

The Senate Committee on State and Local Governmental Operations offered the following substitute to HB 1019:

A BILL TO BE ENTITLED
AN ACT

1 To amend an Act to incorporate the City of South Fulton in Fulton County, Georgia,
2 approved April 26, 2016 (Ga. L. 2016, p. 3726), as amended, particularly by an Act approved
3 May 8, 2018 (Ga. L. 2018, p. 3910), so as to provide that the offices of mayor and
4 councilmember are part time; to modify the procedures for removing city officers from
5 office; to delineate roles between the mayor, city council, and city manager; to change the
6 procedures for calling special meetings of the city council; to clarify veto and veto override
7 powers; to provide for the mayor to appoint chairpersons and vice chairpersons of city
8 council committees; to provide for nomination, confirmation, and appointment of the city
9 manager; to provide for the city manager to appoint the city clerk and city treasurer; to
10 provide that the city council must approve the removal or suspension of the fire chief and
11 police chief; to modify the process for selecting and replacing the city manager and acting
12 city managers; to provide a term limit for the office of mayor pro tempore; to bring the
13 procedures for removing municipal court judges in line with state law; to provide procedures
14 for expenditures made individually by the mayor and councilmembers; to provide procedures
15 for ethics complaints; to modify provisions related to the charter review commission; to
16 repeal and remove expired provisions; to provide for related matters; to repeal conflicting
17 laws; and for other purposes.

18 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

19 **SECTION 1.**

20 An Act to incorporate the City of South Fulton in Fulton County, Georgia, approved
21 April 26, 2016 (Ga. L. 2016, p. 3726), as amended, particularly by an Act approved
22 May 8, 2018 (Ga. L. 2018, p. 3910), is amended by revising subsections (a) and (b) of
23 Section 2.10 as follows:

24 "(a) The legislative authority of the government of this city, except as otherwise
25 specifically provided in this charter, shall be vested in a city council to be composed of a
26 part-time mayor and seven part-time councilmembers.

27 (b) The mayor and councilmembers shall serve for terms of four years and until their
 28 respective successors are elected and qualified, except as otherwise provided in
 29 subsection (d) of Section 2.11 of this charter. No person shall be eligible to serve as mayor
 30 or councilmember unless that person shall have been a resident of the area comprising the
 31 City of South Fulton for 12 months immediately preceding the election of mayor or
 32 councilmembers, shall have attained the age of 21 years prior to the date of qualifying, and,
 33 in the case of councilmembers, shall have been a resident of the district from which he or
 34 she seeks election for six months at the time of qualifying for election; each such person
 35 shall continue to reside within the city and, in the case of councilmembers, within the
 36 district from which he or she was elected during said period of service and shall be
 37 registered and qualified to vote in municipal elections of this city. The mayor may reside
 38 anywhere within the city. No person's name shall be listed as a candidate on the ballot for
 39 election for either mayor or councilmember unless such person shall file a written notice
 40 with the clerk of said city that such person desires his or her name to be placed on said
 41 ballot as a candidate either for mayor or councilmember. No person shall be eligible for
 42 the office of mayor or councilmember unless such person shall file said notice within the
 43 time provided for in Chapter 2 of Title 21 of the O.C.G.A., the 'Georgia Election Code.'

44

SECTION 2.

45 Said Act is further amended by revising subsection (f) of Section 2.11 as follows:

46 "(f) The time for holding regular municipal elections shall be on the Tuesday next
 47 following the first Monday in November of each odd-numbered year. The successors to
 48 the first mayor and councilmembers and future successors shall be elected at the municipal
 49 election immediately preceding the expiration of the respective terms of office and shall
 50 take office on the first day of January immediately following their election for terms of four
 51 years and until their successors are elected and qualified."

52

SECTION 3.

53 Said Act is further amended by revising Section 2.16 as follows:

54

"SECTION 2.16.

55

Removal of officers.

56 (a) The mayor, a councilmember, or other appointed officers provided for in this charter
 57 shall be removed from office for any one or more of the following causes:

58 (1) Failure to uphold the Constitution, laws, and regulations of the United States, the
 59 State of Georgia, this charter, and the code of ordinances of the city;

- 60 (2) Discrimination by the dispensing of special favors or privileges to anyone, whether
61 or not for remuneration;
- 62 (3) Engaging in any business with the government, either directly or indirectly, which
63 is inconsistent with the conscientious performance of his or her governmental duties;
- 64 (4) Using any information coming to him or her confidentially in the performance of
65 governmental duties as a means for making private profit;
- 66 (5) Failure to expose corruption wherever discovered;
- 67 (6) Soliciting, accepting, or agreeing to accept gifts, loans, gratuities, discounts, favors,
68 hospitality, or services from any person, association, or corporation under circumstances
69 from which it could reasonably be inferred that a major purpose of the donor is to
70 influence the performance of the member's official duties;
- 71 (7) Accepting any economic opportunity under circumstances where he or she knows or
72 should know that there is a substantial possibility that the opportunity is being afforded
73 him or her with intent to influence his or her conduct in the performance of his or her
74 official duties;
- 75 (8) Engaging in other conduct which is unbecoming to a member or which constitutes
76 a breach of public trust;
- 77 (9) Taking any official action with regard to any matter under circumstances in which
78 he or she knows or should know that he or she has a direct or indirect monetary interest
79 in the subject matter of such matter or in the outcome of such official action;
- 80 (10) Conviction of a crime involving moral turpitude;
- 81 (11) Failure at any time to possess any qualifications of office as provided by this charter
82 or by law;
- 83 (12) Knowingly violating Section 2.15 this charter;
- 84 (13) Abandonment of office or neglect to perform the duties thereof; and
- 85 (14) Moving residency out of the district such councilmember was elected from.
- 86 (b) Removal of any officer pursuant to subsection (a) of this section shall be accomplished
87 by one of the following methods:
- 88 (1) By the vote of five councilmembers after an investigative hearing. In the event an
89 elected officer is sought to be removed by the action of the city council, such officer shall
90 be entitled to a written notice specifying the ground or grounds for removal and detailing
91 the evidence against the officer. The officer shall be entitled to a public hearing which
92 shall be held not less than 30 days after the service of such written notice. Such public
93 hearing shall be presided over by an independent hearing officer, with the accuser and the
94 accused given equal opportunity to present evidence and call witnesses. Any elected
95 officer sought to be removed from office as provided in this section shall have the right

96 of appeal from the decision of the city council via certiorari to the Superior Court of
 97 Fulton County; or
 98 (2) By an order of the Superior Court of Fulton County following a hearing on a
 99 complaint seeking such removal brought by any resident of the City of South Fulton."

100 **SECTION 4.**

101 Said Act is further amended by adding a new section following Section 3.10 to read as
 102 follows:

103 "SECTION 3.10A.

104 Role delineation.

105 Based upon the firm belief that the proper, efficient, and effective administration and
 106 operation of the city's council-manager form of government will be fostered by a clear
 107 definition of the roles and responsibilities of the city council, mayor, and city manager, this
 108 section states the following principles, which are intended to be fully consistent with this
 109 article:

110 (1) The full and complete legislative and policy making authority of the city resides in
 111 the part-time city council, and the full-time city manager shall take no action which
 112 impinges upon or interferes with the city council's policy making role. Other than
 113 providing information relevant and germane to the city council's legislative deliberations,
 114 the city manager shall strive to remain a neutral party in such legislative deliberations.
 115 To ensure the actuality and appearance of neutrality, neither the city manager nor any
 116 department heads shall participate in any political activity on behalf of the mayor, any
 117 councilmember, or any candidate for such offices, nor shall the city manager or any
 118 department head make any political contribution to the mayor, any councilmember, or
 119 any candidate for such offices. The mayor and councilmembers shall not solicit or accept
 120 any campaign contributions from any city employee;

121 (2) The city manager is the full-time chief executive officer of the city, and, as such, all
 122 department heads, except the city attorney who is appointed by and reports to the mayor
 123 and council, report to the city manager. The mayor and council shall observe the
 124 management authority of the city manager;

125 (3) Except as otherwise provided in this charter, the mayor and councilmembers shall not
 126 in any manner dictate the appointment or removal of any city administrative officers or
 127 employees whom the city manager or any of his or her subordinates are empowered to
 128 appoint. The city manager shall have the authority to provide, at levels he or she deems
 129 necessary and appropriate, administrative support staff for the mayor and

130 councilmembers, and any such administrative support staff shall be subject to the
131 authority and direction of the city manager and not the mayor or any councilmember;

132 (4) Except for the purpose of conducting an investigation or inquiry authorized by the
133 city council pursuant to Section 3.12 of this charter, the mayor and councilmembers shall
134 deal with city officers and employees who are subject to the direction and supervision of
135 the city manager solely through the city manager, and neither the mayor nor any
136 councilmembers shall give orders to any such officers or employees either publicly or
137 privately;

138 (5) The mayor and city council shall not give directives to any city officers or
139 employees, other than the city manager or city attorney, regarding any matters including,
140 but not limited to, constituent complaints and complaints regarding the services,
141 operation, or administration of any department or function of city government. Although
142 the mayor and city council shall not be prohibited from communicating with city officers
143 or employees with constituent complaints or concerns, the city manager must be copied
144 on all such communications;

145 (6) The mayor and councilmembers, unless acting pursuant to a duly authorized
146 investigation or inquiry, shall not discuss in open session the performance of or
147 complaints against any city officer or employee during a city council meeting. This
148 provision is not intended to prevent the mayor or city council from discussing, in general
149 terms, the performance of or any issue relating to any department or function of city
150 government;

151 (7) It shall be prohibited for the mayor or any councilmember to sit in on personnel and
152 management meetings between the city manager and city employees unless such
153 participation is consented to by the city manager and approved by the city council;

154 (8) The mayor shall have no management authority or responsibility with respect to the
155 operations and administration of city government; and

156 (9) The mayor and council, as elected officials, shall possess fundamental oversight
157 duties and responsibilities with respect to all operations and administration of city
158 government, and the city manager shall be responsible and duty bound to facilitate the
159 mayor and city council's oversight function. Once the city council has passed the
160 operating and capital budgets of the city, it shall be the responsibility of the city manager
161 to administer such budgets and to keep the mayor and city council fully informed as to
162 the city's progress against such budgets. The city manager shall provide monthly
163 financial updates on the budgets with year to date information, and such updates shall
164 contain all material information necessary for the mayor and city council to evaluate the
165 financial performance and condition of the city. However, once the city council has
166 appropriated funds in the budget and encumbered such funds through subsequent

167 legislative action, the city manager shall have the authority to administer such budget
 168 including contract administration and account payables as part of the management
 169 function. Any expenditure of city funds directly by the mayor and individual
 170 councilmembers, whether by purchasing card or other means, shall be subject to the
 171 approval of the city manager as his or her duty to administer the city's budget, and the city
 172 manager shall have the authority to have such expenditures forensically audited."

173 **SECTION 5.**

174 Said Act is further amended by revising subsection (b) of Section 3.13 as follows:

175 "(b) Special meetings of the city council may be held on call of the mayor or five members
 176 of the city council. The minutes of any such special meeting not called by the mayor shall
 177 indicate which councilmembers called the meeting. Notice of such special meeting shall
 178 be served on all other members personally, or by telephone personally, at least 48 hours in
 179 advance of the meeting. Such notice to councilmembers shall not be required if the mayor
 180 and all councilmembers are present when the special meeting is called. Such notice of any
 181 special meeting may be waived by a councilmember in writing before or after such a
 182 meeting and attendance at the meeting shall also constitute a waiver of notice on any
 183 business transacted in such councilmember's presence. Written or oral notice of such
 184 special meeting shall be given at least 24 hours in advance of the meeting to the legal organ
 185 of Fulton County and to a newspaper of general circulation in the county. Notice shall also
 186 be posted for at least 24 hours at the place of regular meetings and on the city's website.
 187 Upon written request from any local broadcast or print media outlet whose place of
 188 business and physical facilities are located in the county, notice shall be provided by
 189 telephone, facsimile, or e-mail to that requesting media outlet at least 24 hours in advance
 190 of the called meeting. Only the business stated in the call may be transacted at the special
 191 meeting."

192 **SECTION 6.**

193 Said Act is further amended by revising Section 3.21 as follows:

194 "SECTION 3.21.

195 Submission of ordinances to the mayor.

196 (a) Every ordinance, resolution, or other action adopted by the city council shall be
 197 presented to the mayor for signature within five business days following the adoption of
 198 such ordinance, resolution, or other action by the city council. The mayor shall have the

199 right to veto any ordinance, resolution, or other action adopted by the city council, in
200 accordance with the procedures set forth in this section.

201 (b) The mayor, within ten business days following receipt of an ordinance, resolution, or
202 other action adopted by the city council, shall return it to the city clerk with or without the
203 mayor's approval or with the mayor's veto. If an ordinance, resolution, or other action
204 adopted by the city council has been approved by the mayor or if it is returned to the city
205 clerk neither approved nor disapproved, it shall become law upon its return to the city
206 clerk. However, if the mayor fails to return an ordinance, resolution, or other action
207 adopted by the city council to the city clerk within ten business days of receipt, it shall
208 become law at 12:00 Midnight on the tenth business day after receipt. If an ordinance,
209 resolution, or other action adopted by the city council is vetoed by the mayor, the mayor
210 shall submit to city council, through the city clerk, the reason for the mayor's veto. The
211 city clerk shall record upon the ordinance, resolution, or other action adopted by the city
212 council the date of its delivery to and its receipt from the mayor.

213 (c) An ordinance, resolution, or other action adopted by the city council vetoed by the
214 mayor shall automatically be on the agenda at the next regular meeting of the city council
215 for reconsideration. Votes to override mayoral vetoes shall only occur at regular scheduled
216 meetings of the city council, and cannot occur at a special meeting or emergency meeting.
217 If the minimum number of councilmembers necessary to vote to override the veto are not
218 present, the action may be continued until the next meeting at which such minimum
219 number of councilmembers are present. The city council may override a veto by the mayor
220 and adopt any ordinance, resolution, or other action adopted by the city council that has
221 been vetoed by the mayor by the affirmative votes of at least five councilmembers, not
222 including the mayor.

223 (d) In addition, the mayor may disapprove or reduce any item or items of appropriation in
224 any ordinance, resolution, or other action adopted by the city council. The approved part
225 or parts of any ordinance, resolution, or other action adopted by the city council making
226 appropriations shall become law, and the part or parts disapproved or reduced shall not
227 become law unless subsequently passed by the city council over the mayor's veto as
228 provided herein. The disapproved or reduced part or parts of any such ordinance,
229 resolution, or other action adopted by the city council shall be presented to the city council
230 as though disapproved and shall not become law unless overridden by the city council as
231 set forth in subsection (c) of this section."

232

SECTION 7.

233 Said Act is further amended by revising subsection (a) of Section 3.22 as follows:

234 "(a) The mayor shall be the part-time chief executive of the city government and a member
 235 of and the presiding officer of the city council and responsible for the efficient and orderly
 236 administration of the city's affairs. The mayor shall be responsible for the enforcement of
 237 laws, rules, regulations, ordinances, and franchises in the city. The mayor may conduct
 238 inquiries and investigations into the conduct of the city's affairs and shall have such powers
 239 and duties as specified in this charter or as may be provided by ordinance consistent with
 240 this charter."

241 **SECTION 8.**

242 Said Act is further amended by revising paragraphs (6), (8), and (10) of subsection (b) of
 243 Section 3.22 as follows:

244 "(6) Vote on any tied motion, resolution, ordinance, or other question before the council
 245 other than a veto override;"

246 "(8) Appoint city council committees, committee chairpersons, committee vice
 247 chairpersons, and appoint councilmembers to oversee and report on the functions of the
 248 various departments of the city, subject to confirmation by the city council;"

249 "(10) Nominate the city manager, city attorney, and chief judge of municipal court as
 250 provided by this charter or general state law;"

251 **SECTION 9.**

252 Said Act is further amended by revising subsection (a) and paragraphs (1) and (3) of
 253 subsection (b) of Section 3.23 as follows:

254 "(a) The mayor shall nominate a city manager for an indefinite term and shall set the city
 255 manager's initial compensation, subject to confirmation by the city council. The city
 256 manager shall be nominated solely on the basis of that person's executive and
 257 administrative qualifications. In the event that the city council does not confirm the
 258 mayor's nomination, the mayor shall appoint another individual as the city manager and
 259 such second nomination shall also be subject to confirmation by the city council. If a
 260 second nomination and a subsequent third nomination for the city manager are not
 261 confirmed by the city council, the mayor shall appoint an individual meeting the
 262 qualifications established by this charter who shall serve as the city manager without such
 263 appointment needing to be confirmed by the city council."

264 "(1) In response to such recommendation, the city council shall adopt by affirmative vote
 265 of five of its members a preliminary resolution which must state the reasons for removal
 266 and may suspend the city manager from duty for a period not to exceed 45 days."

267 "(3) If the city manager has not requested a public hearing within the time specified in
 268 paragraph (2) of this subsection, the city council may adopt a final resolution for removal,

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

273 **SECTION 10.**

274 Said Act is further amended by revising Section 3.24 as follows:

275 "SECTION 3.24.

276 Acting city manager.

277 (a) The assistant city manager shall be the acting city manager during the city manager's
 278 temporary absence or physical or mental disability.

279 (b) If there is no assistant city manager, by letter filed with the city clerk, the city manager
 280 shall designate or in the absence of the city manager the mayor shall designate, subject to
 281 approval of the city council, a qualified city administrative officer to exercise the powers
 282 and perform the duties of city manager during the city manager's temporary absence or
 283 physical or mental disability. During such absence or disability, the city council may
 284 revoke a designation made pursuant to this subsection, at any time and appoint another
 285 officer of the city to serve until the city manager shall return or the city manager's disability
 286 shall cease.

287 (c) If the temporary absence or disability of the city manager exceeds 180 days, the office
 288 of city manager shall be vacant and the mayor shall nominate a new city manager. The
 289 acting city manager shall continue to serve in that capacity until the new city manager is
 290 nominated and confirmed pursuant to Section 3.23 of this charter."

291 **SECTION 11.**

292 Said Act is further amended by revising paragraph (1) of Section 3.25 as follows:

293 "(1) Have the authority to hire persons to act as department heads or directors and fill other
 294 positions designed by ordinance or resolution and appoint and, when the city manager
 295 deems it necessary for the good of the city, suspend or remove any city employees and
 296 administrative officers the city manager hires or appoints, except as otherwise provided by
 297 law. The city manager may authorize any administrative officer who is subject to the city
 298 manager's direction and supervision to exercise these powers with respect to subordinates
 299 in that officer's department, office, or agency. Notwithstanding any other provision of this
 300 charter to the contrary, before the city manager can remove the police chief or the fire chief
 301 such removal must be approved by a majority of the city council;"

302 **SECTION 12.**

303 Said Act is further amended by revising Section 3.29 as follows:

304 "SECTION 3.29.

305 Selection of mayor pro tempore.

306 There shall be a mayor pro tempore elected from among the councilmembers by the city
 307 council at the first regular meeting of each calendar year. The term of the mayor pro
 308 tempore shall be one year. No councilmember shall serve two or more successive terms
 309 as mayor pro tempore. All subsequent successors shall be elected at the first regular
 310 meeting of the city council in each calendar year to serve until the first regular meeting of
 311 the city council in the immediately following calendar year. The mayor pro tempore shall
 312 continue to vote and otherwise participate as a councilmember. A vacancy in the position
 313 of mayor pro tempore resulting from the mayor pro tempore ceasing to serve as a
 314 councilmember or from any other cause shall be filled for the remainder of the unexpired
 315 term at the next regularly scheduled council meeting."

316 **SECTION 13.**

317 Said Act is further amended by revising subsection (e) of Section 4.10 as follows:

318 "(e) Except for the fire chief and the police chief, the city manager may suspend or
 319 terminate directors or department heads, so long as the city attorney reviews the facts
 320 supporting suspension or termination and concurs such action is appropriate before such
 321 action is taken. The city manager may suspend or terminate the fire chief or police chief,
 322 provided that a majority of the city council vote to approve such suspension or
 323 termination."

324 **SECTION 14.**

325 Said Act is further amended by revising Section 4.13 and Section 4.14 as follows:

326 "SECTION 4.13.

327 City clerk.

328 The city manager shall appoint a city clerk who shall not be a councilmember. The city
 329 clerk shall be custodian of the official city seal, maintain city council records required by
 330 this charter, and perform such other duties as may be required by the city manager. The
 331 city council shall provide for the compensation of the city clerk. The city clerk shall be the

332 official custodian of all city records, including but not limited to records and documents
 333 from ethics hearings and hearings to remove the mayor or councilmembers.

334 **SECTION 4.14.**

335 Finance director.

336 The city manager shall appoint a finance director to collect all taxes, licenses, fees, and
 337 other moneys belonging to the city subject to the provisions of this charter and the
 338 ordinances of the city and to enforce all laws of Georgia relating to the collection of
 339 delinquent taxes and sale or foreclosure for nonpayment of taxes to the city. The finance
 340 director shall also be responsible for the general duties of the treasurer and fiscal officer
 341 of the city. The city council shall provide for the compensation of the finance director."

342 **SECTION 15.**

343 Said Act is further amended by revising subsection (d) of Section 5.11 as follows:

344 "(d) The chief judge shall serve a term of four years, coincident with the term of the mayor,
 345 but may be removed upon action taken by the Judicial Qualification Commission or as
 346 provided by O.C.G.A. § 36-32-2.1."

347 **SECTION 16.**

348 Said Act is further amended by revising Section 6.31 as follows:

349 "SECTION 6.31.

350 Purchasing.

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

353 (b) The ordinance adopted pursuant to the requirement of subsection (a) of this section
 354 may authorize the mayor and councilmembers to individually expend city funds that are
 355 budgeted to such officers, provided that any such expenditures, whether made using
 356 purchasing cards or other means, are subject to the approval of the city manager.
 357 Furthermore, the city manager shall report at each regular meeting of the city council all
 358 such expenditures approved for and made by the mayor or individual councilmembers
 359 since the last regular meeting of the city council."

360 **SECTION 17.**

361 Said Act is further amended by adding a new article following Article VI to read as follows:

362 "ARTICLE VI-A

363 ETHICS COMPLAINTS

364 SECTION 6-A.1.

365 Ethics complaints.

366 (a) Any person may file an ethics complaint alleging a violation of any of the provisions
 367 of this charter or any ethics ordinance adopted by the city by an employee or city official
 368 by completing and submitting to the city clerk the ethics complaint form adopted by the
 369 city manager. The person filing an ethics complaint shall be referred to in this article as
 370 the 'complainant.' In the event the city clerk is the subject of an ethics complaint, all duties
 371 of the city clerk in this article shall be undertaken by the city manager.

372 (b) The ethics complaint shall, at a minimum, identify the specific provisions of the charter
 373 or ordinance alleged to be violated, shall be supported by affidavits based on personal
 374 knowledge, and shall show affirmatively that the affiant is competent to testify to the
 375 matters stated therein. All documents referred to in an affidavit shall be attached to the
 376 affidavit. Every ethics complaint shall be signed and notarized, and shall contain the
 377 following statement:

378 'I have read the ethics complaint and aver that the facts contained therein are true to the
 379 best of my knowledge and belief, and I am aware that the Ethics Ordinance authorizes the
 380 imposition of penalties against me for filing a frivolous complaint, including without
 381 limitation, payment of costs and attorney's fees associated with the handling and
 382 processing of the ethics complaint, and/or all other penalties applicable under the law.'

383 (c) An ethics complaint shall be filed within six months of the date the alleged violation
 384 is said to have occurred, or in case of concealment or nondisclosure, within six months of
 385 the date the alleged violation was or should have been discovered by the complainant after
 386 due diligence.

387 (d) No action may be taken on any ethics complaint which arises out of substantially the
 388 same facts or circumstances which have previously served as the basis for an ethics
 389 complaint pursuant to this article.

390 (e) A separate ethics complaint shall be filed for each person alleged to have engaged in
 391 any activity violating this article even if the allegations arise from the same factual basis.
 392 The person alleged to have violated this article shall be referred to in this article as the
 393 'respondent.'

SECTION 6-A.2.

Processing ethics complaints.

396 (a) Upon receipt of an ethics complaint, the city clerk shall, within five business days from
397 receipt of the ethics complaint, determine whether the ethics complaint on its face satisfies
398 the requirements of Section 6-A.1 of this charter.

399 (1) If the ethics complaint does not meet the requirements set forth in Section 6-A.1 of
400 this charter, the city clerk shall notify the complainant in writing of the defects via
401 certified mail, return receipt requested. Thereafter, the complainant shall be afforded five
402 business days from receipt of the notification of defect from the city clerk to cure any
403 defects that may be cured and resubmit the ethics complaint. If an ethics complaint is not
404 resubmitted within the allotted time period, the city and the city clerk shall take no further
405 action on the ethics complaint.

406 (2) If the city clerk finds that the ethics complaint does meet the requirements of
407 Section 6-A.1 of this charter on its face, the ethics complaint will be processed pursuant
408 to the provisions of this article.

409 (b) Upon confirmation by the city clerk that the ethics complaint meets the requirements
410 of Section 6-A.1 of this charter on its face, the city clerk shall promptly forward a copy of
411 the ethics complaint by certified mail, return receipt requested, to the city official or
412 employee against whom the ethics complaint was filed.

413 (c) Upon confirmation by the city clerk that the ethics complaint meets the requirements
414 of Section 6-A.1 of this charter on its face, the city clerk shall promptly begin the process
415 of randomly selecting an ethics panel as provided in Section 6-A.4 of this charter.

416 (d) The respondent shall respond to the ethics complaint within 30 days of receipt of the
417 ethics complaint from the city clerk. The respondent's response shall be supported by
418 affidavits based on personal knowledge and shall show affirmatively that the affiant is
419 competent to testify to the matters stated therein. All documents referred to in an affidavit
420 shall be attached to the affidavit. The respondent shall verify the response by his or her
421 signature thereon, which shall be notarized.

422 (e) Within 60 days of the determination by the city clerk that the ethics complaint meets
423 the requirements of Section 6-A.1 of this charter, unless such time is extended by the ethics
424 panel convened to hear the ethics complaint upon good cause shown, the ethics panel shall
425 convene a meeting to conduct an initial review of the ethics complaint to determine
426 whether specific, substantiated evidence from credible sources exists in the ethics
427 complaint to support a reasonable belief that there has been a violation of this article.

428 (f) If after reviewing the ethics complaint the ethics panel determines that no specific,
429 substantiated evidence from credible sources exists to support a reasonable belief that there

430 has been a violation of this article or determines that no violation occurred as a matter of
431 applying the facts alleged and accepted as true to the terms of this article, the ethics panel
432 shall dismiss the ethics complaint without further proceedings. Such dismissal shall be
433 entered in writing stating the basis therefor.

434 (g) If the ethics panel determines that specific, substantiated evidence from credible
435 sources exists to support a reasonable belief that there has been a violation of this article
436 by the respondent, the ethics panel shall set a hearing for consideration of the allegations
437 of the ethics complaint, also known as the 'ethics hearing.' Written notice of the ethics
438 hearing, containing the time, date, and place of such hearing, shall be sent to the
439 complainant and the respondent by the city clerk by certified mail, return receipt requested.

440 SECTION 6-A.3.

441 Ethics hearings.

442 (a) All ethics hearings shall be conducted so as to insure the requirements of due process
443 for the respondent. At the ethics hearing, the complainant and respondent shall be entitled
444 to make opening statements, testify, present witnesses and evidence, and make a closing
445 statement after the submission of all evidence. The complainant and respondent shall not
446 be required to testify unless subpoenaed to do so. Both the complainant and the respondent
447 shall be allowed to question any witness that testifies.

448 (b) The respondent and the complainant shall be entitled to be represented by legal counsel
449 at all stages of consideration of an ethics complaint, including at the ethics hearing.

450 (c) The ethics panel may not call witnesses or tender evidence of its own accord; however,
451 members of the ethics panel may question any witnesses that are called to testify by either
452 the respondent or the complainant.

453 (d) Any final determination resulting from the ethics hearing shall include written findings
454 of fact and conclusions of law. In reaching its decision on the ethics complaint, the ethics
455 panel shall decide if clear and convincing evidence presented at the ethics hearing
456 establishes a violation of this article.

457 SECTION 6-A.4.

458 Ethics panel.

459 (a) Each ethics panel shall be constituted for the sole purpose of considering a single ethics
460 complaint.

461 (b) Each ethics panel shall consist of three randomly selected members from a list
462 maintained by the city clerk.

463 (c) The city clerk shall maintain a list of not less than nine nor more than 15 qualified
464 individuals from which to draw members of ethics panels. The city clerk shall confirm the
465 qualifications and willingness to serve of the members of the ethics panel not less than once
466 per year.

467 (d) Individuals shall be deemed qualified to serve on the ethics panel for so long as they:

468 (1) Are attorneys at law in good standing with the State Bar of Georgia;

469 (2) Have at least five years experience in the practice of law, with no less than three of
470 those years dedicated to general civil litigation practice;

471 (3) Reside or maintain an office within Fulton County;

472 (4) Are not, and have never been, an employee or city official, and are not the spouse,
473 parent, child, or sibling of an existing or former employee or city official; and

474 (5) Have no, and the members of their immediate family have no, business or contractual
475 relationship with the City of South Fulton, have not provided monetary or in-kind
476 campaign contributions to sitting city council members, and otherwise have no conflict
477 of interest in providing service on the ethics panel.

478 (e) Upon the city clerk determining that an ethics complaint meets the requirements of
479 Section 6-A.1 of this charter on its face, the city clerk shall promptly draw names randomly
480 from the list of qualified individuals and contact such individuals to determine their
481 availability to serve on the ethics panel. The drawing of names by the city clerk shall be
482 witnessed by at least one department director or a judge of the municipal court to ensure
483 the integrity of the selection process. Upon selection of three qualified individuals who are
484 available to serve on the ethics panel, the city clerk shall prepare a document identifying
485 panel membership and both the clerk and the staff member or the judge of the municipal
486 court that witnessed the selection process shall attest on that document to the legitimacy
487 of the selection process.

488 (f) No person shall be qualified to serve on more than one ethics panel at any given time
489 unless all other qualified individuals are either serving on an ethics panel or have expressed
490 their unavailability to so serve. Service on an ethics panel shall be deemed to have
491 terminated upon the entry of the written dismissal or decision of the ethics panel after the
492 conclusion of an ethics hearing.

493 (g) An individual shall cease to be qualified immediately upon the third consecutive
494 refusal, whether by choice or unavailability, to serve on an ethics panel after being
495 randomly drawn from the list and contacted by the city clerk to serve.

SECTION 6-A.5.

496

497

Organization and internal operating regulations.

498 (a) Each ethics panel shall elect a chairperson and vice chairperson to serve during the
499 pendency of the ethics panel.

500 (b) Members of the ethics panel shall be paid a per diem for each meeting or hearing they
501 are required to attend. If a hearing lasts multiple days, then the ethics panel attorney shall
502 receive a separate per diem for each day of hearing attendance. The per diem shall be the
503 same for each ethics panel attorney and shall be approved by the city council.

504 (c) The city council shall provide meeting space for the ethics panel. Subject to budgetary
505 procedures and requirements of the city, the city shall provide the ethics panel with such
506 supplies and equipment as may be reasonably necessary to perform its duties and
507 responsibilities. The city clerk shall serve as recording secretary to the ethics panel.

508 (d) Subject to budgetary procedures and requirements of the city, an attorney other than
509 the city attorney shall be available to assist the ethics panel in carrying out its
510 responsibilities or to act as an ethics hearing administrator, whose duties shall be limited
511 to conducting the ethics hearing as directed by the ethics panel. Any such appointed
512 counsel shall be approved by the city council, shall perform services at an approved hourly
513 rate, and shall serve at the joint pleasure of the ethics panel and the city council.

514 (e) The chairperson shall be entitled to the same voting rights as the other members of the
515 ethics panel.

SECTION 6-A.6.

516

517

Removal of member.

518 The city council may remove a member of the ethics panel on grounds of neglect of duty
519 or misconduct in office. For purposes of this section, an ethics panel member that, without
520 good cause, misses two scheduled ethics panel meetings during the handling of a single
521 case shall be deemed to have neglected their duty such that no further evidence
522 demonstrating neglect need be shown. Before initiating the removal of a member from the
523 ethics panel, the city council shall give the member written notice of the reason for the
524 intended action, and the member shall have the opportunity to reply. Thereafter, the city
525 council shall afford such member an opportunity for a hearing before the city council.
526 Upon removal of a member by the city council, the city clerk shall promptly undertake the
527 same process as set forth in subsection 6-A.4(e) of this charter to designate a replacement
528 member of the ethics panel, and the selection process shall be subject to the same
529 witnessing protocol as set forth in subsection 6-A.4(e) of this charter.

530 SECTION 6-A.7.

531 Resignation of member.

532 If a member of the ethics panel decides to resign prior to the final resolution by the ethics
533 panel of an ethics complaint, the member's resignation shall be submitted in writing to the
534 city clerk who shall forward the resignation to the city council, the mayor, and the other
535 members of the ethics panel. A resignation shall be deemed effective upon submission to
536 the city clerk and cannot be revoked. Upon receipt of the resignation, the city clerk shall
537 promptly undertake the same process as set forth in subsection 6-A.4(e) of this charter to
538 designate a replacement member of the ethics panel, and the selection process shall be
539 subject to the same witnessing protocol as set forth in subsection 6-A.4(e) of this charter.

540 SECTION 6-A.8.

541 Duties and powers.

542 The ethics panel shall have the following duties and powers:

- 543 (1) To establish any procedures, rules, and regulations governing its internal organization
544 and conduct of its affairs, provided that such procedures, rules, and regulations do not
545 conflict with any provision contained herein;
- 546 (2) To consider and hear complaints of violations of this article;
- 547 (3) To administer oaths;
- 548 (4) To issue subpoenas only when requested to do so by the complainant or the
549 respondent in accordance with Section 6-A.11 of this charter;
- 550 (5) To recommend such action as provided in this article as deemed appropriate because
551 of any violation of this article; and
- 552 (6) To perform any other function authorized by this article.

553 SECTION 6-A.9.

554 Custodian of records.

555 The city clerk shall serve as legal custodian of the ethics panel records, and shall accept,
556 file, maintain, and administer, in accordance with all applicable laws, any information
557 related to the purposes of this article.

SECTION 6-A.10.

Limitation of liability.

560 No member of the ethics panel, or any person acting on behalf of the ethics panel, shall be
 561 liable to any person for any damages arising out of the enforcement or operation of this
 562 ethics article, except in the case of willful or wanton misconduct. This limitation of
 563 liability shall apply to the city, the members of the ethics panel, the city clerk, the city
 564 attorney, and any person acting under the direction of the ethics panel.

SECTION 6-A.11.

Subpoenas.

567 (a) Any request for a subpoena made by a party to the ethics panel shall be made at least
 568 five business days prior to the ethics hearing date, and shall state the names and addresses
 569 for whom the subpoenas are to be issued and the date and time for the witnesses to appear.
 570 Any party requesting a subpoena shall also notify the opposing party in writing as to whom
 571 the subpoenas will be issued. A failure to provide such notification or to timely request a
 572 subpoena under this subsection may result in a waiver of the right to subpoena such
 573 witness.

574 (b) The ethics panel adopts O.C.G.A. § 45-20-9(c), which states:

575 'Subpoenas shall be issued without discrimination between public and private parties.
 576 When a subpoena is disobeyed, any party may apply to the superior court of the county
 577 where the ethics hearing is being held for an order requiring obedience. Failure to
 578 comply with such order shall be cause for punishment as for contempt of court. The costs
 579 of securing the attendance of witnesses, including fees and mileage, shall be computed
 580 and assessed in the same manner as prescribed by law in civil cases in the superior court.
 581 Once issued a subpoena may be quashed by the [ethics panel] or any administrative law
 582 judge if it appears that the subpoena was used primarily as a means of harassment, that
 583 the testimony or documents sought are cumulative, that the testimony or documents
 584 sought are not relevant, that the testimony or documents sought are not material, that to
 585 respond to the subpoena would be unduly burdensome, or that for other good reasons
 586 basic fairness dictates that the subpoena should not be enforced.'

587 (c) It is intended that O.C.G.A. § 24-13-25 shall apply to require \$25.00 per diem as a
 588 witness fee for any witnesses who are not city employees. City employees shall not be
 589 entitled to receive a witness fee during hours in which they are being paid by the city for
 590 performance of job duties. Additionally, if a witness resides outside the city,
 591 O.C.G.A. § 24-13-25 shall apply to require the \$25.00 per diem witness fee and \$0.20 per

592 mile for travel expenses as a condition for appearance. Consistent with
 593 O.C.G.A. § 24-13-25, any subpoenas issued on behalf of the city will not require payment
 594 of the above-stated fees. If applicable, O.C.G.A. § 24-13-28 shall govern issuance of
 595 subpoenas to off-duty law enforcement officers.

596 (d) The complainant and the respondent shall be individually responsible for costs of
 597 securing the attendance of any subpoenaed witness, including the costs of fees and mileage
 598 as applicable, and shall be individually responsible for service of any subpoena.

599 SECTION 6-A.12.

600 Disciplinary action.

601 (a) Upon a determination that an employee has violated this article, the ethics panel shall
 602 recommend to the mayor and the city council that the city impose any combination of one
 603 or more of the following penalties and actions:

- 604 (1) No further action;
- 605 (2) Written warning or reprimand;
- 606 (3) Suspension without pay;
- 607 (4) Termination of employment; and
- 608 (5) Repayment to the city of any unjust enrichment.

609 (b) Upon a determination that a city official has violated this article, the ethics panel shall
 610 recommend to the mayor and the city council that the city impose any combination of the
 611 following penalties and actions:

- 612 (1) No further action;
- 613 (2) Written warning, censure, or reprimand;
- 614 (3) Request for resignation from office;
- 615 (4) Removal from office to the extent provided by Georgia law; and
- 616 (5) Repayment to the city of any unjust enrichment.

617 (c) The city council shall retain the discretion to determine whether any recommendation
 618 presented by the ethics panel under subsections (a) and (b) of this section shall be imposed.
 619 In exercising this discretion, the city council shall not be bound by the recommendation of
 620 the ethics panel and may impose any combination of the penalties listed in the relevant
 621 section. This discretion shall not entitle the city council to override a determination by the
 622 ethics panel that a violation has occurred.

623 (d) In addition to any other remedy provided herein, upon determination of a violation of
 624 this article, the ethics panel may recommend to the mayor and the city council in writing
 625 that any contract, bid, or change order that was the subject of the violation be cancelled or
 626 rescinded. The city council shall retain the discretion to determine whether such a

627 cancellation or rescission would be in the best interest of the city and shall not be bound
628 in any way by a recommendation of the ethics panel.

629 (e) In addition to any other remedy provided herein, the ethics panel may also forward its
630 written decision to the Fulton County District Attorney's Office, the Office of the Attorney
631 General of Georgia, or the Office of the Governor for appropriate action.

632 SECTION 6-A.13.

633 Judicial review.

634 (a) Any party against whom a decision of the ethics panel is rendered may obtain judicial
635 review of the decision by writ of certiorari to the Superior Court of Fulton County. The
636 application for the writ shall be filed within 30 days from the date of the decision of the
637 city council with respect to the punishment to be imposed. If the ethics panel dismisses the
638 ethics complaint or finds no violation to have been proven by clear and convincing
639 evidence after an ethics hearing, the writ shall be filed within 30 days of the written
640 dismissal or decision. Judicial review shall be based upon the record. No party shall be
641 entitled to a de novo appeal.

642 (b) Upon failure to timely request judicial review of the decision by writ of certiorari as
643 provided in this section, the decision shall be binding and final upon all parties.

644 SECTION 6-A.14.

645 Ex parte communications.

646 (a) After an ethics complaint has been filed and during the pendency of an ethics
647 complaint before the ethics panel, no member of the ethics panel may communicate
648 directly or indirectly with any party or other person about any issue of fact or laws
649 regarding the ethics complaint, except as follows:

650 (1) The members of the ethics panel may obtain legal advice from the city attorney and
651 may discuss the ethics complaint with any city staff provided by the city council to assist
652 the ethics panel; and

653 (2) The members of the ethics panel may discuss the ethics complaint at a lawfully
654 conducted meeting.

655 (b) If any person attempts to communicate with an ethics panel member regarding an
656 ethics complaint pending before the ethics panel, the ethics panel member shall report the
657 substance of the communication to the ethics panel on the public record at the next meeting
658 or hearing of the ethics panel.

659 (c) No ethics panel member shall undertake an independent investigation of any complaint
660 or matter before the ethics panel.

661 SECTION 6-A.15.

662 Confidentiality of board of ethics information.

663 No member of the ethics panel, nor any public servant who has access to any confidential
664 information related to the functions or activities of the ethics panel, shall divulge that
665 information to any person not authorized to have it.

666 SECTION 6-A.16.

667 Wrongful use of this article.

668 (a) The purpose of this article is to endeavor to maintain a high standard of ethical
669 behavior by city officials and employees. This will be most effective when city officials,
670 employees, and citizens work together to set and maintain high ethical standards.

671 (b) In order to accomplish this purpose, ethics complaints shall be based on fact and have
672 the intent to improve the ethical climate of the city.

673 (c) A wrongful use of this article shall occur if and when a frivolous, false, or politically
674 motivated ethics complaint is filed in a negligent, reckless, or purposeful manner without
675 a basis in law or fact and for purposes other than reporting a violation of this article.

676 (d) An ethics complaint is not frivolous if the complainant reasonably believes that facts
677 exist to support the claim and either reasonably believes that under those facts the ethics
678 complaint is valid under this article or acts upon the advice of counsel sought in good faith
679 and given after full disclosure of all relevant facts within his or her knowledge and
680 information.

681 (e) In deciding if an ethics complaint is a wrongful use of this article, the ethics panel shall
682 consider the following, without limitation:

683 (1) The timing of the ethics complaint with respect to when the facts supporting the
684 alleged violation became known or should have become known to the complainant, when
685 the ethics complaint was filed, and the date of any pending election in which the
686 respondent is a candidate or is involved with a candidacy, if any;

687 (2) The nature and type of publicity surrounding the filing of the ethics complaint, and
688 the degree of participation by the complainant in publicizing the fact that an ethics
689 complaint was filed;

690 (3) The existence and nature of any relationship between the respondent and the
691 complainant before the ethics complaint was filed;

- 692 (4) If respondent is a candidate for election to office, the existence and nature of any
693 relationship between the complainant and any candidate or group opposing the
694 respondent;
- 695 (5) Whether the complainant knew or reasonably should have known that the allegations
696 in the ethics complaint were groundless; and
- 697 (6) The complainant's motives in filing the complaint.
- 698 (f) Allegations of a violation of this section shall be raised by the respondent as part of the
699 respondent's response to an ethics complaint.
- 700 (g) Allegations of a violation of this section shall be considered by the ethics panel
701 considering the ethics complaint that is alleged to be a violation of this section. Evidence
702 supporting and opposing the allegations of a violation of this section shall be presented at
703 the same ethics hearing conducted with respect to the ethics complaint that is alleged to be
704 a violation of this section.
- 705 (h) Upon a finding by the ethics panel that clear and convincing evidence of a violation
706 of this section was presented at the ethics hearing, the ethics panel shall recommend to the
707 mayor and the city council that the city impose any combination of the following penalties
708 and actions:
- 709 (1) Public reprimand;
- 710 (2) Criminal prosecution for perjury; and
- 711 (3) Payment of costs and attorney's fees associated with the handling and processing of
712 the ethics complaint. For purposes of this subsection, the term 'costs' shall include the
713 staff time dedicated to processing the ethics complaint as well as copy costs and other
714 directly attributable administrative expenses. For purposes of this subsection, the phrase
715 'attorney's fees' shall include the reasonable fees of the attorney retained, if any, by the
716 subject of the ethics complaint as well as any fees necessary to be paid to the ethics panel
717 attorneys. Such fees shall be calculated and approved in the same manner as provided
718 in Section 6-A.17.

SECTION 6-A.17.

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Reimbursement for reasonable attorney's fees.

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In the event an ethics complaint brought against the respondent arising out of their official duties is dismissed, either by voluntary withdrawal of the complaint by the petitioner or by action of the ethics panel or superior court dismissing the complaint as unfounded or otherwise subject to dismissal, the respondent shall be entitled to reimbursement from the city for reasonable attorney's fees incurred in defending said ethics complaint. Upon securing a final determination by the ethics panel or superior court of the complaint being dismissed, to include voluntary withdrawal of the complaint by the petitioner, the respondent shall submit a copy of the order making such findings or the petitioner's withdrawal, whichever is applicable, to the city manager along with a copy of all applicable itemized attorney's fees incurred in defending same. The itemized attorney's fees shall have attorney time and tasks broken down in one-tenth of an hour increments along with the attorney's hourly fee, coupled with a sworn statement by the attorney that the amount submitted for repayment is the same amount for which the respondent would otherwise have been responsible, or has already paid. Other than attorney time, no other expense or fees shall be subject to reimbursement. The city manager shall submit the attorney fee statement to the city attorney for a determination of reasonableness, of which determination shall be provided in writing to the city manager. Upon all or a portion of the fees being deemed reasonable, the city manager shall submit all documentation to the city finance department for issuance of a reimbursement check to the respondent or respondent's attorney, at the respondent's discretion. Reimbursement under this paragraph shall not exceed \$7,500.00 per ethics complaint, unless otherwise approved in a resolution approved by a majority of the city council."

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SECTION 18.

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Said Act is further amended by deleting and reserving Section 7.13, Section 7.14, Section 7.15, and Section 7.16.

746

SECTION 19.

747

Said Act is further amended by revising Section 7.18 as follows:

748 "SECTION 7.18.
749 Charter commission.

750 At the first regularly scheduled city council meeting, five years after the inception of the
751 City of South Fulton, the mayor and city council shall call for a charter commission to
752 review the city's experience and recommend to the General Assembly any changes to the
753 city charter. Members of the charter commission shall be appointed as follows: one by the
754 mayor, one by the city council, and one by each member of the Georgia House of
755 Representatives and Senate whose district lies wholly or partially within the corporate
756 boundaries of the City of South Fulton. All members of the charter commission must
757 reside in the City of South Fulton. The commission must complete the recommendations
758 within six months of its creation. The commission shall make its recommendations in
759 writing directly to each member of the Georgia House of Representatives and Senate whose
760 district lies wholly or partially within the corporate boundaries of the City of South Fulton.
761 The members of the Georgia House of Representatives and Senate whose district lies
762 wholly or partially within the corporate boundaries of the City of South Fulton shall call
763 said charter commission if the mayor and city council fail to call such commission at the
764 time required by this section."

765 **SECTION 20.**
766 All laws and parts of laws in conflict with this Act are repealed.