

House Bill 1019

By: Representatives Bazemore of the 63rd, Bruce of the 61st, Boddie of the 62nd, Jackson of the 64th, and Metze of the 55th

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 the city manager to appoint the city clerk and city
9 treasurer; to provide that the city council must approve the removal or suspension of the fire
10 chief and police chief; to modify the process for selecting and replacing the city manager and
11 acting city managers; to provide a term limit for the office of mayor pro tempore; to bring
12 the procedures for removing municipal court judges in line with state law; to provide
13 procedures for expenditures made individually by the mayor and councilmembers; to provide
14 procedures for ethics complaints; to modify provisions related to the charter review
15 commission; to repeal and remove expired provisions; to provide for related matters; to
16 repeal conflicting laws; and for other purposes.

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

18 **SECTION 1.**

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

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

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

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SECTION 2.

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

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

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SECTION 3.

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

53

"SECTION 2.16.

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Removal of officers.

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

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

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

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

99 **SECTION 4.**

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

102 "SECTION 3.10A.

103 Role delineation.

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

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

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

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

129 councilmembers, and any such administrative support staff shall be subject to the
130 authority and direction of the city manager and not the mayor or any councilmember;
131 (4) Except for the purpose of conducting an investigation or inquiry authorized by the
132 city council pursuant to Section 3.12 of this charter, the mayor and councilmembers shall
133 deal with city officers and employees who are subject to the direction and supervision of
134 the city manager solely through the city manager, and neither the mayor nor any
135 councilmembers shall give orders to any such officers or employees either publicly or
136 privately;

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

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

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

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

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

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

172 **SECTION 5.**

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

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

191 **SECTION 6.**

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

193 "SECTION 3.21.

194 Submission of ordinances to the mayor.

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

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

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

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

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

231 **SECTION 7.**

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

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

240 **SECTION 8.**

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

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

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

248 "(10) Nominate the city manager, city attorney, and chief judge of municipal court, subject
 249 to ratification by the city council; provided, however, that if the mayor's nomination is
 250 rejected by the city council or the mayor fails to offer a nomination, nominations may be
 251 offered by members of the city council;"

252 **SECTION 9.**

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

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

258 "(3) If the city manager has not requested a public hearing within the time specified in
 259 paragraph (2) of this subsection, the city council may adopt a final resolution for removal,
 260 which may be made effective immediately, by an affirmative vote of five of its members.
 261 If the city manager has requested a public hearing, the city council may adopt a final
 262 resolution for removal, which may be made effective immediately, by an affirmative vote
 263 of five of its members at any time after the public hearing."

264 **SECTION 10.**

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

266 "SECTION 3.24.
267 Acting city manager.

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

270 (b) If there is no assistant city manager, by letter filed with the city clerk, the city manager
271 shall designate or in the absence of the city manager the mayor shall designate, subject to
272 approval of the city council, a qualified city administrative officer to exercise the powers
273 and perform the duties of city manager during the city manager's temporary absence or
274 physical or mental disability. During such absence or disability, the city council may
275 revoke a designation made pursuant to this subsection, at any time and appoint another
276 officer of the city to serve until the city manager shall return or the city manager's disability
277 shall cease.

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

282 **SECTION 11.**

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

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

293 **SECTION 12.**

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

295 "SECTION 3.29.
296 Selection of mayor pro tempore.

297 There shall be a mayor pro tempore elected from among the councilmembers by the city
298 council at the first regular meeting of each calendar year. The term of the mayor pro
299 tempore shall be one year. No councilmember shall serve two or more successive terms
300 as mayor pro tempore. All subsequent successors shall be elected at the first regular
301 meeting of the city council in each calendar year to serve until the first regular meeting of
302 the city council in the immediately following calendar year. The mayor pro tempore shall
303 continue to vote and otherwise participate as a councilmember. A vacancy in the position
304 of mayor pro tempore resulting from the mayor pro tempore ceasing to serve as a
305 councilmember or from any other cause shall be filled for the remainder of the unexpired
306 term at the next regularly scheduled council meeting."

307 **SECTION 13.**

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

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

315 **SECTION 14.**

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

317 "SECTION 4.13.
318 City clerk.

319 The city manager shall appoint a city clerk who shall not be a councilmember. The city
320 clerk shall be custodian of the official city seal, maintain city council records required by
321 this charter, and perform such other duties as may be required by the city manager. The
322 city council shall provide for the compensation of the city clerk. The city clerk shall be the
323 official custodian of all city records, including but not limited to records and documents
324 from ethics hearings and hearings to remove the mayor or councilmembers.

325 SECTION 4.14.

326 Finance director.

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

333 SECTION 15.

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

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

338 SECTION 16.

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

340 "SECTION 6.31.

341 Purchasing.

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

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

351 SECTION 17.

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

353 "ARTICLE VI-A
354 ETHICS COMPLAINTS
355 SECTION 6-A.1.
356 Ethics complaints.

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

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

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

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

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

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

SECTION 6-A.2.

Processing ethics complaints.

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

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

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

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

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

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

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

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

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

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

431 SECTION 6-A.3.

432 Ethics hearings.

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

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

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

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

448 SECTION 6-A.4.

449 Ethics panel.

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

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

- 454 (c) The city clerk shall maintain a list of not less than nine nor more than 15 qualified
455 individuals from which to draw members of ethics panels. The city clerk shall confirm the
456 qualifications and willingness to serve of the members of the ethics panel not less than once
457 per year.
- 458 (d) Individuals shall be deemed qualified to serve on the ethics panel for so long as they:
- 459 (1) Are attorneys at law in good standing with the State Bar of Georgia;
 - 460 (2) Have at least five years experience in the practice of law, with no less than three of
461 those years dedicated to general civil litigation practice;
 - 462 (3) Reside or maintain an office within Fulton County;
 - 463 (4) Are not, and have never been, an employee or city official, and are not the spouse,
464 parent, child, or sibling of an existing or former employee or city official; and
 - 465 (5) Have no, and the members of their immediate family have no, business or contractual
466 relationship with the City of South Fulton, have not provided monetary or in-kind
467 campaign contributions to sitting city council members, and otherwise have no conflict
468 of interest in providing service on the ethics panel.
- 469 (e) Upon the city clerk determining that an ethics complaint meets the requirements of
470 Section 6-A.1 of this charter on its face, the city clerk shall promptly draw names randomly
471 from the list of qualified individuals and contact such individuals to determine their
472 availability to serve on the ethics panel. The drawing of names by the city clerk shall be
473 witnessed by at least one department director or a judge of the municipal court to ensure
474 the integrity of the selection process. Upon selection of three qualified individuals who are
475 available to serve on the ethics panel, the city clerk shall prepare a document identifying
476 panel membership and both the clerk and the staff member or the judge of the municipal
477 court that witnessed the selection process shall attest on that document to the legitimacy
478 of the selection process.
- 479 (f) No person shall be qualified to serve on more than one ethics panel at any given time
480 unless all other qualified individuals are either serving on an ethics panel or have expressed
481 their unavailability to so serve. Service on an ethics panel shall be deemed to have
482 terminated upon the entry of the written dismissal or decision of the ethics panel after the
483 conclusion of an ethics hearing.
- 484 (g) An individual shall cease to be qualified immediately upon the third consecutive
485 refusal, whether by choice or unavailability, to serve on an ethics panel after being
486 randomly drawn from the list and contacted by the city clerk to serve.

487

SECTION 6-A.5.

488

Organization and internal operating regulations.

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

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

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

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

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

507

SECTION 6-A.6.

508

Removal of member.

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

521 SECTION 6-A.7.

522 Resignation of member.

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

531 SECTION 6-A.8.

532 Duties and powers.

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

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

544 SECTION 6-A.9.

545 Custodian of records.

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

549 SECTION 6-A.10.

550 Limitation of liability.

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

556 SECTION 6-A.11.

557 Subpoenas.

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

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

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

578 (c) It is intended that O.C.G.A. § 24-13-25 shall apply to require \$25.00 per diem as a
 579 witness fee for any witnesses who are not city employees. City employees shall not be
 580 entitled to receive a witness fee during hours in which they are being paid by the city for
 581 performance of job duties. Additionally, if a witness resides outside the city, O.C.G.A. §
 582 24-13-25 shall apply to require the \$25.00 per diem witness fee and \$0.20 per mile for

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

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

590 SECTION 6-A.12.

591 Disciplinary action.

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

- 595 (1) No further action;
- 596 (2) Written warning or reprimand;
- 597 (3) Suspension without pay;
- 598 (4) Termination of employment; and
- 599 (5) Repayment to the city of any unjust enrichment.

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

- 603 (1) No further action;
- 604 (2) Written warning, censure, or reprimand;
- 605 (3) Request for resignation from office;
- 606 (4) Removal from office to the extent provided by Georgia law; and
- 607 (5) Repayment to the city of any unjust enrichment.

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

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

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

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

623 SECTION 6-A.13.

624 Judicial review.

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

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

635 SECTION 6-A.14.

636 Ex parte communications.

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

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

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

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

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

652 SECTION 6-A.15.

653 Confidentiality of board of ethics information.

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

657 SECTION 6-A.16.

658 Wrongful use of this article.

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

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

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

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

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

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

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

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

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

710 SECTION 6-A.17.

711 Reimbursement for reasonable attorney's fees.

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

734 SECTION 18.

735 Said Act is further amended by deleting and reserving Section 7.13, Section 7.14, Section
 736 7.15, and Section 7.16.

737 SECTION 19.

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

739 "SECTION 7.18.
740 Charter commission.

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

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