code allows variance, some of which are duties which the city must fulfill while others are options which the city may take. The duties include, among other things, appointing a municipal superintendent of elections,¹⁵⁶ election managers,¹⁵⁷ registrars,¹⁵⁸ custodians of voting machines or vote recorders,¹⁵⁹ and an absentee ballot clerk.¹⁶⁰ The city may by charter or ordinance opt to use nomination petitions,¹⁶¹ use

¹⁵⁴ O.C.G.A. § 21-2-226 (2003).

¹⁵⁵ O.C.G.A. §§ 21-2-226(c) (2003).

¹⁵⁶ O.C.G.A. § 21-2-70.1 (2003).

¹⁵⁷ O.C.G.A. § 21-2-90 (2003 & Supp. 2006).

¹⁵⁸ O.C.G.A. § 21-2-212(c) (2003 & Supp.2006).

¹⁵⁹ O.C.G.A. § 21-2-327 (2003 & Supp. 2006).

¹⁶⁰ O.C.G.A. § 21-2-380.1 (2003).

¹⁶¹ O.C.G.A. § 21-2-170 (2003).

substitute nominations to fill vacancies in party nominations,¹⁶² ban party primaries,¹⁶³ have nonpartisan primaries,¹⁶⁴ have voting machines,¹⁶⁵ allow nomination or election by plurality,¹⁶⁶ and establish a qualification fee.¹⁶⁷ The city must by charter or ordinance set a closing date for filing a notice of candidacy.¹⁶⁸ Provisions for any of the above could be placed in the charter to incorporate any specific prohibitions desired in each area. General sections such as those in this Article could be placed in the charter to allow additional provisions to be established by ordinance.

¹⁶² O.C.G.A. § 21-2-134 (2003 & Supp. 2006).

¹⁶³ O.C.G.A. § 21-2-139(c) (2003 & Supp. 2006).

¹⁶⁴ O.C.G.A. § 21-2-157 (2003).

¹⁶⁵ O.C.G.A. §§ 21-2-320, 21-2-321 (2003 & Supp. 2006).

¹⁶⁶ O.C.G.A. § 21-2-501 (2003 & Supp. 2006) (Cities with populations of 100,000 or more may not elect candidates by plurality and must elect them by majority vote).

¹⁶⁷ O.C.G.A. § 21-2-131 (2003 & Supp. 2006).

¹⁶⁸ O.C.G.A. § 21-2-132 (2003 & Supp. 2006).

A. General Law.

Section 5.10. Applicability of General Law.

All primaries and elections shall be held and conducted in accordance with the Georgia Election Code (Title 21, Chapter 2 of the Official Code of Georgia Annotated) as now or hereafter amended.

B. Election of Officers.

The following sections provide for the elections of officers and the date for such election. In the past the city set a date for elections by charter or ordinance, but as of January 1, 1993, a uniform election date was set on the Tuesday next following the first Monday in November 1993 and biennially thereafter.¹⁶⁹ However, the General Assembly is authorized to provide by local law for elections to be held in the even-numbered years.¹⁷⁰ Officers are all elected for four year terms and are sworn in at the first organizational meeting in January.¹⁷¹ They hold office until their successors are duly elected and take the oath of office.¹⁷²

In addition, the following sections provide for election-at-large. These sections may be altered to provide any combination of district election, at-large and district, at-large election with requirement of residence in districts or proportional

¹⁶⁹ O.C.G.A. § 21-2-9 (2003 & Supp. 2006).

¹⁷⁰ O.C.G.A. § 21-2-541.2 (2003).

¹⁷¹ O.C.G.A. §§ 21-2-541.1 (2003).

¹⁷² *Id.*

representation.¹⁷³ Since the 1965 Voting Rights Act no longer requires proof of discriminatory intent to sustain a challenge involving dilution of minority voting rights,¹⁷⁴ any at-large election system may be difficult to maintain.¹⁷⁵ Changes to the manner of electing the governing authority of a municipality may only be made by the General Assembly.¹⁷⁶

*This section provides for electing the mayor and part of the council each election in order to create a continuing body like the United States Senate follows. The use of staggered term elections assures a greater degree of continuity and a constant supply of experience on the part of the city council.*¹⁷⁷

Alternative 2

Section 5.11. Election of the City Council and Mayor.

¹⁷³ See Article II, p. 28-29; NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 6-10, 46-47 (8th ed. 2003).

¹⁷⁴ 42 U.S.C.S. §§ 1973 through 1973aa-4 (2000 & Supp. 2004).

¹⁷⁵ See generally, CARL VINSON INSTITUTE OF GOVERNMENT, SECTION FIVE, U.S. VOTING RIGHTS ACT OF 1965 (1981).

¹⁷⁶ O.C.G.A. § 36-35-6 (2006).

¹⁷⁷ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 6-7 (8th ed. 2003). For a good discussion of the reasoning behind the use of various plans, distributions of power, and methods of elections, see BOYNTON, City Councils: Their Role in the Legislative System, THE MUNICIPAL YEARBOOK 67-77 (1976).

- (a) There shall be a municipal general election biennially in the odd years on the Tuesday next following the first Monday in November.
- (b) There shall be elected [the mayor and] ____ councilmembers at one election and at every other regular election thereafter. The remaining city council seats shall be filled at the election alternating with the first election so that a continuing body is created. Terms shall be for four years.

Provisions to establish non-partisan elections and election by plurality so as to avoid run-off elections follow.

Section 5.12. Non-Partisan Elections.

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

Section 5.13. Election by Plurality.

The person receiving a plurality of the votes cast for any city office shall be elected.

The city may elect to require a majority vote in lieu of the plurality system or to establish a minimum percentage, i.e. 40%, in the event it retains the plurality approach as provided above.

C. Vacancies.

Some localities require that the remaining members of the council fill any vacancy in office for the unexpired term. Other jurisdictions require the calling of a special election to fill the unexpired term of office. The provision suggested in Section 5.14 provides for the calling of a special election to fill vacancies unless the vacancy occurs within a given period of time near the end of the term. For example, if a relatively short period of time is left in the term of office the calling of an election is an expensive procedure and should be avoided. In such instances, a more desirable practice would be to authorize the council to fill the vacancy by appointment for the remainder of the unexpired term.

Section 5.14. Special Elections; Vacancies.

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

*Vacancies must be filled in accordance with the procedural requirements of O.C.G.A. § 45-5-1(b) and special elections held in accordance with Title 21, Chapter 2 of the Official Code of Georgia Annotated.*¹⁷⁸

D. Other Provisions.

Section 5.15. Other Provisions.

Except as otherwise provided by this charter, the city council shall, by ordinance, prescribe such rules and regulations it deems appropriate to fulfill any options and duties under the Georgia Election Code.

REMOVAL OF OFFICERS

The section below sets forth certain grounds and procedures for removal of officers. These provisions are included to illustrate the various conditions upon which an incumbent can be removed from office, as well as the procedural means for effecting such removal either by vote of the council or by action through the courts.¹⁷⁹ The general laws of the State of Georgia provide causes of removal from office including malpractice, partiality, or neglect of duties;¹⁸⁰ final conviction of a felony;¹⁸¹ and failure at any time to possess any of the qualifications of office as

¹⁷⁸ See discussion of filling vacancies after Section 2.12.

¹⁷⁹ For information on elections for recall of public officers, see O.C.G.A. tit. 21, ch. 4 (2003 & Supp. 2006).

¹⁸⁰ O.C.G.A. § 45-11-4 (2002 & Supp. 2006).

provided by this charter or by law¹⁸². The general laws also provide for specified removal procedures to be followed in some cases.¹⁸³ An elected city official entitled to hold office under state law has a property interest in that office, thus due process requirements, including notice and an opportunity to be heard at a hearing, must be met before removing a city official from an elected office.¹⁸⁴

Section 5.16. Removal of Officers.

- (a) The mayor, councilmembers, or other appointed officers provided for in this charter shall be removed from office for any one or more of the causes provided in Title 45 of the Official Code of Georgia Annotated, or such other applicable laws as are or may hereafter be enacted.
- (b) Removal of an officer pursuant to subsection (a) of this section shall be accomplished one of the following methods:
 - (1) Following a hearing at which an impartial panel shall render a decision. In the event an elected officer is sought to be removed by the action of the city council, such officer shall be entitled to a written

¹⁸¹ O.C.G.A. § 45-5-2 (2002).

¹⁸² O.C.G.A. § 45-2-1 (2002 & Supp. 2006).

¹⁸³ *See, e.g.*, O.C.G.A. §§ 45-5-1, 45-5-6.1 and 45-11-4 (2002 & Supp. 2006).

¹⁸⁴ *Stapleton v. City of Ludowici*, 258 Ga. 868, 375 S.E.2d 855 (1989).

notice specifying the ground or grounds for removal and to a public hearing which shall be held not less than ten (10) days after the service of such written notice. The city council shall provide by ordinance for the manner in which such hearings shall be held. Any elected officer sought to be removed from office as herein provided shall have the right of appeal from the decision of the city council to the Superior Court of _____ County. Such appeal shall be governed by the same rules as govern appeals to the superior court from the probate court.

- (2) By an order of the Superior Court of _____ County following a hearing on a complaint seeking such removal brought by any resident of the city of _____.

The ordinance adopted by the city council regarding removal hearings should provide for the selection of an impartial panel, an opportunity for the officer to present evidence and cross-examine opposing witnesses, and for any other procedural protections to be accorded.

ARTICLE VI

FINANCE

GENERALLY

Historically, few city charters in Georgia have provided an adequate legal basis for the handling of the financial affairs of the local government.¹⁸⁵ Georgia law does impose a few limitations on cities, however. Each city must set a fiscal year, adopt and operate under a balanced budget, and conform to the uniform chart of accounts developed by the Department of Community Affairs.¹⁸⁶ Public finance provisions of city charters usually deal with powers of taxation, procedures for tax collection, regulatory fees, service fees, special assessments, issuance of general obligation and revenue bonds, and procedures and requirements for accounting and budgeting. The city council should designate, by ordinance, who is to collect all taxes, licenses, fees, and other monies belonging to the city and to enforce the laws relating to the collection of delinquent taxes and sale or foreclosure for nonpayment of taxes. The finance sections of some charters also contain provisions governing procurement and property management.

TAXATION AND VARIOUS FEES

¹⁸⁵ See *generally*, GEORGIA MUNICIPAL ASSOCIATION, FINANCING MUNICIPAL SERVICES IN GEORGIA (3rd ed. 1976).

¹⁸⁶ O.C.G.A. § 36-81-3 (2006).

A municipality's power of taxation depends upon a grant either directly or indirectly in the constitution or by a statute enacted by the General Assembly. The courts have ruled that:

Municipal corporations can levy no tax, general or special, upon the inhabitants of the municipality, or upon property therein, unless the power to do so be plainly and unmistakably granted by the state, and the burden is upon every political subdivision of the state which demands taxes from the people to show authority to exercise it in the manner in which it has been imposed by a valid law of this state.¹⁸⁷

The 1983 Georgia Constitution reflects a significant change in the approach to municipal taxing power. It includes municipalities in a specific grant of authority to tax.¹⁸⁸ The new provisions of this Constitution provide a much better legal base upon which municipalities may support their taxation efforts.

Municipalities possess the ability to impose a general property tax on tangible property which, in all but a few isolated instances, must be assessed at 40% of fair market value.¹⁸⁹ The city is required to use the fair market value of property as determined in the county digest.¹⁹⁰ All real and personal property may

¹⁸⁷ City of Atlanta v. Gower, 216 Ga. 368, 370, 116 S.E.2d 738, 740 (1960).

¹⁸⁸ GA. CONST. art. IX, sec. IV, para. I (1983). See Sumner, New Constitution Goes Before the Voters, URBAN GEORGIA 11 (Sept. 1982).

¹⁸⁹ O.C.G.A. § 48-5-7 (1999 & Supp. 2006). Special assessment procedures are provided for property used for agricultural purposes, rehabilitated historic property, landmark historic property, property used for conservation purposes and transitional developing areas. O.C.G.A. §§ 48-5-7 *et. seq.* (1999 & Supp. 2006).

¹⁹⁰ O.C.G.A. § 48-5-352 (1999).

be taxed by municipalities unless otherwise exempted by law.¹⁹¹ All residential, commercial, industrial, public utility, farm, and forest land must be included in the assessment.¹⁹² In addition, vehicles, motor homes, and special franchises are subject to taxation by the city.¹⁹³ The city council sets the millage rate to be uniformly applied against such property.¹⁹⁴

Section 48-5-41 of the Official Code of Georgia Annotated enumerates a specific list of exemptions from ad valorem taxation. It also states that all public property will be exempt except as provided by the first paragraph of the section.¹⁹⁵ Chapter 5 of Title 48 of the Official Code of Georgia Annotated also contains a paragraph relating to homestead exemptions.¹⁹⁶ Homestead exemptions may only

¹⁹¹ For exemptions from taxation, see GA. CONST. art. VII, sec. II (1983), and O.C.G.A. tit. 48, ch. 5, art. 2 (1999 & Supp. 2006).

¹⁹² See O.C.G.A. tit. 48, ch. 5 (1999 & Supp. 2006); GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS, HANDBOOK OF LOCAL GOVERNMENT REVENUE SOURCES 4 (1983).

¹⁹³ O.C.G.A. tit. 48, ch. 5, arts. 9-10 (1999 & Supp. 2006). See GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS, HANDBOOK OF LOCAL GOVERNMENT REVENUE SOURCES 4 (1983).

¹⁹⁴ See J. WEEKS, INVENTORY OF GENERAL HOME RULE AND REVENUE POWERS OF MUNICIPAL CORPORATIONS IN GEORGIA 9 (1984). For the provision requiring uniformity of taxation, see GA. CONST. art. VII, sec. I, para. III (1983).

¹⁹⁵ O.C.G.A. § 48-5-41 (1999 & Supp. 2006).

¹⁹⁶ O.C.G.A. § 48-5-44 (1999). See also, J. WEEKS, INVENTORY OF GENERAL HOME RULE AND REVENUE POWERS OF MUNICIPAL CORPORATIONS IN GEORGIA 9 (1984).

be enacted or amended through local act of the General Assembly followed by a local referendum.¹⁹⁷

Special purpose taxes may also be a useful source of revenue for municipalities. All municipalities are authorized to levy and collect taxes upon all taxable property within their corporate limits in order to give financial assistance to development authorities for the purpose of developing trade, commerce, industry, and employment opportunities. The tax levied for this purpose cannot be in excess of three mills per dollar upon the assessed value of the property taxed.¹⁹⁸

The Georgia Development Impact Fee Act allows municipalities to impose by ordinance development impact fees as a condition of development approval.¹⁹⁹ The fees provide for the financing of public facilities needed to serve new growth and development.²⁰⁰

¹⁹⁷ GA. CONST. art.VII, sec. II, para. II (1983).

¹⁹⁸ O.C.G.A. § 48-5-350 (1999).

¹⁹⁹ O.C.G.A. tit. 36, ch. 71 (2006).

²⁰⁰ O.C.G.A. § 36-71-1 (2006); *see also* GEORGIA MUNICIPAL ASSOCIATION, GAINING GROUND ON INFRASTRUCTURE IN GEORGIA'S CITIES (2003).

A. Property Taxes.

The following are sample charter provisions on property taxes:

Section 6.10. Property Tax.

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

*Section 6.11. Millage Rate; Due Dates; Payment Methods.*²⁰¹

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

B. Occupation Taxes and Regulatory Fees.

²⁰¹ Section 6.11 contains an authorization for payment of taxes by installments. For restrictions on installment payments, see O.C.G.A. § 48-5-23 (1999).

Occupation taxes and regulatory fees are also important sources of revenue in many Georgia cities but unfortunately confusion remains about the distinction between the two. The distinction is important since different case law and statutory law apply to each. Basically, taxes are for the primary purpose of raising revenue while regulatory fees are primarily for defraying the cost of regulating an activity. While in actual practice regulatory fees may be a minor source of revenue, they should be established like other service charges so that the amount charged reflects the costs to the city of regulating the activity. Any substantial revenue raising should be left to true occupation taxes. The courts will look beyond the label a city may use to ascertain the true nature of either type of ordinance.²⁰²

An occupation tax, like all municipal taxes, must be based on a clear grant of power to raise revenue.²⁰³ A regulatory ordinance may be supported by the general grant of police power in the charter.²⁰⁴

The General Assembly enacted a new occupation tax and regulatory fee law effective January 1, 1995.²⁰⁵ The new law supersedes prior local laws and charter provisions and authorizes municipal governing authorities to levy an occupation tax by local ordinance on certain businesses and practitioners with at least one office within the city limits and on those outside the city limits meeting specific

²⁰² *See, e.g.*, *Richmond County Business Association, Inc. v. Richmond County*, 224 Ga. 854, 856, 165 S.E.2d 293, 295 (1968).

²⁰³ *City of Atlanta v. Gower*, 216 Ga. 368, 116 S.E.2d 738 (1960).

²⁰⁴ GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS, HANDBOOK OF LOCAL GOVERNMENT REVENUE SOURCES 11 (1983).

²⁰⁵ O.C.G.A. tit. 48 ch. 13. (2005 & Supp. 2006).

requirements.²⁰⁶ The amount of the tax may be based upon number of employees, a flat tax based on profitability ratios, a gross receipts tax also based on profitability ratios, or just a flat tax.²⁰⁷ In addition, the law authorizes municipal governing authorities to impose regulatory fees by local ordinance or resolution on businesses and practitioners if the government customarily performs investigations or inspections of such businesses for the protection of public health, safety or welfare.²⁰⁸ For more detailed information on occupation taxes, see the July 2003 GMA publication “Occupation Taxes and Regulatory Fees: Make Them Work for Your City.”

Section 6.12. Occupation and Business Taxes.

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

Section 6.13. Regulatory Fees; Permits.

The city council by ordinance shall have the power to require businesses or practitioners doing business within this city to obtain a permit for such activity from the city and pay a reasonable regulatory

²⁰⁶ O.C.G.A. §§ 48-13-6,7 (2005); Businesses and practitioners excluded from the taxes and fees are provided by O.C.G.A. § 48-13-16 (2005).

²⁰⁷ O.C.G.A. § 48-13-10 (2005).

²⁰⁸ O.C.G.A. §§ 48-13-8, 9 (2005 & Supp. 2006).

fee for such permit as provided by general law. Such fees shall reflect the total cost to the city of regulating the activity, and if unpaid, shall be collected as provided in Section 6.18.

Since a franchise is a contract creating property rights, in order for a city to collect a franchise fee there must be a contractual relationship between the city and the party from whom the fee is sought.²⁰⁹ An alternative to franchise agreements has been provided in the event a utility refuses to sign a franchise contract.

Section 6.14. Franchises.

- (a) The city council shall have the power to grant franchises for the use of this city's streets and alleys for the purposes of railroads, street railways, telephone companies, electric companies, electric membership corporations, cable television and other telecommunications companies, gas companies,

²⁰⁹City of Calhoun v. North Georgia Electric Membership Corp., 209 Ga. App. 547, 433 S.E.2d 698 (1993), aff'd, 264 Ga. 205 (1994), (no implied contract created where the city annexed the areas where the corporation provided services, the corporation rejected the proposed franchise fee and the level of service remained constant or decreased); City of LaGrange v. Troup County Electric Membership Corp., 200 Ga. App. 418, 408 S.E.2d 708 (1991) (no implied contract created by charter provision providing that before a franchise is granted the city must receive compensation from the party and set specific terms and conditions of the franchise); *See also*, Athens-Clarke County v. Walton Electric Membership Corp., 211 Ga. App. 232, 439 S.E.2d 504 (1993) (charter provision granting the authority to charge franchise fees in conflict with general law).

transportation companies and other similar organizations. The city council shall determine the duration, terms, whether the same shall be exclusive or nonexclusive, and the consideration for such franchises; provided, however, no franchise shall be granted for a period in excess of 35 years and no franchise shall be granted unless the city receives just and adequate compensation therefor. The city council shall provide for the registration of all franchises with the city clerk in a registration book kept by the clerk. The city council may provide by ordinance for the registration within a reasonable time of all franchises previously granted.

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

Section 6.15. Service Charges.

The city council by ordinance shall have the power to assess and collect fees, charges, assessments, and tolls for sewers, sanitary and health services, or any other services provided or made available within and without the corporate limits of the city. If unpaid, such charges shall be collected as provided in Section 6.18.

Section 6.16. Special Assessments.

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

Section 6.17. Construction; Other Taxes and Fees.

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

C. Collection of Delinquent Taxes.

The collection of delinquent taxes of any kind is referred to as a tax execution. The following section provides needed flexibility in the area of executions. This is important because failure to collect delinquent taxes can result in substantial revenue losses. Cities generally follow execution procedures which are similar to county procedures.²¹⁰

²¹⁰ O.C.G.A. § 48-5-359 (1999). For a publication providing more detail on collecting delinquent taxes, see J. WEEKS, HANDBOOK FOR COLLECTING DELINQUENT PROPERTY TAXES (2d ed. 1984).

*Section 6.18. Collection of Delinquent Taxes and Fees.*²¹¹

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

BORROWING

Cities, from time to time, may find it necessary to borrow funds to meet operating expenses and to fund various projects. The constitution and general laws of Georgia contain detailed and explicit provisions with regard to bonded and other indebtedness.²¹² One such provision is the requirement of prior voter approval of bonds which are to be backed by the full faith and credit of the municipality. These bonds are commonly known as general obligation bonds. Voter approval, however,

²¹¹ For information on collecting delinquent utility charges, see Sentell, Unpaid Utility Charges: Where is Thy Sting? URBAN GEORGIA 28 (April 1983), and *see* O.C.G.A. § 36-60-17 (2006).

²¹² *See* GA. CONST. art. IX, sec. V (1983); O.C.G.A. tit. 36, ch. 82 (2006); O.C.G.A. §§ 36-80-10 to -14 (2006). *See generally*, GEORGIA MUNICIPAL ASSOCIATION, FINANCING MUNICIPAL SERVICES IN GEORGIA (3rd ed. 1976).

is not required for temporary loans, lease-purchase contracts²¹³ or revenue bonds.²¹⁴ Provisions such as these make it unnecessary to specify a city's authority to borrow funds in the local charter. The following sections, however, do incorporate by reference the general laws governing borrowing and indebtedness to inform the charter's readers of the legal framework in this area.

Section 6.19. General Obligation Bonds.

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

Section 6.20. Revenue Bonds.

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

Section 6.21. Short-Term Loans.

²¹³ O.C.G.A. § 36-60-13 (2006).

²¹⁴ See GA. CONST. art. IX, secs. V and VI (1983); O.C.G.A. §§ 36-82-60 to -85 (2006); J. WEEKS, INVENTORY OF GENERAL HOME RULE AND REVENUE POWERS OF MUNICIPAL CORPORATIONS IN GEORGIA 12, 13 (1984).

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

Section 6.22. Lease-Purchase Contracts.

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

ACCOUNTING AND BUDGETING

A city charter should set up general standards or criteria governing accounting and budgeting procedures.²¹⁵ The legislature has devoted a chapter of Title 36 of the Official Code of Georgia Annotated to providing minimum budgeting and auditing requirements for local governments.²¹⁶ The purpose behind the state law is to inform taxpayers how local revenue is being spent and to improve financial management. It also assists state and local policymakers in carrying out their lawful responsibilities.

²¹⁵ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 30-39 (8th ed. 2003).

²¹⁶ O.C.G.A. tit. 36, ch. 81 (2006).

The state has established these definite procedures while still maintaining enough flexibility to accommodate individual municipalities. First, the proposed balanced budget must be prepared by the budget officer and submitted to the governing authority. Then, the public must be given notice by publication and be advised on the availability of the budget. Shortly thereafter, a public budget hearing must take place.²¹⁷

The state also requires that all local governments be audited at least once every two years, but cities with expenditures of less than \$300,000 may elect to submit an annual report of agreed upon procedures in place of a biennial audit.²¹⁸ In addition, cities with more than 1,500 persons or \$300,000 in expenditures must be audited annually.²¹⁹ The law sets minimum standards as to contents of the audit and the minimum procedures to be included in the report of agreed upon procedures.²²⁰ Audits must be made a part of the public record.²²¹ In addition, state law required that by December 31, 1998, all local governments adopt a uniform chart of accounts developed by the Department of Community Affairs.²²² The uniform chart of accounts merely sets the category in which various income and expenditures are placed and allows easier comparison of the financial situations of cities.

²¹⁷ O.C.G.A. § 36-81-5 (2006).

²¹⁸ O.C.G.A. § 36-81-7 (a) (2006).

²¹⁹ *Id.*

²²⁰ *Id.* (a)(3), (c).

²²¹ *Id.* (e).

²²² O.C.G.A. § 36-81-3(e) (2006).

The city's fiscal year should be set according to the date various income can be expected in order to help prevent the need for temporary loans. Consideration should also be given to the taxing and budgeting habits of other jurisdictions that may affect the city and its taxpayers.²²³

The Governmental Accounting Standards Board (GASB) has also issued some minimum standards with which cities must comply. GASB 34 requires state and local governments to report the value of their infrastructure assets, such as roads, bridges, and water and sewer facilities, on an accrual accounting basis, thus bringing the accounting of government bodies in line with the accounting of the private sector.²²⁴ GASB 43 and 45 establish uniform accounting and reporting standards for other postemployment benefits (OPEB) plans offered by state and local employers.²²⁵

Sample charter finance provisions are listed below.

Section 6.23. Fiscal Year.

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

²²³ NATIONAL CIVIC LEAGUE, MODEL CITY CHARTER 30 (8th ed. 2003).

²²⁴ GASB Standard 34, *available at* <http://www.gasb.org/repmoel/overview34.pdf>.

²²⁵ GASB Standard 43 & 45, *available at*
http://www.gasb.org/project_pages/opeb_summary.pdf.

*Section 6.24. Preparation of Budgets.*²²⁶

The city council shall provide an ordinance on the procedures and requirements for the preparation and execution of an annual operating budget, a capital improvement plan and a capital budget, including requirements as to the scope, content and form of such budgets and plans.

Section 6.25. Submission of Operating Budget to City Council.

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

Section 6.26. Action by City Council on Budget.

²²⁶ This section requires action by the council to fill in the budgetary details by ordinance.

- (a) The city council may amend the operating budget proposed by the [mayor][city manager]; except, that the budget as finally amended and adopted must provide for all expenditures required by state law or by other provisions of this charter and for all debt service requirements for the ensuing fiscal year, and the total appropriations from any fund shall not exceed the estimated fund balance, reserves, and revenues.
- (b) The city council by ordinance shall adopt the final operating budget for the ensuing fiscal year not later than the ___ day of _____ of each year. If the city council fails to adopt the budget by this date, the amounts appropriated for operation for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items prorated accordingly until such time as the city council adopts a budget for the ensuing fiscal year. Adoption of the budget shall take the form of an appropriations ordinance setting out the estimated revenues in detail by sources and making appropriations according to fund and by organizational unit, purpose, or activity as set out in the budget preparation ordinance adopted pursuant to Section 6.24.
- (c) The amount set out in the adopted operating budget for each organizational unit shall constitute the annual appropriation for such, and no expenditure shall be made or encumbrance created in excess of the otherwise unencumbered balance of the appropriations or allotment thereof, to which it is chargeable.

Section 6.27. Tax Levies.

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

Section 6.28. Changes in Appropriations.

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

Section 6.29. Capital Budget.

- (a) On or before the date fixed by the city council but no later than ___ days prior to the beginning of each fiscal year, the [mayor][city manager] shall submit to the city council a proposed capital improvements plan with a recommended capital budget containing the means of financing the improvements proposed for the ensuing fiscal year. The city council shall have power to accept, with or without amendments, or reject the proposed plan and proposed budget. The city council shall not authorize an expenditure for the construction of any building, structure, work or improvement, unless the appropriations for such project are included in the capital budget, except to meet a public emergency as provided in Section 2.24.
- (b) The city council shall adopt by ordinance the final capital budget for the ensuing fiscal year not later than the ___ day of _____ of each year. No appropriation provided for in a prior capital budget shall lapse until the purpose for which the appropriation was made shall have been accomplished or abandoned; provided, however, the [mayor][city manager] may submit amendments to the capital budget at any time during the fiscal year, accompanied by recommendations. Any such amendments to the capital budget shall become effective only upon adoption by ordinance.

Section 6.30. Independent Audit.

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

PROCUREMENT AND PROPERTY MANAGEMENT

The proper procurement and management of property is an important responsibility of local government. Few charters contain any requirement with respect to sound property management or procurement. The following sets forth minimum requirements for contracting procedures, centralized purchasing, and the sale, lease and disposition of municipally-owned property.²²⁷ Certainly all contracts made by the city should be in writing and approved by the governing authority. There should be a mandatory requirement that the municipality follow centralized purchasing procedure. The governing body should be authorized to sell and convey or lease real or personal property owned by the city and in some cases, sell land parcels which have become completely surrounded by improvements.

Section 6.31. Contracting Procedures.

²²⁷ For requirements in the sale of municipal property, see O.C.G.A. § 36-37-6 (2006).

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

- (a) it is in writing;
- (b) it is drawn by or submitted to and reviewed by the city attorney, and as a matter of course, is signed by the city attorney to indicate such drafting or review; and
- (c) it is made or authorized by the city council and such approval is entered in the city council journal of proceedings pursuant to Section 2.21.

Section 6.32. Centralized Purchasing.

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

Section 6.33. Sale and Lease of City Property.

- (a) The city council may sell and convey, or lease any real or personal property owned or held by the city for governmental or other purposes as now or hereafter provided by law.
- (b) The city council may quitclaim any rights it may have in property not needed for public purposes upon report by the [mayor][city manager] and adoption of a resolution, both finding that the property is not needed for public or other purposes and that the interest of the city has no readily ascertainable monetary value.
- (c) Whenever in opening, extending or widening any street, avenue, alley or

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

ARTICLE VII

GENERAL PROVISIONS

GENERALLY

Most charters contain an article dealing with various items that do not fit appropriately in any other particular article of the charter. These miscellaneous provisions are brought together in one place in the charter for ease of reference and to provide some general prohibitions, powers, and transitional clauses for a new charter.

The types of general provisions that will be found in a city charter will vary from city to city. Often, a provision is found in charters to require officers and employees to execute official bonds. Provision should be made for continuation of ordinances and resolutions in existence at the time of the revision of the local charter to eliminate the possibility of not having any regulations in effect. Usually, a severability clause is included as a necessary precaution against any particular portion of the charter being held invalid or unconstitutional. It is also desirable to include a repealer section for any former laws that might apply to the city.

The following sections illustrate drafts of items that may be classified as general charter provisions, some of which may not be applicable to a particular city's needs.

BONDS FOR OFFICIALS

Section 7.10. Bonds for Officials.

The officers and employees of this city, both elective and appointive, shall execute such surety or fidelity bonds in such

amounts and upon such terms and conditions as the city council shall from time to time require by ordinance or as may be provided by law.

PRIOR ORDINANCES

One of the common legal problems of many cities is the absence of a city code of ordinances or an up-to-date version of an old code. A good time to adopt or rewrite the city code is when the city charter is rewritten. Sections 2.26(b), (c), and 7.11 of this charter provide for codification.

Alternative 1

Section 7.11. Existing Ordinances, Resolutions, Rules and Regulations.

Existing ordinances, resolutions, rules and regulations of this city not in conflict with this charter shall continue in force, unless repealed or amended, for two years from the effective date of this charter. During such two-year period, the city council shall review all such provisions and shall readopt, repeal or amend each, so that a codification as provided by Section 2.26(b) is accomplished.

If a city prefers not to codify its ordinances at this time or to update the existing code, then the following section in the new charter would preserve the present group of ordinances until specific action is taken on them.

Alternative 2

Section 7.11. Prior Ordinances.

All ordinances, resolutions, rules and regulations now in force in the city not inconsistent with this charter are hereby declared valid and of full effect and force until amended or repealed by the city council.

CHARTER LANGUAGE ON OTHER GENERAL MATTERS

Section 7.12. Existing Personnel and Officers.

Except as specifically provided otherwise by this charter, all personnel and officers of the city and their rights, privileges and powers shall continue beyond the time this charter takes effect for a period of ___ days before or during which the existing city council shall pass a transition ordinance detailing the changes in personnel and appointive officers required or desired and arranging such titles, rights, privileges and powers as may be required or desired to allow a reasonable transition.

Section 7.13. Pending Matters.

Except as specifically provided otherwise by this charter, all rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue and any such ongoing work or cases shall be completed by such city agencies, personnel or offices as may be provided by the city council.

Section 7.14. Construction.

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

- (b) The word "shall" is mandatory and the word "may" is permissive.
- (c) The singular shall include the plural, the masculine shall include the feminine, and vice versa.

Section 7.15. Severability.

If any article, section, subsection, paragraph, sentence, or part thereof of this charter shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair other parts of this charter unless it clearly appears that such other parts are wholly and necessarily dependent upon the part held to be invalid or unconstitutional, it being the legislative intent in enacting this charter that each article, section, subsection, paragraph, sentence or part thereof be enacted separately and independent of each other.

Section 7.16. Repealer.

An Act incorporating the City of _____ in the County of _____, approved _____, 19__ (Ga.L. ____, p. ____), is hereby repealed in its entirety and all amendatory acts thereto are likewise repealed in their entirety. All other laws and parts of laws in conflict with this charter are hereby repealed.

Section 7.17. Effective Date.

This charter shall become effective on _____.