

GMA Handbook for Georgia Mayors and Councilmembers

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Every year, local government becomes more complex, and local leaders must address challenges including legislative and regulatory changes, scarce resources and increased service demands, workforce development needs, and rapidly evolving technology. At the same time, city officials strive to implement innovative programs and foster smart, livable communities and maintain their city's unique character and sense of place. To help meet these challenges, it is important for municipal elected officials to understand the basics of city government.

GMA is pleased to offer this comprehensive online resource for mayors and councilmembers, which is designed to make your job easier. The *Handbook* is a handy reference guide covering topics such as building relationships with your fellow elected officials and staff, local government management and forms of government, ethics, service provision, revenue sources, and intergovernmental relations.

By providing this publication as an online guidebook, GMA can update content as needed to reflect changes in the laws and add information about new topics and best practices, so local leaders will always have access to the latest information.

Please note that this handbook is provided for general informational purposes only, does not constitute legal advice, and may not apply to your specific situation. Municipal officials should consult with their city attorney before taking any action based on the content of this publication.

This handbook is the result of the combined efforts of city officials, staff of state agencies, local government consultants, Carl Vinson Institute of Government staff, and GMA staff. We would like to thank all of the individuals who worked on this project.

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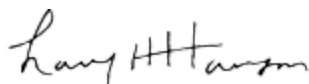
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One of the most important aspects of effective government is defining, understanding, and accepting the appropriate roles of elected and appointed officials. In local governments today, there are three primary forms of government: the council-manager, mayor-council, and commission forms. Nearly half of all governments in the United States today utilize the council-manager form of government. Newly elected officials often find that their preconceived ideas about roles and responsibilities are inconsistent with their form of government. Following the excitement of a campaign and the formality of the oath of office, they find that the process of governing is not nearly as simple as it may have seemed from the outside. Questions arise as to the role of the mayor or councilmember in relation to the city manager, administrator, or clerk. It is quickly discovered that to achieve success, it is imperative that elected officials and staff work together successfully. This recognition, in turn, creates an atmosphere of trust and respect that leads to a well-run organization that can focus on its primary mission of providing efficient, effective, and responsive public services.

Being an effective elected official is not easy. It can be exciting, challenging, and rewarding, but also painful, frustrating, and controversial. Elected leadership can successfully bring a community together, or it can divide it. Newly elected officials are also challenged by unfamiliar processes, laws and mandates, and public scrutiny. They quickly learn the challenge of governing while dealing with mandatory open meetings requirements, passionate differences of opinion from individuals and organizations about what is best for the community, and constant attention and scrutiny from the news media. Persons previously looked upon as community leaders may be viewed with skepticism. In this difficult environment, it is imperative to understand and clearly define the proper roles of elected officials and staff.

Experience has shown that successful cities, leaders, and model local governments generally share a common set of characteristics:

1. Elected and appointed officials share a mutual understanding and acceptance of their respective roles.
2. Trust and respect is shared between the appointed and elected officials.
3. Teamwork is demonstrated in all actions, and both elected officials and appointed staff understand that success is achieved through partnership.
4. Communications are open, honest, and consistent with expectations and outcomes clearly understood.
5. Planning is a part of the organizational culture and includes visioning, goal setting, and short- and long-range planning.
6. The city is operated in a businesslike manner.

Understanding and Acceptance of Roles

In a municipal organization, it is important that elected officials and appointed staff clearly understand and agree on their respective roles as defined by their form of government, the city charter, and the code of ordinances. As a general rule, the governing body is the legislative body, and its members are the community's decision makers. Power is centralized in the elected body, which sets policy, approves a budget, and determines the tax rate. The elected body also focuses on the community's goals, major projects, and long-term considerations such as community growth, land-use development, capital improvement plans, capital financing, and strategic planning. The elected body frequently hires a professional manager to carry out the administrative responsibilities, and it supervises the manager's performance. In addition, the mayor typically presides at meetings, serves as a community spokesperson, facilitates communication and understanding between elected and appointed officials, assists the elected body in setting goals, and serves as a promoter and defender of the community. In addition, the mayor serves as a key representative in intergovernmental relations. The elected body, the mayor, and the manager constitute a policy development and management team.

The appointed official or manager is hired to serve the elected body and the community and to bring to the local government the benefits of education, training, and experience in administering local government operations and management. The manager prepares a budget for consideration; recruits, hires, and supervises government staff; serves as the elected body's chief advisor; develops and makes recommendations on various policies, procedures, and ordinances; develops capital plans; and carries out the policies as set by the governing body. Elected officials and citizens count on the manager to provide complete and objective information, present alternatives, and explain the short- and long-term consequences of proposed actions or inactions.

The art of effective government begins with a clear understanding and acceptance of clearly defined roles. It is true that there is some flexibility based on the skills, talents, and abilities of the members, but in most cases, roles are clearly defined. It is often best to begin with a review of the city charter and code of ordinances. These documents clearly distinguish between the role of elected officials in policy development and the creation of legislation versus the staff's responsibility of administration and day-to-day operation and management. In its purest form, elected officials establish policy and enact laws, and administrators carry out those policies and laws. In this sense, the government works much like a major corporation in that the board of directors sets policy and provides oversight, and the CEO carries out that policy and provides professional oversight to achieve the corporation's goals and objectives. There are times when the distinction between roles is not completely clear or when elected officials wish to exercise more influence over day-to-day operations. These

problems generally lead to organizational ineffectiveness or conflict among the parties. They can also create confusion among staff members and the public at large as to who is in charge of what.

The most effective elected officials direct their time and energies to legislation, policy development, and operational oversight. Oversight can best be carried out by ensuring that the city has professional and competent staff that is responsive, resourceful, efficient, and effective. Managers and administrators need broad oversight to manage the difficult organizational, legal, personnel, financial, and other administrative matters that occur on a regular basis. Elected officials should empower their manager but hold them accountable through regular updates and performance reviews.

Trust and Confidence

For any local government to be successful there must be trust and confidence between the elected body and the appointed official. The manager must respect the fact that citizens have elected these representatives and that they have certain responsibilities to both the public at large as well as their oath of office. Likewise, elected officials must have respect for the form of government citizens have chosen and confidence in their manager to carry out the responsibilities of the position. Both parties share common goals to improve the quality of life, create jobs, protect the public, and provide efficient and effective services. Trust and confidence grow in an environment in which common goals and objectives are established, such goals are monitored and measured, and parties work together to achieve those goals. Elected officials can cultivate trust and foster confidence by expressing their opinions in a constructive manner when policy is being formulated, rather than after the fact or as a surprise at the time of implementation. Managers prefer guidance while developing policy, and such a process usually leads to an outcome satisfactory to all. A good manager will make the life of an elected official easier and more successful, while a poor manager will make the job more difficult, less rewarding, and less successful.

There are instances in which elected officials do not have confidence and trust in the manager. In such cases, it is best that the relationship be terminated. Lack of trust, conflict between staff and elected officials, and lack of confidence create an environment that has negative consequences for all parties involved.

Trust and respect also include how disagreements are handled. Both parties should first discuss issues in private and one-on-one. If such issues cannot be resolved, it is often best to seek the involvement of an independent third party. Regardless, disagreements or differences of opinion can and should be handled with dignity and respect.

Teamwork

Any team or organization is only as strong as the sum of its parts. Teams combine the strengths and efforts of all members over those of an individual member. Successful teams generally accomplish more than successful individuals. Becoming an effective team member is not always easy and often takes a great deal of effort. The following suggestions may help:

- Each person on the team has a view that is important to them and deserves to be heard.
- Some of the best ideas come from listening rather than speaking.
- Debate is healthy and can lead to a better outcome. Once debate is finished and a decision is reached, the decision of the team should be supported.
- Policy should be developed with the input and advice of staff. Likewise, staff should involve and include elected officials in policy development.
- Teams function best with a clear understanding of roles and hierarchy. Particularly, an elected official should not consult with employees other than those who report directly to the elected body.
- Effective team players never worry about credit. They focus on outcomes. They work to build consensus and “sell” their vision. By doing so, others join in. Those who focus on the result and outcome rather than the credit consistently achieve the most success. Effective team players also give and share credit when appropriate.

Communication

Successful relations between elected and appointed officials always require open, consistent, and continuous communication. Information must flow in both directions. A primary responsibility of a manager is to keep elected officials informed in a variety of ways, including the following:

- one-on-one conversations between the manager and each elected official, as needed
- monthly reports on each department's activities, finances, capital projects, etc.
- recommendations with justifications on issues considered by the elected body
- special reports on politically sensitive topics or those that are of major interest and concern to residents
- annual reports, particularly in summary form
- minutes of meetings of boards, authorities, and commissions, and
- notifications of emergencies either in written form or by telephone.

Opportunities should be provided for regular, informal conversations and dialogue. For instance, some agendas have a designated place for a manager's report and council comments. Such opportunities should be used for constructive, open communication and can build camaraderie for all involved.

Planning

Businesses and organizations are successful because they utilize planning as a management tool and a guide for the future. Cities should establish a mission, a vision, and a set of organizational values. These guides can be the foundation for the development of goals and short- and long-range planning. An effective tool for short-term goal setting and planning is a planning retreat. Away from the normal distractions and focused on a common objective, individuals often respond with their best ideas. Use of a facilitator often can help with the process by focusing on the task at hand, being objective and neutral, and sharing insight based on professional experiences as well as successes and failures of other communities. Short-term goals should establish implementation steps and timelines. They should be measurable. Those that involve funding should be included in an appropriate budget or capital improvement program.

Long-range plans are often the most difficult to develop. Citizens may be shocked by long-term growth plans or future land-use patterns. However, it is necessary for local governments to work effectively, maximize use of resources, and comply with ever more challenging permit and regulatory requirements to meet the needs of future long-range planning efforts. Long-range planning is a necessity, not a luxury. Too often, attention is diverted to potholes, property taxes, and a “how-will-this-affect-me” attitude among citizens. Elected officials must stay focused on the big picture and plan if a successful future is to be achieved. In addition to patience and compromise, effective long-range planning takes time, perseverance, and fortitude. It is important that there be a planning process that does not hurry to create a failure but is patient to create a success.

Operating as a Business

One of the harsh realities of local government is that it must be operated as a business. In the past, many local governments knew that they were the only provider of many services and that citizens therefore had little choice but to tolerate poor customer service. This attitude is not the case in most cities today. Elected officials should treat citizens as customers and make conscientious efforts to resolve issues. However, it must also be understood that it is beyond the financial resources and, at times, the role of the local government to solve every problem. Local governments must understand the expectations of citizens, govern and budget accordingly to meet those expectations, and avoid the trap of political expediency by trying to solve every problem by spending more money. Elected officials should also work to treat all constituents fairly and equitably and to understand that at times it is necessary to say “no.”

Conclusion

Effective government is a partnership between elected and appointed officials. It begins with identifying and establishing the roles of all parties based on legal instruments such as the

city charter and its code of ordinances and resolutions and the city's type of government. The most successful elected officials direct their talents, skills, and abilities to legislation, policy development, and operational oversight. They set clearly defined and achievable goals and objectives and make sure that appointed staff understands what will constitute success. Effective local government requires trust and confidence. Efforts must be made to develop mutual trust and respect between elected officials and staff.

Most successful organizations work as a team. It is important to appreciate the views of others, balance listening with speaking, and support the decision of the team once it is made. Remember, employees look to the elected body for leadership and direction. A divisive elected body will lead to a fractured staff and, ultimately, failure. It is important to respect the democratic process more than any single point of view. Elected officials should vote on the content of the question and not on how other members are voting, nor should they worry about the credit but focus on the desired outcome.

Elected and appointed officials must communicate with one another. Information flow, regular reports, and knowledge of problems as well as successes are critical to a well-run organization. Communication must be open, candid, and honest. Likewise, proper planning, both short- and long-range, is essential for success. Successful cities operate in a fiscally responsible, businesslike manner. They focus on core initiatives that are consistent with the mission and vision of the organization and guide their progress through goals, objectives, and measurement of outcomes. Successful leaders influence outcomes and have the ability to convince others not to follow them but to join them.

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Public Trusteeship

Trust is the key word that describes the appropriate relationship between elected officials in local government, other public officials, and their constituency. An elected official serves only as a result of the trust which the majority of the electorate has exhibited by electing that individual to office. The Georgia Constitution stresses the standards applicable to public officers in this way:

All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are trustees and servants of the people and are at all times amenable to them (Ga. Const. Art. I, § 2 ¶1).

Two roles for public officers are established by this constitutional language. First, the public officer is a trustee of the people. Trusteeship is perhaps the highest calling that one can be granted under the law. As trustees, public officers have a fiduciary relationship with their constituents. A fiduciary holds something of value, which he or she does not own, and is charged with managing the valuable item for the sole purpose of benefiting the beneficiary of the trust. Elected officers are entrusted with the power to govern and to manage public property, with the public as beneficiaries of that trust (*Malcom v. Webb*, 211 Ga. 449 (1955)). A public officer's goal should be to further the public good, not to improve the standing of the public officer, except that the officer may share in the benefit as a member of the public at large.

The second idea suggested by the constitutional provision is that the public officer is a servant of the people. A servant cannot exist without a master. The constitution establishes the public as masters and public officers as servants who are charged with responding to the needs and wishes of the master. Georgia does not stop, however, with this constitutional provision in establishing ethical principles for governmental officials.

Common Law or Court Established Standards

In the context of this chapter, common law means the rules established when judges take factual situations and extract from them basic principles that govern the conduct of human affairs. This "common law" tradition is handed down from the English legal system and evolved well before there were detailed statutory provisions governing the conduct between

people. It is important for city officials to understand that an action which may not violate a specific criminal or civil statute on conflicts of interest may run afoul of broader ethical principles that have been established by court decisions (*Trainer v. City of Covington*, 183 Ga. 759, 189 S.E. 842 (1937); 1998 Op. Att’y Gen. No. U98-8). Several principles become evident in a review of court decisions relating to conflicts of interest. Georgia courts have made it clear that persons should not have the opportunity to be led into temptation to profit out of the public business that has been entrusted to them.

Not only can actions violate conflict-of-interest principles, circumstances and situations can create potential violations of the ethical principles applicable to the conduct of governmental affairs. The opportunity to profit from a situation plus an individual’s control over that situation are the elements that create an ethical violation. There is, then, an equation that every public officer should remember: temptation to profit plus opportunity to profit equals impropriety.

Statutory Restrictions

Georgia law has a number of statutory provisions regarding ethics in the conduct of government business. These provisions consist of both civil restrictions and criminal sanctions.

Civil Statutes

Conflicts of Interest

“It is improper and illegal for a member of a municipal council to vote on any question brought before the council in which he is personally interested” (O.C.G.A. § 36-30-6). This statutory provision is derived from an 1888 court decision and was carried forward from the Civil Code of 1895 to the present Official Code of Georgia Annotated. “Personal interest” has been construed by the courts to mean a financial interest (*Story v. City of Macon*, 205 Ga. 590, 54 S.E.2d 396 (1949)). It has been cited on a number of occasions by the Georgia courts to void municipal contracts, such as a contract between a city and a private corporation in which one of the council members owned stock and a contract between the city and the mayor, even though the mayor did not vote or attempt to influence members of the council (*Hardy v. City of Gainesville*, 121 Ga. 327, 48 S.E. 921 (1904); *City of Macon v. Huff*, 60 Ga. 221 (1878)). The court has even construed this code section so broadly as to void a contract when the council member with the financial interest later resigned from the council and the contract was reconfirmed by the council after such resignation (*Montgomery v. City of Atlanta*, 162 Ga. 534, 134 S.E. 152 (1926)).

This statute and court decisions can present problems for a mayor and council. For example, do the courts mean that a mayor and council are unable to purchase General Motors police cars because the mayor owns 100 shares of General Motors stock or is employed by the local General Motors manufacturing plant? The answer is no; there must be some opportunity for measurable profit to the individual arising from the transaction (1982 Op. Att'y Gen. 82-82, p. 173).

Another example of an exception to this statutory provision is based on a case which challenged an ordinance naming a particular bank as the city depository for all municipal funds. The challenge was based upon the fact that the mayor of the city and one of its council members held positions of an officer and director of the depository bank. The Georgia Court of Appeals found that the arrangement did not violate the statute, under the theory that there was no financial profit to the individuals as a result of the bank being named as depository (*Smith v. City of Winder*, 22 Ga. App. 278, 96S.E. 14 (1918)). According to this decision, there was no financial profit because all of the municipal funds were demand deposits. Would the court reach the same conclusion based on these facts today, given the importance of deposits, including demand deposits, to local banks?

In fact, the State Attorney General answered this question in the negative in a letter drafted in 1997. In that case, a county commissioner was a minority stockholder, a member of the board of directors, and also the attorney for the bank with which the county did business. Additionally, the commissioner's law partner was a member of the advisory board of and the attorney for another bank with which the county did business. The business the county did with the banks included depositing general operating funds in four different banks on a rotating basis and depositing surplus funds in the bank with the highest rate of return. The Attorney General agreed with the county attorney in this case that a conflict of interest existed in each instance based on these facts (Letter to the Honorable Robert S. Reeves, Chairman, Emanuel County Board of Commissioners from Attorney General Michael J. Bowers (March 31, 1997)). Note, however, that this opinion was only expressed in a letter and not in an official or unofficial opinion of the State Attorney General.

Another statutory provision of interest to public officials is the code of ethics for governmental service (O.C.G.A. § 45-10-1). The code presents ten principles that are excellent guidelines for conduct by public officers and employees. Two examples of these guidelines are (1) public officials should never use information coming to them confidentially in the performance of governmental duties as a means for making private profit, and (2) persons in government service should seek to find and employ more efficient and economical ways of getting tasks accomplished. There are no sanctions provided for violating any of the general principles outlined in this statute. Therefore, this code of ethics has only an advisory effect on public officers.

Incompatible Offices

Holding incompatible or inconsistent offices is another potential situation that can give rise to an ethical violation. A municipal official is ineligible to hold any other municipal office at the same time he or she serves as a member of the municipal governing body (O.C.G.A. § 36-30-4). Thus, a city official cannot also serve on a municipal planning commission, serve as city clerk, or hold office as city building inspector (1971 Op. Att’y Gen. U71-107; 1967 Op Att’y Gen. 67-36; 1962 Op. Att’y Gen., p. 333).

A city official can also run afoul of principles of ethical conduct if his or her employment comes into conflict with duties as a public officer. For example, the Georgia Supreme Court has disapproved of an arrangement whereby a mayor of a city was hired to serve as the city manager of the city (*Welsch v. Wilson*, 218 Ga.843, 131 S.E.2d 194 (1963)). The mayor, a member of the governing body, was charged with overseeing the performance of the city manager. Thus, the mayor was placed in a position of judging his own performance as the city manager, which is not in the public interest. The mayor could not be both master and servant at the same time. This prohibition against incompatible offices, or holding incompatible employment, may be a significant problem in very small municipalities.

Another example of conflict between a public officer’s private employment interest and his “official” interest is found in a case involving a city attorney (*Stephenson v. Benton*, 250 Ga. 726, 300 S.E. 2d 803 (1983)). The city attorney challenged the mayor’s veto of his reappointment. While the court ruled in favor of the city attorney on the main issue, the opinion found that the lawyer for the city attorney was also the city recorder. As such, the city recorder should have been disqualified as the city attorney’s legal counsel. The court said that the city recorder, a public officer, was acting as an attorney for his own financial gain in initiating a lawsuit which sought to defeat the official actions of other public officers of the city which the recorder served.

Georgia law does allow members of the governing authority of a municipality or county to serve as volunteer firefighters for that municipality or county so long as the individual serving in both capacities receives no compensation for services as a volunteer firefighter other than actual expenses incurred, a per diem for services, contributions to the Georgia Firefighters’ Pension Fund, workers’ compensation coverage or any combination of the foregoing (O.C.G.A. § 36-60-23). However, the statute is very clear that nothing in this law requires a city or county to make any of the payments or offer any of the benefits allowed by this statute.

Criminal Statutes

Sale of Property

Suppose Mayor Smith owns the only hardware store in town. As a matter of course, employees in the public works department of the city occasionally go to the hardware store to pick up small tools and other items necessary in carrying out the day-to-day department maintenance. Is this a permissible activity? Georgia criminal law prohibits the sale of real or personal property by a public officer or employee to a local government which the individual serves (O.C.G.A. § 16-10-6). A violation of the provision can result in imprisonments of not less than one to not more than five years. The statute recognizes exceptions, however, for sales of personal property which do not exceed a value of \$800 per calendar quarter and for sales of personal property made pursuant to sealed competitive bids. Thus, Mayor Smith would not be criminally liable for selling tools and other materials to the city if the transaction met either one of these exceptions to criminal law. Additionally, the law was amended in the 2010 session of the Georgia General Assembly to provide that any contract or transaction entered into in accordance with this provision of law shall be valid and shall not subject an elected officer, appointed officer, or employee to civil liability (O.C.G.A. § 16-10-6(d)).

Another exemption from the criminal law provision prohibiting an employee or officer from selling property to the city for which the employee or officer works is made for sales of real property. A sale of real property by a city official to his or her own city is not a violation of the criminal law if there has been a disclosure to the grand jury or judge or probate court of the county in which the city is located at least 15 days prior to the date the contract or agreement becomes binding. This notice must show the name of the interested person, his or her position in the political subdivision or agency, and the purchase price and location of the property being purchased by the city (O.C.G.A. § 16-10-6(c)(3)).

Abuse of Office

Other potential criminal law violations that can arise from public service include violation of oath of office, bribery, improper influencing of legislative action by a municipality, improperly influencing of the action of an officer or employee, and conspiracy to defraud (O.C.G.A. §§ 16-10-1, 16-10-2, 16-10-4, 16-10-5, 16-10-21). Bribery is committed by a public official when he or she directly or indirectly solicits, receives, or agrees to receive a “thing of value” while implying that doing so will influence his or her performance on some official action. Bribery is likewise committed when persons offer public officials any benefit to which they are not entitled with the purpose of influencing them in the performance of their duties. The law,

however, does acknowledge that a public official may be reimbursed for certain expenses and may accept certain promotional, honorary, and other token gifts without committing bribery. According to the state bribery statute, accepting one or more of the following items does not in and of itself constitute bribery:

- Food or beverage consumed at a single meal or event
- Legitimate salary, benefits, fees, commissions, or expenses associated with a public official's nonpublic business
- An award, plaque, certificate, memento, or similar item given in recognition of the public official's civic, charitable, political, professional or public service
- Food, beverages, and registration at group events to which all members of the governing authority are invited
- Actual and reasonable expenses for food, beverages, travel, lodging, and registration for a meeting that are provided to a public official so that he or she may participate or speak at the meeting
- A commercially reasonable loan made in the ordinary course of business
- Any gift with a value less than \$100
- Promotional items generally distributed to the general public or to public officials
- A gift from a member of the public official's immediate family, or
- Food, beverage, or expenses afforded public officials, members of their immediate families, or others that are associated with normal and customary business or social functions and activities (O.C.G.A. § 16-10-2).

Any person convicted of bribery is subject to a fine of not more than \$5,000 or imprisonment for not less than one or more than 20 years or both (O.C.G.A. § 16-10-2). In sum, other than those benefits of public office that are expressly authorized and established by law, no public official is entitled to request or receive—from any source, directly or indirectly—anything of value in exchange for the performance of any of his or her duties of office. A bribe or payoff, for example, given to a public official under the guise of a campaign contribution is still a bribe. The mere fact that a contribution has been reported as a campaign contribution would not change its character as a bribe (*State v. Agan*, 259 Ga. 541, 384 S.E.2d 863 (1989), cert. denied, 494 U.S. 1057 (1990)).

State law also defines two additional and more targeted forms of bribery related to selling influence: when a public official asks for or receives something of value in return for (1) procuring or attempting to procure passage or defeat of an ordinance, resolution, or other municipal legislation or (2) attempting to influence official action of any other public officer or employee of the city (O.C.G.A. § 16-10-4 et seq.). Upon conviction, the officer may be punished by imprisonment of not less than one or more than five years.

Public officials are guilty of extortion when they demand or receive, under color of office, money, fees, or other things of value that they are not entitled to or which represent more value than is due them. A public officer found guilty of extortion must be removed from office (O.C.G.A. § 45-11-5). It is also unlawful for a public official to coerce or attempt to coerce, directly or indirectly, any other public official or employee to pay, lend, or contribute any sum of money or anything else of value to any person, organization, or party for political purposes. A person engaging in coercion is guilty of a misdemeanor (O.C.G.A. § 45-11-10).

Any public officer who willfully and intentionally violates his or her oath of office is to be punished by imprisonment for not less than one or more than five years (O.C.G.A. § 16-10-1). A public official or other person commits the offense of conspiracy to defraud a political subdivision when he or she conspires or agrees with another to commit theft of property that belongs to a local government or that is under the control of a public official in his or her official capacity. Conviction calls for imprisonment of not less than one to not more than five years (O.C.G.A. § 16-10-21). Also, a city official who receives, takes, or contracts to receive or take, either directly or indirectly, any part of the pay or profit arising out of a public works contract is guilty of a misdemeanor (O.C.G.A. § 36-91-21(g)).

A public officer or any other person who steals, alters, forges, defaces, or falsifies any records or documents, including minutes or digital records, shall be guilty of a felony if convicted and be subject to imprisonment for two to ten years. Under this statute, willfully removing public records from the premises of the public office with the intention of concealing it or keeping it for one's personal use is considered stealing the public records (O.C.G.A. § 45-11-1).

In addition to the infractions described above, state law also addresses malpractice, partiality, and demanding more cost than that to which a public official is entitled. Any local elected official charged with the foregoing may be indicted by the grand jury. If a true bill is returned by the grand jury and the public official is found guilty in a criminal proceeding, the official will be subject to fine, imprisonment, or both, at the discretion of the court. In addition, the official will be removed from office (O.C.G.A. § 45-11-4).

Campaign Financial Disclosure, Personal Financial Disclosure and Lobbying

Details on the state law applicable to campaign financing and disclosure are beyond the scope of this chapter, but each municipal official should become familiar with the requirements on campaign contribution limitations, disclosure, and reporting of campaign activities required by this statute (O.C.G.A. §§ 21-5-30 through 21-5-53). Violation of the

campaign finance disclosure law can result in punishment for a misdemeanor. Allegations of violations can also become powerful tools when used by an individual against an opponent in an election. To ensure compliance with state law, municipal officials should read the materials provided by the Georgia Government Transparency and Campaign Finance Commission and the Elections Division of the Office of the Secretary of State.

Candidates for municipal office are required to file campaign contribution and expenditure disclosure reports with the municipal clerk, the chief executive officer if there is no clerk or, if provided by contract, with the county election superintendent (O.C.G.A. § 21-5-34(a)(4)). The local officer who receives that report then must file it electronically with the Georgia Government Transparency and Campaign Finance Commission. In each nonelection year, the reports must be filed locally by the candidate on January 31 and June 30 (O.C.G.A. § 21-5-34(c)(1)). In each election year, the reports must be filed on January 31, March 31, June 30, September 30, October 25, and December 31 as well as six days before any run-off in which the candidate is listed on the ballot (O.C.G.A. § 21-5-34(c)(2)). If the candidate is listed on the ballot for a special run-off or special election, a report must be filed 15 days prior to that run-off or election (O.C.G.A. § 21-5-34(c)(4)).

However, candidates for elected municipal office who do not intend to accept more than \$2,500 for the campaign or to spend more than \$2,500 in an election cycle may file a declaration of such intent with the appropriate local filing officer and avoid having to file campaign finance disclosure reports. If the candidate exceeds the \$2,500 limit but does not exceed \$5,000, the candidate must file June 30 and December 31 disclosures. If the candidate exceeds \$5,000, the candidate must file all reports (O.C.G.A. §§ 21-5-34(d.1)(1) through (3)).

For each campaign disclosure report that is filed late, the Commission will impose a late fee of \$125. An additional late fee of \$250 will be imposed on the 15th day after the due date and yet another late fee of \$1,000 will be imposed on the 45th day after the report was due (O.C.G.A. § 21-5-34(k)).

In addition to campaign finance disclosures, municipal elected officials and candidates for such offices must file personal financial disclosure reports with the Commission. For officials holding office, such reports must be filed between January 1 and July 1 of each non-election year; all municipal candidates for office must file no later than 15 days after qualifying to run

for office (O.C.G.A. § 21-5-50(a)(3.1)). Late filing of personal financial disclosure reports is subject to the same schedule of late fees applicable to campaign disclosure reports (O.C.G.A. § 21-5-50(f)).

There are also state laws relating to registration and reporting by persons who lobby the General Assembly and persons who lobby local governments (O.C.G.A. §§ 21-5-70 through 21-5-73).

Finally, Georgia law forbids the expenditure of public funds to influence the outcome of an election (O.C.G.A. § 21-5-30.2). Articles in a city newsletter which could be construed as attempts to influence the way citizens vote on an upcoming referendum question can violate this law. Expenditure of private funds to influence voters on a referendum question can only be done by a campaign committee which registers and files financial reports as required in the Ethics in Government Act.

Conflict of Interest in Zoning

Zoning decisions are often troubling issues for government officials. Local government officials with a financial interest in zoning decisions are required to provide disclosure of that interest (O.C.G.A. § 36-67A-2). If the local government official knew or reasonably should have known that he or she has a property interest in real property affected by rezoning, has a financial interest in any business entity which has a property interest in real property affected by rezoning action, or has a family member having any of the interest described above, then the nature and extent of that interest must be disclosed in writing to the governing authority of the city in which the official serves. The local government official is disqualified from taking any action on behalf of him- or herself or any other person to influence action on the application for rezoning. Members of the family who can trigger the disclosure requirement for a city official include a spouse, mother, father, brother, sister, son, or daughter of the official (O.C.G.A. § 36-67A-1(6)). Knowingly failing to comply with these requirements or knowingly violating the other provisions of this law can result in conviction of a misdemeanor (O.C.G.A. § 36-67A-4).

Ethics Provisions in Charters and Ordinances

In addition to the ethics laws and criminal statutes applicable to municipal officials, a city may have additional ethics constraints and methods of airing ethics grievances in the city charter or in municipal ordinances. To the extent that there is already a state law on the same subject, the state law will control. However, local ethics ordinances and ethics boards can

serve as an effective way for local residents and electors to hold municipal officials accountable at the local level. In furtherance of this objective, GMA created the “Certified City of Ethics” program in June 1999.

To earn a “Certified City of Ethics” designation, a city must adopt a resolution establishing the five ethics principles for the conduct of the city’s officials and adopt an ethics ordinance that meets minimum standards approved by the GMA Board. The following five ethics principles are designed to guide the elected officials as individuals and as a governing body:

- Serve others, not ourselves
- Use resources with efficiency and economy
- Treat all people fairly
- Use the power of our position for the wellbeing of our constituents
- Create an environment of honesty, openness and integrity.

The adopted resolution must include or at least reference the definitions of these principles. A majority of elected officials is required to sign the resolution.

To participate in the “Certified City of Ethics” program, the ethics ordinance must contain definitions, an enumeration of permissible and impermissible activities by elected officials, due process procedures for elected officials charged with a violation of the ordinance, and punishment provisions for those elected officials found in violation of the ordinance. Each city designated as a Certified City of Ethics will receive a plaque and a logo which can be incorporated into city stationery, road signs and other materials at the city’s discretion. In addition, GMA will send press releases to the local media notifying them that the city has earned this designation. GMA recommends that cities review the sample ordinance and resolution available in GMA’s publication [Ethics in Government: Charting the Right Course](#) and visit the GMA website for more information on the [Certified Cities of Ethics](#) program.

Federal Laws

There are several means by which federal law enforcement agencies address criminal acts of public officials. They can be grouped into three basic categories: criminal action statutes, corrupt act statutes, and honest services statutes. Criminal action statutes refer to general criminal laws that define and prohibit behavior as criminal. They are not designed specifically to address actions by public officials. Any citizen, including public officials and employees, may be charged with their violation. Examples would include embezzlement, drug dealing, tax evasion, and fraud (Charles D. Gabriel, “The Role of the FBI in State and Local Government Corruption,” Institute for City and County Attorneys (Athens: Institute of Continuing Legal Education in Georgia, University of Georgia, 2001)).

Extortion or bribery involving public officials may also be prosecuted under federal law. Two of the core corrupt act statutes employed to address state and local corruption are the Hobbs Act and Program Fraud statute (Gabriel, "Role of the FBI in State and Local Government Corruption"). The Hobbs Act defines extortion as "obtaining of property from another...under color of official right" (18 United States Code Annotated (U.S.C.A.) § 1951(b)(2)). It includes as a violation the misuse and potential misuse of a public official's power for personal profit. The bribe need not be initiated or demanded by the public official, and passive acceptance is sufficient for a Hobbs Act violation so long as the public official knows that he or she is being offered the payment in exchange for a requested exercise of official power. For example, accepting cash in exchange for a promise to vote favorably on a rezoning matter would violate the Hobbs Act (*Evans v. United States*, 112 S.Ct. 1881 (1992)). Punishment for violation of the Hobbs Act is a fine not exceeding \$10,000 or imprisonment for not more than 20 years, or both. Couching a bribe in the form of campaign contributions and reporting the payment as a campaign contribution does not change the nature of the bribe (Gabriel, "Role of the FBI in State and Local Government Corruption").

The federal Program Fraud statute addresses the actions of those who are responsible for federal funds. At a minimum, jurisdiction is triggered when an organization such as a city or an authority receives federal benefits in excess of \$10,000 involving some kind of federal assistance during a 12-month period prior to or following the act in question. The statute prohibits the following: (1) embezzling, stealing, defrauding or misappropriating property valued at \$5,000 or more; (2) soliciting or accepting bribes relating to some matter involving \$5,000 or more; and (3) giving, offering, or agreeing to give anything of value to influence or reward action in connection with some transaction valued at \$5,000 or more (Gabriel, "Role of the FBI in State and Local Government Corruption"; 18 U.S.C.A. § 666). For example, a chief deputy in a jail that housed federal prisoners in exchange for federal funds well in excess of \$10,000 in value was indicted and convicted for accepting a bribe from a prisoner in exchange for special treatment from the deputy (Gabriel, "Role of the FBI in State and Local Government Corruption"; *Salinas v. United States*, 118 S.Ct. 469, 473 (1997)).

Honest services statutes are available when there are no federal program funds involved but are limited in applicability to bribery and kickback schemes and are not applicable to conflicts of interest (*Skilling v. United States*, 130 S.Ct. 2896, 2010 WL 2518587 (2010)). Using this tool, federal prosecutors must prove the use of either the U.S. mail, an interstate wire communication facility such as a phone or the Internet, or an interstate common carrier such as FedEx or UPS to execute a scheme to defraud someone (Gabriel, "Role of the FBI in State and Local Government Corruption"; 18 U.S.C.A. §§ 1341, 1343, 1346).

One final federal statute that bears mentioning is the False Claims Act (FCA). There are both civil and criminal penalties under the False Claims Act (31 U.S.C.A. §§ 3729-3733; 18 U.S.C.A. § 287). The FCA is violated when a false, fictitious, or fraudulent claim is presented to the federal government that the person presenting it knows to be false through actual knowledge, deliberate ignorance, or reckless disregard. In addition to individuals, local governments are considered persons that can be held liable under the FCA (*Cook County, Ill. v. United States ex rel. Chandler*, 123 S.Ct. 1239 (2003)). One of the most important aspects of the FCA is that it allows private parties, called relators, to sue in the name of the federal government in lawsuits known as *qui tam* actions (31 U.S.C.A. § 3730(b)). The damages that can be levied and collected in a FCA action include civil penalties of \$5,000-\$10,000 per violation, with each false statement serving as a separate claim, and treble damages (31 U.S.C.A. §§ 3729(a)(1)(G)). The federal government may intervene in the case, but the relator is allowed to collect a bounty of up to 25% of the recovery if the government intervenes and 30% if the government does not. The potential for treble damages and up to 30% of the recovery provides relators with a strong incentive to locate false claims and pursue these actions.

Suspension and Removal of Elected Officials

If a local elected official is indicted by a grand jury, Georgia law provides a procedure whereby elected officials may be suspended from office by the governor upon recommendation of a special commission. The special commission is appointed by the governor and is composed of the attorney general and two other persons holding the same office as the indicted official. The duty of the special commission is to determine if the indictment relates to and adversely affects the administration of the office of the indicted official. If the official is suspended, a temporary replacement is appointed by the governor unless the applicable charter provides for some other means for filling temporary vacancies. If the indicted official is acquitted or a *nolle prosequi* is entered, the official is to be immediately reinstated to his or her position. Upon initial conviction of a public official for any felony, whether or not the official was suspended under the procedures described above, such official is immediately and without further notice suspended from office and a replacement official is named to fill the vacancy created by the suspension according to the local or general law applicable to the position (O.C.G.A. §§ 45-5-6, 45-5-6.1).

Additionally, a public official may be subject to recall by the electors pursuant to the provisions of the Recall Act of 1989 (O.C.G.A. § 21-4-1 et seq.). The grounds for recall enumerated in the statute are as follows:

(A) That the official has, while holding public office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her office and adversely affects the rights and interests of the public; and

(B) That the official:

(i) Has committed an act or acts of malfeasance while in office

(ii) Has violated his or her oath of office

(iii) Has committed an act of misconduct in office

(iv) Is guilty of a failure to perform duties prescribed by law, or

(v) Has willfully misused, converted, or misappropriated, without authority, public property or public funds entrusted to or associated with the elective office to which the official has been elected or appointed (O.C.G.A. § 21-4-3(7)).

Conclusion

Some actions, such as trading rezoning votes for cash, are so egregious that any rational person would agree that they are ethical violations. Other situations may or may not be as clear a violation, depending on one's perspective. For example, is it against public policy to include in a contract with an entertainment company using city property that the company shall provide a certain number of free tickets to entertainment events to members of the municipal governing body? What about the purchase at public auction of a surplus city automobile by the son or daughter of a council member, when the council member may be in a position to have knowledge of the particularly good condition of the car? What about the sale of insurance to the city by an agency that has a council member as one of its employees? Finally, should elected officials allow persons with whom the city does business, or may do business, to buy lunch for officials? Does it depend on the cost of the lunch? These and other situations may fall outside the activities specifically prohibited by the criminal law. Likewise, a situation may not clearly be covered by civil conflict of interest statutory provisions, but still may have an appearance of impropriety. The city official can ask, "is the opportunity presented really worth the possible allegation of a scandal which would affect me and my family?" Testing the propriety of a proposed action by asking that question may result in the official deciding to forego activities that would otherwise have been undertaken, even though they might actually have aided the efficient and economical operation of a city government. In a system of government such as ours—which depends on public confidence in its leaders for its continued existence—achieving utmost efficiency and economy may be secondary to earning and keeping that trust.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-One-STRUCTURE-of-MUNICIPAL-GOVERNMENT/Liability-of-Public-Officials-and-the-City.aspx

Cities as well as city officials can be subject to liability in a variety of situations under both federal and state law. However, both cities and city officials are immune from certain types of liability under specific circumstances. This chapter addresses some of the types of liability that cities and city officials may face under both federal and state law and discusses the differing levels of immunity and standards for immunity for both cities and their officials.

State Law

Cities are liable for breach of contract in largely the same way as private entities. However, in some instances, it may be alleged that a municipality's actions promised under the contract were not authorized by law and that the contract is against public policy. When a city acts *ultra vires*, that is it acts without authority, the contract will be held void (*CSX Transportation, Inc. v. The City of Garden City*, 325 F.3d 1236 (2003)).

With respect to torts, however, cities, counties and their employees and officers may be held liable. A tort is a wrongful act for which the law imposes civil liability to compensate or protect the injured party. Common examples of torts are personal injury actions based on accidents occurring in city facilities or based on actions of city employees. Generally, cities can be held liable for the acts of their officials or employees through "*respondeat superior*," which is liability by a master for the wrongful acts of his servant, or liability by a principal for the acts of his agent, where the servant or agent is acting in the course of his or her agency or employment (*Black's Law Dictionary*, 8th ed. 2004).

Sovereign Immunity

Municipalities and their officials are immune from suit except to the extent that sovereign immunity has been waived or in specifically limited circumstances. The waiver of sovereign immunity can be accomplished by action of the General Assembly or by a city's purchase of liability insurance. Additionally, immunity is waived for the performance of non-governmental, often called proprietary, functions (O.C.G.A. § 36-33-1). For example, a hospital is not covered by sovereign immunity because it performs the same functions as a private hospital (*Thomas v. Hospital Authority of Clarke County*, 264 Ga. 40, 440 S.E.2d 195 (1994)).

An example of a waiver of sovereign immunity accomplished by action of the General Assembly is the waiver enacted for use of a local government entity's covered motor vehicle by a local government officer or employee (O.C.G.A. § 36-92-1 et seq.). This law essentially

waives the sovereign immunity of cities and counties for injury or damage arising from motor vehicle claims up to certain prescribed minimum amounts (\$500,000 for bodily injury (1 person), \$700,000 for bodily injury (2 or more persons), \$50,000 for property damage, and \$750,000 aggregate). Local governments can increase the waiver of immunity by obtaining coverage in excess of the statutorily prescribed amounts through the purchase of commercial liability insurance or participation in an interlocal risk management agency.

Local governments may provide for the payment of claims through any method. Thus, local governments may purchase insurance, participate in an interlocal risk management agency, establish a reserve fund for the payment of claims, simply pay claims as they arise, or any combination of the foregoing. Under the motor vehicle waiver law, the fiscal year aggregate liability of a local government cannot exceed any insurance, contracts of indemnity, self-insurance, or other reserve or fund established to pay claims. Any judgment obtained in excess of the annual aggregate liability is to be paid within six months of the end of the local government's fiscal year in which the final judgment was entered. All tort actions, including those filed against a local government as a joint tortfeasor, must be brought in the state or superior court of the county wherein the local government resides (O.C.G.A. § 36-92-4).

Official Immunity

As aptly described by the Georgia Supreme Court:

The doctrine of official immunity, also known as qualified immunity, offers public officers and employees limited protection from suit in their personal capacity. [Official] immunity protects individual public agents from personal liability for discretionary actions taken within the scope of their authority and done without willfulness, malice or corruption. Under Georgia law, a public officer or employee may be personally liable only for ministerial acts negligently performed or acts performed with malice or an intent to injure. The rationale for this immunity is to preserve the public employee's independence of action without fear of lawsuits and to prevent a review of his or her judgment in hindsight (*Cameron v. Lang*, 274 Ga. 122, 123, 549 S.E.2d 341 (2001)).

For the purpose of this immunity, a "discretionary action" is one calling for the exercise of personal deliberation and judgment, entailing examining facts, reaching reasoned conclusions, and acting on them in a way not specifically directed. City officials and employees are liable for the negligent performance of ministerial acts. "Ministerial acts" are those which are required by law or policy that are simple, absolute and definite, and require little or no exercise of judgment.

An example of this distinction was provided in a case in which the Georgia Court of Appeals held that a county's decision on how to allocate resources to repair roads after widespread flooding was discretionary (*Norris v. Emanuel County*, 561 S.E.2d 240, 254 Ga. App. 114 (Ga. App. 2002)). The county officials were not liable for the alleged failure to repair a

particular road and warn of a dangerous condition. The court found that since the decisions required the officials to use judgment and discretion in determining how to allocate workforces, equipment, and time, the officials were entitled to official immunity.

Courts do not extend official immunity to ministerial actions. For example, a court declined to extend official immunity to former court clerks who failed to inform the Department of Corrections that an inmate's sentence had been amended, causing the inmate to spend 22 extra months in jail (*McGee v. Hicks*, 303 Ga. App. 130, 132, 693 S.E.2d 130, 131 (2010)). Courts have also declined to extend sovereign immunity to inspectors when their failure to do an adequate job causes damages (*Georgia Dept. of Transp. v. Heller*, 285 Ga. 262, 674 S.E.2d 914 (2009); *Gregory v. Clive*, 282 Ga. 476, 651 S.E.2d 709 (2007)).

Nuisance

There is no sovereign immunity for nuisance. A nuisance is defined generally as anything that causes hurt, inconvenience, or damage to another. To make a claim for nuisance, the plaintiff must show that the defendant has performed continuous or regularly repetitious acts or created a continuous or repetitious condition that has injured the plaintiff. In order for a city to be liable for nuisance, the plaintiff must also establish more than mere negligence. Rather, the plaintiff must show that the city knew of a condition that constituted a nuisance and failed to take action within a reasonable time to correct it (*Gilbert v. City of Jackson*, 287 Ga. App. 326, 651 S.E.2d 461 (2007); *City of Columbus v. Barngrover*, 250 Ga. App. 589, 552 S.E.2d 536 (Ga. App. 2001); *Wright v. City of Cochran*, 250 Ga. App. 314, 253 S.E.2d 844 (Ga. App. 2002)). A city will not be liable for nuisance resulting from factors, such as increased construction, when the city took no part in the activity that caused the damage. For example, a city can be held liable in a nuisance action when it fails to adequately maintain water and sewage systems (*City of Atlanta v. Kleber*, 285 Ga. 413, 677 S.E.2d 134 (2009)). A city can also be held liable in a nuisance action when a construction project disrupts drainage and causes damage (*City of Roswell v. Bolton*, 271 Ga. App. 1, 659 S.E.2d 659 (2004)).

Federal Law

The largest potential liability under federal law for cities and city officials is based on 42 U.S.C. § 1983, a statute that was part of the Civil Rights Act of 1866, which was enacted to implement the Thirteenth, Fourteenth and Fifteenth Amendments to the U.S. Constitution after the close of the Civil War. In part, Section 1983 states as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

Specifically, Section 1983 authorizes relief against a city, city official, or city employee when an individual's federally protected rights have been violated.

Section 1983 has been utilized to establish liability on the part of cities, city officials, and city employees in an ever expanding variety of situations. Some of the most common types of claims under Section 1983 are for excessive use of force during an arrest, for personal injuries based on use of a city vehicle or equipment, or for alleged mistreatment of employees or citizens (*Brower v. County of Inyo*, 489 U.S. 593, 109 S.Ct. 1378 (1989); *Misek v. City of Chicago*, 783 F.2d 98 (1986)). The U.S. Supreme Court has held that conduct by police officers, even when it violated state law, could constitute state action taken under color of state law and could thereby be actionable under Section 1983 (*Monell v. Dept. of Social Services*, 436 U.S. 658 (1978)).

In *Monell v. Dept. of Social Services*, the U.S. Supreme Court also held that there is no *respondeat superior* liability under Section 1983. Over the years, the Supreme Court has made it very clear that each possible defendant, whether a subordinate or a superior officer or a municipal entity, is responsible only for that defendant's own wrongs. Although a municipality cannot be held liable under a theory of *respondeat superior* for purposes of Section 1983, a municipality can be held liable for the enforcement of a municipal policy, practice, or custom which violates the plaintiff's federally established rights. Thus, when a city official or employee acts based on an ordinance or recognized city policy, practice, or custom, the city can be held directly liable for the official's or employee's actions, even though the official or employee may be immune from suit in her or her individual capacity. There is no immunity for municipalities under Section 1983 (*City of Cave Spring v. Mason*, 252 Ga. 3, 310 S.E.2d 892 (1984)).

Absolute Immunity

City officials have absolute immunity for acts taken as part of their legislative function. Whether an act is considered to be "legislative" for purposes of discerning absolute immunity is determined based on the nature of the act, rather than on the motive or intent of the official performing it. The courts will look at whether the act is part of a governmental function rather than whether the official had some bad or inappropriate motive (*Bogan v. Scott-Harris*, 523 U.S. 44 (1998); *Whipple v. City of Cordele*, 231 Ga. App. 274, 499 S.E.2d 113 (Ga. App. 1998)).

Qualified Immunity

Qualified immunity shields government officials and employees performing discretionary functions from liability for civil damages to the extent that their conduct does not violate clearly established statutory or constitutional rights which a reasonable person would have known (*Pearson v. Callahan*, 129 S.Ct. 808 (2009), modifying the ruling in *Saucier v. Katz*, 533 U.S. 194, 121 S.Ct. 2151 (2001) to give the court more flexibility when determining

whether a person is entitled to immunity by analyzing (1) whether a constitutional right may have been abridged and (2) whether the right was “clearly established” at the time of defendant’s conduct). Again, there is a distinction between “discretionary functions” which require some judgment or decision making by the official or employee and “ministerial functions” which do not require any application of judgment or significant decision making by an official or employee (*Merrow v. Hawkins*, 266 Ga. 390, 467 S.E.2d 336 (1996)).

In order for an official or employee’s conduct to be found to violate a clearly established statutory or constitutional right, the law must be sufficiently well established so that a reasonable official would understand that his or her individual action would violate the plaintiff’s federal rights. However, it is not necessary for qualified immunity to be waived and liability to attach that there be a case already decided on the same or materially similar facts as the one presented by the plaintiff. It is enough if the officials have fair warning that their conduct violates established law (*Hope v. Pelzer*, 122 S.Ct. 2508 (2002)). This is particularly true when the existing case law strongly indicates unconstitutionality and the conduct of the officials or employees is particularly egregious (Sheldon Nahmod, “Section 1983 Overview and Update”, 50th Annual Institute for City and County Attorneys (Athens: Institute of Continuing Legal Education in Georgia), 35).

Indemnification, Insurance, and Risk Management

Cities are authorized to purchase liability or indemnity insurance covering mayors and councilmembers as well as city employees (O.C.G.A. § 36-35-4). Instead of or in addition to buying insurance, a city may adopt a policy to defend civil, criminal, or quasi-criminal actions brought against its officials and employees for actions taken in their official capacity, except for crimes involving theft of city property or money (O.C.G.A. § 45-9-21). Regarding the latter, a city may reimburse the defense costs of those found not guilty or of those against whom charges are dismissed. Municipalities may also spend state, federal, and local funds for this purpose (O.C.G.A. § 45-9-21 et seq.; *Haralson County v. Kimball*, 243 Ga. App. 559, 533 S.E.2d 762 (2000); *Horn v. City of Atlanta*, 236 Ga. 247, 223 S.E.2d 647 (1976); *Haywood v. Hughes*, 238 Ga. 668, 235 S.E.2d 2 (1977)). However, a city is not required to defend such actions (*Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003); *Wayne County Board of Commissioners v. Warren*, 236 Ga. 150, 223 S.E.2d 133 (1976); *Horn v. City of Atlanta*, 236 Ga. 247, 223 S.E.2d 647 (1976)). Municipalities are permitted to settle claims out of court, thereby avoiding costly and time-consuming court battles.

Georgia law also allows municipalities to form with other cities to establish interlocal risk management agencies through which they can jointly establish a self-insurance fund or purchase coverage to insure against general liability claims (O.C.G.A. § 36-85-1 et seq.). Many cities have done this through GMA’s [GIRMA program](#).

Municipal officials may reduce the possibility of lawsuits through the liability prevention process known as risk management (Jose J. Anchondo, "Liability Prevention (Risk Management) for Public Employees and Officials," *Intergovernmental Brief* no. 78-3 (Austin: Texas Advisory Commission on Intergovernmental Relations, September 1978)). Risk management consists of identification, measurement, control, and financing of losses and loss prevention. In this context, identification involves determining areas of potential liability such as law enforcement, personnel practices and procedures, regulatory functions, and the delivery and denial of services. Review of a city's claims history can be useful in identifying areas for loss prevention activities. Measurement is predicting the frequency and financial severity of potential suits. Control means establishing, implementing, monitoring, and updating policies and procedures related to the exposure areas identified. Financing involves providing funds to reduce or eliminate risks and to cover risks that cannot be eliminated.

Additionally, the application of good old-fashioned common sense can help municipalities prevent liability. Several simple steps to bear in mind are:

1. Don't use public office for private matters.
2. Correct mistakes; don't ignore them.
3. Have, follow, and update policies.
4. Conduct and attend training.
5. Only adopt those policies and regulations that the city is prepared to actually enforce.
6. Generate only the infrastructure that the city is prepared to maintain.
7. Conduct periodic liability coverage audits.
8. Consult with the city attorney on controversial matters or when in doubt about the legality or potential consequences of an action.

Georgia Immigration Law Liability

The Georgia General Assembly has enacted a series of laws which attempt to address the issue of undocumented immigrants in the state. The state relies heavily upon local governments to carry out the numerous requirements in these state immigration laws. Municipalities must collect affidavits from contractors, private employers, and applicants for public benefits, amongst the various mandates placed upon local governments. Failure to comply with these state mandates could result in serious penalties for the municipality as well as municipal employees and officials.

One requirement under Georgia's immigration laws places a mandate upon municipalities to obtain affidavits from every contractor performing labor or services for the city costing \$2,500 or more on public works contracts, including contracts involving the operation, maintenance,

and repair of building and structures (O.C.G.A. § 13-10-91(b)). Municipalities face possible loss of qualified local government status if they fail to follow the provisions of this area of Georgia's immigration laws (O.C.G.A. § 13-10-91(b)(7)).

In addition to the requirements for contractors, municipalities must obtain affidavits from private employers with ten or more employees before issuing them a business license, occupational tax certificate, or other document required to operate a business or face the possibility of criminal or civil action brought by the Attorney General (O.C.G.A. § 36-60-6). Similarly, public officials and employees who fail to follow the public works contractor affidavit requirements or the public benefit affidavit requirements of Georgia's immigration laws face the possibility of action by the Attorney General or the Immigration Enforcement Review Board, which may lead to civil fines of up to \$10,000, restitution for the cost of the violation, and removal from office or employment (O.C.G.A. § 45-10-28(c)). Therefore, the potential liability for public officials, employees and municipalities is substantial in regards to compliance with Georgia's immigration laws.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-One-STRUCTURE-of-MUNICIPAL-GOVERNMENT/Mayors-and-Councilmembers-Powers-and-Duties-and-th.aspx

The municipal governing authority consists of the city council or city commission, and, depending on the provisions of the city's charter, the mayor. The governing authority is responsible for two essential types of functions: legislative and administrative.

- Legislative responsibilities involve setting policy for the government by enacting various ordinances, resolutions, and regulations.
- Administrative responsibilities deal with the implementation of the policies and procedures established by the governing body. In many cities, the administrative burden is too great to be borne solely by the mayor and council, so these powers are delegated to a professional manager, and policies are carried out by various departments, boards, and commissions in the city.

Powers and Duties of the Mayor

The responsibilities of the mayor include presiding over all meetings of the council, generally insuring that city departments run smoothly, helping to build a sense of community, and providing leadership and services to municipal citizens. The mayor serves as the official spokesperson for the city government. The mayor is often empowered with the authority to vote in the event of a tie and may or may not have veto power over legislation approved by council. The mayor is also responsible for signing contracts, ordinances and other instruments executed by the governing body which by law are required to be in writing (see GMA's [Georgia Model Municipal Charter](#) for details).

Depending on the city's form of government, the mayor's executive duties range from largely ceremonial (as in the council-manager form of government) to managing day-to-day operations (as with the "strong mayor"/Mayor-Council form of government). Under the council-manager form of government, the mayor provides general oversight for executive functions but assigns day-to-day administrative duties to an appointed, professional manager. City officials should review and become familiar with the city's charter. GMA's *Georgia Model Municipal Charter* (see above) is a useful resource guide for cities who wish to modernize their existing city charter.

Council-Manager Form of Government

In this form of government, an appointed manager is responsible for carrying out executive functions in the city. The city manager may either report primarily to the mayor or to the full council. With a true council-manager form of government, the manager is authorized to appoint and remove department heads, is responsible for preparing the proposed budget for

submission to city council, and reports directly to the full council rather than the mayor. While the manager has substantial authority, the mayor and council retain the ultimate executive responsibility and may remove the manager at any time they feel it is appropriate to do so. Additional information about this form of government may be obtained through the [International City/County Management Association \(ICMA\)](#) or the [Georgia City-County Management Association \(GCCMA\)](#).

Weak Mayor/Strong Mayor/Commission Forms of Government

In the weak mayor and strong mayor forms of government, the mayor fulfills the primary executive role. With the weak mayor form, executive authority is diluted by the requirement that the city council must vote to approve certain administrative actions. With the strong mayor form, the mayor may appoint an administrator to assist in carrying out the day-to-day duties associated with oversight of municipal operations and service delivery. Under the commission form of government, the board of commissioners shares the executive role, although in some cities the mayor may have additional administrative authority, and some cities using the commission form have an appointed administrator.

Powers and Duties of the Mayor Pro Tem

Many city charters allow the selection of a mayor pro tem from among the councilmembers. This individual is responsible for fulfilling the duties of the mayor if the mayor is absent. The mayor pro tem also fills any vacancy in the office of mayor until that office can be filled through a special or general election.

Powers and Duties of Councilmembers

Councilmembers are empowered to make policy decisions and to approve ordinances, resolutions, and other local legislation to govern the health, welfare, comfort, and safety of the city's residents. City council sets policy guidelines for the administrative and fiscal operations of the city. Under the "strong mayor"/Mayor-Council form of government, the city council's administrative powers are very limited. However, under the "weak mayor"/Mayor-Council form, city councilmembers may be assigned to committees that review how individual departments carry out programs.

Compensation

The municipal charter contains provisions for compensation and expenses for the mayor and councilmembers. State law places limitations and [procedural requirements](#) on the adoption of salary adjustments for elected municipal officials (O.C.G.A § 36-35-4). The Georgia Department of Community Affairs maintains reports on elected officials' compensation based on data reported by cities in the annual [DCA Wage and Salary Survey](#).

Vacancies

Vacancies are created when an elected official qualifies for any other elective office more than 30 days prior to the expiration of the present municipal office. No member of the council (including the mayor) can hold any other municipal office during the term for which he or she was elected as councilmember unless he or she first resigns that council position (Ga. Const. Art. II § 2, ¶ V; O.C.G.A. § 45-5-1). Vacancies also occur by the death or resignation of the incumbent, by the incumbent ceasing to be a resident, or for other reasons.

Except in the case of death, resignation, or felony conviction, notice must be provided to the person whose office is vacated at least 10 days before filling the vacancy or calling for an election. The decision to fill the vacancy is subject to appeal to the superior court. Vacancies may also be created in the event of a recall election. General law provides the grounds for recall and the way a recall election is held (O.C.G.A. § 21-4.3 (7) b). Vacancies created by recall are filled by special election in the manner provided by law.

Powers and Duties of the Governing Body as a Whole

The powers of the governing body include, but are not limited to, setting millage rates for property taxes, approving the city's budget, approving city expenditures, passing ordinances and resolutions, establishing policies and procedures, hearing rezoning and annexation requests, and making appointments to boards, authorities, and commissions.

Home Rule: Powers under the Constitution

Georgia's municipal home rule powers are outlined in the state constitution and Georgia Code and empower local governments with a significant level of control over how local issues are handled. The constitution allows the local governing authority legislative power to:

adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto (O.C.G.A. § 36-5-3).

Administrative Powers in the Georgia Code

State law enumerates the administrative powers of the municipal governing body to be as follows (O.C.G.A. § 36-34-2):

1. the power to establish municipal offices, agencies, and employments
2. the power to define, regulate, and alter the powers, duties, and qualifications, compensation, and tenure of all municipal officers, agents, and employees (unless this power is specifically given to another official in the charter)
3. the power to authorize officers, agents, and employees of the city to serve process, summons, notice, or order, as prescribed by state law, if the offense was committed within the city limits

4. the power to establish merit systems, retirement systems, and insurance plans for municipal employees and employees of independent school systems, and to provide a way to pay for such systems and plans
5. the power to contract with state departments or agencies or any other political subdivision for joint services or the exchange of services and/ or for the joint use of facilities or equipment
6. the power to legislate, regulate, and administer all matters pertaining to absentee voting in municipal elections
7. the power to grant franchises for public utilities.

Taxation and Expenditure of Public Funds

The governing authority is empowered by the Georgia Constitution to levy and collect taxes and fees within its corporate limits to pay for public services and functions as authorized by the constitution or by general law (Ga. Const. Art. IX, § 4). The mayor and council are responsible for setting the millage rate for property taxes. On behalf of the city, the governing authority also has the power

- to accept and expend grant funds and obtain loans
- to incur debt (Ga. Const. Art. IX, § 5)
- to enter into contracts (O.C.G.A. § 36-91-20) and
- to issue revenue and other types of bonds (Ga. Const., Art. IX § 6; O.C.G.A. § 36-38; 36-82, 36-34-6).

Cities may find it necessary to borrow funds to meet operating expenses and to fund various projects. The constitution and general laws of Georgia contain detailed, explicit provisions about bonded and other indebtedness (Ga. Const. IX, § 5; O.C.G.A. § 36-82; O.C.G.A. § 36-80-10 through 36-80-14; O.C.G.A. § 36-91-20). One such provision is the requirement of prior voter approval of general obligation bonds, which are to be backed by the full faith and credit of the municipality. Voter approval is not required for temporary loans, lease-purchase contracts (O.C.G.A. § 36-60-13), or revenue bonds (Ga. Const. IX, § 5-6; O.C.G.A. § 36-82-60 through 36-82-85).

Budgets and Audits

The budget is the primary tool used by the mayor and city council to guide the delivery of services to the community and to communicate priorities to the public. Each fiscal year, municipal officials clarify goals and set priorities for the upcoming year. The governing authority oversees the budget development process and approves the city's budget each year. A GMA [video](#) contains helpful information about budgeting, and additional information about the municipal budget process can be found in GMA's [Budget Guide for Georgia's Municipalities](#).

The governing authority must also insure that periodic, independent audits of the city's operating budget are completed. Georgia law requires cities with a population over 1,500 or expenditures of \$300,000 or more to complete an annual audit of all city financial statements (O.C.G.A. § 36-81-7). Local governments with less than \$300,000 in expenditures may elect, in lieu of an annual audit, to provide for an annual report of agreed upon procedures or biennial audit (O.C.G.A. § 36-81-7(a)(1)(2)).

The independent audit must be conducted in accordance with generally accepted auditing standards and the standards applicable to the Government Auditing Standards issued by the Comptroller General of the United States. The auditor reviews financial statements to provide an opinion on the city's financial condition, its control over financial reporting, and to test for the city's compliance with provisions and requirements of federal, state, and local laws, regulations, contracts, and procedures.

Contracts, Purchasing, and Management and Disposition of Property

The Georgia Code states that, "The council or other governing body of a municipal corporation has discretion in the management and disposition of its property" (O.C.G.A. § 36-30-2). The city's authority to enter into contracts comes primarily from home rule powers and from the municipal charter, which usually grants this power to the mayor and council. There are several different types of contracts, including municipal road contracts, public works contracts, and intergovernmental contracts. There are also specific limitations on the power to contract, which, if not adhered to, will render the contract void or illegal. More information about this issue can be found in the chapter Contracting, Purchasing, and Sale of Municipal Property of this handbook.

The proper procurement and management of property is an important responsibility of city officials. Although sound procurement and property management procedures may not be explicitly spelled out in every city's charter, there are certain basic requirements that all governing bodies should adhere to. First, all contracts made by the city should be in writing and approved by the governing authority. Second, there should be a mandatory requirement that the municipality follow centralized purchasing procedures. Further, the governing body should be authorized to sell and convey or lease real or personal property owned by the city and, in some cases, to sell parcels that have been cut off by improvements. The sale of surplus property is regulated by state law.

Planning and Zoning

The governing authority is responsible for setting policies that will determine how the community will grow and develop, insuring that the unique characteristics of the city are

preserved while providing for controlled growth. The goals and objectives for land use planning are formally stated in the city's comprehensive plan. The city may also have a zoning ordinance, which serves as the law governing how development will be controlled in the community. The mayor and council may choose to appoint a Planning and Zoning Commission to make recommendations on land use issues to the city council. Ultimately, the governing authority is responsible for hearing rezone requests and petitions for annexation.

Relationship of the Mayor and Council to Other Municipal Boards, Commissions, and Authorities

The city charter may enumerate specific departments, including public works, parks and recreation, police, fire, and public utilities. The charter may also include a description of departments such as finance, personnel, and planning, as well as a minimum list and description of appointed administrative officials.

Mayors and councilmembers either serve on or make appointments to an array of boards, authorities, and advisory bodies. Many of these offices are empowered with statutory authority to act independently from the municipal governing authority, so it is critical for mayors and councilmembers to understand their relationship to these other offices. It is also important to understand the powers, duties, methods of selection, terms of office, compensation, and expenses related to the offices most commonly found in municipal governments.

Municipal Appointed Boards, Commissions, and Advisory Groups

Appointed bodies assist the elected officials of the government by serving in advisory capacities for specific projects, services, and/or facilities of the government. It is important that appointments to these groups are made carefully so that they will function effectively and remain accountable to the city government and sensitive to the public's needs and desires.

Parks and Recreation Boards

The municipal governing authority is responsible for adopting resolutions that describe the specific functions, organization, and responsibilities of the parks and recreation department. The department can operate as a line department reporting directly to the city administrator or manager, mayor, or to the entire council. An alternative to this structure is for the department to operate under the direction of a parks and recreation board, the board of education, or another existing board, as the governing body may determine. Some cities without a parks and recreation board use an advisory committee to provide citizen input to the governing authority and the department head.

If the city has a mayor-council form of government, it is recommended that the parks and recreation department head report directly to the manager. When a county and city operate a parks and recreation department jointly, a policy board with members appointed by each government is recommended.

If a municipality chooses to have a parks and recreation board or advisory committee, the local ordinance or resolution creating it should address the following basic issues.

The Powers and Duties of the Board

The governing authority may authorize the recreation board to maintain and equip parks, playgrounds, recreation centers, and the buildings that are located on these facilities. They may also develop, maintain, and operate all types of recreation facilities and operate and conduct facilities controlled by other authorities. The city may authorize the parks and recreation board to hire playground or community center directors, supervisors, recreation superintendents, or other employees as it deems necessary. The parks and recreation board should be authorized to develop a program of recreational activities and services that is designed to meet the diverse leisure-related interests of all people in the community (O.C.G.A. § 36-64-3).

Number of Board Members, Method for Appointing Members, Term Length, Compensation, and Filling Vacancies

The recreation board should consist of a minimum of five persons and a maximum of nine persons. Board members serve without compensation, and are appointed by the mayor or presiding officer of the municipality. The terms of office of the board shall be for five years or until their successors are appointed and qualified, except that when the appointing authority makes initial appointments or fills vacancies, he or she may vary the initial terms of members so that thereafter, the term of at least one member will expire annually. Immediately after it is appointed, the recreation board must meet and organize by electing one of its members president and designating other officers as necessary. Vacancies on the board that occur for reasons besides expiration of the term are to be filled by the mayor or presiding officer of the governing body only for the unexpired term (O.C.G.A. § 36-64-5).

A parks or recreation board may accept grants, real estate donations, or any gift of money or personal property or other donations which are to be used for playgrounds or recreation purposes (O.C.G.A. § 36-64-6). The acceptance of any grant or donation which will result in additional expense to the municipality for maintenance and improvements must be approved by the governing authority. A municipality may also levy a tax or issue bonds to support the recreation program (O.C.G.A. § 36-64-7 through 36-64-11).

Planning Commission and Zoning Board of Appeals

Because of the home rule powers afforded to local governments in Georgia, there is no state statute requiring a planning commission or zoning board of appeals. The Constitution of the

State of Georgia provides that “each municipality may adopt plans and may exercise the power of zoning” (Ga. Const. Art. IX, § 2, ¶4). The Zoning Procedures Law (O.C.G.A. § 36-66-1 through 36-66-5) states that cities may, through the adoption of an ordinance or resolution, appoint administrative officers, bodies, or agencies as necessary to exercise their zoning powers. The law also outlines the minimum requirements for advertising, public hearings, and other guidelines to ensure that the public is afforded due process when cities regulate the use of property through zoning.

The Georgia Department of Community Affairs (DCA) also has resources on alternatives to conventional zoning. The DCA Model Code provides Georgia's local governments a set of relatively simple tools to address land use and development issues in communities. It provides a one-stop shop for a variety of regulations designed for communities with limited capacity to prepare and administer these types of regulations. Along with traditional tools, such as subdivision regulations, the code introduces a variety of alternative and innovative approaches such as a Land Use Guidance System and Design Guidelines.

Planning Commission

The governing authority is responsible for adopting and updating a comprehensive land use plan which states the overall priorities, goals, and objectives for land use for the present and future. In most cities, however, the governing body is responsible for such a wide range of duties that they often do not have sufficient time to devote to considering land use planning issues. Therefore, most cities have established a planning commission that serves as an advisory board to the mayor and council for land use issues. The local planning commission serves as a buffer between the public and the governing authority.

The planning commission is usually charged with reviewing applications for permits and making recommendations to the mayor and council for approval or denial of permits. In formulating recommendations, the planning commission considers technical information provided by the city's planning staff and the concerns of local special interest groups. The planning commission must look beyond short-term solutions and make recommendations on what is best for the city's future.

The number of members, length of terms, and process for removing planning commissioners is determined by each city. Members of the planning commission are not compensated for their service, unless the city chooses to pay for travel expenses related to their duties. While training for planning commissioners is not required, it is recommended that planning commission members be encouraged to attend training available through the American Planning Association, the Georgia Planning Association, and/ or the Carl Vinson Institute of Government at the University of Georgia.

Zoning Board of Appeals and Variances

A city's zoning board of appeals and variances is established by the municipal governing authority to hear individual cases where the interpretation, administration, or enforcement of the zoning ordinances have caused hardship to property owners. As with the planning commission, the membership, term limits, and process for removing and replacing members of the board of appeals and variances is determined by the governing authority.

Municipal Authorities

Local authorities are units of government created by the local government to accomplish specific objectives, projects, or missions that are for public purposes and in the public interest. Local government authorities can be created in one of two ways:

1. by general enabling act, which allows cities (under certain conditions) to create an authority by adopting and filing a resolution or
2. by special local law, which is a special piece of local legislation passed by the General Assembly that creates a single, unique local government authority.

Since authorities began being formed in Georgia, constitutional changes and state laws have made it easier for local governments to create authorities. Presently, eleven types of authorities, including industrial development authorities and downtown development authorities, can be activated in local governments by general enabling act, i.e., the city only must file a resolution declaring the need for such an authority.

Beginning in 1995, Georgia law began requiring all authorities to register with DCA. Failure to do so results in the authority being prohibited from incurring debt or issuing any credit obligation. Authorities are also required to provide an annual Report of Registered Authority Finances to DCA. More information about authorities can be found on the [DCA website](#).

Powers of Authorities

All authorities may:

- purchase, lease, sell, or retain property
- improve or develop property
- extend credit or make loans
- borrow money and issue revenue bonds
- enter into contracts and intergovernmental agreements with local governments.

Authorities were originally created to enable local governments to get around strict constitutional debt limitations. The constitution limits local government general obligation debt to 10% of the total assessed value of property subject to taxation in the jurisdiction. A referendum is also required prior to the local government incurring general obligation debt. However, an authority is empowered to issue revenue bonds. The bonds are then repaid out of revenues derived from the project funded with the bonds. The city is neither required nor

permitted to use its tax revenues to repay the bonds. Since tax revenues cannot be used to repay revenue bonds, the bonds are not legally considered to be a debt of the city government. Cities can directly issue revenue bonds without creating an authority, but the law narrowly restricts the types of projects for which the bonds may be used, whereas the laws creating authorities have permitted a wider range of uses for revenue bonds. Generally, authorities are not required to pay taxes on property they acquire, lease, or otherwise control (O.C.G.A. § 36-62-3).

Authorities: Pros and Cons

Advantages of creating an authority include:

- the ability of the municipal government to delegate responsibility
- to have a body that will assist in developing and operating a single purpose facility (such as water and sewer, parking facility, etc.)
- carrying out a focused public purpose, such as economic development
- financing a project through revenue bonds
- creates a way to have ongoing oversight of operations after initial development is completed
- their activities may be less influenced by politics
- there is some distance between the city and the authority, which is helpful if controversies arise.

Disadvantages to creating authorities include:

- authorities can become too independent
- authority boards are often appointed to terms longer than those of the elected officials who appointed them
- they can become financially self-sufficient from the city from operations of the facilities they develop
- they are likely to be less responsive to public opinion and to local governments.

Insuring Accountability

Despite the level of independence of authorities, municipal governing bodies do have oversight powers and controls. For example, the boards of all municipal authorities are comprised of members appointed by the city's governing authority. For many authorities, a certain number of city officials are either *required* to serve or *may be* appointed to serve on the board. The activities of authorities must be consistent with those described in the local Service Delivery Strategy. The enabling legislation for some authorities specifically states that board members serve at the pleasure of the governing authority. The Housing Authority Law states that housing authority directors can be removed by the mayor for inefficiency, neglect of duty, or misconduct in office. Enabling legislation for other types of authorities provides for even more direct oversight powers. Authorities typically have bylaws that govern their activities and describe their organization. Finally, authorities are subject to open meetings and open records laws.

Funding and Support for Authorities

State law provides that a municipality may levy and collect municipal taxes to provide for financial assistance to its Development Authority or to a Joint City-County Development Authority to develop trade, commerce, industry, and employment opportunities. The tax is limited to three mills per dollar upon the assessed value of the property subject to taxation by the municipality (O.C.G.A. § 36-62 et seq.).

Composition of Boards of Directors of Authorities

The composition of the Boards of Directors of authorities varies depending on the type of authority and method of creation, but there are some commonalities. First, membership is always appointed by the governing authority. In some instances, authority members must be residents of the jurisdiction of the local government appointing them to the Board. Finally, the number of members usually ranges from five to nine members who usually serve staggered terms of four to six years.

Special requirements are established in the enabling legislation for certain types of authorities. For example, the Hospital Authorities Law requires the city to consider appointing a licensed doctor or registered nurse to the Board (O.C.G.A. § 31-7-72). Housing Authorities, depending on the population of the city, must have at least one director that is a resident of a housing project in the city, and city-elected officials and employees are prohibited from serving on the Board (O.C.G.A. § 8-3-50). And, while at least three of the directors of Regional Solid Waste Management Authorities *must* be elected city officials, Downtown Development Authorities have the option of having a city official on the Board (O.C.G.A. § 12-8-54; O.C.G.A. § 36-42-4).

Commonly Used Types of Authorities

Industrial Development Authority

The municipal governing authority is empowered by general law to create a joint development authority to promote trade, commerce, industry, and employment. A joint development authority may be activated by any two or more municipal corporations, any two or more counties, or one or more municipal corporations and one or more counties (O.C.G.A. § 36-62-5.1). Joint development authorities are subject to the same statutory requirements as development authorities.

The development authority is created to perform a specific purpose, to accomplish a special mission that is in the public interest, i.e., community economic development. It possesses all the powers necessary for it to carry out its purpose, including the authority to purchase, retain, improve, and develop property; enter into contracts and intergovernmental agreements; and borrow money and issue revenue bonds.

A development authority consists of a board of a minimum of seven and a maximum of nine directors appointed by the municipal governing body for staggered four-year terms. Each director must be a taxpayer and city resident who is not an officer or employee of the county. Directors receive no compensation other than reimbursement for actual expenses incurred in performing their duties (O.C.G.A. § 36-62-4).

Downtown Development Authority

The objective for activating a downtown development authority (DDA) is to revitalize and redevelop municipal central business districts (O.C.G.A. § 36-42-2). The push to create DDAs began in the late 1970s and was motivated by a need to protect downtown areas that were declining due to the development of new commercial areas on the suburban fringes of cities. To activate a DDA, the municipal authority needs only to adopt and file a resolution declaring the need for the authority and specifying the boundaries of the downtown.

DDAs possess all the powers necessary to carry out their purpose. They may accept grants and apply for loans; own, acquire, lease, and improve property; and enter into contracts and intergovernmental agreements.

The DDA consists of a board of seven directors appointed by the municipal governing authority to serve four-year terms (for directors appointed or reappointed on or after July 1, 1994). Directors are appointed by the governing body, and must be taxpayers who live in the city and/or owners or operators of businesses located within the downtown development area and who are taxpayers residing in the county in which the municipal corporation is located, except that one director may reside outside the county if he/she owns a business within the downtown development area and is a resident of the State of Georgia. One director may be a member of the governing body of the municipal corporation. No less than four of the directors must be persons who either have or represent a party who has an economic interest in the redevelopment and revitalization of the downtown development area. Directors receive no compensation other than reimbursement for actual expenses incurred in performing their duties (O.C.G.A. § 36-42-7). All members of the board of directors, except for the director who is also a member of the city's governing body, must complete at least eight hours of DDA training within the first 12 months of appointment to the DDA.

Hospital Authority

A municipality is empowered to activate a hospital authority to establish and operate hospital facilities within its jurisdiction. A joint hospital authority with a municipality or municipalities

and a county (or counties) can also be set up. A hospital authority has all the powers necessary to carry out its purposes, including the authority to make contracts; acquire real and personal property; appoint officers, agents, and employees; and operate, construct, improve, and repair hospital projects. The authority fixes the rates and charges for the use of its facilities, but it cannot operate for a profit (O.C.G.A. § 31-7-72). The authority may also borrow money and issue revenue bonds, which are not debts to the city or county.

A hospital authority has no power to tax. However, the governing authority may contract with the authority to pay for services rendered to indigent sick and others and levy a property tax, not to exceed seven mills, to pay for such services. A hospital authority has the same tax exemptions and exclusions as cities operating similar facilities (O.C.G.A. § 31-7-84, 31-7-72e).

The hospital authority consists of a board of directors of between five and nine members appointed by the governing authority. The governing authority can determine the length of terms, which are to be staggered. Board members receive no compensation other than reimbursement for actual expenses incurred in performing their duties (O.C.G.A. § 31-7-72, 31-7-74).

Housing Authority

A housing authority can be activated by the adoption of a resolution by the municipal government stating the need for the authority. A housing authority may be created if the governing authority determines that unsanitary or unsafe housing conditions exist in the city or if there is a shortage of safe, sanitary, affordable housing (O.C.G.A. § 8-3-2, 8-3-4).

A housing authority has all powers necessary and convenient to carry out its purposes, including the power to make contracts; acquire, prepare, lease, and operate housing projects; provide for housing construction, repair, and furnishings; borrow money or accept grants and loans; and issue revenue bonds. Bonds and other obligations incurred by the authority are not debts of the city (O.C.G.A. § 8-3-30, 8-3-32, 8-3-70, 8-3-72). Housing authorities may enter into contracts with for-profit entities for the ownership of a housing project and are authorized to incorporate nonprofit corporations as subsidiaries of the authority (O.C.G.A. § 8-3-3, 8-3-8, 8-3-11, 8-3-30).

In exchange for tax relief from the city, the authority may agree to pay the city for improvement services, and facilities furnished by the city for the benefit of any housing project (O.C.G.A. § 8-3-8). An authority may not construct or operate a housing project for a

profit or as a revenue source for the city. Rents must be no higher than necessary, and authorities must comply with statutory requirements for renting and tenant selection (O.C.G.A. § 8-3-11, 8-3-12). The city-governing authority must provide sufficient money to cover administrative and overhead expenses for the authority's first year of operation. After that, the city may periodically lend or donate money to the authority (O.C.G.A. § 8-3-155).

A housing authority consists of five commissioners appointed by the governing authority to staggered five-year terms. Commissioners may not be officers or employees of the city. They receive no compensation other than reimbursement for necessary expenses. The authority may employ its own personnel and may use the services of the city attorney or employ outside counsel (O.C.G.A. § 8-3-50, 8-3-51).

Airport Authority

Cities are authorized, separately or jointly, to acquire, establish, construct, expand, own, lease, control, equip, improve, maintain, operate, regulate, and police airports and landing fields for the use of aircraft, either within or outside the city limits (O.C.G.A. § 6-3-20). The governing authority can construct, maintain, and operate airports or landing fields; adopt regulations and establish fees for their use; set penalties for violation of these regulations; and lease airports to private parties (O.C.G.A. § 6-3-25). The governing authority may provide funds for airports or landing fields, acquire easements for lights and markers, and police all airport facilities (O.C.G.A. § 6-3-24, 6-3-26, 6-3-27). A governing authority that has established an airport or landing field, or which intends to do so, may vest the authority to construct, equip, maintain, and operate it in an officer, board, or other municipal body. If this is done, construction, equipment, and operation expenses remain the responsibility of the city (O.C.G.A. § 6-3-25). Airport authorities are generally permitted to make contracts, obtain and dispose of property, set and collect charges and tolls, issue revenue bonds, and accept loans and grants.

City or Independent School Boards

In Georgia, the responsibility for the administration and financial support of public schools is divided between the state and the local (city or county) board of education. Local governments play virtually no role in the provision of education, but they are responsible for levying the property tax certified by the board of education. The State Board of Education has the authority to formulate educational and administrative policies and standards for the improvement of public education within the state (O.C.G.A. § 20-2-240, 2-2-270 through 2-2-274). Management and control of public schools within each county and city are the responsibility of the board of education.

The state constitution makes no distinction between a county board of education and a city board of education in its grant of authority to manage and control local schools. City charters in existence before the 1945 constitution and amended since 1945 vary as to the powers granted city boards of education (Ga. Cons. Art VIII, Sec. 5-2). Cities that do not currently have a school system are constitutionally forbidden to create a new independent school system (Ga. Const. Art. VIII, Sec. 5-1). However, the Georgia Supreme Court has held that territorial expansion of existing city school systems by annexation is not forbidden by the constitution because it is not the creation or establishment of a new independent school system in violation of the constitution (*Upson County School District v. City of Thomaston*, 248 Ga. 98 (1981)).

There are 20 independent city school systems in Georgia. In some circumstances, the city board of education may not have full authority to set the millage rate for the local support of its public schools and to establish a budget for the operation of the schools. However, an argument may be made that the 1992 constitutional amendment requiring all local boards of education to be elected and providing that the management and control of each local school system is vested in the board of education may have the legal effect of vesting in the independent or city board of education the same authority to manage and control its schools as is vested with a county board of education, but there has been no court case testing or deciding this issue.

While the powers and duties of independent school boards vary, there are some general consistencies. School boards are responsible for developing the policies to guide the staff and administration of schools in independent school districts. The board can hire teachers and other personnel upon the recommendation of the school superintendent (O.C.G.A. § 20-2-211). The State Board of Education is authorized to set a date by which the local school board must prepare and submit an operating budget to the State School Superintendent (O.C.G.A. § 20-2-167). The local board of education has limited authority to borrow money to operate the school system and may issue bonds for building and equipping schools and purchasing property to build schools. The board of education can purchase, own, and sell property (Ga. Const. Art. IX, Sec. 5, ¶1 and 4, O.C.G.A. § 20-2-520, 20-2-390, 20-2-430).

To qualify for state funds, the board of education must raise money to operate the schools, which is accomplished primarily through taxation (O.C.G.A. § 20-2-160, 20-2-168). Each municipality authorized by law to maintain an independent school system may support and maintain the public common schools within the independent school system by levy of ad valorem taxes at the rate fixed by law upon all taxable property within the limits of the municipality. The board of education of the municipality annually recommends to the

governing authority of the municipality the rate of the tax levy. Taxes levied and collected for support and maintenance of the independent school system by the municipal governing authority must be appropriated, when collected, by the governing authority to the board of education or other authority charged with the duty of operating the independent school system. Funds appropriated to an independent school system shall be expended by the board of education only for educational purposes including, but not limited to, school lunch purposes. The term “school lunch purposes” includes payment of costs and expenses incurred to purchase of school lunchroom supplies; the purchase, replacement, or maintenance of school lunchroom equipment; the transportation, storage, and preparation of foods; and all current operating expenses incurred in the management and operation of school lunch programs in the public common schools of the independent school system. “School lunch purposes” shall not include the purchase of foods (O.C.G.A. § 48-5-405).

The Georgia Constitution and general law provide that members of the board of education are to be elected by the voters of the school district which the board member represents. A member is required to live in the district he or she represents. No person who is a member of the State Board of Education, who is employed by the state board or a local board of education or who is employed by or who serves on the governing body of a private school, is eligible to serve as a member of a local board of education (Ga. Cons. Art. VIII, Sec. 5, ¶2; O.C.G.A. § 20-2-51).

Members of local school boards are typically elected to four-year terms (O.C.G.A. § 20-2-52, 20-2-54.1). Vacancies for the remainder of an unexpired term are filled by appointment of the remaining members of the board if the vacancy occurs less than 90 days prior to the general election. If the vacancy occurs more than 90 days before the general election, it must be filled by a special election.

Board members of any local system for which no local act exists receive a per diem of \$50 per day for attending board meetings, plus reimbursement for actual expenses. General law also authorizes provision of group medical and dental insurance for members of the board of education (O.C.G.A. § 20-2-55).

School Superintendent

The local school superintendent serves as the liaison between the State School Superintendent and subordinate local school officers. The superintendent serves as the executive officer of the local board of education and is responsible for procuring school equipment and materials it deems necessary. The superintendent must

1. insure that the prescribed textbooks are used by students
2. verify all accounts before an application is made to the local board for an order for payment
3. keep a record of all official acts, which, together with all the books, papers, and property appertaining to the office, are to be turned over to his or her successor (O.C.G.A. § 20-2-109).

The superintendent's duties include enforcing all regulations and rules of the State School Superintendent and of the local board according to the laws of the state and the rules and regulations made by the local board that are not in conflict with state laws. He or she must visit every school within the local school system to become familiar with the studies taught in the schools, observe what advancement is being made by the students, counsel with the faculty, and otherwise aid and assist in the advancement of public education. The [Georgia School Board Association](#), the [Georgia Department of Education](#), and other [educator resources](#) may provide additional information.

Regional Commissions

A Regional Commission (RC) is a regional planning organization created and managed under Georgia law to provide technical and planning assistance to its member local governments. There are [12 Regional Commissions](#) in Georgia, and each city and county must belong to a Regional Commission.

Functions and Powers

Regional Commissions do not have taxing authority and rely on per capita dues from member local governments. To be eligible for state grants and loans, each RC must assess and collect annual dues averaging a minimum amount of \$1.00 for each resident of each county within the regional commission, based upon the most recent population estimate. RCs provide technical and planning services to member local governments and have the authority to contract with service providers to assist communities in developing a more effective and efficient provision of community facilities and services.

Regional Commission Council Membership

Regional Commissions must appoint a council to set policies for the RC. State law requires membership on the council to include the chief elected official of each county within the region; one elected official from one municipality in each county in the region; three residents of the region to be appointed by the Governor for two-year terms; two non-public members appointed for two-year terms, one appointed by the Lieutenant Governor and one appointed by the Speaker of the House; and additional members as deemed necessary. More information about Regional Commissions can be found on the [DCA website](#), including a [map](#) of the Regional Commission boundaries and a [directory](#) of Regional Commissions.

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There are many different types of courts in Georgia, including state and federal courts, trial courts, and appellate courts. Aside from federal courts, the highest state court is the Georgia Supreme Court, which may choose to hear appeals from the Georgia Court of Appeals, has the final authority on the interpretation of the state Constitution, and governs the practice of law in Georgia (O.C.G.A. § 15-2-1 et al.; Chapter 3 of Title 15 of the O.C.G.A. § 15-3-1 et al.; Ga. Const. Art. VI, § 1, ¶ 1; Ga. Const. Art. VI, § VI, ¶ II).

There are a variety of state trial level courts in Georgia. Superior courts have original jurisdiction in numerous types of civil cases, serve as the exclusive trial court for the adjudication of felony criminal offenses, and serve as courts of appeal from decisions in municipal court (O.C.G.A. § 15-6-1 et al.). State courts are county-level trial courts that only exist in some counties and have jurisdiction over certain civil matters and misdemeanor criminal cases (O.C.G.A. § 15-7-1 et al.). Probate courts are countywide courts that in some areas hear traffic offenses that occur in the unincorporated area, and that oversee estate matters, gun and marriage licensing, and some election matters (O.C.G.A. § 15-9-1 et al.). Magistrate courts are county-level courts that hold first appearance hearings for state and superior court and have jurisdiction over county ordinance offenses. Magistrate judges also issue warrants authorizing searches and arrest (O.C.G.A. § 15-10-1 et al.). Municipal courts are city-level courts that have jurisdiction over traffic cases arising within the city limits, cases involving municipal ordinances, and certain specified misdemeanor offenses (O.C.G.A. § 36-32-1 et al.). Decisions in municipal court may be appealed to the superior court and from there to the Court of Appeals or possibly the Supreme Court (O.C.G.A. § 5-4-1 et al.).

Procedure

The primary purpose of municipal court, like other trial courts, is to afford an impartial forum for the adjudication of disputes, which in municipal court usually involves a misdemeanor criminal defendant or someone accused of violating one or more provisions of an ordinance. In criminal matters, either misdemeanors or ordinance violations, the defendant is entitled to the protection of a host of federal and state constitutional rights. All parties appearing in court are entitled to due process, which generally means an opportunity to plead their case to a neutral judge and to present and challenge evidence (U.S. Const. Amendment 5 & 14). These rights also include the right to be represented by counsel and the right to have counsel appointed at government expense if the defendant cannot afford counsel (*Gideon v. Wainwright*, 372 U.S. 335 (1963)). Misdemeanor defendants in Georgia are entitled to a jury trial (*Geng v. State*, 276 Ga. 428 (2003)). Although municipal courts have the authority to conduct bench trials, they do not have the authority to hold jury trials. Thus, in certain cases where criminal defendants insist on their right to a jury trial, a transfer of the case to a state or superior court may be required. Although some defendants may knowingly choose to

waive their right to counsel, in order to hear a case, municipal court must provide lawyers to indigent defendants that request them (*Alabama v. Shelton*, 122 S.Ct. 1764 (2002)). It is necessary that interpreters be provided for defendants that have a limited proficiency in the English language at no cost to the defendant (Rule 14 of the Uniform Rules of Municipal Court).

The event that triggers a criminal case is either the issuance of a citation or an arrest. Citations are written notices that serve in lieu of arrest and typically give the defendant notice of the crime charged and a summons to appear in court. For some offenses, such as driving under the influence, a defendant is usually arrested. Once arrested, most defendants are able to post bail or bond in order to leave the jail and return to court at a later date to answer the charges. Defendants that fail to appear in court typically forfeit their bond. Courts usually issue warrants for a defendant's arrest if they fail to appear. Although most of the offenses heard in municipal court are relatively minor in comparison to those heard in superior court, some of them carry mandatory jail time (e.g., O.C.G.A. § 40-6-391.). Additional procedural requirements in municipal court are covered by the Uniform Rules of Municipal Court.

Jurisdiction

Traffic Offenses

State law authorizes municipal court to hear violations of state and local traffic laws that occur within the city limits. State traffic offenses are misdemeanors and may in some cases carry penalties of up to one year in prison and a one thousand dollar fine (O.C.G.A. § 17-10-3(a)(1)).

Other Misdemeanors

The state has authority to grant jurisdiction over certain misdemeanor offenses to municipal courts. The penalties that may be imposed for these offenses in municipal court are typically identified in the statute granting jurisdiction. Examples of these offenses include possession of less than one ounce of marijuana and shoplifting property valued at \$300 or less (O.C.G.A. §§ 36-32-6, 36-32-9).

Ordinance Violations

Cities may proscribe certain conduct that is not already prohibited by state law and provide for appropriate punishment (O.C.G.A. § 36-35-3). State law establishes that the maximum punishment for ordinance offenses is six months incarceration and fines of one thousand dollars per offense (O.C.G.A. § 36-35-6(a)(2)). Some municipal charters limit the city to lesser maximum punishments for ordinance offenses.

Not all ordinance cases that are heard in municipal court are strictly criminal in nature. For example, some cities have adopted nuisance abatement ordinances, which allow complaints to be brought against property owners for maintaining nuisances or allowing code violations

to persist. In these instances, the city is either represented by a code enforcement officer, or a code enforcement officer is the city's main witness. In such cases, in addition to traditional fines, the court has the power to order abatement of a nuisance, provided that the city can prove its case.

Court Personnel

Judges

The presiding official in municipal court is the municipal court judge. A part-time judge or several full-time judges, or some combination of both, may staff municipal court depending on the size of the city's caseload. State law requires that municipal court judges be attorneys and active members in good standing with the State Bar of Georgia, although non-lawyer judges that were serving as of June 30, 2011, may continue to do so as long as they continue to obtain mandatory annual training (O.C.G.A. § 36-32-1.1). Most municipal judges are appointed by the governing authority of the city, although a few are elected (O.C.G.A. § 36-32-2). Municipal court judges can only be removed for cause by a two-thirds' vote of the entire membership of the governing authority of the city (O.C.G.A. § 36-32-2.1). The conduct of municipal court judges, like that of all judges in the state, is prescribed by the Georgia Code of Judicial Conduct, adherence to which is enforced by the Judicial Qualifications Commission (JQC) and the Supreme Court of Georgia. The JQC and the Supreme Court have the authority to remove a judge from the bench for violations of the Code of Judicial Conduct (GCJC). Judges have the duty to sit in an impartial manner and advise defendants of their rights. They are prohibited from participating in ex parte communications with municipal officials. Ex parte communication means "on one side only". In this context, judges may not communicate in substance about a case with only one side, without a representative of the other side of a case present (*Black's Law Dictionary*, West Publishing (10th ed. 2014)). Municipal court judges are required to obtain training from the Municipal Courts Training Council (O.C.G.A. § 36-32-27).

Clerks

Typically, most municipal courts are staffed by one or more court administrators or clerks employed by the city that must answer to both the city governing authority and the judges. Court staff is governed by the same set of ethical rules that governs judicial behavior. Court employees are thus also barred from engaging in ex parte communication with parties and from giving legal advice to parties appearing before the court. The tasks of municipal court clerks, which include processing warrants and sentences issued by the judge and collecting fines and fees paid into the court, require careful diligence. Failure to properly process paperwork can lead to false arrest, and failure to properly administer court fees is in many instances a crime itself (e.g., O.C.G.A. § 15-21-134). Employees assigned to work in municipal court should thus be properly trained. State law requires that municipal court clerks receive annual training (O.C.G.A. § 36-32-13).

Public Defenders

As stated above, defendants in municipal court that are unable to afford an attorney are entitled to have one appointed to represent them at the city's expense if they face the possibility of incarceration. Defendants attempting to assert their rights to indigent counsel usually complete an application indicating their income and assets as well as their debts and liabilities. Lawyers provided to criminal defendants are often called "public defenders." Cities can provide these lawyers through several different mechanisms. Cities can choose to have an appointed list through which the municipal court judge will appoint lawyers to represent different defendants at a set rate. Cities can also hire full-time or part-time lawyers to appear in court and handle cases of indigent defendants that request counsel. The Georgia Public Defender Council is charged with promulgating standards for how many cases a public defender can handle, the minimum qualifications for such attorneys, and establishing standards for determining the financial eligibility of persons claiming indigence (O.C.G.A. § 17-12-1 et. seq.). Because public defenders represent the criminal defendant, even if their employer is the government, they must abide by the ethical rules that govern lawyers and zealously represent the defendant's position under the rules of the adversary system.

Prosecuting Attorneys

Municipalities are authorized to appoint prosecuting attorneys to represent the city's interest in cases in municipal court. Prosecuting attorneys must be members in good standing of the State Bar of Georgia and admitted to practice in the appellate courts of Georgia (O.C.G.A. § 15-18-91 et seq.). Depending on the size of the city's caseload, prosecutors can be part-time or full-time. Full-time municipal court prosecutors may not engage in the private practice of law, and part-time municipal court prosecutors may not engage in private practice in municipal court nor appear in private practice in any matter in which they have exercised jurisdiction as a prosecutor (O.C.G.A. § 15-18-94). Although state law merely authorizes and does not mandate the appointment of a municipal court prosecutor, it is particularly important that cities have attorneys representing the prosecution in criminal cases that carry mandatory jail time such as driving under the influence, where failure to create a proper record can result in costly appeals and conviction reversals.

Sentencing

Because most of the cases in municipal court are criminal, persons found guilty are issued a criminal sentence. The sentence typically includes a fine, but may also include jail time for certain offenses. In some instances, defendants are sentenced to probation in order to require them to comply with certain conditions of their sentence. Failure to comply with the terms of probation may trigger a probation revocation hearing. Should the city prove that a defendant has violated his or her probation, the judge may choose to revoke all or a portion of a probated sentence and send a defendant to jail. Probation is a mechanism used by courts to encourage defendants to meet certain conditions rather than send them to jail. If the conditions of probation are met, a defendant usually has their case closed. Conditions of probation can include such things as payment of fines, community service, and attendance at driver safety courses. Municipalities can choose to operate their own probation

department with city employees or they can contract with private probation companies to perform the service (O.C.G.A. § 42-8-101). If a municipality chooses to have its own employees serve as probation officers, they must receive training required by state law (O.C.G.A. § 35-8-13.1). Both the municipal court judge and the governing authority of the city must agree to a contract with a private probation company (O.C.G.A. § 42-8-101).

Fines

Because most of the offenses heard in municipal court are minor in nature, fines are the most common punishments imposed. The amounts of fines are limited by the statute or ordinance creating the offense, the general state law parameters for misdemeanors, or by the municipal charter (O.C.G.A. § 17-10-3).

Fees

Fees or “fine add-ons,” as they are sometimes called, are imposed in addition to a defendant’s fine. These are usually imposed by state law and require that either additional percentages of the amount of the fine or flat amounts be sent to different governmental agencies. These fees must be carefully accounted for and distributed to the appropriate agencies in accordance with state law.

Incarceration

Although most of the cases in municipal court do not result in jail time, some offenses carry mandatory jail time. On some occasions, courts may revoke probation, which results in a defendant having to serve jail time. Incarceration is very costly, as adequate facilities are a constitutional requirement. Most cities contract with the county for the provision of jail services for any municipal court defendants that are sentenced to incarceration.

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Elections are perhaps the most fundamental element of representative democracy. Therefore, steps must be taken to insure that elections comport with requirements of the state and federal Constitution, federal statutes (most prominently the Voting Rights Act), state statutes, and city charters. Because elections are held to so many legal standards, they must be administered by well-trained, experienced, and responsible staff. In 1998, state law was changed to incorporate the municipal election code into the state election code applicable to state, county, and federal elections. A few distinctions remain between city elections and other elections, however. Most notably, the majority of municipal elections are held in odd-numbered years.

Municipal Election Superintendent

The municipal election superintendent is the administrative person responsible for a host of administrative duties associated with conducting an election (O.C.G.A. § 21-2-70). The municipal election superintendent is appointed by the city governing authority in a public meeting, but if the governing authority fails to appoint a superintendent, the city clerk automatically becomes the election superintendent. The superintendent cannot be closely related to any municipal candidate. Specifically, a superintendent cannot be a “parent, spouse, child, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law” of a candidate (O.C.G.A. § 21-2-70.1.). Because a poorly conducted election can bring about litigation as well as judicial orders to re-hold elections, the importance of properly trained election superintendents and staff can hardly be overemphasized. The Georgia Secretary of State maintains a [Georgia Election Official Certification Program](#) that municipal election superintendents should complete in order to assure they have the necessary training.

Qualifying

There are two key events in most municipal elections: qualifying and the election. Qualifying is the process through which candidates indicate their desire to run for office before the municipal election superintendent confirms that they possess the requisite legal qualifications to be eligible to do so. Candidates for municipal office must pay a qualifying fee or submit a pauper’s affidavit indicating that they cannot pay the fee (O.C.G.A. § 21-2-131(b)(2); O.C.G.A. § 21-2-131(c)(5); O.C.G.A. § 21-2-132(g)). Qualifying fees for nonpartisan municipal offices are 3% of the previous year’s gross salary for the office and are to be set and published no later than February 1 of each year in which there is a regular election and at least 35 days prior to a special election (O.C.G.A. § 21-2-131(a)(1)(A)). The overwhelming majority of municipal elections in Georgia are non-partisan, and therefore the election cycle tends to be rather short. Qualifying periods shall commence no earlier than 8:30 a.m. on the third Monday in August immediately preceding the general election and shall end no later

than 4:30 p.m. on the following Friday. Qualifying for special elections begins no sooner than the date of the call and must end no later than 25 days prior to the election (O.C.G.A. § 21-2-132(c)(3)(A); O.C.G.A. § 21-2-132(d)(4)). Qualifying may be reopened by the governing authority at 9:00 a.m. the Monday following the end of the original qualifying period and closed at 5:00 p.m. that Tuesday when no individual files a notice of candidacy or pays the qualifying fee during the original qualifying period (O.C.G.A. § 21-2-132(c)(3)(B)).

Additionally, qualifying must be reopened for those same time periods when an incumbent filed a notice of candidacy and pays the qualifying fee during the original qualifying period but then withdraws as a candidate before the end of the original qualifying period (O.C.G.A. § 21-2-132(c)(4)). Most cities conduct their own qualifying and appoint their own election superintendent.

Write-In Candidates

Georgia does allow for write-in candidates, but they also have to qualify in order to be eligible to receive votes. Write-in candidates must file a written intention of candidacy with the municipal election superintendent and publish a notice in the “official gazette of the municipality” no earlier than January 1 of the year in which the election is to be held and no later than seven days after the closing of the regular qualifying period (O.C.G.A. § 21-2-133). On occasions where no candidates have qualified during the regular qualifying period, write-in candidacies have been used to avoid putting the city through the expense of holding a special election to fill a seat unfilled in a general election.

Holding Elections

General municipal elections take place on the Tuesday following the first Monday in November in each odd-numbered year, must be published in the newspaper 30 days prior to the election, and said notice must be transmitted to the Secretary of State (O.C.G.A. § 21-2-9(c)). Most city elections follow the traditional rule that a candidate must obtain more than 50% of the votes cast in order to win. Some city charters (e.g., Porterdale) have different methods of electing council members that may allow candidates receiving a plurality to win the office in order to save the city the cost of a runoff. Some charters (e.g., Chickamauga) provide that candidates run simultaneously for multiple posts with the top vote getters filling the seats. Many cities contract with their county government to conduct their municipal election.

Special Elections

From time to time cities must call special elections to fill vacancies in city elected positions or to put a referendum question authorized by state law before the voters (for instance, O.C.G.A. § 3-4-91, authorizing the sale of distilled spirits by the drink). There are specified election dates per year on which such elections may be held, with specific timelines for calling the election. As of December 2017, the special election dates were as follows:

- for odd-numbered years, the third Tuesday in March, the third Tuesday in June, the third Tuesday in September, and the Tuesday after the first Monday in November

- for even numbered years, the third Tuesday in March, unless there is a Presidential preference primary that year, in which case the special election must be held in conjunction with the Presidential preference primary, the date of the general primary, or the third Tuesday after the first Monday in November (O.C.G.A. § 21-2-540).

Home Rule

Although there is some room for variation in electing members of a city governing authority, almost all such changes must be made by the state legislature (O.C.G.A. § 36-35-6(a)(1)). Any such changes made by the legislature previously required preclearance by the United States Department of Justice under Section 5 of the federal Voting Rights Act (42 U.S.C. § 1973c). Preclearance is the term used to describe the Justice Department's evaluation of whether a change affecting voting made by a covered jurisdiction has the effect of abridging the right to vote of anyone based on race, color, or membership in a language minority group. In 2013, the United States Supreme Court held that the formula used by the federal government to determine which jurisdictions were required to submit to preclearance was outdated (*Shelby County, Alabama v. Holder*, 133 S.Ct. 2612 (2013)). As a result, Section 5 of the Voting Rights Act has been rendered inoperable, and the State of Georgia and its local governments are no longer required to submit voting changes to the Department of Justice for preclearance. For more information on local redistricting plans see the 2014 Georgia Municipal Redistricting Guide.

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A municipal government's structure, or form of government, assigns formal authority among the city's elected and appointed officials. To this end, municipal government structure determines the primary **policymaking** and **executive** responsibilities among municipal officials.

Roles of Municipal Officials

A municipality's elected officials act in a policymaking role when they pass ordinances, resolutions, and formally adopted motions. Examples of the policymaking roles include the adoption of the municipality's annual budget, its personnel policy, and its land use plan. Such examples represent the legislative responsibility of the municipality.

The executive role typically refers to administrative responsibilities, particularly with regard to the day-to-day operations of the municipality. Examples of executive responsibility include implementation of council policies, service delivery, and personnel management.

In some municipalities, these roles - policymaking and executive - are combined, while in other municipalities there is a clear division to provide for a separation of powers.

Forms of Municipal Government

In Georgia, most municipalities utilize one of three forms of government:

- Mayor-Council (Strong Mayor) Form
- Mayor-Council (Weak Mayor) Form
- Council-Manager Form

These forms of government divide executive and policymaking roles and responsibilities between the municipality's elected officials - the mayor and council - and appointive staff. While there are distinct differences between these forms of government, there are many variations on structure and policy roles depending on the provisions of the municipality's charter and the philosophy of the municipality.

Mayor-Council Form (Strong Mayor)

Under this form of government, the city council plays the primary policy role, while the mayor assumes the primary executive role. This form provides for a distinguishable separation of powers between the city's executive branch (mayor) and its legislative branch (city council).

Thus, the separation of powers contained in the “strong” mayor form is similar to those found in the national and state governments, with the office of mayor being similar to the President of the United States or a governor of a state. Likewise, the council acts as a legislative body similar to the Congress of the United States or a state legislature.

Under this form, the mayor serves as the city’s chief executive officer and has full responsibility for the city’s daily operations. As such, the mayor normally possesses the power to hire and fire department heads and other city staff, prepare and administer the city’s budget, and execute contracts. The mayor may also have the authority to appoint council committees, veto legislation passed by the council, and appoint members to city advisory boards. In some cities, particularly larger ones, the mayor may appoint a professional administrator (chief administrative officer, city administrator, etc.) to assist in carrying out the daily operations of the city. The city council is responsible for enacting the city’s policies through the adoption of ordinances and/or resolutions. While the mayor may possess the authority to veto actions of the city council, the council may possess authority to override the mayor’s veto.

Mayor-Council Form (Weak Mayor)

Under this form of government, the mayor and city council normally share the primary policymaking and executive roles. In many cities, the “weak” mayor’s role is primarily ceremonial, with the “weak” mayor possessing few, if any, of the executive powers provided to a “strong” mayor. For example, the mayor may not have the authority to appoint council committees, develop the city’s budget, or veto actions of the city council. Also, the mayor may have limited authority to appoint department heads, subject to confirmation by the city council. However, the mayor may not possess the authority to fire department heads. Additionally, the presence of various council committees may impact effective decision-making.

The primary advantage of this form is that it keeps control of the government out of the hands of any single person, so that a corrupt or incompetent individual could do little harm to the city. For more information, see the Georgia Municipal Association’s [Model Municipal Charter](#).

Council-Manager Form

Under this form of government, the city council provides the primary policymaking role, and an appointed city manager provides the primary executive role. It combines the strong political leadership of the elected mayor and council with the strong managerial experience of an appointed local government manager.

The council-manager form of government was developed in the early 1900s by reformers who envisioned a more business-like approach to municipal government. Thus, the structure of a municipality operating under the council-manager form of government is similar to the structure of a corporation. To this end, the municipality's citizens are treated as shareholders that elect a city council to serve as their board of directors. The city council establishes the city's policies, while a professional city manager, hired by the city council, is charged with implementing the council's policies. In this capacity, the city manager functions similarly to a corporation's chief executive officer, or CEO. For more information, see the Georgia Municipal Association's [Model Municipal Charter](#).

Primary Features of the Council-Manager Form of Government

Generally, the council-manager form of government deviates from the traditional separation of powers structure that exists at the national, state, and local levels of government. Instead of having an elected chief executive (president, governor, etc.), the council-manager form of government gives formal governmental authority to an elected city council. The city council then hires a professional city manager to oversee all administrative and executive functions.

The city manager serves at the pleasure of the city council. If a majority of the council is displeased with the manager's performance, the manager can be fired, subject to applicable laws and ordinances as well as the terms of the manager's employment agreement with the city council, if any.

In summary, the council-manager form of government combines the strong political leadership of elected officials (mayor and council) with the strong managerial experience of an appointed local government manager. Under this form of government, responsiveness to citizens can be enhanced, as administrative accountability is centralized in one individual, the city manager.

Additionally, because political power is concentrated in the entire city council rather than in one elected official, the council-manager form may provide citizens with greater opportunities to serve their community and to influence its future.

Responsibilities of the City Council

The council is the city's legislative and policymaking body. Its members are the community's decision-makers. As such, the city council is responsible for enacting policies, approving the city's annual budget, setting the city's tax rate, and focusing on such major projects and issues as land use planning, capital financing, and strategic planning. The council is also responsible for hiring the city manager, supervising the manager, and evaluating the manager's performance.

By its very nature, the council-manager form of government is designed to free the city's governing body from the administration of daily operations, allowing them to instead devote attention to policymaking responsibilities.

Responsibilities of the Mayor

In the purest sense of the council-manager form, the mayor is a member of the city council, with the position of mayor usually being chosen from among the council members on a rotation basis. Under this scenario, the mayor presides at council meetings, signs official documents (ordinances, resolutions, proclamations, etc.) and serves as the city's official spokesperson. In this sense, the mayor in a council-manager city is similar to a corporation's chairman of the board.

In actual practice, however, numerous cities, including many in Georgia, now elect the mayor citywide by the voters. In these cities, the mayor may possess expanded powers, including the power to veto legislation, appoint council committees, appoint citizen advisory boards, and/or prepare an annual report ("State of the City") to the council and the community. However, the mayor normally does not possess any day-to-day administrative responsibilities.

Responsibilities of the City Manager

The city manager is hired by the city council to carry out the policies established by the council and to oversee the city's daily operations. The manager should be hired solely on the basis of relevant education and professional experience.

Typically, the city manager is responsible for implementing policies and programs adopted by the city council; hiring and supervising the city's department heads and administrative staff; developing a proposed budget for the council's consideration; administration of all city contracts; and serving as the mayor and council's chief advisor. The city manager also serves as the mayor and council's liaison to the city's department heads.

While the reformers who created the council-manager form of government originally sought to separate the politics of local government from its administration, this separation is now mostly fiction. Today, most city councils desire and expect their manager to make policy recommendations, with such recommendations providing accurate and detailed information, possible alternatives, and any long-term impacts. The city council can then adopt, modify, or reject the manager's recommendations.

While city managers are typically hired by the city council and serve at the council's pleasure, most managers, particularly those in medium and large cities, now operate under the terms of an employment agreement. Such agreements normally outline the terms and conditions of employment and separation, along with providing clear guidelines for evaluating the manager's performance.

Table 1. Council-Manager Form of Government

Pro	Con
As city government has become more complex, it stresses professionalism, with administrators chosen on the basis of competence.	An appointive city manager is less responsive. Most large American cities with a population of over one million have a politically elective chief executive.
Municipal administration is segregated from city politics.	Policy rarely can be separated from its implementation and management.
The city manager gives expert advice to council, resulting in maximum efficiency and economy.	The council still has ties to the municipal bureaucracy, and potential political liabilities may outweigh the savings in cost recommended by the manager.
The city manager, as an appointed expert, can provide more impartial judgment than can the council.	The manager may lack political sensitivity, and if there is an elected mayor, the roles of the manager and mayor may be ambiguous.

Source: David L. Martin, *Running City Hall: Municipal Administration in America*, 2nd ed. Tuscaloosa: University of Alabama Press, 1990), 72.

Other Forms of Government

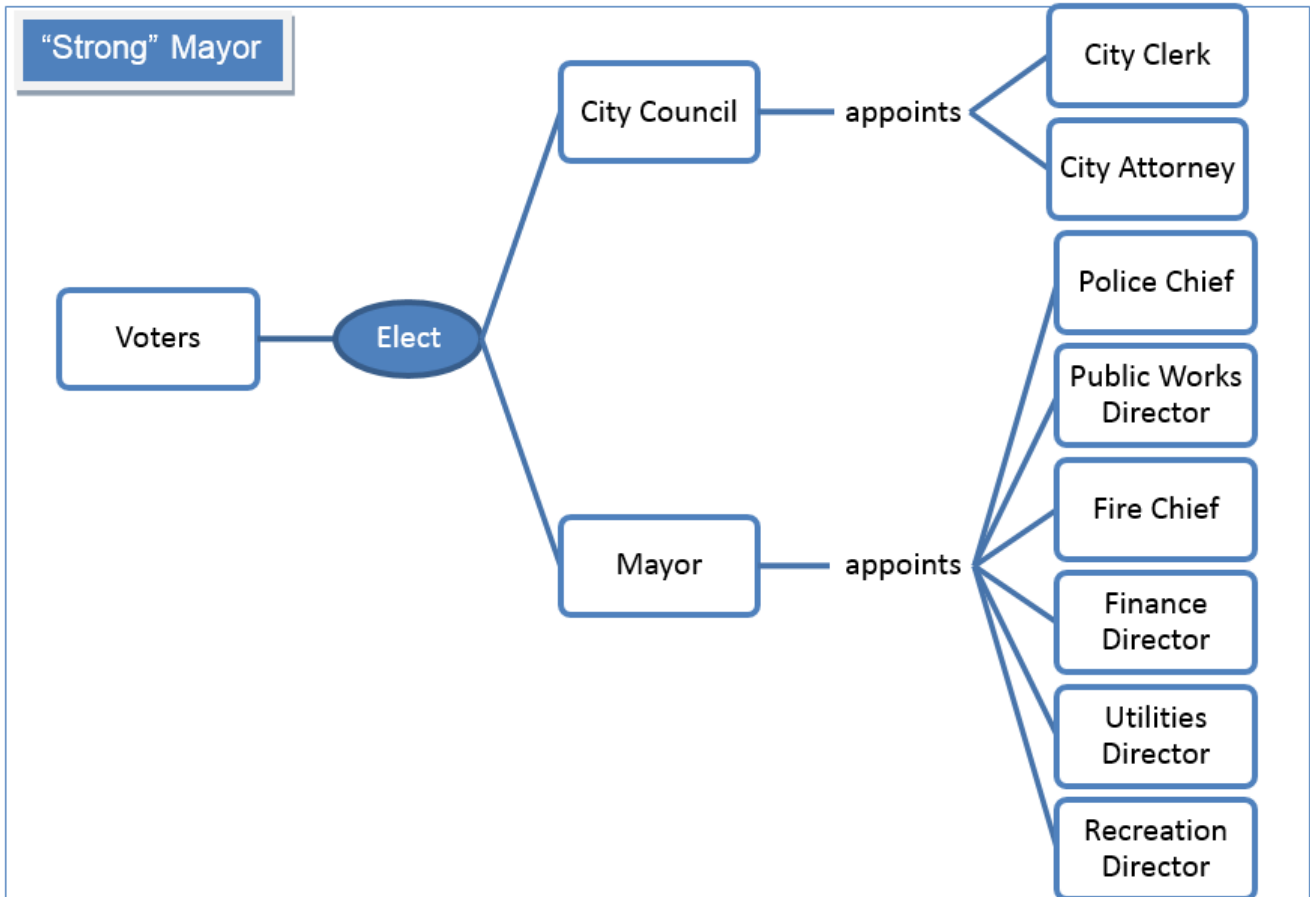
Commission Form

Another form of municipal government, although not common in Georgia, is the commission form. Under this form of government, the councilmembers (“commissioners”) are typically elected at large. A chair is normally selected from among the commissioners to preside at their meetings and to serve as the ceremonial head of the commission. The chairmanship may be rotated on an annual basis. The commission form of government is unique because each elected commissioner oversees one or more departments (e.g., police, recreation, utilities, etc.). Thus, this form of government combines legislative and executive responsibilities.

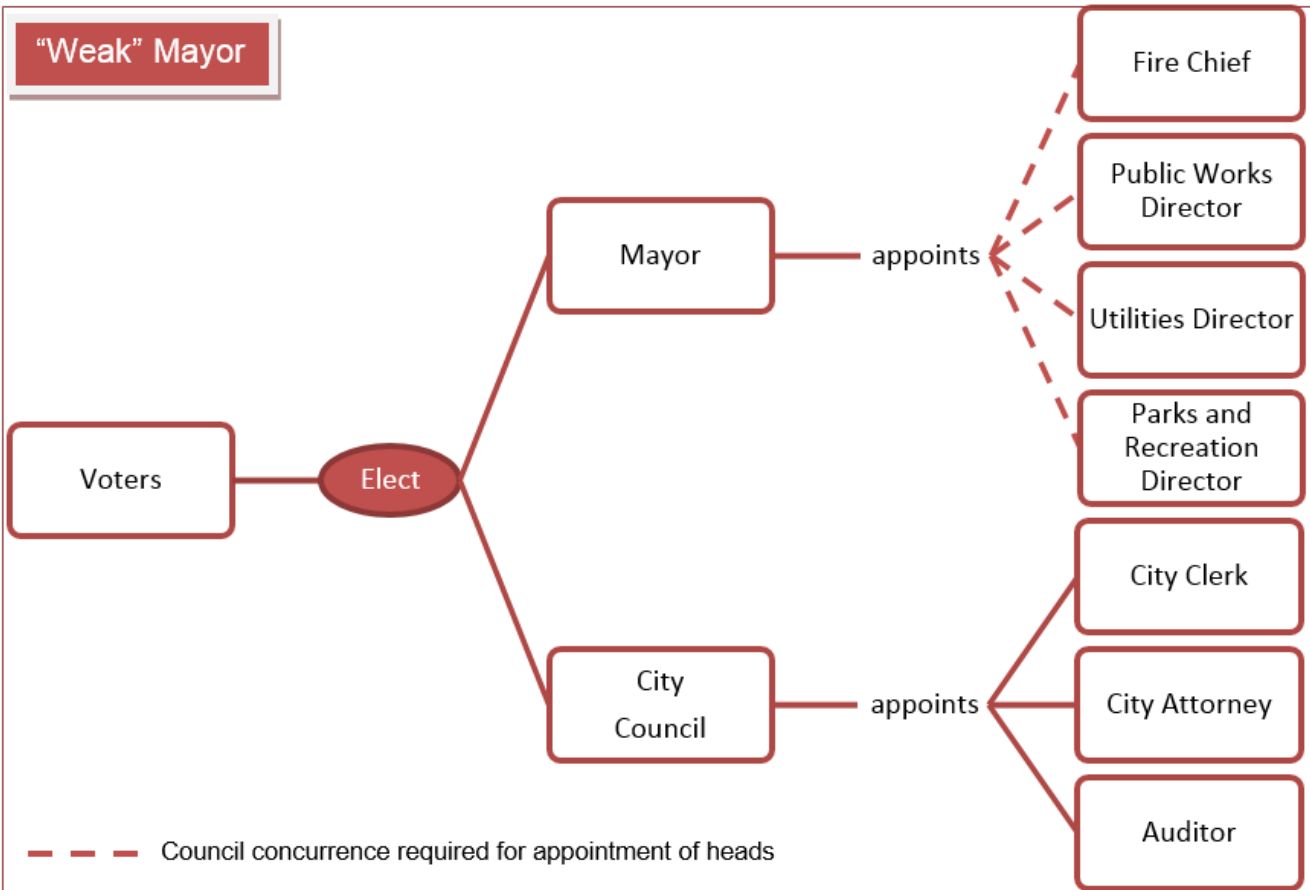
While the commission form is used by a majority of the county governments in Georgia, the City of Trenton is the only municipality in Georgia to use the commission form in its purest sense. A small number of cities in Georgia, including Cedartown, Cordele, Decatur, Rome, and Toccoa, refer to their legislative body as “city commissions” rather than as “city councils.” However, each of these cities operates under the council-manager form of government, and each has an appointed city manager.

Table 2. Form of Government Comparison

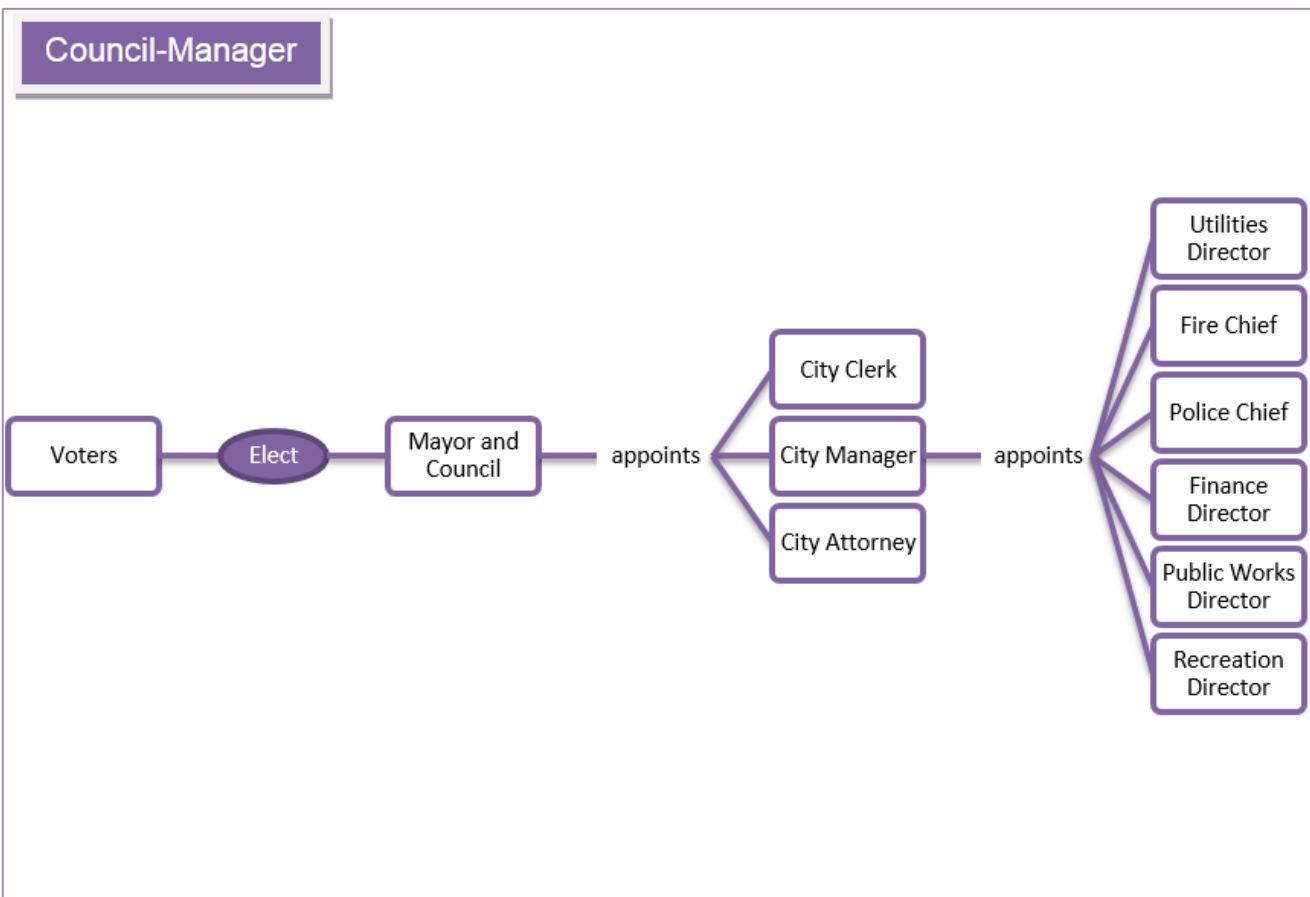
Form of Government	Primary Policymaking Role	Primary Executive Role
Mayor-council "strong" mayor	City council	Mayor (perhaps with the assistance of an appointed administrator)
Mayor-council "weak" mayor	Shared by city council and mayor	Shared by mayor and council or provided by mayor, although executive authority may be sharply limited by requirement of council concurrence for various administrative actions.
Council-manager	City council	Appointed manager is held accountable for executive functions by city council. In pure form, manager reports to full council rather than primarily to the mayor.

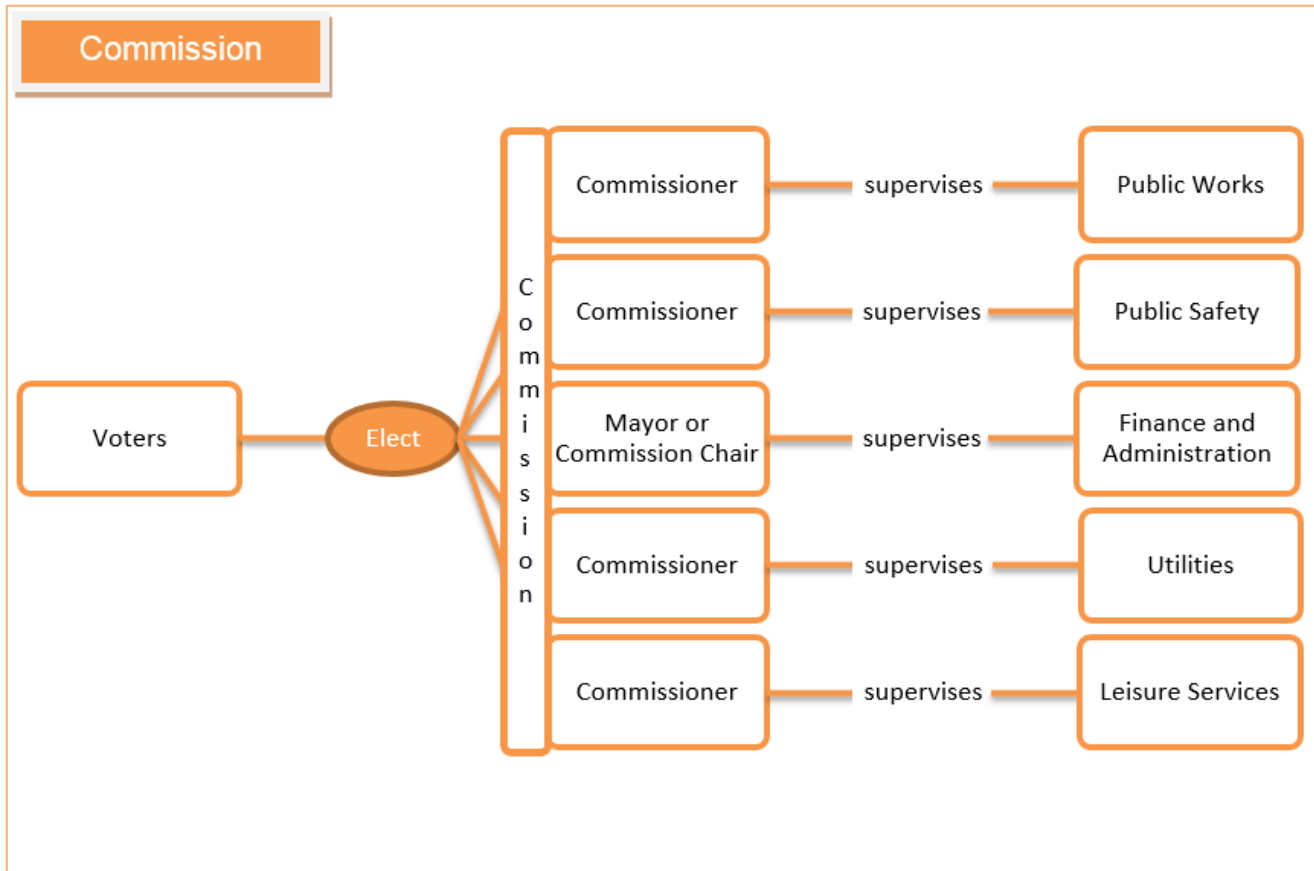


"Weak" Mayor



Council-Manager





Professional Management in Municipal Government

What determines whether a municipality is professionally managed? Many municipal governments claim to be professionally managed, while many others aspire to be managed in a professional manner. However, it is difficult to determine not only what constitutes professionalism, but also whether or not a municipality is actually managed in a professional manner.

A city's form of government is not an effective indicator of the city's professionalism. Professional management can exist in any of the forms of government found in Georgia. However, a municipality operating under the council-manager form of government has clearly chosen to fundamentally alter its form of government in order to instill professional management considerations in daily operations and the provision of service delivery.

The decision to employ a professional manager to serve as the municipality's chief executive is generally regarded as the ultimate desire for professionalism in municipal government. The form of government that best embraces this desire - the council-manager form - has been endorsed by the National Civic League since 1915.

The authority of a professional manager to appoint and remove department heads is essential for effective executive control. When the mayor or city council has authority for such personnel actions, such decisions - and many resulting operational decisions - often

remain political. The manager's authority to develop the city's annual budget is necessary to increase the likelihood that management factors will be injected and considered during the preparation of the budget. Finally, the manager should possess a direct reporting relationship with the city council. This allows the manager to provide his or her professional advice to the full governing body rather than to a single political official.

ICMA Recognition

The International City/County Management Association (ICMA) compiles a list of cities recognized as having professional local government management. The recognition process identifies municipalities that have established positions of professional authority by ordinance, charter amendment, or other legal means. ICMA's recognition process contains two categories: council-manager and general management. The criteria for the council-manager category require that the city manager:

- Be appointed by a majority of the council
- Have a direct role in both policy formulation and policy implementation
- Have responsibility for preparation and implementation of the annual budget; and
- Have authority for the appointment and removal of at least most department heads.

Changing a City's Form of Government

A municipality may change its form of government by amending its municipal charter through a local act of the Georgia General Assembly. If changing to the council-manager form of government, the charter amendment should specify the duties and responsibilities of the city manager, the manager's relationship to the city council, and other associated requirements that involve this form of government.

Georgia law requires a local act of the General Assembly to take "(A)ction affecting the composition and form of the municipal governing authority..." (O.C.G.A. § 36-35-6). Additionally, the Georgia Supreme Court has held that fundamental and substantive changes in city government cannot be made by a municipality under general home rule laws (*Jackson v. Inman*, 232 Ga. 566, 207 S.E.2d 475 (1974)).

Of course, a city council can establish the position of city administrator or city manager simply through the passage of an ordinance creating such position. Such an ordinance could be abolished at any time by a subsequent city council. However, such an ordinance cannot fundamentally alter the city's form of government without the city running afoul of the limitation on home rule powers contained under state law (O.C.G.A. § 36-35-6).

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-One-STRUCTURE-of-MUNICIPAL-GOVERNMENT/Municipalities-Sources-and-Limits-of-Power.aspx

It has been stated on numerous occasions that Georgia is a “Dillon’s Rule” state, meaning that the power of municipal corporations is limited to powers expressly granted, powers implied in or incident to express powers, or “those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable.” Such rule also mandates that “[a]ny fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied” (John F. Dillon, *Commentaries on the Law of Municipal Corporations*, 5th ed. (Boston: Little, Brown and Company, 1911), pp. 448-50; *Jewel Tea Company v. City Council of Augusta*, 59 Ga. App. 260, 200 S.E. 503 (1938); *Beazley v. DeKalb County*, 210 Ga. 41, 77 S.E.2d 740 (1953); *Weber v. City of Atlanta*, 140 Ga. App. 332, 231 S.E.2d 100 (1976); *H.G. Brown Family Ltd. Partnership v. City of Villa Rica*, 278 Ga. 819, 607 S.E.2d 883 (2005)). Despite an amendment to the Georgia Constitution in 1954 authorizing the General Assembly to allow municipal self-government and the enactment of Home Rule Acts in 1962 and 1965, these limited characterizations of municipal powers continue to be respected and upheld by the courts.

Georgia municipal corporations derive their power from a number of sources including the Georgia Constitution, state statutes, and local legislation. The municipal charter is a type of local legislation. Additionally, municipalities may be granted power by federal laws enacted by Congress. The United States Constitution, federal laws, the Georgia Constitution, state statutes, and local legislation also can limit the power of a city or direct that it act in a particular fashion. Finally, Georgia cities enact ordinances and resolutions to guide their own actions and the actions of those within the city limits.

Georgia Constitution and State Statutes

The highest level of state law governing municipal corporations is the Georgia Constitution of 1983 and its amendments. It is supreme to all general and local acts of the General Assembly as well as to city ordinances and resolutions. Any legislation inconsistent with the constitution is void from the time of enactment (*City of Atlanta v. Gower*, 216 Ga. 368, 116 S.E.2d 738 (1960); *City of Savannah v. Hussey*, 21 Ga. 80, 68 Am. Dec. 452 (1857)).

With respect to the sources of power for municipal corporations, some of the more significant provisions of the Georgia Constitution are the Home Rule provision, the Supplementary Powers provision, the Zoning provisions, the Eminent Domain clause, the Intergovernmental Contracts provision, the Special District clause and the Gratuities clauses.

Home Rule

“Home Rule” is a doctrine under which municipalities and counties are delegated the autonomy to act with respect to their own affairs and without the need for specific legislative authorization. Additionally, home rule may act as a limitation on the state’s power to enact laws regarding matters falling within the home rule grant. The basic authority for municipal home rule in Georgia is found in the following constitutional provision: “The General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly” (Ga. Const. Art. IX, Sec. II, Par. II).

Acting upon this authority, the Georgia General Assembly passed specific enumerations of powers in 1962, now codified at Title 36, Chapter 34 of the Georgia Code, and later passed the Municipal Home Rule Act in 1965. Under the Home Rule Act, the governing authority of a municipal corporation has the power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the state constitution or any applicable charter provision (O.C.G.A. § 36-35-3). General powers granted by state statute also include, among others, the power to hire employees, set duties and compensation, establish departments, authorize municipal employees and agents to serve any process or summons in the city for activity in the city which violates a law or ordinance, establish retirement, merit and insurance systems for employees, contract with other governmental agencies or political subdivisions, and grant franchises to public utilities for use and occupancy of the streets (O.C.G.A. § 36-34-2).

O.C.G.A. § 36-35-4 allows the governing authority to set the compensation and benefits of municipal employees and elected officials. Increases to the compensation of elected members of the governing authority cannot become effective until after the next regular election and cannot be adopted from qualifying date to inauguration date. Notice of intent to enact the increase must be published in the legal organ for three consecutive weeks immediately preceding its enactment.

The Home Rule Act also permits amendment of the municipal charter by ordinance without the necessity of action by the legislature. Furthermore, the General Assembly cannot pass any local law to repeal, modify, or supersede any action taken by a municipal governing authority under this statute except with respect to matters reserved exclusively to the General Assembly. Municipal charters may be changed by a local act of the legislature, by initiative and referendum, or by an ordinance adopted by the city council. Changes by ordinance require adoption of the ordinance at two regular consecutive meetings not less than seven nor more than 60 days apart. Publication is also required for three weeks within a

period of 60 days immediately before final adoption. There are limitations on changing provisions included in the charter by initiative (O.C.G.A. § 36-35-3(a) et seq.). Charter amendments are not effective until a copy of the amendment and an affidavit from the legal organ attesting to publication of the notice have been filed with the Secretary of State and in the office of the clerk of superior court (O.C.G.A. § 36-35-5).

Certain matters are reserved exclusively to the General Assembly and cannot be acted upon by the city through ordinance. Municipal corporations cannot enact charter amendments or ordinances which do any of the following:

1. Affect the composition and form of the municipal governing authority, the procedure for election or appointment to the governing authority, continuance or limitations on continuance in office (O.C.G.A. § 36-35-6; *Ivey v. McCorkle*, 343 Ga. App. 147, 806 S.E.2d 231 (2017); *Griffin v. City Council of Milledgeville*, 279 Ga. 835, 621 S.E.2d 734 (2005); *Krieger v. Walton County Board of Commissioners*, 271 Ga. 791, 524 S.E.2d 461 (1999))
2. Define any criminal offense which is also an offense under Georgia law, provide for confinement in excess of 6 months, or provide for fines or forfeitures in excess of \$1,000 (O.C.G.A. § 36-35-6; *Lawal v. State*, 273 Ga. App. 891, 893, 616 S.E.2d 205, 207 (2005))
3. Adopt a form of taxation beyond that authorized by the state constitution and laws
4. Affect the exercise of eminent domain
5. Expand regulation over business activities regulated by the Public Service Commission beyond that authorized by charter, general law or the state constitution
6. Affect the jurisdiction of any court, or
7. Change charter provisions relating to the establishment and operation of an independent school system (O.C.G.A. § 36-35-6).

Subject to certain conditions and limitations, the home rule statute authorizes municipal governing authorities to reapportion the election districts from which their members are elected. Reapportionment may occur after each decennial census and is required if the annexation of additional territory to the city has the effect of denying voters residing in that territory the right to vote for members of the governing authority on substantially the same basis as other municipal electors (O.C.G.A. § 36-35-4.1). For more information see GMA's [Municipal Redistricting Guide](#).

Supplementary Powers

The Supplementary Powers provision, also known as Amendment 19 for the designation it had in 1972 when voters ratified it, is an important constitutional provision granting specific powers to cities. This provision spells out supplementary powers that municipalities and counties may exercise in addition to and supplementary to powers possessed by virtue of their charter or other local legislation. Specifically mentioned and included are the power to provide police and fire services, solid waste collection and disposal, public health facilities and services, street and road construction and maintenance, parks and recreational

programs and facilities, storm water and sewage collection and disposal systems, water treatment and distribution, public housing, public transportation, and libraries. This provision also states that, *unless otherwise provided by law*, no county can provide services within a municipality except by contract with the municipality. Likewise, *unless otherwise provided by law*, no municipality may provide services outside its boundaries except by contract with the affected county or municipality (Ga. Const. Art. IX, Sec. II, Par. III(a) et seq.).

Notably, municipal charter provisions are laws recognized by the courts as empowering municipalities to act pursuant to those provisions even in the absence of a contract with the county (*Kelley v. City of Griffin*, 257 Ga. 407, 359 S.E.2d 644 (1987); *Coweta County v. City of Newnan*, 253 Ga. 457, 320 S.E.2d 747 (1984), *Cobb County v. City of Smyrna*, 270 Ga. App. 471, 606 S.E.2d 667 (Ga. App. 2004)). However, intergovernmental agreements between cities and counties pursuant to general state law or the intergovernmental contracts provision of the Georgia Constitution may act as a limitation on the ability of municipalities to provide extraterritorial services depending on the terms of the agreement.

The Supplementary Powers provision also states that while the General Assembly may enact general laws on the subject matters addressed by the Supplementary Powers provision and can regulate, restrict or limit the exercise of such powers, the General Assembly may not withdraw any such powers (Ga. Const. Art. IX, Sec. II, Par. III(c)).

Zoning

One of the most controversial duties undertaken by local governing authorities is zoning. The Georgia Constitution authorizes cities to adopt plans and exercise the power of zoning, but it allows the General Assembly to enact general laws establishing procedures for the exercise of that power, which the General Assembly has done (see the chapter [Planning and Land Use](#) of this handbook) (Ga. Const. Art. IX, Sec. II, Par. IV; O.C.G.A. § 36-66-1 et seq.). However, the General Assembly has also reserved to itself the power to provide by law for “Restrictions upon land use in order to protect and preserve the natural resources, environment, and vital areas of this state...” (Ga. Const. Art. III, Sec. VI, Par. II).

Eminent Domain

“The governing authority of each county and of each municipality may exercise the power of eminent domain for any public purpose subject to any limitations...provided by general law” (Ga. Const. Art. IX, Sec. II, Par. V). Both the United States Constitution and the Georgia Constitution require the payment of just and adequate compensation for the taking of private property for public purposes (U.S. Const. Amendment 5; Ga. Const. Art. I, Sec. III, Par. I). A city can use eminent domain when a project satisfies three basic requirements: there must

be a public purpose; the property owner must receive just and adequate compensation; and the city must comply with the statutory notice and proceeding requirements (O.C.G.A. Title 22; O.C.G.A. 32-3-1 et seq.; *Summerour v. City of Marietta*, 807 S.E.2d 324 (2017)).

In 2005, the United States Supreme Court ruled in *Kelo v. New London* that economic redevelopment constitutes a public use that can justify a taking (*Kelo v. City of New London*, 545 U.S. 469 (2005)). In response, Georgia law was amended to more strictly define “public use.” The new law states that economic development, on its own, is not a public use. Examples of public use include use by the public or government entities, for utilities, for roads and other transport purposes, for acquisition of property for which it is impossible to identify or locate the owners, for consensual condemnation, or to cure blight (O.C.G.A. § 22-1-1(9)). The new law also narrowed the definition of blight (O.C.G.A. § 22-1-1(1)).

In addition to narrowing the definition of what constitutes blight and public use, the new law requires any condemned property to be dedicated to public use for twenty years. It also requires condemned land to be put to public use within five years, or the city may face penalties up to and including losing the property (O.C.G.A. § 22-1-2(b)-(c)). If property is condemned to remedy blight and the city follows the special court process set forth in the law, the city can convey such property to a private party (O.C.G.A. § 22-1-15).

Although sometimes unpopular, eminent domain or condemnation is an important power of local governments. “The governing authority of each county and of each municipality may exercise the power of eminent domain for any public purpose” (Ga. Const. Art. IX, Sec. II, Par. V). Landfills, sewer lines and jails are just a few of the public services provided by local governments that people rarely want located near them.

Intergovernmental Contracts

The Georgia Constitution authorizes the state, cities, counties and other political subdivisions to enter into intergovernmental agreements with one another or public agencies, corporations or authorities for a period not exceeding 50 years (Ga. Const. Art. IX, Sec. III, Par. I). Such contracts must deal with activities, services or facilities that the contracting parties are authorized by law to undertake or provide (*Greene County School Dist. v. Greene County*, 278 Ga. 849, 850, 607 S.E.2d 881, 883 (2005); *DeKalb County v. City of Decatur*, 297 Ga. App. 322, 677 S.E.2d 391 (2009)). Intergovernmental contracts are frequently used to facilitate financing deals in conjunction with downtown development authorities, urban redevelopment authorities or other types of authorities (*AMBAC Indemnity Corporation v. Akridge*, 262 Ga. 773, 425 S.E.2d 637 (1993); *Nations v. Downtown Development Authority*

of the City of Atlanta, 256 Ga. 158, 345 S.E.2d 581 (1986)). In addition, intergovernmental contracts are utilized by cities and counties to provide services and facilities jointly, to provide services within the jurisdiction of another local government, and to act on a regional basis.

Special Districts

The constitutional provision on special districts authorizes the creation of special districts for the provision of local government services within such special district and the assessment of fees, taxes and assessments to pay for such services and to construct and maintain facilities for such services (Ga. Const. Art. IX, Sec. II, Par. VI). Special districts can be created by a general state law that directly creates the district, by a general law requiring the creation of districts under conditions specified by general law, or by a municipal or county ordinance or resolution. An example of a special district created by general state law is the local option sales tax (LOST) statute that establishes 159 special districts in Georgia for the purpose of levying the LOST (O.C.G.A. § 48-8-81). Although the tax is a local option activated by local referendum, the special district is established by general state law, and the boundaries of the special districts in this instance are the same as the boundaries of Georgia's 159 counties. As another example, the excise tax on hotel and motel rooms is also a special district tax established by general state law (O.C.G.A. § 48-13-50.1). For the purpose of this tax the boundary of each special district is any city that separately levies a tax or, when the tax is levied by a county, the entire county minus the corporate limits of any municipality which separately levies the tax. An example of a special district created by local ordinance is a city business improvement district or a tax allocation district (O.C.G.A. § 36-43-5; O.C.G.A. § 36-44-8). Special service districts also are sometimes used by counties to provide services exclusively to or primarily for the benefit of residents of the unincorporated area, such as fire protection or garbage service, but the county cannot create a special district for the provision of the sheriff's office (O.C.G.A. § 33-8-8.3; *Channell v. Houston*, 287 Ga. 682, 699 S.E.2d 308 (2010)). This arrangement is intended to avoid double taxing municipalities.

Typically the services or facilities provided in a special service district are funded by special taxes, fees or assessments levied within the special service district. To facilitate the financing of improvements within a special service district, the Georgia Constitution authorizes municipalities to incur debt on behalf of a special service district when the municipality, at the time of or prior to incurring the debt, provides for assessment and collection of an annual tax within the special service district in an amount sufficient to pay the principal and interest within 30 years. However, the amount of debt incurred, when taken together with all other outstanding debt of the municipality, cannot exceed 10 percent of the assessed value of all taxable property within the municipality and a referendum must be held in which the qualified voters of the special district consent to incurring debt for the special district (Ga. Const. Art. IX, Sec. V. Par. II).

Gratuities

Two important constitutional provisions limit the power of cities to make contributions of public funds or property. The first one states that "...the General Assembly shall not have the power to grant any donation or gratuity or to forgive any debt or obligation owing to the public..." (Ga. Const. Art. III, Sec. VI, Par. VI). The Georgia Supreme Court has held that this section applies to municipalities and that its purpose is to prevent the "extravagant outlay" of municipal funds (*Grand Lodge of Ga. I.O.O.F. v. City of Thomasville*, 226 Ga. 4, 172 S.E.2d 612 (1970); *Mayor of Athens v. Camak*, 75 Ga. 429, 435 (1885)).

The court applied this provision in a case involving a county contract with a private company for fire protection services. It held that local governments may furnish fire stations and fire-fighting equipment for a private company's use in providing fire protection. The court reasoned that no gratuity or donation is involved when the local government receives substantial benefits in return for the use of its property (*Smith v. Board of Commissioners of Hall County*, 244 Ga. 133, 259 S.E.2d 74 (1979)).

Other decisions have acknowledged the principle that whether a municipality makes a donation or gratuity depends upon the benefits received by the city. A municipality cannot make a gift that conveys government property to a private party. For example, local government donations to a chamber of commerce, freight bureau, and a convention and tourist bureau have been held to violate this constitutional provision. In these cases, the local governments had not entered into a contract to receive benefits from the other party (*Grand Lodge of Ga. I.O.O.F. v. City of Thomasville*, 226 Ga. 4, 172 S.E.2d 612 (1970); *Atlanta Chamber of Commerce v. McRae*, 174 Ga. 590, 163 S.E. 701 (1931)).

It has likewise been suggested that it is impermissible to expend public funds for the purpose of conducting a straw poll or public opinion referendum without statutory authority (AG Op. U90-20). The basis for this opinion is the constitutional provision which authorizes cities and counties to expend public funds to perform public services or functions authorized by the state constitution or by law (Ga. Const. Art. IX, Sec. IV, Par. II). Because the expenditure of city or county funds must be authorized by some legislative act or constitutional provision, expenditure of funds for a referendum is proper only if it is authorized such as in the case of certain annexations or to allow sales of liquor by the drink (O.C.G.A. §§ 36-36-58; 3-4-41, 3-4-91 et seq.).

The other constitutional provision prohibiting gratuities by municipal corporations states as follows: "The General Assembly shall not authorize any county, municipality, or other political subdivision of this state, through taxation, contribution, or otherwise, to appropriate money for or to lend its credit to any person or to any nonpublic corporation or association except for purely charitable purposes" (Ga. Const. Art. IX, Sec. II, Par. VIII). Although this provision contains an exception allowing the expenditure of money for purely charitable purposes, the authority to make charitable contributions must be specifically granted by the General

Assembly in a general statute or in local legislation. The authority to spend for general welfare purposes is not enough (*Miller v. City of Cornelia*, 188 Ga. 674, 4 S.E.2d 568 (1939)). All charitable donations must be purely charitable (*Harris v. Gilmore*, 265 Ga. App. 841, 842, 595 S.E.2d 651, 654 (2004)).

Cities and counties are also prohibited from directly or indirectly making contributions or engaging in any activity to influence the outcome of an election or referendum. This prohibition extends to those acting on behalf of the city or county (O.C.G.A. § 21-5-30.2(b)).

Other Georgia Constitutional Provisions

The 1945 and the 1976 Georgia Constitutions recognized two types of constitutional amendments: general constitutional amendments submitted to the people of the entire state and local constitutional amendments submitted only to the people of the political subdivisions directly affected (Ga. Const. 1945, Art. XIII, Sec. I, Par. I; Ga. Const. 1976, Art. XII, Sec. I, Par. I). When the 1983 Constitution was being drafted, the decision was made to prohibit future local constitutional amendments but to provide a mechanism for continuing those already in existence (Ga. Const. Art. XI, Sec. I, Par. IV). If action was not taken to continue a local constitutional amendment, it stood repealed no later than July 1, 1987. Local constitutional amendments continued in force may be repealed but may not be amended (Ga. Const. Art. XI, Sec. I, Par. IV(b)). Local constitutional amendments have been recognized by the courts to continue to have constitutional status (*Columbus-Muscogee County Consolidated Government v. CM Tax Equalization, Inc.*, 276 Ga. 332, 579 S.E.2d 200 (2003)).

Population acts are laws which classify and apply to political subdivisions based on population and are generally prohibited by the Georgia Constitution (Ga. Const. Art. III, Sec. VI, Par. IV). However, legislation which repeals a population act, or which amends a population act to allow it to continue covering political subdivisions already covered by such act, is not considered an impermissible “population act” and is allowed (O.C.G.A. § 28-1-15).

General law takes precedence over a local act (Ga. Const. Art. III, Sec. VI, Par. IV). A general law is one having general application or at least applying to all municipalities and/or all counties. A local act is one that deals only with a particular city or county. Municipal charters are an example of local legislation. In general, provisions in municipal charters may be more restrictive of the city’s power than general law but may not be more expansive.

Local Legislation

Municipalities in Georgia, whether called a “city”, “town”, “municipality”, or “village”, are creatures of state law under O.C.G.A. § 36-30-1. They are created by the General Assembly’s adoption of a municipal charter. The municipal charter sets forth certain information such as the name and corporate limits of the municipality. It also enumerates the

type of government the city will have and sets forth certain powers for the city governing body and elected officials. The charter may also address administrative affairs of the city, municipal finances, the municipal court, and a variety of other topics.

Although the municipal charter is originally adopted by the General Assembly, pursuant to the Home Rule Act, state law provides that municipalities may amend their charter as previously discussed.

Ordinances and Resolutions

Enacting ordinances and resolutions is a major responsibility of mayors and councilmembers. Equally important, however, is ensuring that members of the public have access to the enactments of the governing body.

Codification

Georgia law requires that each municipality provide for the general codification of all ordinances and resolutions of the municipality having the force and effect of law. The codification, and each ordinance and amendment to the general codification, is to be adopted by the local governing authority, published promptly and made available to the public at a reasonable price as fixed by the local governing authority. The codification is to be made available by posting it on the Internet or, in counties which have established a county law library, a copy may be furnished to the county law library. Cities with a population of 5,000 or less according to the most recent decennial census have the option of having their ordinances and resolutions compiled rather than codified. Such a compilation must include, at a minimum, the ordinances and resolutions arranged in a logical manner, such as by date, and preferably should include an index or other finding aids (O.C.G.A. § 36-80-19).

An important reason to codify a city's ordinances is that Georgia statutory law allows courts to take judicial notice of a certified copy of any ordinance or resolution included within the codification required by Code Section 36-80-19. Any such certified copy is considered self-authenticating and is admissible as proof of any such ordinance or resolution before any court or administrative body (O.C.G.A. § 24-7-22).

Format

For the most part, Georgia statutory law does not define the types of legislation that mayors and councils may enact, nor does it stipulate subjects to be treated by a particular type of legislation. Therefore, guidance regarding enactments must be obtained from reviewing a municipality's charter and from court decisions. As an early case explained, "[t]he distinction between an ordinance and resolution is usually considered to be that, while a resolution deals with matters of special or temporary character, an ordinance prescribes some permanent rule of government" (*City of Rome v. Reese*, 19 Ga. App. 559, 91 S.E. 880

(1917)). A later case, providing a rather extensive discussion of municipal legislative enactments, asserted that “[l]egislation by a municipal corporation must be put in the form of an ordinance, and acts that are done in a ministerial capacity and for temporary purposes may be in the form of a resolution” (*Allen v. Wise*, 204 Ga. 415, 50 S.E.2d 69 (1948)). A municipal enactment may at times be called something other than an ordinance or resolution. But it should be noted that the name—ordinance, resolution, order, motion, etc.—given an enactment does not appear to be overly important to the courts and certainly not conclusive in determining its nature (*Ibid.*; *Western and Atlantic Railroad v. Swigert*, 57 Ga. App. 274, 195 S.E.230 (1938)).

However, in striving to define these terms, the courts have reached certain important conclusions regarding municipal ordinances. Generally, ordinances based on legislative authority are laws within the meaning of the Georgia Constitution. They have the same effect as local laws, such as city charter provisions, enacted by the General Assembly. Since they are considered local or special acts, they are void in any case for which provision has been made by an existing general law (O.C.G.A. §§ 36-35-3 and 36-35-6; *City of Atlanta v. S.W.A.N. Consulting & Sec. Services, Inc.*, 274 Ga. 277, 553 S.E.2d 594 (2001); *Jenkins v. Jones*, 209 Ga. 758, 75 S.E.2d 815 (1953); *City of Columbus v. Atlanta Cigar Company, Inc.*, 111 Ga. App. 774, 143 S.E.2d 416 (1965)).

Although state law does not dictate a required format for a municipal ordinance, it is important to review a city’s charter and previously adopted ordinances for provisions that may include requirements for inclusion in a municipal ordinance or resolution. However, there are some basic elements to a well-drafted ordinance that may allow a municipality to avoid challenges to the validity and meaning of its enactments:

1. The “title” provides an identifying name for the ordinance or resolution.
2. The “preamble” briefly explains the purpose of the ordinance and the objectives sought to be accomplished by it. This may be quite lengthy and include findings of fact for certain types of ordinances such as those regulating adult entertainment.
3. The “enactment clause” formally declares the passing or adoption of an ordinance and identifies the enacting legislative body (i.e., the city council).
4. The “definition section” defines any words or phrases that have special meaning in the ordinance.
5. The “body” is the basic act itself, organized and divided into identifiable sections.
6. The “severability clause” stipulates that if any portion of the ordinance is held invalid, the remaining provisions continue in full force and effect.

7. The “repealer clause” abolishes previous ordinances that the municipal governing authority no longer wishes to be operative. A repealer clause that specifically identifies provisions to be abolished is far preferable to a general clause simply stating that “all conflicting enactments are hereby repealed.” The latter type can lead to confusion concerning which ordinances, or parts thereof, have been repealed. Additionally, an “equal dignity” rule governing the repeal or amendment of municipal ordinances exists in Georgia. This means that generally an ordinance must be repealed or amended by no less than another ordinance (*Harper v. The Mayor and Council of Jonesboro*, 94 Ga. 801, 22 S.E. 139 (1894)).
8. The “effective date” specifies the date on which the ordinance becomes effective.

Adoption of Documents and Maps

Documents and maps may, in the absence of charter or other statutory provisions to the contrary, be adopted by reference, provided they are formally adopted and

1. can be sufficiently identified “...so there is no uncertainty as to what was adopted”
2. are made public records
3. are “accessible to members of the public who are, or may be, affected by [them]”, and
4. the adopting ordinance gives notice of such accessibility (*Friedman v. Goodman*, 219 Ga. 152, 132 S.E.2d 60 (1963); *City Council of Augusta v. Irvin*, 109 Ga. App. 598, 137 S.E.2d 82 (1964); *Waldrop v. Stratton and McClendon, Inc.*, 230 Ga. 709, 198 S.E.2d 883 (1973); *Foskey v. Kirkland*, 221 Ga. 773, 147 S.E.2d 310 (1966)).

Note that one such instance when a map must accompany an ordinance and not merely be referenced is in the context of zoning. The courts have held that the zoning map is an indispensable part of the zoning ordinance (*Bible v. Marra*, 226 Ga. 154 (1970); *City Council of Augusta v. Irvin*, 109 Ga. App. 598, 137 S.E.2d 82 (1964)). Without a valid map, the zoning ordinance is void. “It is essential in order to enact the maps as a valid part of the ordinance that they be formally adopted and be treated in each step of the legislative process with all of the solemnity required for the text” (*City Council of Augusta v. Irvin*, 109 Ga. App. 598, 137 S.E.2d 82 (1964); *Foskey v. Kirkland*, 221 Ga. 773, 147 S.E.2d 310 (1966)).

Procedural Requirements

Ordinances may be enacted prescribing procedures for passing ordinances. However, the courts generally view procedural requirements in municipal ordinances differently from those found in the city charter or other statutory law. In two cases where procedural requirements spelled out in an ordinance were not complied with, the court refused to invalidate subsequent ordinances that were not enacted in accordance with these procedures (*South Georgia Power Company v. Baumann*, 169 Ga. 649, 151 S.E. 513 (1929); *Ellis v. Stokes*, 207 Ga. 423, 61 S.E.2d 806 (1950)). The Georgia Supreme Court has held that a rezoning of property was validly adopted even though the city did not comply with the provisions in the

city's charter regarding the adoption of ordinances. The court found that compliance with state law, the Zoning Procedures Law, was sufficient (*Little v. Lawrenceville*, 272 Ga. 340, 528 S.E.2d 515 (2000)).

Municipal Taxation and Spending

The Georgia Constitution allows cities to impose taxes authorized by the Constitution or by general law. Additionally, local laws enacted by the General Assembly may authorize a city to levy and collect taxes and fees within the corporate limits of the municipality (Ga. Const. Art. IX, Sec. IV, Par. I). Public funds can be expended to perform any public service or public function authorized by the State Constitution or by law (Ga. Const. Art. IX, Sec. IV, Par. II). Issues of municipal taxation are more fully covered in the chapter Municipal Revenues of this handbook.

Federal Limitations

The Supremacy Clause of the United States Constitution makes the United States Constitution, federal law and treaties the supreme law of the land (U.S. Const. Art. VI). Additionally, the ability of local governments to take action in particular areas may be limited by a number of federal constitutional provisions, notably including the First Amendment, the Fifth Amendment and the Fourteenth Amendment. As previously referenced, one part of the Fifth Amendment prohibits local governments from taking private property except for public use and upon the payment of just compensation.

The First Amendment states as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances" (U.S. Const. Amend. 1). Free speech issues may confront local governments and their officials in a variety of contexts including dealing with employees, access to public space for speeches and expressive conduct including parades or marches and displays in public space, billboard and sign regulations, newsstand regulations, and adult entertainment. Additionally, local government officials must negotiate the often confusing path between respecting the free exercise of religion and avoiding the establishment of religion.

The Fourteenth Amendment to the United States Constitution provides the guarantees of due process and equal protection. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any States deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" (U.S. Const. Amend. 14). Although the case law in these areas can be quite detailed, there are some basic guiding principles that can make these concepts easier to understand. Due process generally

requires that an individual receive notice and an opportunity to be heard before the government does something detrimental to them, while equal protection often boils down to treating similarly situated people the same without discrimination based on prohibited grounds.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Two-PUBLIC-ACCESS-and-MEDIA-RELATIONS/Meetings-Procedure,-Organization,-and-Public-Parti.aspx

During city council (or commission) meetings, decisions are made that formally set municipal programs in motion, enact ordinances, adopt policy, and authorize the expenditure of city funds. This chapter discusses the conduct of meetings, preparation for meetings, rules of procedure, and encouragement of citizen participation. Citizens draw conclusions about the effectiveness of their governing body from the manner in which public meetings are organized and conducted. Not only are orderly and well-run meetings more enjoyable, they also help establish a more positive city image. Disorderly and poorly conducted public meetings reflect negatively upon the city, its governing body, and staff.

Meetings

Before exploring how to have an effective meeting, it is important to understand what a meeting is. According to state law, a meeting occurs when *a quorum of the members of the governing body of an agency or of any committee of its members* created by such governing body, whether standing or special, pursuant to schedule, call, or notice of or from such governing body or committee or an authorized member, at a designated time and place *at which any public matter, official business, or policy of the agency is to be discussed or presented or at which official action is to be taken or, in the case of a committee, recommendations on any public matter, official business, or policy to the governing body are to be formulated, presented, or discussed* (O.C.G.A. § 50-14-1, emphasis added).

Therefore, nearly every time the council assembles as a group, a meeting occurs. While the law does provide a few exceptions, it is important to be mindful of the spirit of the law. This code section is intended to make the policy-formulation process more transparent to citizens.

City councils hold different types of meetings: regular meetings, work sessions, executive sessions, special meetings, and public hearings. However, all are likely “meetings” under the law and must be in compliance with certain requirements.

Regular Meetings

Regular meetings are official meetings held periodically to consider municipal business, make policy decisions, approve contracts, establish budgets, and enact ordinances or resolutions. Their time and frequency are usually specified in the city charter or by ordinance.

Work Sessions

Work sessions provide members the opportunity to meet with staff in order to delve into complex issues, discuss solutions and alternatives, give direction to staff, finalize agendas, or create consent agendas. Work sessions may be held immediately prior to a regular meeting or at other times established by the council. Pre-meeting work sessions may be used by councilmembers to prepare for upcoming regular, formal meetings. These meetings are typically more casual in tone, are often used for information gathering, and no formal votes are taken. However, pre-meeting work sessions are subject to the open meetings law.

Executive Sessions

Council meetings that are closed to the public are often referred to as executive sessions. Such meetings may only be held for the specific, limited purposes authorized by law, and the council must comply with statutory procedures when closing a meeting. These private sessions are held with the elected officials and any staff or appointed professionals necessary to the discussion.

Special Meetings

These meetings are usually convened to discuss and vote on one or a limited number of specific issues. For example, a special meeting may be held to take action on a controversial rezoning request. Because there may be a number of people wishing to comment regarding the request, holding a special meeting to address the issue is an effective way to avoid an otherwise long and drawn out regular meeting. Special meetings may also be convened during an emergency.

Public Hearings

Public hearings allow citizens to express opinions on matters of public concern. Generally, no official action is taken during a public hearing. Some hearings are required by law, but they may also be used by the council for other matters. They may be called in order to gather facts related to proposed actions or to gauge public opinion by allowing citizens the opportunity to comment on a specific topic, such as a land-use plan. They may also be used as town hall meetings to meet members of the public and learn about their concerns. Finally, they can be used to allow the citizens to vent their frustrations.

Public hearings may be held as part of a regular or special meeting, or they may be entirely separate meetings. Although there are many opportunities to meet, official decisions may only be made in open meetings of the elected body. At such meetings, issues are publicly debated, and action is taken. Local officials must resist the temptation to make final decisions prior to official meetings and then “rubber-stamp” them at the official meeting, and should avoid even the appearance of doing so.

Preparing for Meetings

As an elected official, you bear the heavy burden of making decisions that will determine your city's future. You owe it to your constituents to represent them well. This responsibility includes being prepared to lead.

Do your homework. Study the issues and have the facts in hand before the meeting. Review the data, reports, and background information provided by the staff before arriving at city hall, including pertinent municipal ordinances. Evaluate alternatives and be prepared to debate your position effectively. A councilmember who comes to a meeting unprepared may unwittingly and unnecessarily slow down the meeting. The rules of order that your city uses will help keep debate civil, but you also must keep your temper in check. It is embarrassing and unprofessional when a mayor or councilmember loses control in a public meeting. In such cases, there are methods by which an unruly member may be removed from the meeting.

You and your fellow elected officials should know who is responsible for setting the meeting agenda. Determine how the agenda is set, how items can be added, and the agenda deadlines. You also should decide as a group how the agenda will be changed, if necessary.

Rules of Procedure

Clear, up-to-date, written rules of procedure make it easier to transact municipal business in an orderly manner. To be effective, a councilmember needs to know the rules of procedure for city council meetings, and anyone chairing a meeting (the mayor, council president, etc.) should be especially well-versed in the applicable rules of procedure. A city's charter may provide for specific rules of procedure, or it may be silent. In this case, the city council may adopt a standard guide to parliamentary procedure, such as Robert's Rules of Order, or may design its own rules of procedure. Although every local government should adopt a set of procedural rules to govern its meetings, there is no state law requiring adoption of a particular set of rules.

Purpose

Rules of order for public meetings should help manage the conduct of the city council; they should not get in the way of transacting the people's business. Whatever rules your council adopts, they should conform to the following three principles:

1. Rules should establish and maintain order by providing a clear framework for the conduct of a meeting.
2. Rules should be clear and simple, facilitating wider understanding and participation.
3. Rules should be user-friendly, meaning they should be simple enough that citizens feel able to participate in the process.

The following essential elements should be included:

1. A clear statement recognizing the hierarchy of law. The U.S. Constitution and federal law, the Georgia Constitution and state law, and the city's charter override any procedural meeting rules the council may adopt.
2. The manner and requirements for calling and convening special meetings and the quorum necessary for transacting business.
3. Designation of who shall preside over meetings in the absence of the mayor and the mayor pro tem.
4. A standard order of the agenda (for instance, call to order, roll call, minutes, approval of minutes, amendments to the agenda, administrative and fiscal matters, appearances or public comment, reports, old business, new business, adjournment).
5. Designation of a parliamentarian (unless the parliamentarian is the chair, his or her findings are advisory because the chair ultimately makes decisions of procedure, subject to appeal by the body).
6. Rules limiting debate. This section should include rules governing the public forum or public comment section of the agenda, including rules regarding speakers representing groups, limitations on repetition of the same information, and a method for granting additional time to speakers.
7. Any instances in which a supermajority (i.e., more than a simple majority) is required for passage. If a city adopts a set of standard rules by reference, any exceptions to the supermajority requirements of the referenced rules should be noted in the council's ordinance.
8. Requirements for second and subsequent readings of ordinances and other official actions of the governing body.
9. A procedure for suspending the rules, if any.
10. Rules for enforcing decorum and proper conduct.
11. A procedure for appealing the decisions of the chair.
12. A provision for the use of general consent when the chair establishes that there is unanimity to advance the business of the council more rapidly, including rules governing the use of a consent agenda, if desired.

While not required, a good practice may be an affirmative obligation for all members of the governing body to vote on all business before the body unless they publicly declare a conflict of interest and recuse or remove themselves from consideration of the matter in accordance with state laws and local procedures and policies for dealing with conflicts of interest.

Published in 1876 by Gen. Henry Martyn Robert, Robert's Rules of Order has become the most familiar guide to parliamentary procedure and is used by a variety of organizations, including governments at the federal, state, and local levels. However, the rules were not drafted with local governments in mind and do not address certain idiosyncrasies of and issues related to local government, such as the need for public comment and public hearings, the provision of special mayoral powers or limits to such powers in state statutes or

local charters, the use of abstentions for political purposes, or the special role of staff during city council meetings. The most recent (11th) edition of Robert's Rules includes certain provisions for "small boards," which better fits most city governing authorities. Robert's Rules of Order also assumes that all meeting participants will conduct themselves with decorum and respect and that they will always follow the rules and abide by the decisions of the chair.

Despite its limitations, Robert's Rules of Order does describe the major rules of parliamentary procedure that a local government needs to conduct productive, efficient meetings, including the making of motions, the management of debate, the process of voting, and is widely recognized as the preferred way of running public meetings. If a council decides to create its own rules of procedure, it may still defer to Robert's Rules of Order where the charter and local ordinances are silent.

Although the current edition of Robert's Rules of Order is complex and lengthy, its essential principles are quite simple. It systemically and logically sets forth meeting rules based on a hierarchy of rights: rights of the majority to decide and to prevail, rights of the minority to be heard, rights of individual members, and rights of absentee members. When seen as protecting these rights, rules of order and procedure will generally preserve harmony in a group, even when there are distinct disagreements about the substantive public policy matters under consideration. Ultimately, the will of the majority prevails, but that same majority must allow participation by members who do not represent the majority position; to do otherwise or to set aside the rights requires a supermajority vote. The rights of absent members are also partially protected by quorum rules and procedures governing setting and changing the agenda.

Order of Business

City council meetings should follow an order of business formally included in its rules of procedures. The council should not depart from this order except in unusual cases and then only by majority vote. An order of business makes it easier to prepare the agenda and minutes and engenders greater public confidence because it provides predictability.

The Agenda

The agenda constitutes the governing body's agreed-upon road map for the meeting. A formal, written agenda following the official order of business should be prepared in advance of each meeting and is required by law. An agenda provides an outline of items to be considered and usually lists them in order of priority. The agenda must list all items that are expected to be considered at a particular meeting. It may also briefly state what action is requested of the city council and any previous action taken by it. State law requires that the agenda be made available to the public and be posted at the meeting site. Although state law allows councilmembers to add necessary items to the agenda after it is posted, last-minute additions that introduce material members may not have had time to study should ideally be avoided (O.C.G.A. § 50-14-1(e)(1)). City councils should determine who is charged with preparing meeting agendas and establish a deadline for submitting requests or

communications for inclusion in the agenda and include them in the rules of procedure ordinance. Any item received after the deadline should be held over for the next meeting unless the majority of councilmembers present at the meeting votes to add it to the agenda.

A sample agenda includes the following:

1. Call to order/roll call/quorum check
2. Invocation/pledge of allegiance
3. Approval of minutes from previous meeting
4. Approval of the order of the agenda
5. Called public hearings
6. Public forum/citizen comment time (if they do not appear on the agenda, the rules for a public forum should be explained each time by the chair. Timing of the public forum varies from city to city).
7. Reports (from officers, committees, special presentations, other)
8. Old/unfinished business
9. New business
10. Consent items
11. Tabled items/hold items
12. General comments
13. Adjournment

Discussion

The same basic format should be followed for discussion on each item on the agenda. The chair does the following:

- Announces the agenda item, sometimes by number, clearly stating the subject.
- Invites reports from staff, advisory committees, or other persons charged with providing information to the body.
- Asks if any councilmembers have any technical questions that require clarification.
- In some cities, asks for public comments or, if at a public hearing, opens the hearing to public input and at the end of the public comment section announces that public input has concluded or the public hearing has ended and that the balance of the discussion will be limited to the members of the body, unless the council waives this rule by majority vote. Note that this practice deviates from the usual practice under most rules of procedure, including Robert's.
- Invites a motion from the governing body and, when received, announces the name of the member making the motion and the person seconding the motion if a second is required by the body's rules of procedure.
- Ensures that the motion is clearly understood, either by repeating it or by asking the clerk or the author of the motion to repeat it.
- Entertains amendments that may be offered.
- Moderates a discussion of the item until a final motion is ready for a vote or other disposition.

Transacting the business of the council in this fashion provides consistency in the decision-making process and assures that the members of the governing body consider all available information before making a decision.

Participating in Meetings

In addition to the mayor, who usually presides over city council meetings, and the councilmembers, nearly every city has at least two appointed officials in attendance to perform tasks vital to the conduct of meetings. They typically include the city clerk, the city manager or administrator (or other administrative officer), and the city attorney.

Presiding Officer

Usually, the mayor is the presiding officer of the city council. Depending on the city charter and ordinances, the mayor may be able to vote only in the case of a tie vote or may be allowed to vote on all issues. The council usually elects one of its members as mayor pro tem to serve in the mayor's absence.

The performance of the presiding officer is the key to effective, businesslike meetings. He or she is responsible for ensuring that meetings are orderly, conducted in conformity with the rules of procedure, and progress at an appropriate pace. At the same time, the presiding officer is responsible for ensuring that councilmembers and citizens have ample opportunity to express their views. A high level of comfort with the city's applicable rules of procedure is crucial for the presiding officer.

Other Members of Council

The elected councilmembers are the policymakers. City councilmembers share with the presiding officer the responsibility for properly conducted meetings. This responsibility includes having respect for one another's views and being willing to compromise, when possible, for the good of the city.

The city council must use its best judgment on how much time to spend examining a problem before reaching a decision. Actions of a city council should be deliberate and carefully weighed for possible consequences. Members will probably never know as much as they would like about the consequences of various actions; however, failure to make a decision or to take action can create as many problems as a decision made in haste. The city council must strike the proper balance between the two extremes. In any case, the city council should not allow a vocal minority that chooses to attend a particular meeting to unduly determine the outcome of a decision. Councilmembers must act for the good of the majority of the citizens.

City Clerk

The city clerk is the official record keeper. Although the role of the clerk varies widely from city to city, all clerks are responsible for keeping the official minutes of council meetings. The clerk's duties may also include preparing and distributing the meeting agenda and minutes, bookkeeping and maintaining other records, preparing and processing correspondence and reports, and managing the city council office. The clerk will typically make certain that all meetings are advertised in accordance with the Open Meetings Act.

Manager or Administrator

If the city has a manager or administrator, he or she should attend all meetings of the city council. This officer plays a significant role in preparing business to be considered at city council meetings. He or she is called upon to gather data, develop and evaluate alternatives, make policy recommendations to the city council, and carry out the intentions of the council. The role of the manager or administrator is largely determined by the city council. A good relationship between the city council and the manager or administrator can result in a smooth transition between policymaking and implementation. Such a relationship can also improve the effectiveness of councilmembers and reduce the amount of time they must spend in meetings.

City Attorney

The city attorney advises the city council on its powers and duties under the law. He or she is usually required to attend meetings of the council in order to give legal advice on matters before the council, making certain that members abide by all applicable laws and keeping abreast of city programs and problems. The attorney may also be asked to prepare ordinances and resolutions, charter amendments, and other legal documents. He or she also advises other city officers on official legal matters and represents the municipality in court and in administrative matters.

Every city needs an attorney who is accessible to city officials at all times. This person does not necessarily need to be a full-time officer but should advise the councilmembers in the deliberations and decisions of the city council. Many city attorneys serve as the council's parliamentarian, but there is no requirement that the attorney fill this role.

Public Participation

Georgia law requires that virtually all council meetings be open to the public, but the law does not require that members of the public be allowed to speak. Nonetheless, most local governing bodies adhere to the principle that citizens should have the right to petition their elected representatives; allowing time for public comment and debate at meetings maintains elected officials' accessibility and communicates the desirability and value of citizen input.

The order of business for council meetings and the preparation of the agenda affect public participation. A council must balance the desire for public participation with its legitimate need to proceed with its regular business in an orderly and expedient fashion.

The Consent Agenda

A consent agenda can be useful when commissioners have a great deal of business to consider. A consent agenda typically includes items that require a decision but are not controversial. A consent agenda includes action items on which little or no discussion is anticipated or items that have been previously discussed (and possibly voted on) but that require final approval. Typically, any item can be removed from the consent agenda for discussion by the full group and have a separate vote taken on that item if requested by any one member of the group. Some local governments place the consent agenda near the end of the meeting because its contents are generally noncontroversial and rarely involve public comment (e.g., issuance of permits, street closure requests, authorizing payment of bills), while other local governments elect to place the consent agenda near the beginning of the meeting (after approval of the order of the agenda) in the event an item on the consent agenda is judged to be controversial or is the subject of additional public input. A consent agenda can save time, but items should not be placed on the consent agenda to discourage public participation.

The public is more likely to participate in meaningful discussion if they are familiar with the governing body's agenda process and with its rules of procedure. In addition to printed agendas, many cities also distribute the written rules for public comment and a simplified version of the council's rules of order and procedure.

The Basic Rules of Parliamentary Procedure

The following are the basic rules of parliamentary procedure (D. Zimmerman, *Robert's Rules in Plain English* (New York: Harper Collins, 1997)):

- The rights of the organization supersede the rights of individual members.
- All members are equal and have equal rights to attend meetings, make motions and debate, and vote.
- A quorum must be present to conduct business. A quorum is the number of members required to be present to legally conduct business.
- The majority rules. The minority has the right to be heard but must abide by the majority's decision.
- Silence is consent. Nonvoting members agree to accept the majority decision.
- A two-thirds vote is necessary when limiting or eliminating members' rights or when changing a previous decision.
- An amendment must directly relate to the question under consideration.
- Once a speaker has been granted the floor, another member may not interrupt.
- The presiding officer may not put a debatable motion to a vote as long as members wish to debate it.

- Once a question is decided, it is generally out of order to bring up the same motion or one essentially like it at the same meeting.
- Personal remarks are always out of order in debate. Debate must be directed to motions and principles, not motives or personalities.

Two of the most misunderstood rules of parliamentary procedure are motions to “table” and to “call the question.”

Tabling or Postponing

After considerable debate, the council still may not be ready to vote on a motion. In that case, members may propose the following:

- That the motion be **postponed** until the next meeting so that more information can be gathered.
- That the motion be **postponed temporarily** (that is, table the motion), setting it aside until later in the meeting to allow more urgent business to be dealt with, permit amendments to be drafted, or allow time for implications of the motion to be checked. A motion to “take from the table” brings it back before the meeting. A motion to table is not debatable; a motion to postpone may be the subject of debate unless the city’s rules of procedure provide otherwise.
- That the motion be **withdrawn** at the request of its mover, but only if no member who is present objects.

Calling the Question

Someone who yells “question!” from the floor indicates that he or she wants the motion put to a vote. Generally, the chair should not allow normal and reasonable debate to be cut short. A motion to call the question or in any way limit debate must be seconded and requires a two-thirds majority vote in order to proceed with a vote on the main motion on the floor.

When special circumstances exist, or the unique wishes of the governing body, tradition, or other reasons dictate that meetings proceed in a manner not envisioned by Robert’s Rules of Order (or any other adopted model of meeting procedure), the procedure for setting aside the rules should be clearly delineated in the body’s own rules. A city’s rules of procedure could also address a councilmember making general comments at the conclusion of a meeting; these remarks will not necessarily lead to a motion.

Encouraging Citizen Attendance

City council meetings offer an excellent opportunity for citizens to learn from and speak to their elected representatives. To encourage greater citizen participation, consider the following suggestions:

- Provide adequate notice of meetings. Printing the time and location in the legal notice section of the local newspaper is not enough. Publish the agenda in the newspaper. Take advantage of free time that radio and television stations are required to provide for public service announcements. Post an eye-catching copy of the agenda in public buildings and stores.

- Remember that traditional ways of public notification and dissemination of information may be insufficient. In addition to newspapers, television, and radio, include the use of social media to make citizens aware of meetings and the topics expected to be considered.
- Schedule and situate meetings for maximum attendance. Weekday evenings are usually more convenient. Arrange for adequate parking.
- Furnish a comfortable setting for meetings. The meeting room should be well maintained, adequately lighted, at a comfortable temperature, and large enough to accommodate the public. There should be good acoustics or a public address system and adequate seating for citizens. City councilmembers should face the audience and one another; a semicircular arrangement is effective. The clerk, attorney, and other municipal officials should be seated where they can best assist in the meeting.
- Schedule business for maximum participation. Scheduling subjects of greatest public interest early in the meeting is usually a good idea.
- Distribute the agenda and other information liberally. As citizens enter the meeting room, they should be given a copy of the agenda. A seating chart of councilmembers reflecting the respective areas they represent, a simple organization chart of city government, and a list of the names of the chief administrative officers are also helpful.
- Use visual aids for presentation. Topics can often be presented visually for greater clarity. Zoning change requests, budget presentations, and reports, for example, can be made more informative and interesting through the use of visual aids.
- Assist the news media. Media reporters should be seated at a table where they can easily see and hear the proceedings. Upon entering the room, they should be given a copy of the agenda. Data, reports, and memoranda sent with the agenda to city councilmembers prior to the meeting should also be available for reporters.

Public meetings can be satisfying for participants when they are well run, focus on the objectives, and end on time.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Two-PUBLIC-ACCESS-and-MEDIA-RELATIONS/Open-Meetings-and-Open-Records.aspx

“All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them. The people of this state have the inherent right of regulating their internal government. Government is instituted for the protection, security, and benefit of the people; and at all times they have the right to alter or reform the same whenever the public good may require it” (Ga. Const. Art. I, Sec. II, Par. I et seq.). These words in the Georgia Constitution are the starting point for any consideration of Georgia’s laws on open meetings and open records. They are a reminder that government is created by and for the people to promote the common good and that public officials and employees are the servants, not the masters. Public servants are expected to execute their duties in an honest and trustworthy manner that can be reviewed, judged and critiqued by the people. The only way the people can regulate their government is if they know what it is doing. Thus, openness in government must be the rule and not the exception. Openness in government is also a key to building public trust.

Open Meetings

Georgia’s open meetings law applies to meetings of the governing authority of every “agency” as that word is defined in the statute. The definition includes every county, municipal corporation, school district, or other political subdivision of the state and every municipal, county, regional or other authority. Thus, meetings of the city council and meetings of the city’s downtown development authority are covered meetings. The term “agency” also applies to the governing body of every city department, agency, board, bureau, office, commission, authority, or similar body (O.C.G.A. § 50-14-1(a)(1)).

The first requirement for a “meeting” is the gathering of a quorum of the members of the governing body of an agency, any committee of the members of the governing body of an agency, or any committee created by such governing body (O.C.G.A. § 50-14-1(a)(3)). The second requirement is that the gathering must be one at which any official business, policy, or public matter of the agency or committee is formulated, presented, discussed or voted upon. Both of these requirements must be met to come within the statute’s definition of “meeting”.

The definition of “meeting” does not include certain gatherings of a quorum of a governing body or committee so long as the primary purpose of the gathering is not to evade or avoid the requirements of the Open Meetings Act and so long as no official action is taken by the members during that gathering (O.C.G.A. § 50-14-1(a)(3)(B)). For example, it is not

considered a “meeting” when a quorum of a governing body or committee gathers to inspect physical facilities or property under the jurisdiction of the agency or gathers to meet with officials of the legislative or executive branches of the state or federal government at state or federal offices. Similarly, it is not considered a “meeting” when a quorum of a governing body or committee of an agency gathers to attend statewide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency. It also is not considered a “meeting” when a quorum of the members of a governing body of an agency gets together for the purpose of traveling to a meeting or gathering as otherwise authorized by the law. Again, no official business, policy, or public matter can be formulated, presented, discussed, or voted upon by the quorum while attending the training or traveling.

The law also recognizes that city officials are often present at the same social, ceremonial, civic, or religious events but are there to participate in that event and not to conduct official business. Thus, the law states that when a quorum of the body or committee is at such an event it is not a “meeting” so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum. Even though these types of gatherings are not considered “meetings” and thus are not subject to the requirements for notice, agenda and minutes, city officials should always be mindful of the public’s perception that official decisions are being made informally in these types of settings.

City officials must remember that exclusion from the definition of “meeting” of the exemptions noted above will not apply “...if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business” (O.C.G.A. § 50-14-1(a)(3)(B)). Thus, city officials utilizing most of the exemptions noted above from the definition of “meeting” need to scrupulously avoid discussing any policy, public matter, or official business of or related to the city. Note that the exception for meeting with state or federal legislative or executive branch officials at a state or federal office only prohibits taking official action by the members. It makes sense that discussion or formulation of official business, policy or a public matter would be allowed in such circumstances but a vote would not. However, when a quorum is traveling to such a meeting, attending a funeral, or participating in training on city functions, such officials are advised to limit discussion with one another to matters that do not implicate city business.

Also not subject to the Open Meetings Act are incidental conversations unrelated to the business of an agency. An example of this would be something like “How about them Braves?” Finally, the law states that e-mail communications among members of an agency are not subject to the Open Meetings Act (O.C.G.A. § 50-14-3(a)(7) et seq.). Note, however, that such communications are subject to disclosure pursuant to the Open Records Act. The intent of this provision is to recognize and treat e-mail communications like hard copy memoranda shared with members of an agency. City officials are cautioned not to use technology in an attempt to avoid the requirements of the Open Meetings Act.

The city must provide the public with advance notice of meetings. Notice of the time, place, and dates of regular meetings (e.g., the city council's monthly meeting) must be made available to the general public and be posted in a conspicuous place at the regular meeting place of the agency and must be posted on the agency's website, if it has one. For any meetings that are not conducted at the regular meeting place or time, the agency must post the time, place, and date of the meeting for at least 24 hours at the regular meeting location and give written or oral notice at least 24 hours in advance of the meeting to the legal organ of the county or a newspaper with equal circulation. For emergency meetings (i.e., meetings with less than 24 hours' notice), the meeting notice must include the date, time, and location of the meeting, the subjects expected to be covered at the meeting, and the reason for meeting with less than 24 hours' notice (O.C.G.A. § 50-14-1(d)(1) et seq.). Notice must be provided to the county legal organ or a newspaper with greater circulation in the county than the legal organ. Many cities have made it a practice to simply notify all of the newspapers, radio stations, and television stations serving the area when there are special called meetings or there is an emergency meeting.

Regularly scheduled meetings can be cancelled or postponed (O.C.G.A. § 50-14-1(d)(1)). This often happens when the customary meeting date falls on a holiday.

An agenda of all matters expected to come before the council or other governing body must be made available upon request and must be posted at the meeting site as far in advance as is practicable during the two weeks prior to the meeting (O.C.G.A. § 50-14-1(e)). If a particular issue is not included on the posted agenda it may still be considered by the council if it is deemed necessary to address it. The courts have not yet defined what is meant by "necessary to address," and individuals—often with competing political agendas—may have different definitions. However, the clear intent of this provision is to ensure that the public is informed of the matters that will come before the body. Thus elected officials should avoid amending the agenda at the meeting to add a matter, particularly one that is known to be controversial, unless there is a clear and unambiguous necessity to do so.

Members of the public must be allowed access to the meeting and must be allowed to make visual and sound recordings of the open portions of any meeting (O.C.G.A. § 50-14-1(c)). Some city councils designate an area or areas where equipment for visual and sound recordings can be placed so that the equipment does not obstruct the view of meeting attendees and use of the equipment is not disruptive to the meeting. If a city or any other "agency" subject to the Open Meetings Act is going to do this, they should formulate and adopt a clear policy addressing the issue at a time when there is nothing controversial going on to avoid the perception that the policy on recording equipment is aimed at a particular person or constituency. Given modern phone capabilities, most open meetings could easily be recorded without the governing body of an agency aware that it was occurring.

If attendance at a meeting is larger than the meeting room can accommodate, then the council should move the meeting to a larger venue, if available (*Maxwell v. Carney*, 273 Ga. 864, 548 S.E.2d 293 (2001)).

A written summary of the subjects acted on and a list of the officials attending the meeting must be prepared and made available within two business days of the meeting. Minutes of the meeting must be prepared and made publicly available after having been approved as official; such approval is to occur at the next regular meeting of the agency (O.C.G.A. § 50-14-1(e)(2)). The minutes must, at a minimum, contain the names of the governing body members present at the meeting, a description of each motion or other proposal made, a record of who made and seconded each motion, and a record of all votes including who voted for and who voted against each motion. It shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining. For meetings with less than 24 hours' notice, the minutes must also describe the notice given and the reason for the emergency meeting (O.C.G.A. § 50-14-1(d)(3)). Minutes of executive sessions must be taken, but they are not open to the public. Such minutes must specify each issue discussed, but the substance of attorney-client discussions need not be recorded and are not to be identified in the minutes (O.C.G.A. § 50-14-1(e)(2)(C)).

In situations necessitated by emergency conditions involving public safety or the preservation of property or public services cities may conduct meetings via teleconference so long as the proper notice requirements are met and the public is given access to the teleconference meeting. A city council or other agency can also meet by teleconference if necessary due to the health of a member or the absence of a member from the jurisdiction so long as a quorum is present in person and the other requirements for an open meeting are met (O.C.G.A. § 50-14-1(g)). Under this exception, a member of an agency can only participate by teleconference twice in one calendar year unless there are emergency conditions or the member has a written opinion of a physician or other health professional stating that reasons of health prevent that member's physical presence. However, a quorum of the members must still be present in person. Finally, teleconference meetings are allowed to be held when one or more of the city's members are on ordered military duty at the time of the meeting, so long as the meeting is otherwise held in compliance with state law (O.C.G.A. § 38-2-279(g)).

Although there are numerous exceptions to the requirements of the open meetings law, there are six primary reasons why a city council would lawfully hold a closed meeting or executive session. These reasons are:

1. to discuss pending or potential litigation with legal counsel and to discuss or vote on settlement (O.C.G.A. § 50-14-2(1))
2. to discuss or vote on authorizing negotiations to purchase, dispose of, or lease property
3. to discuss or vote on the acquisition, disposition, or lease of real estate by the city (O.C.G.A. § 50-14-3(b)(1))
4. to discuss hiring, compensation, evaluation, or disciplinary action for a specific public officer or employee (O.C.G.A. § 50-14-3(b)(2))

5. to interview an applicant to be executive head of a department, or
6. to discuss records that are exempt from disclosure (O.C.G.A. § 50-14-3(b)(4)).

The governing body of an agency may close the portion of the meeting during which the members are deliberating on hiring, appointing, compensating, disciplining, or dismissing a public officer or employee. However, any portion of a meeting during which the body receives evidence or hears arguments on personnel matters must be open. A city council may also go into executive session to discuss or deliberate on the periodic evaluation or rating of a public officer or employee, or to interview applicants for the position of executive head of an agency. Note that the exceptions allow certain discussions and interviews to take place in an executive session but that all votes on personnel matters must be taken in public (O.C.G.A. § 50-14-3(b)(2)).

Because closed meetings are the exception and not the rule, if there is any doubt whether a topic may be discussed in a closed meeting, the city attorney should be consulted. If doubt remains, the meeting should be open. Furthermore, it does not matter what a closed meeting is called. A closed meeting may be called an executive session, a work session, or something else. For purposes of the open meetings law, there are only two types of meetings—open or closed. Whatever a meeting is called, it should be clear to the public whether the meeting is open or closed.

A majority vote of the quorum present for the meeting is required to close a meeting. The specific reason for closing the meeting must be stated in the minutes, the minutes must reflect the names of the members of the governing authority present and those voting to close the meeting, and these portions of the minutes must be made available to the public. When a meeting is properly closed but the discussion begins to stray into an area of discussion required to be open, the presiding officer must rule the discussion out of order and the discussion must cease (O.C.G.A. § 50-14-4(a) et seq.). If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer must immediately adjourn the executive session.

When a meeting is closed under the Open Meetings Act, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, must execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception (O.C.G.A. § 50-14-4(b)(1)). False swearing is a felony under Georgia law (O.C.G.A. § 16-10-71).

Any action taken at a meeting that was not open, but should have been, is not binding (O.C.G.A. § 50-14-1(b)(2)). Parties who wish to contest that an action was invalidly taken in a closed meeting must do so within 90 days after the date the action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such

date is not more than six months after the date the contested action was taken. Any action under the Open Meetings Act contesting a zoning decision must be commenced within 30 days.

Any person knowingly and willfully conducting or participating in a meeting in violation of the Open Meetings Act may be convicted of a misdemeanor and fined not more than \$1,000. Alternatively, a civil penalty not to exceed \$1,000 for the first violation may be imposed by the court in any civil action brought under the Open Meetings Act against any person who negligently violates the Act. A civil penalty or criminal fine not to exceed \$2,500 per violation may be imposed for each additional violation committed within a 12-month period from the date that the first penalty or fine was imposed. It shall be a defense to any criminal action that a person has acted in good faith. An agency or person who provides access to information in good faith pursuant to the Open Meetings Act will not be held liable for having provided such access (O.C.G.A. § 50-14-6). If anyone signs an executive session affidavit containing false information, he or she may be convicted of a felony and fined \$1,000 and/or imprisoned for up to five years (O.C.G.A. § 16-10-71). Further, participation in a meeting that is held in violation of the Open Meetings Act may be grounds for a recall action (O.C.G.A. § 21-4-3(7); *David v. Shavers*, 263 Ga. 785, 439 S.E.2d 650 (1994)).

Someone who sues for a violation of the Open Meetings Act is to be paid their attorney's fees and other litigation costs, unless special circumstances exist. The test for whether fees and other expenses will be assessed against the governing body is whether the position of the complaining party was substantially justified. The Attorney General is authorized to bring enforcement actions, either civil or criminal, as appropriate to enforce the law (O.C.G.A. § 50-14-5(b)).

Open Records

Georgia's open records law generally applies to the same "agencies" as defined by the Open Meetings Act. Thus, it applies to the city and all city departments, agencies, boards, bureaus, commissions, authorities, and other similar bodies (O.C.G.A. § 50-18-70(b)(1)).

Generally, the city employee or official who maintains the records is the records custodian who actually responds to requests for city records. The city can designate one or more persons to serve as the custodian of agency records and open records officer. A city may want to review its charter to determine whether a custodian of records is named in the charter and determine whether the city's charter should be amended to authorize the appointment of additional records officers. An agency can require that all written records requests be made upon the designated open records officer. However, the law specifically provides that an agency cannot delay its response to an open records request just because the designated open records officer is absent or unavailable (O.C.G.A. § 50-18-71(b)(1)(B)). Thus, a city needs to ensure that at all times there is available to the public a designated open records officer who can receive and respond to their request. If an agency designates

one or more open records officers, it must provide notice of such designation(s) to any person requesting records, must notify the county legal organ, and must post the designation(s) on the agency's website, if it has one (O.C.G.A. § 50-18-71(b)(2)).

"Public record" is defined to include all documents, papers, letters, maps, books, tapes, photographs, computer-based or computer-generated information, data, data fields, or similar material prepared and maintained or received in the course of the operation of an agency. Such records are subject to disclosure unless they fall within one of the legal exemptions to the open records law. Handwritten notes, e-mails, text messages, calendars, etc., are all public records subject to disclosure under the Open Records Act. It does not matter whether the record exists electronically, as a hard copy or in some other format. Additionally, records prepared and maintained or received by any company, individual, or other entity that does business with or has contracts with the city to provide services for the city must be available to the public under the Open Records Act (O.C.G.A. § 50-18-71(b)(2)). This rule applies to records possessed by a private person or entity in the performance of a service or function on behalf of the "agency."

The open records law requires that all public records, except those legally exempted from disclosure, must be open for personal inspection by any individual at a reasonable time and place, usually within three business days from the receipt of the request. Available documents must be made available within three business days. For records or documents that cannot be made available within three business days, a written description of the records, along with a timetable for inspection and copying, must be provided within three business days (O.C.G.A. § 50-18-71(b)(1)(A)). In lieu of providing printouts or copies of records or data, the city can provide access to records through a website accessible to the public (O.C.G.A. § 50-18-71(h)).

The city is not required to prepare any reports, summaries, or compilations that are not in existence at the time of the request (O.C.G.A. § 50-18-71(j)). However, so long as the city's existing computer programs can handle it, the city cannot refuse to produce electronic records just because production of the records will require inputting search, filter, or report parameters into the city's computer system. Once it has been determined that all or part of a document falls under one of the legal exemptions, the city must provide, in writing, the specific legal authority exempting such record from disclosure by code section, subsection, and paragraph (O.C.G.A. § 50-18-71(d)). If a requested document contains both open and exempt information, the records custodian must still release the document but may redact or mark out the exempt information.

Many cities are making routine records more accessible to the public by posting records on the city's website or allowing citizens to access records through the Internet. This makes getting information easier for citizens and saves staff time.

Although the records custodian may ask that open records requests be made in writing, he or she may not require them to be in writing. However, municipal employees that receive records requests should be instructed to make a written record of oral open records requests. Most requesters will readily provide a written request for two reasons: it protects from misunderstanding the request and helps focus the request to avoid excessive charges, when the request is for something other than meeting minutes, agendas, ordinances, etc. A written request also becomes an identifiable record, clearly triggering the three business day time period for access when received by the open records officer or records custodian designated by the city. Finally, legal action to enforce compliance with the Open Records Act is only available when a written request is made (O.C.G.A. § 50-18-71(b)(3)).

The city may impose a reasonable charge for search, retrieval, redaction, and production or copying costs to produce responsive records but is required to use the most economical means reasonably calculated to identify and produce the records. This charge must be calculated using the prorated hourly salary of the lowest paid full-time employee with the necessary skill and training to fulfill the request minus the first fifteen minutes of search and production. Additionally, the city may charge up to ten cents per page for letter- or legal-size copies, the actual cost of producing larger copies, and the actual cost of the media on which records or data are produced (O.C.G.A. § 50-18-71(c)(1) et seq.). To avoid the introduction of viruses or malware onto the city's computer or system, the city should always use a new flash drive or other media if providing electronic data rather than accepting one from the requester.

In any instance in which the city plans to charge more than \$25 to respond to a request, the city must notify the requester within the three-day time limit and provide an estimate of costs. Unless the requester stated in the request a willingness to pay an amount that exceeds the estimated cost, the city can defer any search for records until the requester has agreed to pay such estimated cost. If the estimated cost of production exceeds \$500, the city may insist on prepayment (O.C.G.A. § 50-18-71(d)). Note that a requester may prefer to inspect records rather than receive copies. In such a case, the city should have someone with the requester while inspecting records to ensure they are not removed or altered. If confidential information must be redacted from records, the city can choose to provide redacted copies (O.C.G.A. § 50-18-71(b)(1)(B)).

The city should update its records retention schedule and make sure that employees responding to records requests are familiar with the schedule. State law requires cities to have a records retention schedule, and all department heads and records custodians should familiarize themselves with and follow the records retention plan adopted by the city (O.C.G.A. § 50-18-99).

The following records may be (but are not required to be) withheld for a specific period of time:

1. Investigation of complaints against city employees. Records containing materials from investigations of complaints against public employees or relating to the suspension or termination of an employee are not subject to disclosure until 10 days after the investigation is complete or otherwise terminated (O.C.G.A. § 50-18-72(a)(8)).
2. Appointment of the executive head. Records that would identify all of the applicants for the position of executive head of an agency (such as city manager) may be withheld until up to three finalists are selected, unless the public has had access to the application and interview process (O.C.G.A. § 50-18-72(a)(11)). 14 days prior to the final decision, the names and application materials of as many as three finalists must be made available to the public upon request, unless the applicant no longer seeks the position. However, the city may be required to provide information regarding the number of applicants and the race and gender of those applicants.
3. Land acquisition. Real estate appraisals, engineering or feasibility estimates, or other records relating to the acquisition of real property may be withheld only until the transaction has been completed or terminated (O.C.G.A. § 50-18-72(a)(9)).
4. Pending bids and proposals. Competing bids and proposals may be withheld until such time as the final award of the contract is made, the project is abandoned, or the agency takes a public vote regarding the sealed bid or proposal, whichever comes first (O.C.G.A. § 50-18-72(a)(10)).
5. Pending investigations. Records of law enforcement, prosecution, or regulatory agencies in any pending investigation, other than the initial incident report, may be withheld until the prosecution or any direct litigation is final or terminated (O.C.G.A. § 50-18-72(a)(4)). However, note that this exception does not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution.
6. Attorney-client privilege and attorney work product. Records subject to the attorney-client privilege and confidential attorney work product may be withheld (O.C.G.A. §§ 50-18-72(a)(41), (42)). However, if an attorney is conducting an investigation on behalf of an agency, the legal conclusions of the attorney are protected. Factual findings are not protected unless the investigation pertains to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee of the agency.

An action to enforce the Open Records Act may be brought by any person, firm, corporation or other entity, and by the Attorney General. The Attorney General is also authorized to file a criminal action against individuals who violate the open records law. Anyone who knowingly and willfully violates the open records law, by refusing access, failing to provide documents within the requisite time, or “attempting to frustrate access by intentionally making records difficult to obtain or review”, may be found guilty of a misdemeanor and may be subject to a fine not to exceed \$1000 for the first violation. A civil penalty or criminal fine not to exceed \$2500 can be imposed for each additional violation committed within a twelve-month period. Additionally, civil penalties may also be imposed by the court on any person who negligently violates the terms of the statute. As with the open meetings law, the Attorney General or any other person, firm, or corporation may bring a civil action in superior court to require the

municipal records custodian to release records, and the city may be required to pay the complaining party's attorney's fees if the records custodian acted without substantial justification in denying an open records request (O.C.G.A. § 50-18-73 et seq.).

Handbook for Georgia Mayors and Councilmembers

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"Our liberty depends on the freedom of the press, and that cannot be limited without being lost."

Thomas Jefferson

The role of public relations in government is often misunderstood. Some see public relations as mere frosting on the cake—an “extra” that only large city governments can afford; others equate it to the production of “slick” propaganda, designed to cover up serious problems. Neither of these perceptions is accurate or helpful to the person who has been elected to serve the public.

Public relations in government are much more than just another program that a city government budgets into its fiscal year. Every government is constantly engaged in public relations. City employees are engaged in public relations each time a citizen visits city hall to pay a utility bill, phones with a complaint about garbage pickup, or signs up for a city recreation program. Elected city officials are engaged in public relations whenever they respond to a voter’s request, answer a reporter’s question, or explain municipal concerns to a civic organization.

In city government, public relations is the sum of all contacts between the citizens and the people who work in the government. Public relations involves all the actions that influence the way voters form their opinions about their government—from a handshake to a newsletter, from a telephone call to a story in the newspaper.

This chapter first considers public relations as an integral part of daily government activity. It then suggests ways that government officials can interact effectively with the media. The latter part of the chapter offers specific suggestions for getting the government’s story out to the public and describes the role of the public information officer.

Day-By-Day Public Relations

The stereotype of public relations is that of talking with reporters, writing press releases, etc. But in most cities—especially smaller cities—the most powerful impression that citizens will have of city government will come from personal contact with city employees and officials. Paving crews, sanitation workers, police officers, and clerks are in the “front line” of contact with citizens. It is here that a city’s officials and staff have the greatest chance of establishing good relations with the public by following basic procedures of good communications.

Public Relations Begins at the Top

The attitudes of elected officials toward the public will set the tone for the whole administration. Maintaining good public relations offers direct advantages to the officeholder. It will help the mayor and councilmember accomplish those tasks they feel are important. Furthermore, all elected officials depend on good public relations in order to get reelected.

In public office, an official must learn to deal successfully with many “publics”—the individual citizen as well as special interest groups, civic and professional organizations, minority groups, and representatives of the media. Keeping in mind the following rules of thumb will make contacts with the public more pleasant and valuable:

1. Remember that you are the people’s representative and spokesperson, not one of their rulers.
2. Have a pleasant, down-to-earth attitude with all citizens. Do not treat them in a patronizing or callous manner.
3. Listen to complaints and suggestions made by citizens. Citizens often have good ideas concerning government programs and services. Complaints about specific services should be referred to the appropriate department.
4. Keep the public informed about city government.
5. Be consistent in your dealings with the public.
6. Do not be afraid to say no to people who ask favors that are against the public interest or simply cannot be done. Take time, however, to explain why their requests cannot be granted.
7. Follow through on citizens’ requests. In a busy, overworked city government, it is sometimes easy for citizen requests to “slip through the cracks” and remain unanswered for long periods of time. Do not let this happen. Often, all it takes is a phone call to the citizen to let him or her know that you are working on the problem or will get to it soon to make the citizen feel good about your efforts—even if you can’t handle the request immediately.
8. Refrain from publicly criticizing fellow government officials.
9. Consider personal honesty your most carefully guarded possession and public office your most cherished trust.

Today, citizens expect their elected officials to be accessible. Voters expect to contribute to decisions as they are being discussed rather than merely reacting to policies already decided upon. To satisfy these demands for accessibility, many officials have set up citizen advisory committees that meet regularly to discuss government matters. Hearings about pending legislation, especially of a controversial nature, also get citizens involved. In general, an honest attempt by an official to encourage public participation in government will probably result in improved public relations.

Social media provides another way in which government can be transparent and engage citizens. It has also changed public expectations: people no longer look for the government to issue a formal press release to get information out; they are expecting news to be

available in a much more timely manner and to be able to engage with city leaders. If city governments are going to be on social media, they should be prepared to meet those expectations.

Good In-House PR Shows Down the Line

"Reputation matters because your behind is always behind you."

Happy Masina

Each individual associated with a city government is an ambassador from that government to the public. Officials should remember that a few poorly handled complaints can undo all the favorable publicity gained by a whole series of expensive ads. Therefore, encouraging public relations skills for all employees is very important.

A wise official will also remember that good PR begins "in house." Encouraging good employee relations is the first step in building good relations with the public: satisfied employees produce good public relations. Establishing and maintaining good morale among city employees, then, is extremely important. This is best accomplished by a supportive and effective administration. Slick publicity can never replace the genuine willingness of a satisfied staff to serve the public. A great deal of damage can be done by a dissatisfied employee airing grievances to acquaintances during nonworking hours.

Department heads and supervisors are most directly responsible for the attitudes, morale, and training of employees. Their awareness of the importance of good public relations to a city government is critical. If a department head tends to act contemptuously toward the public, that attitude will surely be reflected down the line.

Contacts with the Public Create an Impression

All government workers need to know how to handle *face-to-face* contact with citizens. An employee should assume that his or her contact with a citizen may be that citizen's only personal encounter with city government in a month, a year, or perhaps a lifetime. In face-to-face contact, a sensitive employee should be able to judge whether a citizen is satisfied or, if not, take steps to remedy the situation. In all direct contacts, the employee's personal appearance and manner of speech will play a part in the citizen's impression of the government.

Note that citizens will also draw conclusions from the appearance of the city government's offices and facilities. Post signs or have a receptionist to clearly direct visitors to the proper agency or official. Making it easy for a citizen to find his or her way suggests that the government cares about responding to citizen needs. Ensure that the public areas of city hall look professional; first impressions really do matter.

Some contacts with citizens will be by *telephone*. Each employee should be encouraged to respond promptly to phone calls as well as to in-person requests. Good telephone habits also include:

- identifying the employee and department immediately when answering or placing a call
- speaking clearly into the transmitter
- speaking with a smile—callers can hear the difference
- keeping a message pad and pencil near the phone
- using tact with callers who are upset, and
- avoiding sending callers on wild-goose chases.

When a call needs to be transferred, the caller should be informed quickly to avoid needless repetition of lengthy explanations. The employee should be sure that the transfer is made correctly and the caller is in contact with the proper person.

Answering requests so that a citizen is satisfied can involve willingness to give the caller a little extra time and consideration:

Even in the simplest procedure by which we direct a visitor to the proper office, we can combine listening and questioning with our answers in such fashion as to prevent embarrassment and confusion. If a caller were to inquire as to where he could obtain a “permit,” an adequate answer might be, “That would be in room four.” But the additional moment required to answer, “Our building permits are issued by Mr. X in room four,” could provide the caller with a specific person to seek in a busy office containing several people; furthermore, the additional information supplied in the longer answer could enable the caller to clarify his inquiry by saying that he had been dealing with Mr. A, rather than Mr. X; we in turn could reply that the caller was seeking a business license rather than a building permit, and that Mr. A could help him in room five (City of LaHabra, “Training in Public Relations and Communications,” January 1962).

Since some contacts with the public will be written, *writing* skills are also an important part of good public relations. The appearance of a letter, like the appearance of a desk, creates an impression; smudges or typos should be repaired before a letter is posted.

Letter writers should be careful to use language that will be easily understood. Technical jargon, plentiful in government, should be avoided in written correspondence as well as in face-to-face dialogues. Words like “prioritize” instead of “arrange,” “parameters” instead of “limits,” or “input” rather than “suggestions” tend to block rather than promote communication. Avoid using acronyms, since most people who do not work in government will not recognize them and may be intimidated by this government jargon.

Many cities also use websites and email to reach citizens. The rule of first impressions applies here as well: you want your website to be attractive, useful, and easy to navigate. Likewise, emails should be proofread for grammar and spelling just as you would regular correspondence. Also, keep in mind that tone of voice and inflections are not easily “read.” Sometimes, something meant to be humorous may be perceived by the reader as sarcastic or mean. Even though emails are more informal than regular letters, the tone should remain businesslike.

More and more, people expect to be able to quickly find out information about their city. For this, they are going first to the Internet. Make it easy for them to find the information and make sure the content is updated on a regular basis so the information is current.

If your city decides to connect with the public through social media, such as Facebook or Twitter, it is advisable to have a policy in place that spells out which city employees or departments have the authority to update the pages, what type of information is allowable, and how the city will respond to negative comments.

Working with the Media

“Facing the press is more difficult than bathing a leper.”

Mother Teresa

What is a “medium?” The newspapers, radio, and television broadcasts that come to mind at the mention of “the media” are just part of a much wider spectrum of media. A medium is any means by which communication moves from one person to another. Word-of-mouth is a medium (and, some say, the most effective one). Websites are a medium. Utility bills are a medium. Memoranda are a medium. Cable television is a medium. The telephone is a medium.

People consider radio, television, and newspapers as *the* media because they are the ones most often used to inform the public about issues of public concern. But it is important not to overlook the potential of other media in helping local government officials communicate with the public. After dealing with *the* media, the potential of some of the *other* media will be discussed.

Most citizens form images of their city government and its officials through newspapers, radio, and television. These media tell people what city officials say and what the government does. These media are not, however, just vehicles for one-way communication from government to citizen. They also report public responses to city government officials and programs, and their own editorial responses may influence others. City officials need to read and listen to these media sources.

Good relationships between the media and a government are built on mutual self-interest. A government wants certain news in the paper. It wants the public to know what it is accomplishing. On the other hand, the media want newsworthy stories and information important to their readers or viewers.

Although the government and media depend upon each other, their relationship is characterized by ongoing tension. Even the efforts of the best-intentioned public official cannot circumvent this tension between the media and government. Conflict is inevitable as they pursue their separate goals. On the one hand, the media see their role as that of providing continuing surveillance of government activities in order to keep the public informed. They feel they have an obligation to investigate, question, and criticize government operations and services. They also know that controversy makes news. On the other hand, governments may prefer to underplay controversy. They may expect the media to support their efforts and to give little attention to any mistakes, faults, and failures.

Although both sides have legitimate complaints, the tension between the government and the media is healthy—and essential to a functioning democracy.

Developing Good Media Relationships

"Wooing the press is an exercise roughly akin to picnicking with a tiger. You might enjoy the meal, but the tiger always eats last."

Maureen Dowd

City governments, especially their officials, need to learn how to use the media successfully. Elected officials can perish politically unless they have learned to deal with local newspapers, radio, and television. They must be aware too, that as public officials their private lives may be observed closely by the media.

The following suggestions should help local officials to make relations with the media beneficial rather than frustrating.

Understand How the Different Media Function

Television, radio, and newspaper reporters usually look at news from different angles. Newspaper reporters are likely to follow city government most closely, keeping track of day-to-day happenings and seeking to provide in-depth coverage of significant actions. As a general rule, they have more time and more space in which to tell a story. For most weekly papers, local government is a staple of their coverage. Daily papers also give a lot of coverage to local government news, but include more national and international news as well.

Television reporters are usually looking for major events, particularly those with some visual impact. For example, a newspaper reporter may regularly cover planning commission meetings. A television reporter may be interested in a meeting only if a large group of citizens are planning a protest there. Radio stations either use newspapers as their source of news or have assigned reporters. In general, radio reporters are looking for more snappy news items than for in-depth stories.

Media representatives appreciate an official who recognizes them and knows what they do. These guidelines will help:

1. Keep up to date on the names of the reporters assigned to cover government. City officials often complain about the rapid turnover of reporters. That is common in the media, but you can help catch new reporters up to speed when they come to your city hall. Supplement this with specific information about your city—key officials, size of budget, budget year, key projects, etc.—and cap it off with a tour of your city to show the reporter what is going on in your city. You may not get glowing news stories, but taking these steps may produce more accurate, fair stories.
2. Know who does what on a news staff. Do not, for example, hold a reporter responsible for a headline or the placement of a story in the paper, since these are the decisions of an editor.
3. Be aware of media deadlines. Ask the reporter what deadline he or she is working on and respond appropriately. Get announcements to a station manager in time for the seven o'clock news. Return telephone calls promptly so your viewpoint on a new city program will be in the paper's evening edition. If you cannot provide the information a reporter is seeking by deadline, let him or her know that you can't as soon as possible. These deadlines also mean that reporters work under demanding time pressures. Under such conditions, errors can be made even by the most conscientious reporters and editors.
4. Give advance notice. Frequently, media are understaffed, particularly on weekends. If you want coverage of an event, let the media know in advance so a reporter, photographer, or camera crew can be scheduled.
5. Suggest story ideas. Reporters often hear, "Why didn't you cover that event?" or "Why don't you ever publish the good news?" And, often, the answer is because they were unaware of the event or no one told them the "good news." Reporters get paid for reporting—help them and help yourself by offering story ideas.

Be Both Helpful and Accessible

"PR means telling the truth and working ethically—even when all the media want is headlines and all the public wants is scapegoats. Public relations fail when there is no integrity."

Viv Segal, MD of Sefin Marketing

Return phone calls promptly. Alert the media to important news. See that reporters are provided with agendas for meetings and background information on issues and programs.

Treat all reporters fairly and do not play favorites. When there is some important news, see that all reporters are alerted. Do not ignore media that cater to a particular segment of the city's residents, such as newspapers that serve the black community.

Even if you have established a good relationship with the media, recognize that you will not always be happy about the news they report. Rarely has a public official not been annoyed by a statement pulled out of context or even misquoted, or by an action or stand on an issue that has been misinterpreted. What should you do in such a circumstance? Avoid overreacting to occasional annoyances. Try to forgive and forget, and do not hold grudges. Former President Reagan's top press aide, Larry Speakes, once said, "I've been in this business long enough to know that you never win a fight with a reporter or an editor, for as Huey Long said when he was governor of Louisiana, 'They have reams and reams of paper and barrels and barrels of ink.'"

When you are interviewed by a reporter, keep these two cardinal points in mind: be honest; be discreet. Even if a situation is unpleasant, being straightforward and honest will pay off. Rumors are worse than the truth. If members of the press suspect something is being covered up, they will try to investigate. The resulting story of a cover-up may be larger and more significant than the initial story would have been, and it is certain to have a negative impact on the public. If you have bad news, you tell it first. Don't let it be "discovered" by the media.

Be as open as possible, be honest, but also be *discreet*. When talking to a reporter, remember that what you say will be aired or appear in print. If you are not prepared to make a statement, say so. If you should not say something, don't. Most reporters will honor a request to keep a remark "off the record," but some will not. This confidentiality is a courtesy, not an obligation.

In uncomfortable situations, public officials sometimes take refuge in being "unavailable" or in responding "no comment" to questions. These refuges are rarely, if ever, prudent. Public officials can look foolish if, for example, they reply "no comment" when asked why they voted for an unpopular bill. However, "no comment at this time" can be appropriate in some situations. For example, if a city is being audited, any remarks might be premature or damaging. When using that reply, explain why comments are inappropriate at the time.

It is permissible to say "I don't know" when asked a question that you don't know the answer to, but it's wise to add "but I will find out and get back to you." Then do so.

Although being open with the media is sometimes uncomfortable, it is the best way to serve the public, our democracy, and your city government. A good illustration is Clearwater, Florida, with its policy of supplying reporters with background information for council meetings, stories of all city activities, and *copies of all letters of complaint about city services*.

The reporters could, of course, follow these complaints through to discover how the city dealt with problems. The result: excellent media relations and a city generally perceived as having a well-run city government.

Reporting to the Public

"I am a firm believer in the people. If given the truth, they can be depended upon to meet any national crisis. The great point is to bring them the real facts."

Abraham Lincoln

Public relations means more than establishing harmonious contacts with the public or even with the media. Part of public relations is getting important information to the public. A way of remembering this aspect of public relations is to think of the letters in the abbreviation PR as standing for "performance" and "reporting." If a city government is performing its tasks well, it should also be reporting its success to the citizens. How can this be done?

Using Broadcast Media

The obvious method to report to the public is by using newspapers, radio, and TV. Without some effort on its part, however, a city cannot depend on the media to get specific information to the public. If a city official is on good terms with a reporter, editor, or station manager, a phone call may be the simplest way to initiate the news process.

Remember when talking to television reporters to "think visually." They are going to want to know what kind of footage they can get to go with the story. When pitching a budget story, for example, suggest the reporter conduct the interview in the city park, where children will be playing in the background, to illustrate the need for more funds for the city recreation program.

Newspaper *calendars* and *public service announcements* on radio or TV may be used to let the public know about city meetings, hearings, or special events. Information items should be typed and delivered to the appropriate place before deadline.

Announcements or stories about city programs can be given to the press in the form of a *news release*. A news release is a written account of an event or issue. It should be proofread carefully before it is reproduced or distributed. Typographical errors cast doubt about the accuracy and authority of the source. Further, such errors could result in a serious misstatement.

The *news conference* is a method of informing all the media simultaneously about an important news item. This method of communications should be used sparingly, however, as many people must take time out of their working day for such an event. Generally, invitations to a news conference are given orally, and news conferences are held in the early part of the day in a central location. They are typically used for major announcements (a new industry coming to town, launching a new city service) or in crisis situations when you want to get the information out to all outlets at one time.

News releases and conferences are usually handled by the city's public information officer, if such a position exists. Local media may provide other opportunities for letting the public know about their city government.

Newspapers may welcome *guest editorials* or even *regular columns* contributed by local officials. In some cities, radio and television public affairs forums or *talk shows* can be excellent ways of communicating with citizens. A phone call to the station manager may be all that is necessary to schedule an appearance on such a program.

Using the *Other Media*

Even without broadcast media (and some Georgia cities have very little access to broadcast media), cities have access to a number of media which, properly used, can be very effective means of communicating with citizens.

Cable Television

New communications technology has greatly broadened the range of media. The proliferation of cable TV channels in particular offers new choices in communication. A number of Georgia cities have been able to secure the use of cable channels and videotaping and editing facilities when negotiating cable franchises. The city of Waycross, for example, offers 24-hour city programming to its citizens through the use of a cable channel and a videotaping and editing studio. Other cities have negotiated to have their city council sessions taped (which very effectively ends citizen complaints about accessibility), and some have agreements whereby the cable franchisee provides aid and assistance in producing informational videos for the city.

The ideal time to reach agreements with cable providers about such services is during franchise negotiations, but cable providers may be asked to provide such services at any time. It is an excellent idea to examine what services other cities have sought and obtained and what current law requires of cable systems, before entering franchise negotiations.

Newsletters

Cities of all sizes throughout Georgia are already providing their cities with regular newsletters. They range from two-page, type-written, photocopied newsletters with hand-drawn art to slick, printed, multi-color newsletters that feature photographs of city employees. More and more cities are also producing e-newsletters, which are emailed to subscribers. Newsletters generally include news of city departments' activities, news of city personnel, upcoming community events, and explanations of city policies.

Such newsletters need not be a one-way medium. They can allow citizens to write letters to the editor. Or they can solicit information. The newsletter put out by the city of Americus, for example, asks its readers to write or call if there is anything they want to know about the city. They promise to respond to every request, either directly or through the newsletter.

Desktop publishing technology, which has become relatively inexpensive in the last several years, is widely used to produce newsletters, since it allows users to produce very attractive, professional-looking newspapers for a small investment of money. But desktop publishing should not be regarded as a panacea. It still requires time and attention to detail to produce a newsletter that is attractive and error-free. Typographical errors and errors of fact can still be misleading, no matter how they are produced. Cities should also be cautious of using images or stories obtained off the Internet for newsletters. Often, these images and articles are copyrighted, and unauthorized use of them can be very costly for cities. There are several websites that offer copyright-free images or images that are in the public domain, and cities should look for those or obtain a subscription to an image library. Cities should also use the same caution in using music downloaded from the Internet.

Utility Bills

Utility bills are a direct mail advertiser's dream—mail that is opened and read by almost everyone who receives it. Some Georgia cities have elected to take advantage of this medium by including short printed pieces with their utility bills. The City of Savannah, for example, includes a one-page "About City Hall" article in its utility bills, giving its citizens information about the way the city functions.

Occasional Pieces

Anything a city prints can be used as a tool to get the city's message across. That includes annual reports, posters announcing various meetings, advertisements, and press handouts at city meetings.

Facing Live Audiences

Information about the city government can also be communicated *in person*—an effective way of reaching specific audiences. Most civic groups welcome city spokespersons as speakers for their meetings. Service departments, such as police and fire, often present programs that explain city services to schools and other groups.

Some cities have devised a speakers' bureau, selecting city officials who can make themselves available to tell citizens about various aspects of their government. By publicizing the existence of a speakers' bureau, a city can create increased opportunities to get its message out.

Public hearings and *open meetings* give voters and governments a healthy way to exchange viewpoints. Ample notification of such meetings is important. Scheduling public hearings or committee meetings in the evening, when working people can attend, is a good idea. So is rotating meeting locations around different neighborhoods in the city.

Role of PR in Disaster Preparedness

There comes a time in the affairs of many cities when disaster strikes. This is often a time

when good public information is most desperately needed and least available—unless a city has included public information in its disaster preparedness plan.

Such disasters can take many forms. Very often, they are natural disasters—a severe flood or a devastating fire. They can also be man-made disasters—a train loaded with hazardous materials derailed, requiring massive evacuations of city residents.

At such times, there will be intense efforts on the part of the media to obtain comments from local officials. But very often, the department heads and other officials who would ordinarily respond quickly to such requests will be too busy to respond to the requests. Under such circumstances, reporters will often interview anyone they can reach, which can result in conflicting and inaccurate information.

The best way to avoid this situation is to include communications in the city's disaster preparedness plan. Some member of the city government should be assigned the responsibility for talking with the media—as “media contact.” Make sure the other members of the disaster response team understand his or her roles, so that they can refer media requests properly to the media contact along with the information needed by the media. Reporters do not ordinarily like being referred to a spokesperson, but an official spokesperson is better than no interview.

The media contact can not only field questions from the media, but can also relay vital emergency information to the local radio, television, and newspaper outlets. Thus the media contact can serve a vital function—relaying important information to the media, squelching rumors and inaccuracies, leaving other city officials free to cope with the emergency, and projecting an image of a city government that is well prepared to handle the crisis.

Role of the Public Information Officer

Many governments hire persons skilled in communications to assist them in letting the public know the positive things they are doing. What does such a person do?

- prepares news releases, public service announcements, etc.
- maintains good media relations
- produces brochures, posters, leaflets, reports, notices, and other publications
- produces photos, videos, and other visual aids
- maintains files of photos of city personnel
- prepares paid advertisements
- responds to citizen requests, complaints, etc.
- meets with citizen groups
- prepares speeches and other presentations
- gives tours
- coordinates special events
- develops forms of recognition for citizens and city employees

- improves communications among city employees and between city employees, mayors, and councilmembers
- strategizes and manages the city's social media presence
- monitors social media (including blogs) to ascertain threats to the city brand and formulate responses when deemed necessary
- maintains file of news coverage—invaluable for later research.

Obviously, the size and income of a city government will determine whether such a position is advisable. A city that cannot afford to hire a full-time employee in this area may wish to consider taking on a skilled individual on a part-time or temporary basis. However, public relations can never be delegated away. Specific public relations tasks can be assigned. But good public relations is a product of the performances of all members of city government—employees, supervisors, and elected officials.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Two-PUBLIC-ACCESS-and-MEDIA-RELATIONS/Effectively-Responding-To-Conflict.aspx

This chapter offers information about a topic most people try to avoid. So, if you want:

- to improve conversations in your public and private lives, I include tips on conflict competence
- to work through frustrating situations, this chapter describes tried and true skills
- to enhance how you and your municipality respond to conflict, I explain several procedures, how they work, and why they improve certain situations and not others.

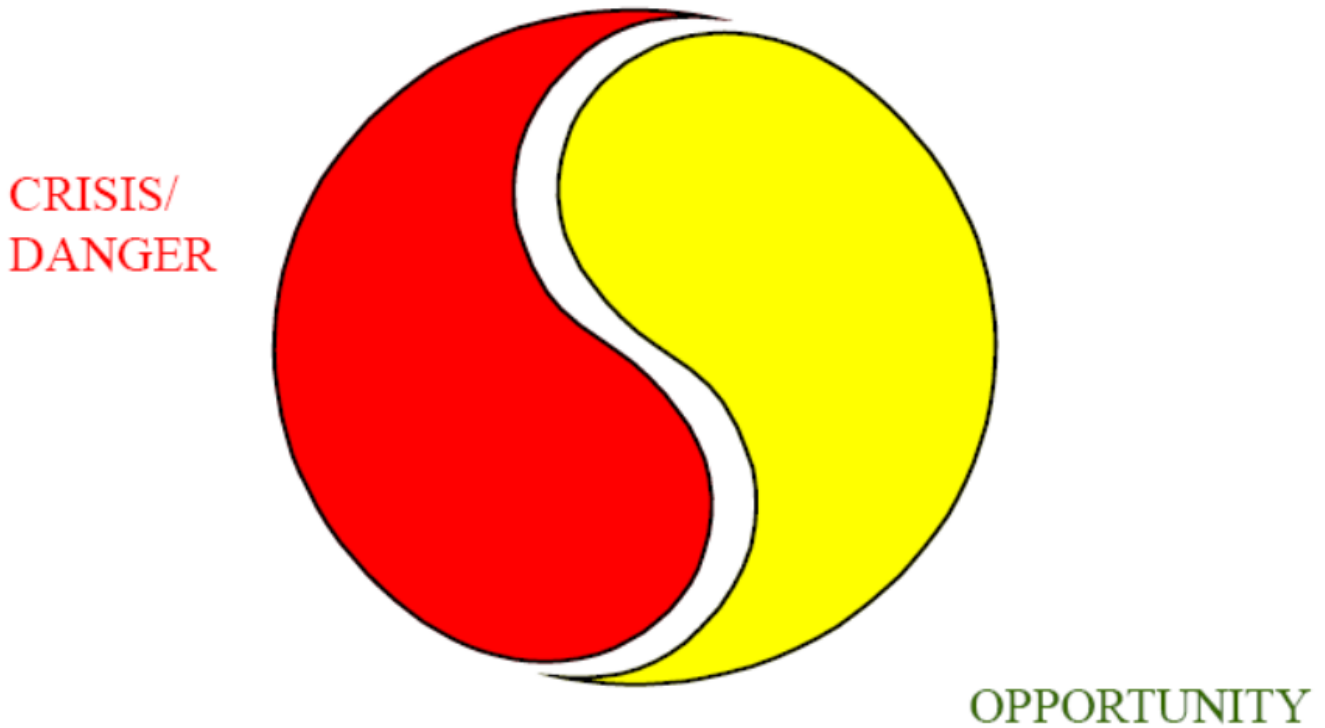
Conflict is normal in all vibrant relationships. It is so common in public decisions that opposition to proposed zoning or infrastructure changes is almost a given. Within any work team, community group, or commission at least one bully and a victim interrupt work and chew up time. But you ignore conflict at your own peril. Unlike fine wine or cheese, conflict does not improve with age.

Conflict operates like a smoke signal, indicating perceptions of incompatibility. Conflicted people sense:

- blocked access to valued resources (e.g., revenue streams for a budget, land, drinkable water, preferred office space or equipment, etc.)
- obstructed progress (e.g., building bike lanes or changing street design), or
- an abuse of values (e.g., safe religious expression, equal treatment, etc.).

Figure 1 shows the two sides of conflict. Most people focus on the negative and never experience the positive side. Negative ideas harden over the years with consistently bad experiences. We are creatures of habit who don't like to change. Picture a cat or dog hanging out in a favorite sun spot; they too hate to move.

Figure 1: Conflict



Used with permission of the  herrman group

Conflict frustrates almost everyone; it even offends. But conflict rarely involves pathology or evil. If you tune in early warning signals and cultivate effective reactions, chances of realizing the opportunities increase exponentially.

Conflict happens in all relationships because each of us is a unique bundle of needs and quirks. Even on our best days, our ability to communicate those needs and quirks is poor. We think we say what we mean when in truth we rely on incomplete snippets of what we are thinking and what we want to happen. Cell phones and other technology further undermine accurate communication by removing visual cues and vocal intonation so critical to conveying meaning clearly. See Figure 2: Thoughts on Communication for a quick sense of why we struggle with communication.

Figure 2: Thoughts on Communication

- Good communication supports mutual understanding of intention and meaning.
- Since we don't communicate directly from mind to mind (our minds are not hard wired), everything we hear and say is distorted.
- Look at how little words contribute to a message.*

Body – facial expression	55
Verbal tone (way words are spoken)	38
<u>Verbal (meaning of words)</u>	<u>7</u>
Total	100



- Less than 5% of all communication is accurate.
The rest is NEVER accurate (OH, come on now 😊).

* Mehrabian, A. (1981) Silent messages: Implicit communication of emotions and attitudes. Belmont, CA: Wadsworth

As a political leader, you depend on good communication, coupled with conflict competence (see Figure 3: Conflict Competence), to accomplish virtually everything. But odds are stacked against you. So many common situations reinforce less than optimal reactions:

- You spend long hours with other officials and your public in tense meetings.
- Elected officials run perpetual campaigns designed to create name recognition and supportive donors. But political narratives depict opponents in unflattering sound bites, and those sound bites bite, leaving a bitter aftertaste.
- Complex issues, often stretching across jurisdictions and time, defy comprehension and easy solutions.

Figure 3: Conflict Competence



- **Reduce your fear of fights so you selectively engage rather than run or lash out**
- **Flex with change – avoid rigid, even dogmatic patterns of doing things**
- **Listen to yourself (build self awareness) and others**
- **Doubt - suspend certainty, quick judging, assumptions**
- **Analyze the type of fight before you (in a structure, a relationship, over resources, etc.)**
- **Assert your needs gently, clearly, asking for specific changes**
- **Assess what might help/when/how**
- **Apply skills that work for the situation**

A New Compass

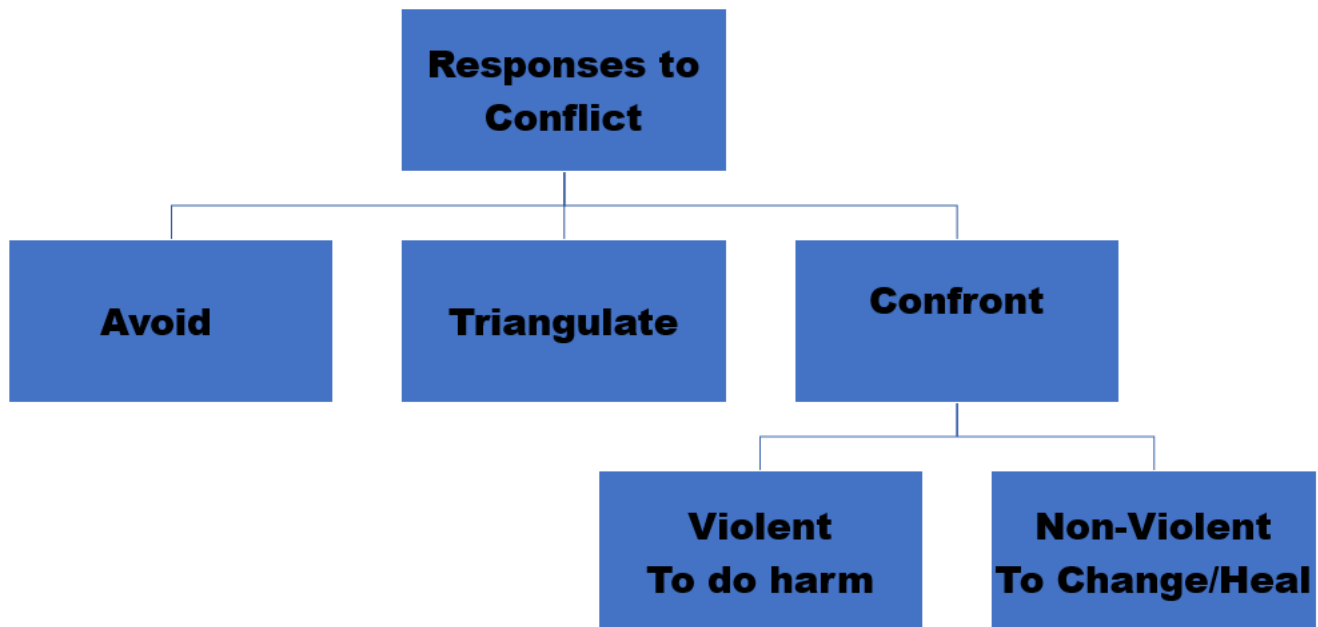
All conflict disrupts “the normal way” of doing things. That disruption releases energy to refresh how things are done. As a public official, you can harness that energy to create better ways of fulfilling obligations inherent to public service: working smarter; retaining and nurturing effective employees; creating public trust; working more effectively with other political leaders; and finding better solutions to complex problems.

This chapter asks you to reset your conflict compass so your north star flips from fear to acceptance to informed reactions that build your community. Conflict competence makes the idea of emotional intelligence relevant to conflict reactions, starting with responses to conflict. Emotional intelligence offers ideas about not flying off the handle, attending to your own emotions and confirming those of others. You, your constituents, and other leaders benefit when conflict competence is incorporated into your leadership style.

Responses to Conflict

Figure 4 depicts common responses to conflict. Responding effectively is tricky for all of us, as noted as far back as Aristotle (in *The Nicomachean Ethics*) who said something like: “Anyone can become angry – that is easy. But to be angry with the right person, to the right degree, at the right time, for the right purpose, and in the right way – this is not easy.” The following describes the benefits and limitations of several responses.

Figure 4: Responses to Conflict



Flight is the most common reaction to conflict. Figure 4 shows two forms: *avoidance* and *triangulation*. Neither is intrinsically bad, just overused. We run more often than necessary because most people don’t stop long enough to think about their intent (i.e., why run versus confronting an uncomfortable situation? Consider what you gain by running or staying). Without understanding your intent, it is hard to know when to walk away, wait, and when to act. You strategize football or poker, why not a fight?

Avoidance is an excellent reaction when strangers irritate you, and their services are neither critical nor unique. For example, I walk into a retail store that carries merchandise you see everywhere. You run into a clerk who can’t bother to get off a call with a friend. Instead of complaining loudly, walk away. Since the store and clerk don’t provide irreplaceable service, why initiate a conflict? Consider all your relationships in your personal and political life. How many fit this description above? Not many? Most of us depend on friends and colleagues to get things done. My only reservation about avoidance is that people use it too often, including when a confrontation might improve their life.

Waiting, as a short-term tool, works well if it allows you to breathe, think, strategize, and gather information. Plus, waiting a reasonable amount of time before acting allows fights to mature. Acting prematurely typically falls on deaf ears because people don't perceive a crisis, or they are so angry they can't hear your concerns. Until they do, the fight is simply not ripe for productive discussions and analysis, or anything else.

Protracted avoidance tactics like denial, suppression, capitulation, or "management" are similarly overused. I hear denial in platitudes: "If it ain't broke, don't fix it." Political leaders also sidestep confrontations when they hand off deliberations to committees, and "managing" conflict suppresses creative engagement while encouraging stodgy, inflexible, uncaring organizations.

Triangulation, another common flight tactic, feeds grapevines. Triangulation occurs when someone is uncomfortable talking directly to the person or people involved in a fight. So instead of confronting, they talk to friends or friends of friends. Triangulation helps if you talk to people who maintain confidentiality (e.g., hermetically sealed silence), and your confidants urge you to talk directly to the offending person when the time is right. Triangulation allows you to tell and explore your story (i.e., your narrative) safely. It also allows you to talk out possible solutions. However, substituting triangulation for confrontation carries the same disadvantages as avoidance.

Fight reactions, the other set of typical responses, assume some form of confrontation. Like avoidance, confrontation is not intrinsically bad, especially if confronting validates a relationship. Confronting tells others you want to solve a problem. Certain events call for in-your-face confrontation. Examples of when standing up and speaking out (non-violently) is justified include structural dangers to people (e.g., the Flint, MI water crisis), danger to citizens when unwritten policies discriminate (e.g., in a workplace or a neighborhood), or to stop violence. But even non-violent confrontation uses up vast amounts of money, personnel, and time while also damaging relationships. Anyone considering litigation or military control tactics should assess intent alongside long-term consequences. Both alienate and burn bridges. Consider if the chance is worth the risk or if you have sufficient public as well as personal resources to persevere to the end. Especially in the heat of a really upsetting public dispute, give yourself permission to slow your reactions down long enough to understand the pros and cons.

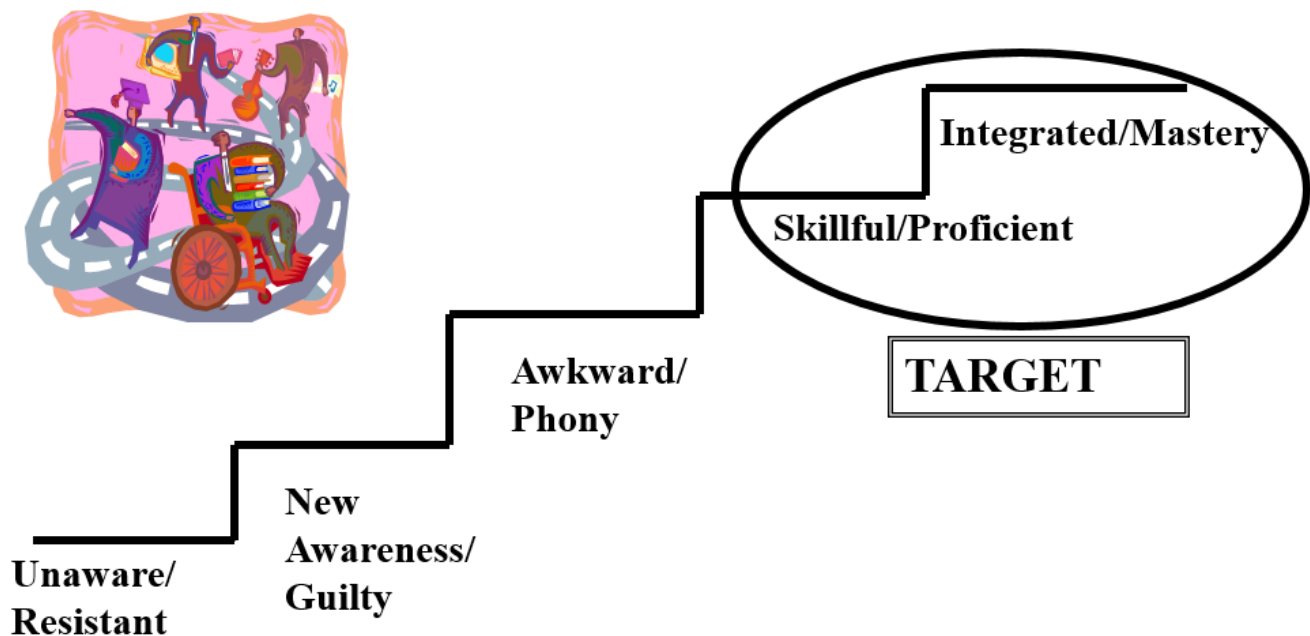
Basic Skills

No two conflicts are alike, so no single skill like listening or a procedure like mediation transforms every conflict. Conflict competence means you know when and how to invoke several skills and procedures. Skills listed earlier in Figure 3 probably don't appear earth-shattering. But they go against what most people have been taught since childhood. So, to become conflict competent you probably need to unlearn as you learn. That's not easy. Mastering conflict competence requires perseverance, practice, patience with yourself,

patience with failure, and reassurance. The brilliant cellist Pablo Casals, in his eighties or nineties, was asked why he continued intense, daily practice. He is reputed to have said, “I think I’m making progress.”

Figure 5 helps you visualize a normal learning curve. Whenever we learn something new, there are roadblocks, a step of progress, plateaus, steps backward, and even moments of discovery. I have been doing conflict work for about 50 years. I practice every day; I continually have internal conversations about the right word to use and the best timing, and I can report I’m still learning. Moral of the story? Try it and stay with it, and these skills will become your internal map for working with conflict. You will be a more effective leader.

Figure 5: How Learning Happens



Skill Set 1: Communication

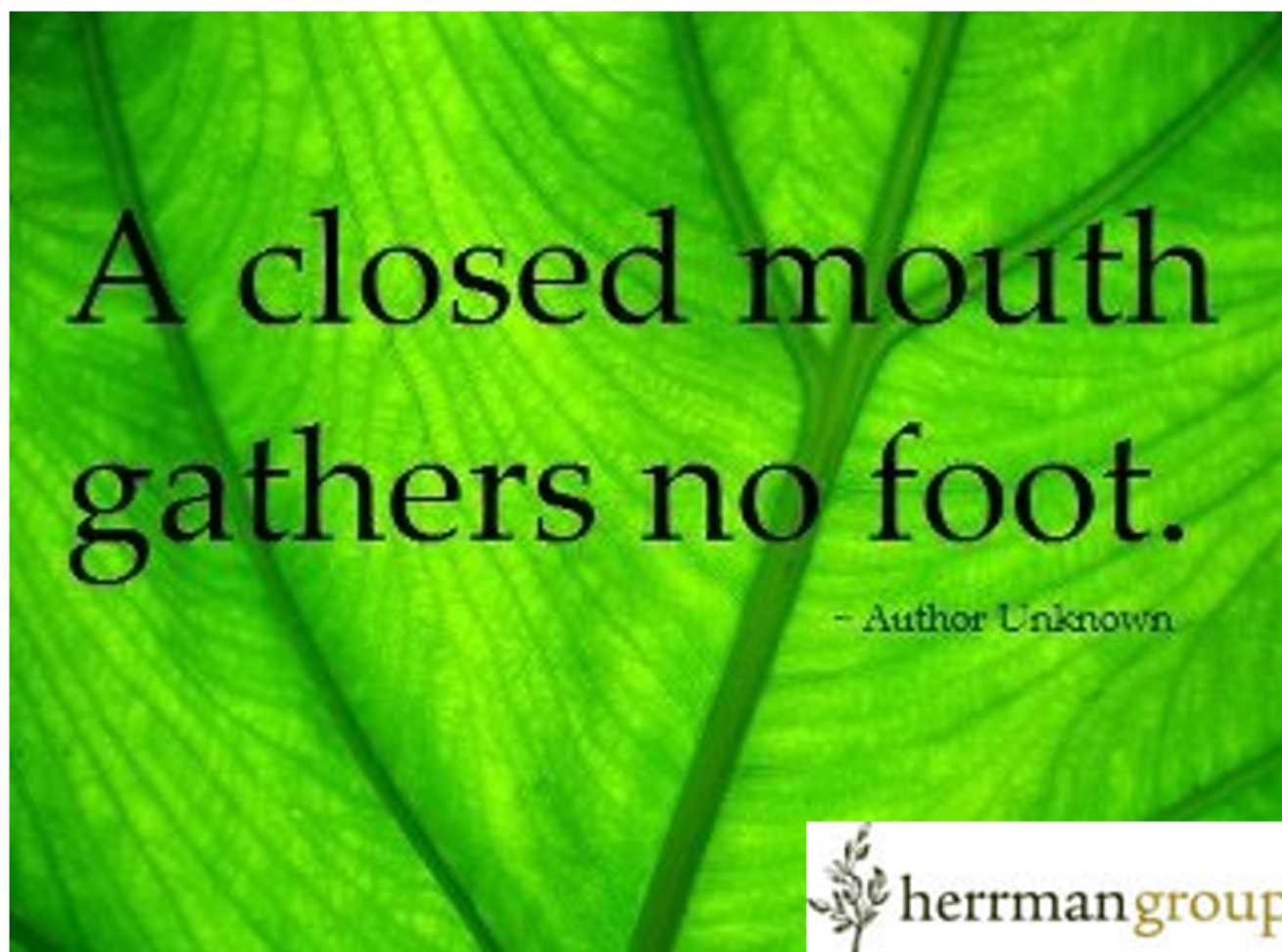
Do you ever wonder why we have two ears, a brain, and then a mouth? Good conflict work actively engages our ears and brain first. Note Figure 6: good conflict work starts with self-reflection. I mentioned intent several times. Drilling down on your personal needs, hot buttons, assumptions about a person or situation or on desired outcomes, frees you to make good, personal decisions about a fight. I’m smiling as I offer this example. I look at my sweet hubby and think “I really want a good marriage.” Now, decisions at home might be a bit different from a situation where I look at some over-the-top advocate and think: “I really don’t care.” See how self-awareness might shape conflict reactions?

Figure 6: Good Listening in a Nutshell

- **Tune yourself to you (build self-awareness), then...**
- **Tune others in (practice gentle, silent listening) and**
- **Stay open to what you hear**

Ears gather both factual and emotional information. Your brain processes both, although memories of salient events, especially painful ones, shape what you perceive and how you act. Hearing and validating both is central to effective conflict work. Next, your mouth allows you to gently elicit even more, clarifying information. Only later in a fight, talk about what's important to you. Both gathering and providing information contribute to success, but effective communicators listen before talking.

Figure 7: And then there is Silence (golden)



Listening is your best, secret tool for analyzing a conflict. Listening is a challenge for most of us, especially when it calls us to stop talking. Use *passive* and *active listening skills* to gather information. Passive skills include attending and passive prompts. Attending involves positioning your body, including your eyes, to convey respect and interest in what someone is saying. Passive prompts include little utterances like: “I see”, “right”, “um-hum”, or “sure.” Passive prompts signal a non-judgmental presence. If someone hesitates to talk, switch to passive prompts like: “I’m interested. Tell me.” Use silence strategically; as a general rule, people are uncomfortable with silence and will fill gaps in a conversation. This form of listening produces a great deal of information crucial to any analysis and decisions about next steps. Skilled listeners project genuine curiosity, patience, and open acceptance (no matter what they hear). Finally, talkers benefit from hearing their own narrative. Hearing often spurs edits and embellishments, creating more detailed accounts of events. All this information is pure gold.

Beware communication pitfalls that shut people down. Don’t project an attitude of “knowing” what’s going on. About 95% of the time our assumptions are wrong or incomplete. Avoid interjecting opinions about events. Ask direct questions. Don’t talk over someone or interrupt,

or offer solutions. These are ingrained habits, but avoiding them results in better information and trust.

There are several forms of *active listening*. One is especially helpful after the forms of passive listening noted above. The other works well later in conversations. For the first form, once passive prompts unlock the flood gates, people seek affirmations that you heard and understood what they said. A form of active listening summarizes narratives, either as literal restatements or quick paraphrases. They should confirm factual as well as emotional content. If you say you are paraphrasing and ask for feedback, your inquiry affirms while also giving permission for your conversational partner to correct and embellish. It is hard to mess up when you validate that it is OK for someone to talk.

As conversations conclude, active communication tools, like closed-end questions, confirm and clarify intentions to act. Examples might include: “So how does that work day-to-day?” “What kind of memo works best?” “What time should that happen?” “What is your deadline?” “How do you want funds transferred?” Closed-end questions shape good outcomes by making next steps explicit, even if that next step is to meet again.

Closed-end questions also help you redirect conversations. Perhaps someone wanders off topic. Use closed questions to bring people back to the original topic. Perhaps someone evades a difficult topic, or lies, or spirals out of control emotionally. Closed-end questions stop these conversational patterns nicely.

Talking is the flip side of listening. It seems silly to say, but talking lets you assert what you need and want. As you might expect, several assertion techniques help you state your needs in ways that invite others to listen. The goal of an effective assertion is not to drive your nemesis cowering into a corner, but to invite him and her to work with you to solve a mutual problem.

Good assertions are clear, concise, specific, and include invitations to the other person to engage in a conversation. Well-worded, well-placed, well-timed assertions move conversations in productive directions. You control that, just as you would great tennis shots or golf drives. Here are a few examples of things to say and do:

- Project your intent. Say something like: “I’m anxious for us to reach an agreement so we can move to other lines in the budget.”
- Talk about emotions. So, say something like: “Sorry, frustration is getting the better of me.”
- Talk about facts. You deal with concrete problems, so talk concretely, as in: “Exactly how much does the fee increase over five years?”
- Use statements that affirm a working relationship: “I care that we have worked together smoothly. I’m afraid for our party if our working relationship falls apart.”

Try to avoid the following (and know these are just the tip of the iceberg):

- Accusations: “You are lying.”
- Embellishments: “This legislation/policy is the worst piece of political pandering I have ever seen!”
- Vague descriptions of changes you want: “We need to pass laws that people want.”
“We need to work together better.”
- Talking over someone or interrupting.

The Power of Narrative

I use the word narrative a lot, because narratives are important to what you do. The term refers to how you think about your life and communicate those ideas to yourself and others. Whether consciously or not, people think and talk in stories. As a public official, narratives impact your work in at least three ways.

First, government budgets express the collective values of government officials. Narratives shape government spending and budget priorities (e.g., otherwise why hold campaigns for SPLOST funds?). More broadly, narratives like “we have to do away with deficit spending” or any tax-and-spend story, or “we live in a crime-ridden city vs. this is a great place to live”, or “terrorist plots destroy our way of life vs. lone wolf story”, shape public perceptions, formations of coalitions, as well as perceptions of facts, accuracy, and emotional hot buttons among officials and citizens.

Second, what candidates (and their surrogates) say during campaigns determines success or failure, and the impact is intentional. To illustrate that power, go back to Max Cleland’s defeat in 2003. Anyone remember the media narrative about his patriotism? That narrative destroyed a record of extraordinary service to this country while high-jacking the campaign, leaving him powerless to change the narrative or avoid election defeat.

Finally, media of all types highlight and manipulate narratives to sell while informing. All political “spin” manipulates narrative. Research affirms the power of a narrative, but when you know the effect, you can use active listening prompts to change or counter a narrative. This is a great tool in debates or interviews. But you leave yourself defenseless to challenge and turn a narrative when you lack awareness coupled with poor communication skills. What political narrative do you support: growth or no growth, public transportation or no public transportation, support for after-school programs or no expansion in education, etc.? What narrative would you support in the middle of a political fight (because that’s when your core narrative pops up)?

Skill Set 2: Conflict Analysis

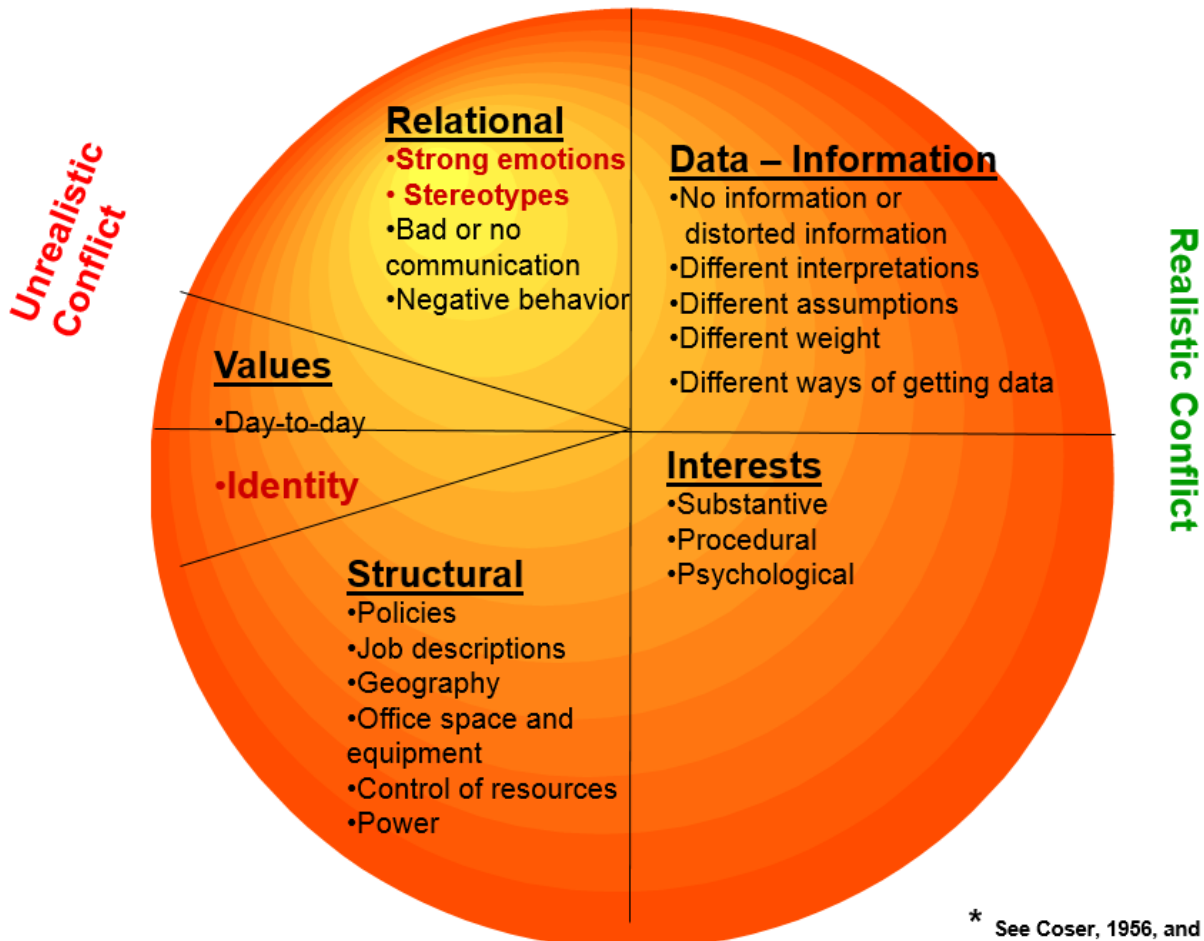
When someone tells you about a conflict, the story is a conflict narrative. If possible, conduct confidential interviews with anyone directly involved or capable of blocking productive outcomes. Interviews uncover a conflict’s history, the issues, coalitions, and associated

emotions. With all this information, begin to assess intervention options. This thoughtful approach greatly improves your potential for good results.

Conflict Components

Figure 8 displays what I listen for. Even initial conversations tell me if a conflict is *realistic* or *unrealistic*. Most conflicts are realistic: issues are negotiable, and people are not determined to crush each other. Data, structural, and interest conflicts involve negotiable issues. Unrealistic conflicts spring from strong emotions, sometimes spiraling into an intent to hurt someone. Identity-level values and highly emotional relational conflicts, two more sectors seen in Figure 8, are prone to be unrealistic. Unrealistic conflicts challenge all of us because highly emotional fights obscure resolvable issues embedded in the conflict. Gang fights and protracted wars between the religious sectors and cultures in the Middle East lean toward being unrealistic, violent and poorly focused on resolution from within. Emotional intensity escalates when people procrastinate, potentially shifting what might be a realistic conflict into an unrealistic fight. Only a few fights between political leaders in Georgia come close to unrealistic proportions.

**Figure 8
Conflict Issues***



* See Coser, 1956, and Wehr, 1979

Next, look inside the globe. While the partitions make description easier, conflicts rarely encompass just one dimension. For example, data conflicts may damage relationships while also involving administrative policies or local regulations. In fact, conflicts encompassing several dimensions are easier to resolve, offering negotiable options resulting in fewer impasses.

Of the dimensions indicated in Figure 8, *data conflicts* are common, realistic, and the easiest to resolve. Data conflicts pertain to glitches in how information moves (e.g., who talks to whom; access to and proficiency using information tools like computers or cell phones; the accuracy of information produced in reports or for budgets; interpretations of terms/narratives like “best practices,” “assets,” “needs,” “historic,” etc.). People wield power when they control information. Personnel fights and conflicts involving constituents or local businesses may begin as struggles over data (e.g., challenges to property assessments and taxes). Data fights also surface during financial transfers between departments or between governmental units. Intra- or intergovernmental conflicts may involve poor information sharing or deliberate distortions of information. Since data conflicts trigger lower levels of emotion, they leave few residual scars, while good resolution strategies create new data management or personnel systems that benefit future generations.

Structural conflicts are more difficult to convert to good outcomes because structures by nature (e.g., codes, policies, laws, charters, etc.) change at glacial speed, and more people must buy into change. I once mediated a personnel dispute involving people with different needs for social contact versus solitude in order to work effectively. Their desired outcome called for shutting a door between two offices. But that solution required modifying the fire code. Think of the work required to renegotiate interagency or intergovernmental agreements, and the paperwork required to amend codes, legislation, or policies. Changing governmental structures takes time and a great deal of good will.

Interest conflicts are the stock and trade of political life. These conflicts cover the substance of your decisions (e.g., negotiations over water rights and transportation corridors; prioritizing projects funded by special taxes, tax districts, or legal settlements like the state’s portion of the tobacco settlement or HOPE, etc.), procedures used (e.g., procedural maneuvers when meetings rely on Robert’s Rules of Order), and psychological advantages (e.g., pitching policy proposals to your “political base” to outsmart the opposition). Interest conflicts sometimes also trickle down to employees who think their jobs will be more secure, more lucrative, or that they may be promoted if they play “the game” skillfully. Most interest conflicts are realistic, but exhibit unrealistic characteristics when local elections or votes on local policies become a way of obliterating political rivals. The pivotal role and increasing toxicity of interest conflicts is illustrated by candidates who experience profound depression after losing an election.

Relational conflicts surface in government settings as personnel fights, fights between elected and appointed managers (sometimes involving department heads), and when elected leaders go after each other. Relational conflicts might start as realistic data,

structural, or interest fights. They can escalate to relational conflict when “spin” morphs into acerbic assaults. Media as well as opponents love to promulgate nasty campaigns. Unrealistic conflicts fester and erupt as accusations of discrimination, environmental or not-in-my-backyard disputes, and staff versus volunteer disputes in non-profits that advocate for social services. Good outcomes are possible, but calculated vitriol leaves residual scars.

Political leaders are human. Even though everyone expects spin, cutting narratives hurt when leaders don’t make the effort to discuss and listen respectfully in an environment offering little privacy to heal personal wounds. Decades ago, leaders spent quality time away from cameras and microphones socializing. In past decades politicians took great pride in going on fishing or hunting trips together, being members of the same clubs or churches, or visiting each other’s homes for private socials.

When *values conflict* erupt, listen so you distinguish between day-to-day values (e.g., whether someone is a rabid Braves or White Sox fan) versus values that define someone’s personal identity (e.g., whether someone is a conservative Christian or a devout Muslim). Working with day-to-day values is relatively easy, provided you approach the situation knowing that any value is important and not to be scorned. You can negotiate around day-to-day values, but identity values are non-negotiable. Anyone trying to “resolve” conflicts involving identity values adds fuel to the fire. Rely on procedures like a structured dialog and skills that create safe environments where people listen respectfully, talk candidly, and hopefully walk away with a deeper appreciation for the complexity of the issues. Houses of worship grapple with identity conflicts, but political arenas also face them as accusations of discrimination from cultural or economic minorities, or as environmental fights that destroy long-held family farms, or zoning fights over property with religious significance such as burial grounds.

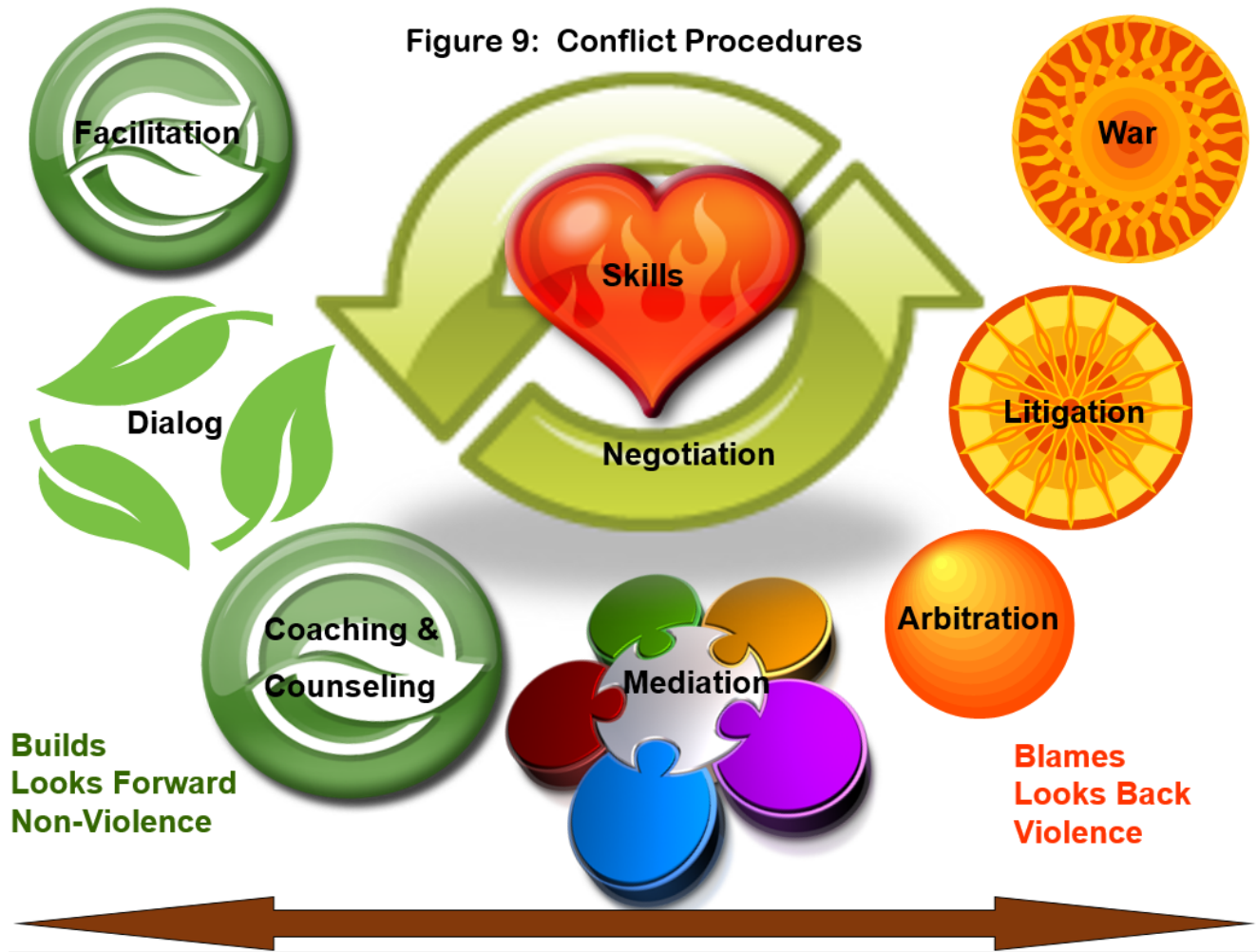
Skill Set 3: Problem-Solving

Employees are fighting (over data, relations, structures, etc.). Two department heads dig their heels in over procedures (structural fights) or money (resources). Neighborhood organizations protest garbage fees and changes in collection sites (structure and resources). Members of a governing authority snipe at each other during meetings covered by the press (hopefully reflecting realistic conflicts over negotiable issues). Your service delivery strategy, comprehensive plan, or local option sales tax negotiations hardly get off the ground. Affected governments do not see eye-to-eye, and representatives avoid meetings. What do you do? What procedures might help or inflame a situation? Here are some tips to help you match procedures to a conflict. A payoff for being conflict-competent comes when you are able to connect what your conflict analysis indicates to the right procedures.

Major Procedures

Figure 9 highlights procedures used to work with conflict. Each procedure labeled in Figure 9 covers a set of procedures that change somewhat in different contexts (i.e., facilitation used

to explore technical problems would be different from facilitation to accomplish strategic planning).



Reactive Versus Proactive Responses

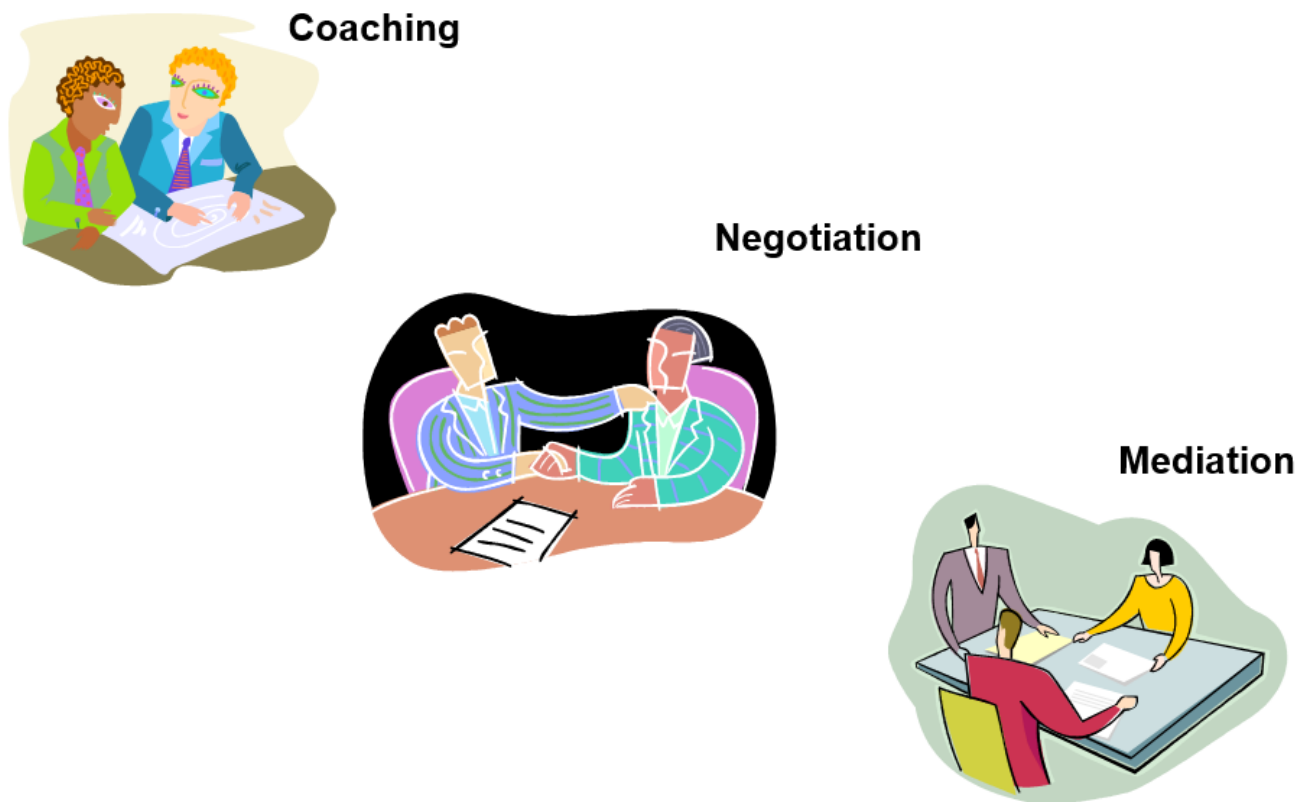
Before exploring intent along with pros and cons of various procedures, look at the arrow at the bottom of Figure 9. Right off the bat, some procedures work in some situations and not others. Procedures shaped by law - litigation, arbitration, and mediation, conducted in a litigation context - respond narrowly to certain fact patterns from the past. Where law restricts a procedure, emotions and non-legal events are not relevant. It is ironic that almost all conflicts spilling beyond law are propelled by emotion. Where law restricts a procedure, blame, retribution, a liability rule, and monetary awards result, not much else.

Mediation, conducted in contexts other than litigation, conflict coaching, dialog, and facilitation draw energy from narratives of past events to personalize and create commitment to future actions. Flexible solutions rule. Forward-thinking personnel directors initiate problem-solving among employees prior to developing a new classification system, a departmental merger, or a city/county merger. Planning directors orchestrate facilitation procedures that accommodate community-wide discussions of future development and creation of planning maps. Dialogues work nicely to prevent polarization over impending

shake-ups in school district maps, especially where demographic shifts pit parents of different ethnic origins against each other. By advantaging proactive responses, leaders and citizens have adequate time to research, discuss, and recommend.

Figure 9 shows a heart surrounded by arrows marked negotiation. *Skills* lie at the heart of all conflict work. *Negotiation* encompasses those skills and drives every procedure noted here. Negotiation relies on good communication between people as they go about solving problems. Figures 10 through 13 provide visuals for a few of the variations in procedures as different as co-workers working on issues or hundreds of people discussing highly technical problems affecting multiple states or a region of a state.

Figure 10: Table Shapes and Seating Make a Difference



Litigation and arbitration

No municipal official wants to learn about problems when they are notified of pending litigation. Litigation signals that a major affront occurred and was generally not handled well. In some jurisdictions, the standard operating procedure for offices of legal affairs and human resource departments is to stonewall when employees allege discrimination or someone is badly hurt at work. A few commercial enterprises have broken this mold and have produced happier customers, better public reputations, and lower litigation costs. But examples of such forward, compassionate, and cost-effective thinking are few and far between.

As noted above, procedures related to law narrow the scope of a conflict. Each requires demonstrations of legal transgressions, while other conflict characteristics remain moot. Lawyers, judges, and arbitrators (who serve in a slightly less formal capacity) decide outcomes - almost always monetary settlements - based on case precedent. Emotional scars are left to heal on their own.

I classify litigation and arbitration as forms of violent confrontation because both procedures punish people even if they win. Litigants turn their lives over to their attorneys for years. The bureaucracy is impenetrable and unresponsive to individual needs. Litigants rarely talk to each other, and opposing counsels strongly discourage communication unless all attorneys are present. Even given the punishment involved, I still recommend both procedures when legal issues are on the table or where people need protection from violent attacks.

Mediation adds disinterested third parties to a negotiation. Mediators encourage and manage conversations about a conflict. Unlike judges and arbitrators, they never offer legal advice or decide outcomes of a conflict. Their job is to help participants create and select best outcomes. Figures 10-12 show various configurations. The procedure adapts well to relational, data, structural, and interest-based disputes, including those focusing on a legal dispute. So, employee fights or regional water disputes are both fair game. I locate mediation in the middle of Figure 9 because mediators rely on numerous styles that reflect the reason for the mediation and a mediator's preferences. Resolution is the clear intent, so I refrain from using this procedure for value or identity conflicts.

Figure 11: Mediation and Facilitation

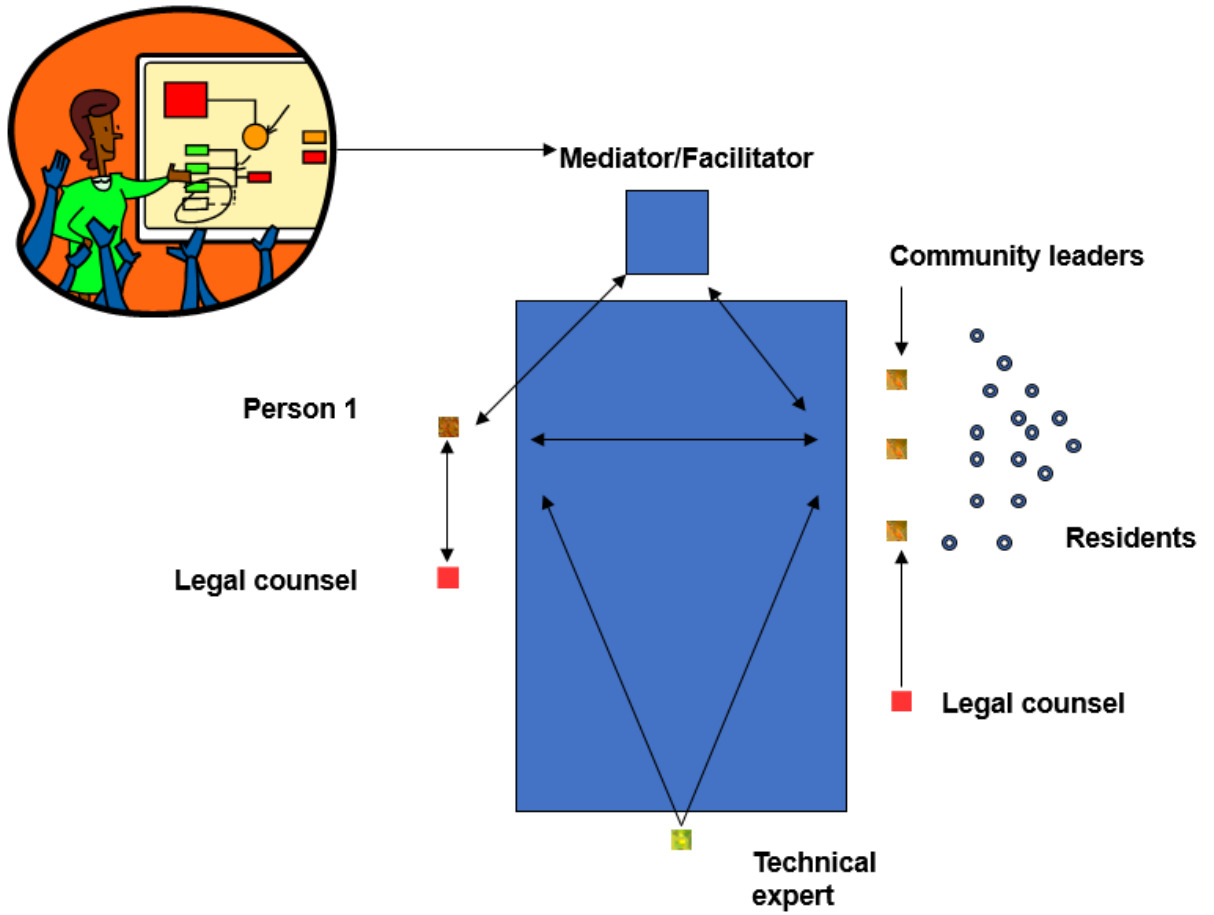
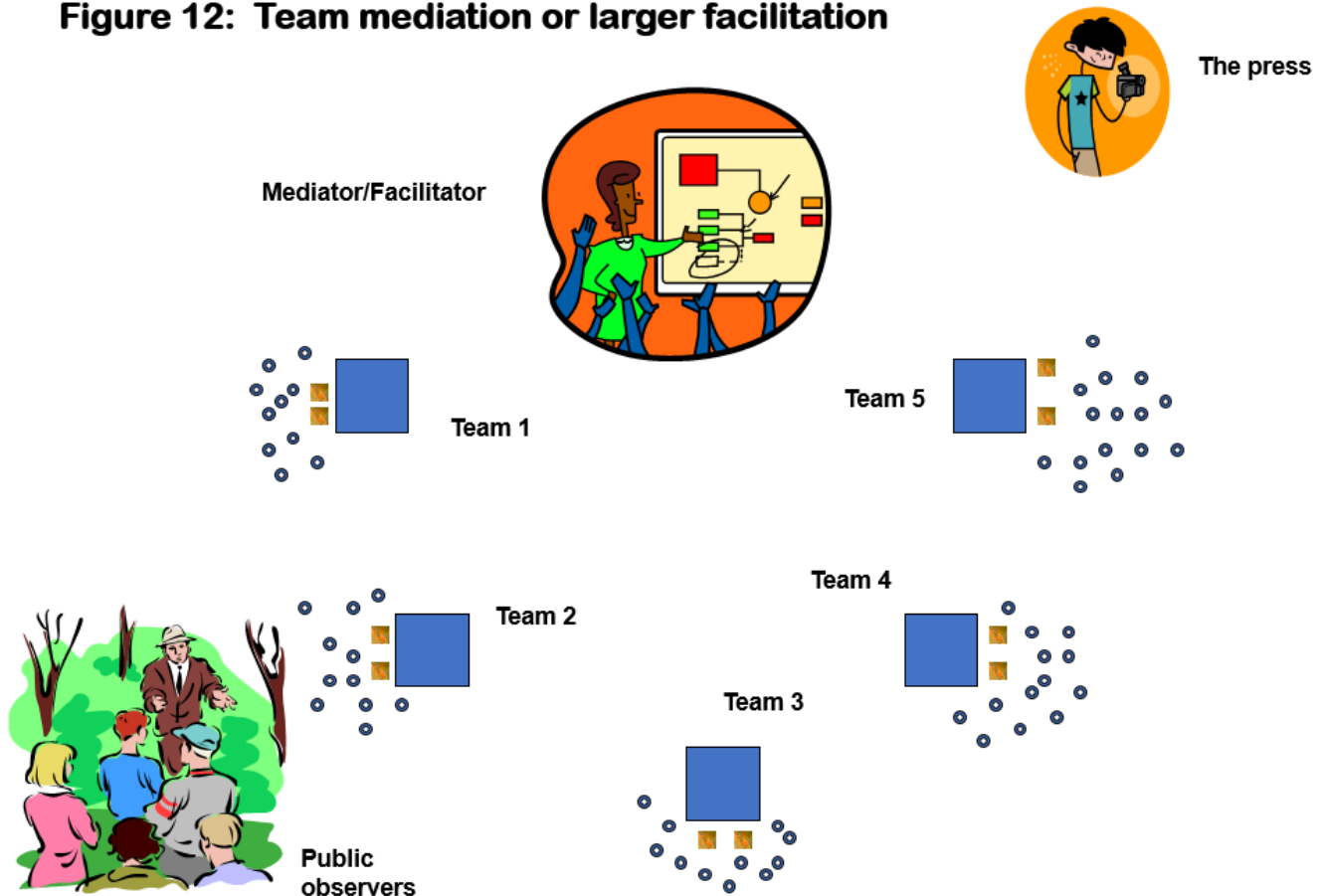


Figure 12: Team mediation or larger facilitation



Conflict coaching applies when people won't or can't negotiate face-to-face (see Figure 10). Coaching blends business coaching with conflict skills to guide problem solving. Coaches meet individual clients eight or more times for about an hour. The extended time frame allows for a great deal of learning. Clients explore the narrative of a bad situation and then explore alternative ways forward. They explore their emotions and learn new ways to solve problems. Coaches prepare clients for third-party assistance when the client is comfortable confronting other people involved in the conflict. Coaching is appropriate for highly emotional conflicts based in relational, interest, and value conflicts as well as those grounded in structures.

Dialog works beautifully when conflicts relate to intense value disputes. I always anticipate suspicion, raw nerves, and high anxiety when dialogs begin. All this is overcome when groups are relatively small (approximately 5 to 15 people, see Figure 13), and a structured format creates emotional safety. A structured format supports focused listening, heart-felt statements about feelings and worldviews, and perceptive questions about those worldviews. Escalated cycles of anger and suspicion stop when people hear others speak passionately about core values. If nothing more than listening and talking happens, you have a great outcome. I have watched former enemies cry and hug leaving a dialog. That is progress.

Figure 13: Dialog



Facilitation

When a conflict is over structural change, and tension is low, facilitation is a perfect procedure to use. Like mediation, facilitation adapts easily to small and larger group settings (see Figures 11 and 12), accommodating a small number of people or several teams and hundreds of participants. For example, small work teams within a department might learn facilitation and then use their skills to check on their progress meeting departmental goals. Working with an external facilitator, departments can update strategic plans.

Figure 11 shows how I use a facilitation or mediation (depending on levels of polarization) to address zoning and planning disputes. Figure 12 maps out a multi-team approach that accommodates multiple government units, hundreds of participants, the press, the public and legal professionals. This larger model is great for discussions of complex issues such as service delivery plans, environmental disputes, divisions of sales tax revenues, and comprehensive land-use plans.

Must You Choose?

No. The interviews help you (alone or with a consultant) decide whether one procedure would suffice or if multiple procedures would better address the situation. You do not have to

limit your choices.

Leading an Intervention

You are involved in conflicts when mayors and councils deliberate; in oversight of the city administrator or manager's work; in dealings with elected or appointed leaders of other cities, counties, or authorities; and even in dealings with your local legislative delegation. This chapter describes skills that help you work with conflict. But should you step into the role of intervener? The following questions might help you decide:

- Do you have enough clout to make meetings happen?
- Do you have “thick skin”?
- Will your position allow you to be impartial?
- Can you legally and emotionally delegate solutions to others?
- Do you have time to focus on the people and the conflict?
- Is the conflict “bigger” than your capacity to manage a problem-solving process?

In Summary

Every issue, skill, or procedure discussed in this chapter applies to conflicts within and between governmental bodies. If a mayor and council are experiencing difficulties, effective conflict work may happen with coaching, one-on-one mediation, or a series of smaller mediations. Difficulties between elected bodies might rely on team mediation or facilitation. Statewide or regional disputes, such as over water rights, might benefit from facilitation or mediation procedures. The choice is yours. Begin working with each of these skill sets and then decide how you want to get involved. There are no limits to how a mayor and council, the city manager or administrator, or city employees can address conflict.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Three-MANAGEMENT-of-MUNICIPAL-GOVERNMENT/Annexation.aspx

Growing and prosperous Georgia cities create a growing and prosperous Georgia. Although cities comprise only 8.9% of Georgia's land area, approximately 43% of the state's population lives in cities. And that number is growing because Georgia's cities provide value and responsive local government to residents and businesses alike. Georgia cities are home to 64.7% of the commercial property, 49% of the industrial property and 57.9% of all tax-exempt property in the state. Despite the fact that over half of all tax-exempt property in the state is located within cities, the property in cities still generates greater taxing power per square mile than property in unincorporated areas (2016 [Georgia Department of Revenue Tax Digest Consolidated Summary](#)). An even more remarkable statistic is that the economies of Georgia's cities generate 89% of the state's gross domestic product (calculated based on 2016 data from the [Bureau of Economic Analysis](#)).

State law recognizes the importance of growing cities to the economic health of Georgia by stating that "municipal corporations are created for the purpose of providing local governmental services and for ensuring the health, safety, and welfare of persons and the protection of property in areas being used primarily for residential, commercial, industrial and institutional purposes" (O.C.G.A. § 36-36-51(1)). Because one reason cities exist is to provide urban services to densely populated or developing areas, it follows that cities be allowed to grow to accommodate more intense development as well as property owners and citizens that wish to enjoy the benefits of city services. Cities also provide a unique sense of place and community identity.

Annexation is typically driven by property owners and citizens living in unincorporated areas that wish to have their property or residence added to a neighboring city's jurisdiction and thus receive municipal services and other benefits of being in the city limits. Although cities may provide some services outside of their territorial limits, areas added to a city through annexation receive the benefit of all applicable municipal services.

While some annexations occur because an adjacent city provides services not available in the unincorporated area, in many instances property owners desire annexation because a city can provide a heightened or improved level of service. For example, many city residents enjoy better ISO ratings and consequently lower homeowner's insurance rates because of the enhanced response times offered by a municipal fire department. Some residents wish to be served by a municipal police department that may have a better officer to resident ratio, smaller patrolling area, and better response times.

In addition to enhanced services, many residents wish to take advantage of the efforts that cities have made to create more livable communities. Initiatives in many cities promote active downtowns. Infrastructure like sidewalks and parks allow residents to enjoy a higher quality of life. As a result of these initiatives and heightened service levels, annexation often results in raising the annexed property's value.

Finally, many residents enjoy having access to a smaller and more responsive local government. Especially in the metro Atlanta area, being able to rely on a mayor and council that only represent a few thousand people allows for decision-making that respects and is responsive to the needs of individual neighborhoods.

Methods of Annexation

There are five methods of annexation. For additional details on annexation, the full text of Georgia's annexation statutes, case summaries, checklists and other materials on annexation, please see GMA's [Growing Cities, Growing Georgia: A Guide to Georgia's Annexation Law](#).

100% Method

The 100% method allows property owners of all the land in an area to seek to have their property annexed into an adjacent city by signing a petition (O.C.G.A. § 36-36-20 et seq.). It is up to the city council to determine whether to annex the property or not. However, counties have the power to prevent the expansion of a city into their county for the first time using the 100% method (O.C.G.A. § 36-36-23(b)).

Land can also be deannexed from a city in response to a petition signed by all of the owners of the land seeking deannexation. It is prohibited for such a deannexation to create an unincorporated island. The decision whether to deannex an area is treated the same as a decision to annex by the 100% method and left to the discretion of the municipal governing authority.

60% Method

This method allows for petitioners representing owners of at least 60% of the property in the area to be annexed plus at least 60% of the resident electors in the area to be annexed to sign a petition to have their property annexed into an adjacent city. This method is available to cities with populations over 200 persons. The municipality is required to prepare a plan for servicing an area to be annexed and to hold a public hearing before adopting an ordinance annexing the area covered by the petition (O.C.G.A. § 36-36-30 et seq.; *City of Riverdale v. Clayton County*, 263 Ga.App. 672, 588 S.E.2d 845 (2003)).

Resolution and Referendum

The resolution and referendum method provides for an election to be held in an area to determine if the area should be annexed. This method requires an agreement between the

city and the county providing services in the area and a referendum of voters residing in the area to be annexed (O.C.G.A. §§ 36-36-57, -58; O.C.G.A. § 36-36-54(b)(4)). Municipalities may annex contiguous areas intended to be developed for “urban purposes” as well as areas in between the existing city limits and areas to be developed for “urban purposes.” The municipality must prepare a plan for servicing the area to be annexed and hold a public hearing prior to the referendum. An area intended to be developed for “urban purposes” is defined as an area with a total resident population equal to at least two persons for each acre of land and an area subdivided into lots and tracts such that at least 60% of the total acreage consists of lots and tracts five acres or less in size and such that at least 60% of the total number of lots and tracts are one acre or less in size (O.C.G.A. § 36-36-54(c)-(d)).

Island Annexation

Municipalities with a population of 200 or more may unilaterally annex contiguous “unincorporated islands” (O.C.G.A. § 36-36-90 et seq.). “Unincorporated islands” are areas completely surrounded by one or more cities. To be eligible for this type of annexation the unincorporated island must have been such an island on January 1, 1991. All or any portion of such an unincorporated island may be annexed simply by the passage of an ordinance by the city council. The intent behind this authority is to allow cities to alleviate voting and service delivery issues caused by such areas.

Local Act of General Assembly

In addition to annexation by home rule, the Georgia General Assembly may change a municipality’s boundaries and annex property into the municipal limits by enacting local legislation. Where more than 50% of an area proposed for annexation by local act is “used for residential purposes” and the number of residents to be annexed exceeds 3% of the city’s current population or 500 people, whichever is less, a referendum on annexation must be held in the area to be annexed. “Used for residential purposes” means that the property is a lot or tract five acres or less in size on which is constructed a habitable dwelling unit (O.C.G.A. § 36-36-16).

Land can also be deannexed from a city by the legislature. Note that introduction of a local act of the General Assembly must be preceded by notice to the municipality affected and advertisement in the newspaper (O.C.G.A. § 28-1-4).

Procedural Considerations

Once property has been annexed, the city must file an identification of the annexed land with the Department of Community Affairs (DCA) and the county within 30 days of the last day of the quarter during which the annexation becomes effective (O.C.G.A. § 36-36-3; O.C.G.A. § 36-36-38). The city must also send to DCA and the county a letter stating the city’s intent to add the annexed area to maps provided by the United States Census Bureau during the next regularly scheduled boundary and annexation survey of the municipality (O.C.G.A. § 36-36-3(a)(3); O.C.G.A. § 36-36-3(g)). Additionally, the city must send to DCA a list identifying

roadways, bridges, and rights-of-way on state routes that are annexed, including total mileage annexed (O.C.G.A. § 36-36-3(a)(4)). The addition of this information to the official census map is important for a variety of purposes, including redistricting.

Relationship with Counties

Service Delivery

Although annexation primarily concerns residents seeking annexation and the municipality being petitioned, counties do have some potential interests. Some counties have claimed that annexation places a burden on county governments by depriving them of revenue, making land use decisions difficult, or interfering with the provisions of service delivery. While municipal property always remains on county property tax rolls, annexation of businesses and establishments that serve alcohol will result in occupations taxes and alcohol license fees being paid to the city. Counties are able to continue to collect property taxes on property that is annexed, but they are freed from the costs associated with providing services that will be provided by the city.

Every county and city must enter into a service delivery strategy agreement in order to address which local government will provide each service, where it will provide each service and how each service will be funded (O.C.G.A. § 36-70-23). These agreements should also address double-taxation of municipal residents, duplication of service and any changes in service delivery in response to annexation. Furthermore, cities and counties may enter into intergovernmental agreements and have in place mutual aid agreements that establish respective roles for service delivery.

Zoning, Land Use, and Dispute Resolution

Property annexed into a city must be rezoned by the city (Ga. Const. Art. IX, Sec. II, Par. IV). If the city and county have a common zoning ordinance with respect to zoning classifications, which is a rare occurrence, the city can adopt a zoning ordinance stating that all annexed property shall be zoned by the municipality for the same use for which it was zoned immediately prior to annexation. Otherwise, the city must complete the requirements for rezoning the property, except for the final vote on rezoning, prior to adopting an annexation ordinance or resolution (O.C.G.A. § 36-66-4(d) et seq.).

When a municipality receives a petition for annexation, it must provide a copy to the county, along with the proposed zoning and land use of such area, by certified mail or overnight delivery (O.C.G.A. § 36-36-111). If the zoning or land use of an area to be annexed will be changed immediately after the annexation and such proposed change would impose a material increase in burden upon the county due to the proposed change in land use or zoning, proposed increase in density or infrastructure demands related to the proposed change in land use or zoning, the county governing authority may file an objection to the

annexation (O.C.G.A. § 36-36-113(a)). The county governing authority must vote in an open session to object to the annexation and provide evidence of any financial impact forming the basis for the objection (O.C.G.A. § 36-36-113(c)).

In order for an objection to be valid, the proposed change in zoning or land use must:

- Result in a substantial change in the intensity of allowable use of the property or a change to a significantly different allowable use, or
- Significantly increase the net cost of infrastructure or significantly diminish the value or useful life of the capital outlay which is furnished by the county to the area to be annexed, and
- Differ substantially from the existing uses suggested for the property by the county's comprehensive land use plan or permitted for the property pursuant to the county's zoning ordinance or its land use ordinances (O.C.G.A. § 36-36-113(d)).

State law requires the appointment of an arbitration panel (comprised of five members) by DCA not later than 15 days after the city receives the county's objection. This panel must render a binding decision within 60 days of appointment and must consider certain factors in rendering their decision. The county is required to provide supporting evidence that its objection is consistent with its land use plan and the pattern of existing land uses and zonings in the area of the proposed annexation. If the panel rules on zoning, land use, or density conditions, its findings will be recorded in the deed records of the subject property. The arbitration panel will dissolve ten days after it discloses its findings. The county will pay 75% of the cost of the arbitration, including the costs incurred by the city and property owner. The arbitration panel will apportion the remaining 25% between the affected parties (O.C.G.A. § 36-36-114 et seq.). The decision of the arbitration panel may be appealed to superior court (O.C.G.A. § 36-36-116). After the final resolution of any objection, whether by agreement of the parties, act of the panel, or any appeal from the panel's decision, the terms of the arbitration panel's decision will remain valid for a period of one year. The annexation may proceed at any time during the one year time period without any further right of objection by the county. Following the annexation and zoning in accord with the panel's decision, the municipal government cannot change the zoning, land use, or density of the annexed property for one year (O.C.G.A. § 36-36-117). Likewise, the county is prohibited from changing the zoning, land use, or density of the property proposed for annexation for one year if the proposed annexation is abandoned (O.C.G.A. § 36-36-118).

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Three-MANAGEMENT-of-MUNICIPAL-GOVERNMENT/Contracting,-Purchasing,-and-Sale-of-Municipal-Pro.aspx

A city's authority to contract comes primarily from its charter and from state laws. The municipal charter generally grants to the mayor and council, acting as the governing body, the power to enter into contracts for the transaction of municipal business. Usually neither the mayor nor the council acting alone has the authority to bind a municipality to a contract except in the case of a veto override. Some charters vest in a city manager the power to enter into certain types of contracts or contracts up to a certain dollar amount.

A city may enter a contract or incur a liability only if its charter or some other law of the state authorizes it to do so. A contract beyond the scope of a city's corporate powers is void. However, if a city had jurisdiction over a subject matter, it has implied power to contract in regard to the subject matter. For instance, if a city can provide solid waste collection within the city, it can also contract with a private company to perform that service on behalf of the city. In like manner, a city cannot do by contract that which it otherwise lacks the authority to do.

Not only is a municipality restricted from contracting except where it has authority, its power to contract is also limited. If the city ignores one of these limitations, the contract may be deemed unlawful, illegal, or unauthorized. Examples of illegal contracts are:

- contracts tending to lessen competition or to encourage a monopoly (Ga. Const. Art. III, § 6, ¶5(c))
- contracts that, if carried out, would increase the municipality's debt beyond constitutional debt limitations (Ga. Const. Art. IX, § 5, ¶1; *Fairgreen Capital, LLC v. City of Canton*, 335 Ga. App. 719, 782 S.E.2d 46 (2016); *Bauerban v. Jackson County Board of Commissioners*, 598 S.E.2d (2004); *Barkley v. City of Rome*, 381 S.E.2d 34 (1989))
- contracts binding the governing authority or its successors so as to prevent free legislation regarding "governmental" functions (O.C.G.A. § 36-30-3; *Unified Gov't. of Athens-Clarke County v. Stiles Apts.*, 295 Ga. 829, 764 S.E.2d 403 (2014); *City of McDonough v. Campbell*, 289 Ga. 216, 710 S.E.2d 537 (2011); *Greene County School District v. Circle Y Construction, Inc.*, 291 Ga. 111, 728 S.E.2d 184 (2012); *Barr v. City Council of Augusta*, 206 Ga. 750, 58 S.E.2d 820 (1950); *City of Fayetteville v. Fayette County*, 171 Ga. App. 13, 318 S. E.2d 757 (1984); *City of Power Springs v. WMM Properties*, 253 Ga. 753, 325 S.E.2d 155 (1985); *City of Atlanta v. Brinderson Corporation*, 799 F.2d 1541 (11th Cir. 1986))
- contracts in violation of "public policy" although there may be no statute prohibiting them (O.C.G.A. § 13-8-2; *Trainer v. City of Covington*, 183 Ga. 759, 189 S.E. 842 (1937); *Frazer v. City of Albany*, 245 Ga. 399, 265 S.E.2d 581 (1980)), and

- contracts promoting “self-interest” (O.C.G.A. § 36-30-6; *Story v. City of Macon*, 205 Ga. 590, 54 S.E.2d 396 (1949)).

An illegal contract with a municipality is considered void forever; it does not bind the municipality even if there has been complete performance on the part of the other party (*City of Baldwin v. Woodard & Curran, Inc.*, 293 Ga. 19, 743 S.E.2d 381 (2013); *City of Hogansville v. Farrell Heating Co.*, 161 Ga. 780, 132 S.E. 436 (1925); *City of Warm Springs v. Bulloch*, 212 Ga. 149, 91 S. E. 2d 13 (1956)). A contract that is void because it is illegal cannot be ratified. Acceptance or use by the municipality of any benefits furnished under the void contract will not make it valid (*H.G. Brown Family L.P. v. City of Villa Rica*, 278 Ga. 819, 607 S.E.2d 883 (2005); *Town of Wadley v. Lancaster*, 124 Ga. 354, 52 S.E. 335 (1905); *Mayor and Council of Hogansville v. Planters Bank*, 27 Ga. App. 384, 108 S. E. 480 (1921); *Hardy v. Mayor and Council of Gainesville*, 121 Ga. 327, 48 S.E. 921 (1904)). This rule is based on the principle that it is the duty of any person contracting with a municipality to see that the contract strictly complies with provisions of the law limiting and prescribing the municipality’s powers (O.C.G.A. § 45-6-5; *Wiley v. City of Columbus*, 109 Ga. 295, 34 S.E. 575 (1899); *Ingalls Iron Works Co. v. City of Forest Park*, 99 Ga. App. 706, 109 S. E.2d 835 (1959); *City of Jonesboro v. Shaw-Lightcap, Inc.*, 112 Ga. App. 890, 147 S.E.2d 65 (1966)).

One exception to the above rule relates to a void contract that could have been but was not properly authorized. If the representative officials who have the right to contract make such a contract, and if they have knowledge of the work being done, and thereafter accept the benefits on behalf of the municipality, an implied ratification will result which will render the municipality liable for the reasonable value of the goods or services received (*City of Gainesville v. Edwards*, 112 Ga. App. 672, 145 S.E.2d 715 (1965); *City of Dallas v. White*, 182 Ga. App. 782, 357 S.E.2d 125, *cert. denied* (1987)).

Generally contracts for professional services involving particular knowledge, such as those engaging the services of attorneys, auditors, or architects, are not subject to bidding requirements. If no charter provision, ordinance, or state law prevents it, a municipality is generally free to negotiate such contracts as it sees fit.

Conflict of Interest

Municipal officials may not use their office for private gain. Georgia law provides that “it is improper for a member of a city council to vote upon any question brought before the council, in which he is personally interested” (O.C.G.A § 36-30-6). The Georgia courts have applied this statute to municipal contracts, and they have relied on it to void contracts:

- between a mayor and council and a private corporation in which one of the councilmen owned stock (*Hardy v. Mayor and Council of Gainesville*, 121 Ga. 327, 48 S.E. 921 (1904); *Mayor and Council of Hogansville v. Planters Bank*, 27 Ga. App. 384, 108 S.E. 480 (1921))

- between a municipality and a company that was represented by the law firm of which one of the councilmen was a member (*Cochran v. City of Thomasville*, 167 Ga. 579, 146 S.E. 462 (1928)), and
- between the city and the mayor even though the mayor neither voted nor attempted to influence members of the council (*Trainer v. City of Covington*, 183 Ga. 759, 189 S.E. 842 (1937); *Montgomery v. City of Atlanta*, 162 Ga. 534, 134 S.E. 152 (1962)).

In addition to being a violation of public policy and thus voidable, such contracts tainted by “personal interest” may also be criminal violations. Municipal officials commit the offense of bribery by directly or indirectly soliciting, receiving, or accepting anything of value by inducing the reasonable belief that the giving of the thing will influence his or her official action (O.C.G.A. § 16-10-22). The Georgia Code contains the following provision:

Any employee, appointive officer or elective officer of a political subdivision...or agency thereof who for himself or in behalf of any business entity sells any real or personal property to

1. the employing political subdivision
2. an agency of the employing political subdivision
3. a political subdivision for which local taxes for education are levied by the employing subdivision, or
4. a political subdivision which levies local taxes for education for the employing political subdivision

shall, upon conviction, be punished by imprisonment for not less than one or more than five years (O.C.G.A. § 16-10-6).

The above provision does not apply to sales of personal property totaling less than \$800 per calendar quarter or sales of personal property made pursuant to sealed competitive bids. The exception for quarterly sales of less than \$800 in personal property exists to ensure that cities do not waste time, money, and manpower driving to another jurisdiction for routine purchases just because the mayor or a member of the city council owns the local hardware store or gas station. Sales of real property are permitted when a disclosure of the personal interest has been made to the grand jury or probate judge at least 15 days prior to the date of the agreement. Additionally, sales made in accordance with the restrictions of the statute and otherwise valid are enforceable and do not subject the parties to civil liability. However, any municipal official who sells real or personal property to his or her municipality outside the limitations of this statute could have the contract invalidated and may face criminal charges.

To foster public trust in government, city officials must avoid all situations in which their public actions may be affected by or come into conflict with their personal interests. In instances when this is impossible, they should disqualify themselves from acting on such matters.

Types of Contracts

Among the various types of contracts that cities enter into are (1) municipal road contracts, (2) public works contracts, (3) intergovernmental contracts, (4) energy savings performance contracts, and (5) public-private partnerships for water reservoirs, facilities, and systems. The following is a discussion of these five specific types of contracts and some information on what the law requires regarding a successful bidder.

Municipal Road Contracts

Contractual Authority

A municipality is authorized to contract with any person, the federal government, the state, or any state agency, municipality, or county for the construction, maintenance, administration, and operation of municipal roads and related activities. A municipality may perform roadwork with its own forces or with prison labor (O.C.G.A. § 32-4-91 et seq.). Any contract for work on the municipal road system must be in writing and approved by resolution of the municipal governing authority and entered on its minutes (O.C.G.A. § 32-4-111).

Limitations on Authority to Negotiate Contracts

Municipalities are prohibited from negotiating road contracts except those:

- involving the expenditure of less than \$200,000
- with a state agency or political subdivision with which it is authorized to contract
- with a railroad or railway company or publicly or privately owned utility as authorized by applicable law
- for engineering or other kinds of professional or specialized services
- for emergency maintenance requiring immediate repairs to a public road, including but not limited to bridge repairs, snow and ice removal, and repairs due to flood conditions, or
- as otherwise expressly authorized by law.

Additionally, a road contract of more than \$20,000 but less than \$200,000 cannot be awarded unless at least two estimates have been submitted (O.C.G.A. § 32-4-113).

Bidding Requirements

Generally, municipal road contracts are let by public bid. The city is required to advertise for competitive sealed bids in a local publication (usually the newspaper in which sheriff's sales are advertised) once a week for two weeks. The first advertisement appears two weeks prior to the opening of the sealed bids and the second follows one week later (O.C.G.A. § 32-4-114 et seq.). The advertisement must include information specified by law.

The city may require each bidder to pay a reasonable sum to cover the cost of the bid proposal form, the contract, and its specifications. The city may also mandate that no bid will be considered unless accompanied by a proposal guaranty payable to the municipality to ensure that the successful bidder will execute the contract on which he or she bids (O.C.G.A. § 32-4-116 et seq.).

Public Works Construction Projects

The Georgia Local Government Public Works Construction Law establishes uniform requirements for local government public works construction projects (O.C.G.A. § 36-91-1 et seq.). The law requires contracts for such projects to be awarded in an open and competitive manner while authorizing the use of current construction industry practices to provide increased flexibility to local governments that are constructing public facilities. The law defines public works construction as “the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any public real property other than those projects covered by Chapter 4 of Title 32 or by Chapter 37 of Title 50. Such term does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property or any improvements or installations performed as part of an energy savings performance contract” (O.C.G.A. § 36-91-2(12)).

Exemptions

Not all construction contracts are subject to the public works construction law. With certain exceptions, the requirements of the law do not apply to contracts for the following projects:

1. Public works construction contracts costing less than \$100,000
2. Projects performed using inmate labor
3. Projects involving the expenditure of federal funds and requiring compliance with federal laws or regulations regarding procedures for entering into public works construction contracts
4. Projects necessitated by emergencies or natural disasters
5. Road construction projects
6. Projects self-performed by the governmental entity
7. Sole source procurement, or
8. Professional services (O.C.G.A. § 36-91-22).

Advertising Requirements

The public works construction law establishes minimum requirements for advertising public works construction opportunities. The contract opportunity notice must be posted conspicuously in the governing authority’s office, and it must be advertised in either the legal organ of the county or by electronic means on an Internet website of the governmental entity or on a website identified by the governmental entity. The contract opportunity must be advertised at least two times with the first advertisement published at least four weeks prior to bid/proposal opening date and the second advertisement at least two weeks after the first ad. The advertisement must include enough details to enable the public to know the extent

and character of the work to be done. All notices must advise potential bidders/offerors of any mandatory prequalification requirements, any pre-bid conferences, and/or any federal requirements (O.C.G.A. § 36-91-20(b)).

Prequalification of Bidders and Offerors

The public works construction law allows cities to adopt, in their discretion, a process for mandatory prequalification of prospective bidders or offerors (O.C.G.A. § 36-91-20(f)). A prequalification process allows a city to establish minimum criteria that potential bidders or offerors must meet in order to become eligible to submit a bid or proposal on a public works construction project. While local governments are not required to use a pre-qualification process, those who choose to do so must adhere to the following requirements contained in the public works construction law:

1. Criteria for prequalification must be reasonably related to the project or the quality of work. The criteria should not be designed to eliminate all prospective bidders/offerors but one.
2. The criteria for prequalification must be available to any prospective bidder or offeror requesting such information.
3. The process must include a method of notifying prospective bidders or offerors of the criteria for prequalification. All required notices of advertisement must advise potential bidders/offerors of the mandatory prequalification process (O.C.G.A. § 36-91-20(b)).
4. The prequalification process must include a procedure for a disqualified bidder to respond to his or her disqualification to a representative of the city, although this provision does not require the city to provide a formal appeal procedure (O.C.G.A. § 36-91-20(f)(4)).

Competitive Sealed Bids and Proposals

Cities must utilize one of two methods when soliciting public works construction contracts: competitive sealed bids or competitive sealed proposals.

1. *Competitive Sealed Bids.* Under this method, the city issues an Invitation to Bid, and prospective bidders must submit bids in accordance with the bid invitation. All submitted bids must contain a final price or fee for project completion. The city must select the bid from the responsible and responsive bidder who submits the lowest price and meets all of the requirements included in the bid invitation. Under this method, bids are valid for only 60 days, unless otherwise agreed upon by the city and the bidder.

2. *Competitive Sealed Proposals*. Under this method, the city issues a Request for Proposal (RFP), which contains a description of the project and the factors that will be used to evaluate submitted proposals. The RFP may or may not require a final price or fee to be included with the proposal. Price may be one of the factors considered by the city when making its final decision, but it will not be the only factor. All submitted proposals are evaluated in accordance with the criteria provided in the RFP, and the city must make its final selection based on such criteria. Under this method, proposals are valid for as long as specified in the RFP, but offerors that have not been “short-listed” by the city must be released after 60 days (O.C.G.A. § 36-91-50(b) et seq.).

Note that state law prohibits disqualifying a responsible bidder based upon lack of previous experience with a job of the size for which the bid or proposal is being sought if the bidder has experience performing the work, the bid or proposal is not more than 30% greater in scope or cost from the bidder’s previous experience in jobs, and the bidder can procure the required bid, performance, and payment bonds (O.C.G.A. § 36-91-23).

Project Delivery Methods and Construction Management

The public works construction law allows any construction delivery method to be utilized. However, any public works construction project that places the bidder or offeror at risk for construction and requires labor or building materials in the execution of the contract must be awarded on the basis of competitive sealed bids or competitive sealed proposals (O.C.G.A. § 36-91-20(c)).

The city should consider its own internal capabilities when selecting the appropriate construction delivery method and management approach. Before selecting a construction project delivery method and management approach, city officials should determine whether or not the city has the in-house resources available to:

- manage the design phase of the project
- manage the construction phase of the project, and
- supervise and inspect construction.

Construction Project Delivery Methods

Several construction delivery methods are briefly described below. These methods are conceptual, and variations of each method may exist.

1. *Traditional Method (Design-Bid-Build)*. In this method, the city hires a professional architect or engineer to design the project. After completion of the design phase, the city solicits bids for the construction portion of the project. The city typically awards the contract to the bidder who submits the lowest responsive, responsible bid. The selected contractor then retains necessary trade contractors.

2. *Design-Build*. In this method, the city requests proposals and then hires a single firm who provides all design and construction services. Several different firms (design professionals and trade contractors) may provide the actual services, yet the city has only one contract with the entity responsible for both types of services.
3. *Construction Management (CM) At-Risk*. In this method, the construction manager assumes the financial risks and liabilities of constructing the project, thus placing the manager “at risk.” This method eliminates the duplication of services caused by employing both a construction manager and general contractor. The model also allows the city to avoid entering into contracts with numerous trade contractors.

Construction Management Methods

Unlike the project delivery methods listed above, which are based on the assignment of “delivery” risk for design and construction, the following methods are referred to as “management” methods. These methods can be used in conjunction with any of the project delivery methods listed above.

1. *Program/Project Management*. In this method, the city employs a project manager to act on the city’s behalf during all phases of the project. The primary distinction between the project manager and the construction manager depends upon the scope of the project being performed. Typically, the project manager will fill the role of the city’s staff should the city not have adequate or experienced personnel to oversee the project.
2. *Agency Construction Management*. In this method, the city hires a construction manager who serves as a professional adviser and who manages and coordinates the activities of the design and construction teams. However, the general contractor and the design team still have contracts directly with the city. The selected construction manager has little liability or responsibility and serves only in an advisory role. Therefore, the construction manager is at no financial risk.

Bond Requirements

Bid, payment, and performance bonds are required on all projects costing more than \$100,000 that are subject to the public works construction law. These bonds protect the city in the event that a contractor fails to meet his or her responsibilities regarding the project. A city may, in its discretion, require such bonds for any project, regardless of its cost.

1. *Bid Bonds*. Bid bonds protect the city in the event that the selected bidder or offeror fails to enter into a contract with the city.
2. *Performance Bonds*. Performance bonds provide reimbursement to the city in the event that the contractor fails to complete the project in accordance with the contract.
3. *Payment Bonds*. Payment bonds protect the subcontractors and suppliers who work for the city’s contractor by ensuring that they are compensated by the contractor. If a city fails to obtain a payment bond on a contract costing more than \$100,000, the city may be held liable to pay the subcontractors or suppliers (O.C.G.A. § 36-91-91).

Any bid bond, performance bond or payment bond required under the Georgia Public Works Construction Law must be approved as to form and as to the solvency of the surety by an

officer of the governmental entity negotiating the contract (O.C.G.A. § 36-91-40). In the case of a bid bond, such approval must be obtained prior to acceptance of the bid or proposal, and in the case of a performance or payment bond, such approval must be obtained prior to execution of the contract. The local government may choose not to accept a bond unless the surety is on the United States Department of Treasury's list of approved bond sureties and unless the surety is licensed to do business in Georgia by the Insurance Commissioner.

Contractor's Oath

Prior to beginning work on the public works construction project, the contractor must provide a written oath stating that he or she has not attempted to prevent competition with regard to the procurement of a contract for the project (O.C.G.A. § 36-91-21(e)). If the contractor's oath is false, the contract is void, and the city can attempt to recover any monies paid to the contractor.

Penalties

Any public works construction contract that is subject to the law and executed without properly utilizing either the competitive sealed bid method or the competitive sealed proposal method is invalid (O.C.G.A. § 36-91-21(a) and (h)). Additionally, a municipal elected official who receives or agrees to receive any pay or profit from a local government public works construction contract, shall be guilty of a misdemeanor (O.C.G.A. § 36-91-21(g)). Also, if a contractor knows that the city failed to properly advertise the contract opportunity or use either the competitive sealed bid method or the competitive sealed proposal method, the contractor is not entitled to payment for any of the work performed under the contract (O.C.G.A. § 36-91-21(a)).

Intergovernmental Contracts

A constitutional provision authorizes municipalities to contract, for a period not exceeding 50 years, with the state or other local units of government in Georgia with respect to facilities or services (Ga. Const. Art. IX, § 3, ¶1). Under this provision, municipalities are specifically authorized to convey existing facilities to the state and to any public agency, corporation, or authority. Cities may contract with any public agency, corporation, or authority for the care, maintenance, and hospitalization of its indigent sick. Under this power, the municipality may not enter into any contract it might deem advisable. The state and its agencies and subdivisions may contract with each other only with reference to facilities and services they are otherwise authorized to provide.

Another constitutional provision authorizes counties and municipalities to contract with one another for certain services, such as police and fire protection, garbage and sewage disposal, street and road maintenance, parks, and treatment and distribution of water (Ga. Const. Art. IX, § 2, ¶3).

Intergovernmental contracts are also authorized by a variety of general state laws, including those authorizing a municipality to contract with:

- the state, a state agency, another municipality or county, or with any combination thereof for public road work (O.C.G.A. § 32-4-111)
- other municipalities, counties and private persons, firms, associations, or corporations, for any period of time not to exceed 50 years, to provide industrial wastewater treatment services to such private entities in order to comply with applicable state and federal water pollution control standards and to be eligible for grants-in-aid or other allotments (O.C.G.A. § 36-60-2), and
- the Georgia Ports Authority for the leasing, operation, or management of real or personal property in or adjacent to any seaport (O.C.G.A. § 52-2-9(15)).

This list provides only a sample of the range of contracts that a city is authorized to enter into with other political bodies.

Energy Savings Performance Contracts

A municipality is authorized to contract with “qualified energy services providers” who are persons or businesses with a record of documented guaranteed energy savings performance contract projects and who are experienced in the design, implementation, and installation of energy conservation measures. Additionally, such providers have the technical capabilities to verify that such measures generate guaranteed energy and operational cost savings or enhanced revenues, have the ability to secure or arrange the financing necessary to support energy savings guarantees, and are approved by the Georgia Environmental Finance Authority for inclusion on a pre-qualifications list (O.C.G.A. § 50-37-3).

The Georgia Environmental Finance Authority establishes a list of qualified energy service providers that have prequalified to be utilized in contracts for energy savings performance contracts. Municipalities may issue requests for proposals from at least three providers on the list and may issue a contract based upon the request for proposal. The law has a number of specific requirements a municipality must follow in order to correctly utilize and implement an energy savings performance contract.

Public-Private Partnerships for Water Reservoirs, Facilities, and Systems

Municipalities are allowed to contract with private parties, including, but not limited to, corporations and individuals, to obtain any and all permits, licenses, and permissions that are required to complete a water reservoir or water supply system project. The contractual authority granting these powers to municipalities is limited but does allow for cities to obtain funding and make payments for projects in many methods (O.C.G.A. § 36-91-101).

Public-private partnerships for water reservoirs, facilities, and systems are not limited to one local government per project. Instead, the law allows for multiple local governments to work together on a project, but in such cases the local governments must designate one local government to be the lead local authority. The lead local authority, once selected, has a number of powers and duties under the law. There are a number of procedures which must be followed by participating municipalities. For instance, a contract entered into for public-private partnerships for water reservoirs, facilities, and systems cannot exceed 50 years (O.C.G.A. § 36-91-102).

The Water Supply Division of the Georgia Environmental Finance Authority also has the ability to undertake public-private partnerships for water reservoirs, facilities, and systems and must seek the advice and input of affected local governments. Local governing authorities are allowed to request in writing that the Water Supply Division participate in a project in any capacity, including as lead local authority. The Water Supply Division also has specific conditions and limitations placed upon it should it choose to participate in a project (O.C.G.A. § 50-23-28.2(b) et seq.).

The Successful Bidder

A road contract let for public bid is to be awarded to the lowest responsive and responsible bidder. However, the municipality has the right to reject all bids and may re-advertise, perform the work itself, or abandon the project (O.C.G.A. § 32-4-118).

Before beginning work, the successful contractor must sign a written oath that he or she has not prevented, or attempted to prevent, competition in the bidding (O.C.G.A. § 32-4-122). In addition, where the contract price is \$5,000 or more, the contractor must file

- payment and performance bonds for the protection of subcontractors and other furnishing materials or labor, and
- any other bonds required by the municipality in its advertisements for bids, such as public liability and property damage insurance bonds or policies and bonds to maintain in good condition such completed construction for a period of not less than five years.

Failure to take payment bond renders the city liable for losses to subcontractors, laborers, material men, and other persons furnishing materials and labor (O.C.G.A. § 32-4-119 et seq.).

Purchasing

A number of statutory provisions authorize municipalities to enter into purchasing agreements. For example, municipalities can contract with the federal government or the state for the purchase, lease, or acquisition of equipment, supplies, and property and appoint an officer or employee to bid and make necessary down payments for these things (O.C.G.A. § 50-16-81). Cities may also purchase various supplies and surplus property through the Georgia Department of Administrative Services (O.C.G.A. § 50-5-100 et seq.; § 50-5-143). Municipalities must purchase goods from the Georgia Correctional Industries Administration where the availability of such goods has been certified with the Department of Administrative Services and such goods are competitive in quality and price (O.C.G.A. § 50-5-73).

Individual cities may also possess the power to purchase various goods and services, and be restricted in such purchases, by virtue of the city's charter. For example, the city's charter may require that bids be obtained for purchases over a certain specified amount, that a minimum number of bids be obtained, that the bids be sealed and in writing, or that the lowest and best bid be accepted. Most municipalities, however, merely have provisions in their charters providing that the council may by ordinance prescribe the rules and procedures for municipal purchasing.

Miscellaneous Statutes Concerning Purchasing

When making purchases, municipalities should be aware of two additional statutes. The first provides that, in the purchasing of and contracting for supplies, materials, equipment, and agricultural products, state and local authorities must give preference "as far as may be reasonable and practicable" to items manufactured or produced in Georgia, unless giving such a preference will sacrifice price or quality (O.C.G.A. § 50-5-61). The second act makes it a misdemeanor for any municipal officer to purchase or authorize the purchase of any beef other than beef raised and produced in the United States when the purchase is to be made with governmental funds. Canned meats not available from a source within the United States and not processed in this country may be purchased without penalty (O.C.G.A. § 50-5-81).

Office Supplies

No general law requires competitive bidding in the purchase of office supplies and similar items. Local statutes may provide that purchases of items be preceded by legal advertisement and competitive bidding.

Immigration

The "Georgia Security and Immigration Compliance Act" requires every political subdivision, instrumentality or agency of the state to register for and use the federal program to verify

employment eligibility of all newly hired employees (E-Verify). Municipalities must also include in all bids, contracts, and subcontracts for the physical performance of services for \$2,500 or more provisions requiring all contractors and subcontractors to use E-Verify and to submit an affidavit that they are using and will continue to use the E-Verify program (O.C.G.A. § 13-10-91). Before a bid on a contract for the physical performance of services is considered by the city, the bid must include a signed, notarized affidavit from the contractor attesting to the contractor's registration with and use of E-Verify, that the contractor will continue using E-Verify throughout the contract period, and listing the contractor's E-Verify user identification number and date of initial authorization to use E-Verify. Each year every public employer must provide to the Department of Audits and Accounts proof of compliance with this law.

Sale of Municipal Property

All sales by a municipal corporation of real property or personal property that has an estimated value of more than \$500 must be made either by sealed bids or by auction to the highest bidder. A municipal corporation may reject any and all bids or cancel any proposed sale. Notice of a sale must be published once in the official newspaper of the county in which the municipality is located or in a newspaper of general circulation in the municipality. The legal notice must appear not less than 15 days nor more than 60 days prior to the date of the sale. If the sale is by sealed bid, the bids shall be opened in public at the time and place stated in the legal notice. The bids shall be kept available for public inspection for not less than 60 days.

Personal property with an estimated value of \$500 or less may be sold without regard to any of the above provisions. Such sales may be made in the open market without advertisement and without the acceptance of bids. The municipality has the power to estimate the value of the property to be sold (O.C.G.A. § 36-37-6).

Sale of City-Owned Utilities

A municipality may sell, lease, or otherwise dispose of the property of any electric, water, gas, or other municipally owned public utility plants or properties. The city may decide the terms and conditions of such transactions. Prior to the sale, a notice setting out the price and other general terms of the sale must be placed for three consecutive weeks in a newspaper published in or having general circulation in the municipality. The sale or lease may take place ten days after publication of the final notice unless 20 percent of the qualified voters sign a petition objecting to it. If such a petition is filed, the sale or lease cannot take place unless it is approved at a special election by two-thirds of those voting. Such election shall be held at least 50 days after the objecting petition is filed with the city (O.C.G.A. § 36-37-7 et seq.).

Lease of City Property

Cities can enter into a lease for the use, operation, or management of real or personal property for longer than 30 days if it is done by sealed bid or auction in the same manner as for a sale and the lessee agrees to maintain insurance coverage of at least \$1 million and to assume all responsibility for any injury to person or property and to indemnify and hold harmless the city. The lessee cannot pledge or mortgage the property or their interest in the property. The lease term can be no longer than five years with one five-year renewal. After that time, leasing of the property must again be subject to public bid or auction (O.C.G.A. § 36-37-6). Where real property is leased for the erection of a telecommunications tower, the initial term of the lease can be no longer than ten years, and there may be one renewal period no longer than ten years.

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Human resource management encompasses a wide variety of issues relating to the relationship between an employer and its employees. These issues can present many challenges for the employer, particularly in the public sector. This chapter familiarizes elected city officials with certain legal and practical considerations associated with two of the more significant human resource management issues that Georgia municipal employers face: recruiting and selecting qualified job applicants.

Recruiting Qualified Candidates for Employment

Job postings should state the duties of the position, minimum and desired qualifications, salary ranges, and necessary special licenses or certificates. Vacancies should remain posted long enough to allow those interested in the position a reasonable opportunity to apply. To ensure that the applicant pool is representative of all segments of the community, steps should be taken to post or otherwise announce vacancies in newspapers and other publications, message boards, websites, local school placement offices, local job fairs, radio broadcasts, and other media popular with and/or accessible to each such segment.

Job postings should identify the city as an equal employment opportunity employer, and an "EEO Statement" reflecting the current state of the law should be adopted. For example: "The city provides equal opportunity to all employees and applicants for employment without regard to race, color, religion, sex (including pregnancy), sexual orientation, transgender status/gender identity, national origin or citizenship, age, disability, genetic information, or military or veteran status, or any other status or classification protected by applicable federal, state and local laws."

The 11th Circuit Court of Appeals, which establishes federal legal precedent for the states of Georgia, Florida, and Alabama, has held that sexual orientation is not a protected classification under Title VII of the Civil Rights Act of 1964 (*Evans v. Georgia Regional Hospital*, 850 F. 3d 1248 (11th Cir. 2017)). As a governmental body, however, a city's employment practices are also subject to the Equal Protection Clause of the 14th Amendment, which extends some protection to the classification (e.g., *Inniss v. Aderhold*, 80 F. Supp. 3d 1335 (N.D.Ga. 2015)).

Recent case law also holds that transgender status/gender identity is a protected classification under the Equal Protection Clause and under Title VII (*Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Chavez v. Credit Nation Auto Sales, LLC*, 641 Fed. Appx. 883 (11th Cir. 2016)).

The Immigration Reform and Control Act, enforced by the U.S. Department of Justice, prohibits discrimination against employees or applicants for employment based on their citizenship status (8 U.S.C. §1324b(a)(1)(B)). Georgia law, on the other hand, requires that police officers and communications officers be U.S. citizens(O.C.G.A. § 35-8-8(a)(2); Ga. Comp. R. & Regs. § 464-14-.02(b)).

Selecting Qualified Candidates for Employment

Depending on the position being filled, the selection process involves evaluating applications and/or resumes, interviewing candidates, speaking with references, conducting background checks, administering written examinations, and conducting assessment centers. Cities should strive to choose the best qualified applicants while avoiding unnecessarily stringent hiring standards that may adversely impact minority and other protected groups.

Conducting Criminal Background Checks

Georgia law requires employers to exercise due diligence to avoid hiring or retaining employees who present an unreasonable risk of harm to their coworkers or members of the public. Specifically, employers are bound to exercise ordinary care in the selection of employees and not to retain them after knowledge of incompetency (O.C.G.A. § 34-7-20). Thus, when a claim for damages is asserted by someone harmed by a municipal employee, and it is determined that the city knew or, in the exercise of reasonable diligence, should have known that its employee posed such a risk, liability can be substantial (*Coleman v. Housing Auth. of Americus*, 191 Ga. App. 166 (1989); *TGM Ashley Lakes, Inc. v. Jennings*, 264 Ga. App. 456 (2003)). Consequently, criminal background checks have become a fairly standard part of most cities' hiring procedures—particularly those with ready access to the Georgia Crime Information Center (GCIC) database through their police departments (O.C.G.A. § 35-3-34 et seq.).

On the other hand, undue emphasis on criminal history information by employers can result in a disparate impact on minority and other protected groups. Consequently, the U.S. Equal Employment Opportunity Commission (EEOC), with the support of many court decisions, has developed guidelines to assist employers in the lawful use of criminal history information for hiring (and promotion) purposes. Importantly, these guidelines make a critical distinction between arrests and convictions, with only the latter being regarded as reliable evidence that the candidate committed a criminal act. In fact, the EEOC considers hiring and promotion decisions based solely on arrests to be unlawful.

Furthermore, while convictions are regarded as reliable evidence that the candidate committed a crime, the EEOC still considers that employers cannot lawfully reject a candidate on this basis without first giving specific consideration to (1) the nature and gravity of the crime or its underlying conduct; (2) the amount of time that has passed since the crime

was committed; and (3) the relationship of the crime to the position sought. The EEOC also expects employers to allow such candidates the opportunity to explain the circumstances of the conviction and otherwise make a case for why it should not be disqualifying. Ultimately, an employer who declines to hire (or promote) a candidate due to a criminal conviction must be prepared to demonstrate that treating the conviction as disqualifying is job-related and consistent with business necessity.

Georgia, like many states, precludes state and local government employers from hiring convicted felons as peace officers, communications officers and, to a lesser extent, firefighters (O.C.G.A. § 35-8-8 (peace officers); Ga. Comp. R. & Regs. §464-14-.02 (communications officers); O.C.G.A. § 25-4-8 (firefighters)). The EEOC does not regard such blanket prohibitions as lawful, however, thereby setting the stage for a possible courtroom showdown between the EEOC and the State of Georgia with a local government employer caught in the middle, accused of violating federal law because it complied with state law.

Relevant also to the issue of criminal background checks is Georgia's "First Offender" law, which precludes an employer from declining to hire (or promote) a candidate based solely on a conviction that was accorded "first offender" treatment. In fact, under such circumstances, the conviction is deemed not to have occurred, meaning that such candidates may accurately deny ever having been convicted (O.C.G.A. § 42-8-63; Ga. Comp. R. & Regs. § 140-2-.04(2)(a)(3)). While the convictions themselves are off limits, municipal employers may nevertheless evaluate the misconduct underlying an applicant's receipt of first offender treatment to determine whether the misconduct itself contraindicates "good moral character," or otherwise constitutes a non-conviction basis for disqualifying the candidate under the city's established hiring standards, such as illegal drug activity, involvement in theft, etc. (O.C.G.A. §§ 25-4-8(a)(3), 35-8-8(a)(6); Ga. Comp. R. & Regs. §§ 205-2-1-.04, 464-3-.0(1)(h); *Dominy v. Mays*, 150 Ga. App. 187 (1979); 1986 Op. Atty Gen. Ga. 189, 1986 Ga. AG LEXIS 31, at *4 (Aug. 18, 1986)).

Finally, in recent years, some Georgia cities have voluntarily implemented versions of Governor Nathan Deal's "Ban the Box" initiative, whereby criminal background checks are not conducted until the later stages of the selection process, to ensure that a candidate's criminal history is evaluated in the context of his/her qualifications for the position in question. This initiative is designed to facilitate a more objective assessment of whether the conviction is genuinely disqualifying and is credited with helping thousands of individuals overcome their criminal pasts to become productive employees and contributing members of society (Ga. Exec. Order No. 02.23.15.03 (Feb. 23, 2015)).

Pre-Employment Drug Testing

Public sector drug testing constitutes a search within the meaning of the Fourth Amendment. Nevertheless, the U.S. Supreme Court held that a public employer is authorized to conduct drug tests without the sort of individualized suspicion normally required by the Fourth

Amendment when there is a “special need” that outweighs the privacy interests of the employee (*Skinner v. Railway Labor Executives’ Assn.*, 489 U.S. 602 (1989); *National Treasury Employees v. Von Raab*, 489 U.S. 656 (1989)). In the *Skinner* case, the Court found that employment in a public safety capacity met this “special need” standard. Likewise, in *Von Raab*, the Court held that the standard is met in the case of employees who carry firearms and/or are directly involved in drug interdiction.

Based on similar considerations of “safety-sensitive” positions, the federal Omnibus Transportation Employee Testing Act of 1991 requires drug testing of certain employees in the aviation, motor carrier, railroad, and mass transit industries (49 U.S.C. §§ 31301 and 31306; 49 C.F.R. Part 382.101, et seq.; 49 C.F.R. §383.5; 61 Fed. Reg. 9546 (Mar. 8, 1996) and 61 Fed. Reg. 14,677 (Apr. 3, 1996); 65 Fed. Reg. 79462 (Dec. 19, 2000)). Under this Act, any city employee with a Commercial Driver’s License (CDL) is subject to drug testing, including pre-employment testing.

While the majority view of pre-employment drug testing is that public employers may require applicants for safety-sensitive positions or other jobs meeting the Supreme Court’s “special need” standard to be tested, there is no consensus on the constitutionality of across-the-board testing of all applicants for employment. The California Supreme Court held that such testing was constitutional, reasoning that municipal employers cannot evaluate applicants the way they can employees (*Loder v. City of Glendale*, 14 Cal. 4th 846, 927 P. 2d 1200 (Cal. 1997), cert. denied, 522 U.S. 807 (1997)). On the other hand, a federal district court in Georgia struck down a state law requiring across-the-board testing of all applicants for State employment, holding that the law was overly broad in light of the standard established by the Supreme Court’s *Von Raab* decision (*Georgia Association of Educators v. Harris*, 749 F. Supp. 1110 (N.D. Ga. 1990); see also *Voss v. City of Key West*, 24 F. Supp. 3d 1219 (S.D. Fla. 2014), holding that a city’s interest in safe, effective, and efficient delivery of public services was not a “special need” sufficient to enable its across-the-board pre-employment drug testing policy to survive a Fourth Amendment challenge).

Until the U.S. Supreme Court, the 11th Circuit Court of Appeals, the Georgia Supreme Court, or the Georgia Court of Appeals has occasion to consider the constitutionality of across-the-board pre-employment drug testing, any city with such a policy or contemplating the adoption of such a policy must balance the risk of a successful constitutional challenge against the perceived adverse consequences of less comprehensive pre-employment testing.

Application of Georgia’s “Sunshine Laws” to the Selection Process

Georgia’s open records and open meetings laws have special application to the municipal selection process. With regard to the former, while hiring-related records are generally subject to public disclosure, certain exemptions bear noting. For instance, a confidential evaluation submitted to a city in connection with its consideration of a particular applicant is exempted from disclosure, as are examinations prepared and administered to applicants by

the city (O.C.G.A. § 50-18-72(a)(7)). Additionally, a city need not disclose any records identifying applicants for city manager, city administrator, or other open “executive head” positions; provided, however, that at least 14 calendar days prior to the hiring decision, all records relating to the top three candidates shall be subject to disclosure upon request (O.C.G.A. § 50-18-72(a)(11)). Even where a given record is not subject to exemption, it may contain information which itself is not subject to public disclosure and therefore must be redacted prior to production of the record. Examples include social security numbers, mother’s birth name, dates of birth, home address and telephone number, credit or debit card information, bank account number or information, insurance or medical information, unlisted telephone numbers, personal email addresses or mobile telephone numbers, and the identities of immediate family members or dependents (O.C.G.A. §§ 50-18-72(a)(20)(A), (a)(21)). With regard to Georgia’s open meetings laws, a city council may go into executive session to discuss and deliberate upon the hiring or appointment of a prospective employee, provided that it is the actual hiring or appointing authority for the position in question. Furthermore, when the position is for city manager, city administrator, or other “executive head,” the city council may interview applicants in executive session. In either instance, however, any vote on the matter must be conducted in open session. These exemptions apply only when the discussions or deliberations concern specific candidates. When considering matters of policy regarding the city’s employment or hiring practices, the discussions or deliberations must be conducted in open session (O.C.G.A. § 50-14-3(b)(2)).

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Human resource management encompasses a wide variety of issues relating to the relationship between an employer and its employees. These issues can present many challenges for the employer, particularly in the public sector. This chapter familiarizes elected city officials with certain legal and practical considerations associated with many of the more significant human resource management issues that Georgia municipal employers face: ensuring that the city's practices regarding discharge and discipline, leaves of absence, compensation, and benefits are consistent with applicable federal and state laws.

At-Will Employment

Any discussion of employer and employee duties and rights with respect to discharge and discipline requires consideration of Georgia's "at-will" employment rule. It is generally understood that Georgia is a so-called "at-will" state, but confusion often exists as to what that means in the context of municipal employment (O.C.G.A. § 34-7-1). Generally speaking, in an at-will employment relationship, either the employer or the employee may terminate the relationship with or without notice and/or with or without cause. Unlike the employee, however, the employer is subject to the implied caveat that it may not terminate even an at-will employment relationship for unlawful reasons (e.g., for violating federal civil rights legislation prohibiting certain forms of discrimination or retaliation) (*Nix v. WLCY Radio/Rahall Communications*, 738 F.2d 1181, 1187 (11th Cir. 1984)). In Georgia, municipal employment relationships are at-will unless the city has imposed some substantive restriction or limitation on its right to terminate or otherwise alter the employment relationship. There is no uniformly applied term to describe an employment relationship that is not at-will. However, a public employee who is not at-will is regarded as having a property interest in his/her continued employment which triggers the due process clauses of both the United States and Georgia Constitutions.

In the private sector, any self-imposed substantive restriction or limitation on the employer's right to terminate the employment relationship is generally limited to an employment agreement. For municipal employers, however, there are numerous additional ways by which such a restriction or limitation may be imposed, including by charter, local legislation, ordinance, resolution, personnel policies and procedures, employee handbook, or any other means establishing a mutual understanding (*Nolin v. Douglas County*, 903 F.2d 1546 (11th Cir. 1990); *Hunter v. City of Warner Robins*, 842 F. Supp. 1460, 1466 (N.D.Ga. 1994)). A restriction or limitation is substantive if it precludes termination or alteration of the employment relationship unless certain conditions or circumstances exist, with common examples being requirements that the termination be supported by cause, good cause, just

cause, merit reasons, etc. By contrast, restrictions or limitations which are merely procedural are insufficient to alter a city's status as an at-will employer. Common examples are requirements that a department head obtain the prior approval of the city manager, that the employee be given a certain amount of notice prior to the effective date of the termination, or that the employee be permitted to grieve or appeal the decision.

Due Process: Property Interests in Employment

When the employment relationship is not at-will, a municipal employee is considered to have a property interest in his/her continued employment which triggers the protections of due process (*Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972); *Warren v. Crawford*, 927 F.2d 559 (11th Cir. 1991)). In this context, due process can be viewed as a procedural means to ensure that the substantive restrictions or limitations on the employer's right to terminate or otherwise alter the employment relationship (e.g., demotions, suspensions without pay, etc.) are satisfied. It accomplishes this by requiring the employer to provide the employee with (1) notice of the grounds for the proposed termination and (2) an opportunity to be heard; i.e., to respond to these grounds (*Marcelin v. City of West Palm Beach*, 417 Fed. Appx. 848 (11th Cir. 2011); *Camden County v. Haddock*, 271 Ga. 664 (1999); *Board of Commissioners of Effingham County v. Farmer*, 228 Ga. App. 819 (1997)).

The "notice" component of due process requires that the employee be made aware of the allegations against him in sufficient detail to enable him/her to understand and provide a reasonable response. It also requires that the employee be made aware of the adverse action or range of adverse actions he/she is potentially facing (e.g., "up to and including termination"), essentially so that he/she will know how much significance to attach to the situation.

The "opportunity to be heard" component of due process is far more involved, in that it requires an actual evidentiary hearing to be conducted before a neutral hearing officer or panel. At the hearing, the municipal employer bears the burden of proof, which it must satisfy through the presentation of sworn witness testimony and other evidence supporting the grounds for the employee's termination. The employee, who is entitled to be represented by an attorney at his/her own expense, has the right to cross-examine the employer's witnesses and otherwise challenge the employer's evidence, as well as to present his/her own witnesses and evidence (*Brownlee v. Williams*, 233 Ga. 548 (1975)).

Historically, due process required that the evidentiary hearing be conducted on a "pre-deprivation" basis; i.e., before the employee is terminated. In the modern era, however, the courts have recognized that public employers often need to effectuate the termination before it can reasonably arrange for and conduct an evidentiary hearing. For this reason, employers are permitted to conduct a highly abbreviated, informal hearing on a pre-deprivation basis, provided that a full evidentiary hearing is thereafter conducted on a post-deprivation basis.

When municipal employers opt to use this two-hearing model for providing due process to their employees who possess property interests in their employment, the pre-deprivation hearing need only afford the employee the opportunity to respond to the allegations against him/her and the proposed adverse action. There is no burden of proof, nor is there any presentation of witness testimony or other evidence. Moreover, while the city official who conducts the abbreviated, informal pre-deprivation hearing should refrain from making a decision until after the hearing, he/she need not be entirely neutral (i.e., he/she may be the official who initiated the disciplinary proceedings).

The evidentiary hearing—whether conducted on a pre-deprivation basis (i.e., the one-hearing model) or on a post-deprivation basis (i.e., the two-hearing model)—must be “meaningful” in a constitutional sense. This means that it must be conducted within a reasonable time (e.g., not so quickly that the employee does not have sufficient time to prepare or retain an attorney, but not so late that witnesses’ memories have faded or the employee has had to relocate to find employment) (*Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985)). This also means that the employee must be provided with copies of or access to the employer’s evidence, including the names of the employer’s witnesses and a general description of their proposed testimony. Because due process does not impose a reciprocal requirement on the employee, many cities elect to impose such a requirement on the employee through the appeal procedure.

Finally, where the evidentiary hearing provided to the employee by the municipal employer qualifies as judicial or quasi-judicial, Georgia law authorizes the employee to seek judicial review of the post-hearing decision in the superior court via writ of certiorari (O.C.G.A. § 5-4-1 et seq.). Such proceedings must be commenced within 30 days of the decision. The superior court reviews the factual findings underlying the decision pursuant to a highly deferential “substantial evidence” standard, while legal conclusions are subject to a de novo review. The superior court may uphold the decision, reverse the decision, or remand the matter for further proceedings.

Due Process: Liberty Interests and Name-Clearing Hearings

Whether or not they are at-will employees or possess property interests in their continued employment, all municipal employees possess liberty interests in their future employability which, under certain circumstances, entitle them to some amount of due process in connection with the termination of their employment (*Campbell v. Pierce County*, 741 F. 2d 1342 (11th Cir. 1984)).

As discussed in the preceding paragraphs, in the context of a *property* interest, the purpose of a due process hearing is to protect an employee from an unjustified or unwarranted deprivation of his/her right to continued employment. In the context of a *liberty* interest,

however, the purpose of a due process hearing is to protect the employee's professional reputation and/or ability to find future employment. Accordingly, liberty interest hearings are often referred to as "name clearing hearings."

Name clearing hearings are designed to guard against the imposition of unwarranted stigma on a public employee. In this context, "stigma" has been described by the courts as: damage to an employee's professional reputation or good name that adversely affects his/her ability to secure subsequent employment in his/her chosen field or as a limitation or disability imposed on an employee which forecloses or restricts his/her ability to take advantage of other employment opportunities.

A city employee's liberty interest is implicated whenever he/she is discharged for reasons that might impose such stigma. Reasons for discharge that have been held to be stigmatizing include drug use, sexual harassment, theft, dishonesty, and falsifying records. Reasons for discharge that have been held not to be stigmatizing include unsatisfactory performance, failure to cooperate with co-workers, inability to get along with co-workers, and bad judgment.

The concept of constitutional "meaningfulness" applies to name clearing hearings as well. However, because of the different purposes behind the hearings designed to protect property and liberty interests, the hearings have different procedural requirements. In particular, the name clearing hearing is more informal than the property interest hearing and need only afford the employee a meaningful opportunity to refute the charges against him by argument, witness testimony or other evidence. Moreover, to be meaningful, the name clearing hearing must be conducted publicly (*Campbell v. Pierce County*, 741 F. 2d 1342 (11th Cir. 1984); *Waters v. Buckner*, 699 F. Supp. 900 (N.D.Ga. 1988), *aff'd*, 889 F. 2d 274 (11th Cir. 1989)).

Unlike a property interest hearing, the name clearing hearing is not designed to allow the employee an opportunity to appeal or otherwise challenge the propriety of the city's decision to terminate his/her employment. The city bears no burden of proof at a name clearing hearing and need not justify its decision. Furthermore, while the employee is ordinarily entitled to notice of the charges against him/her prior to the name clearing hearing, there is no requirement that he/she be furnished with a witness list or other evidence relied upon by the employer in reaching the discharge decision. The employee is of course free to request these materials from the city—to the extent they exist—via the Open Records Act prior to the hearing.

While a property interest hearing must be conducted before a hearing officer(s) authorized to reverse the employment decision in question, a name clearing hearing need only be presided over by a city official(s) with sufficient standing within the city to bring an appropriate level of dignity to the proceeding. Moreover, while the need for a neutral hearing officer(s) is not as compelling for a name clearing hearing as it is for a property interest hearing, it is in the city's best interest not to use a hearing officer(s) who is (or who appears to be) hostile to the employee.

The name clearing hearing must be conducted at a meaningful time; however, it need not be conducted on a pre-deprivation basis (*Campbell v. Pierce County*, 741 F. 2d 1342 (11th Cir. 1984)). Furthermore, the city need not initiate the name clearing hearing; rather, it is sufficient that the city simply notify the employee of his/her right to request such a hearing. To this end, it is advisable to notify the employee in writing of his/her right to request the name clearing hearing and to establish a time limitation (e.g., five business days) for the request. It is generally recognized that the employee has the right to be represented by an attorney at the name clearing hearing (at his/her own expense).

Where the employee is not an “at-will” employee and is therefore entitled to a property interest hearing, the two hearings (property interest and name clearing) can be combined. Where this is done, the employee should be notified in advance and in writing that the property interest hearing will also serve as a name clearing hearing (*Harrison v. Wille*, 132 F. 3d 679 (11th Cir. 1998)).

Exceptions to the At-Will Employment Rule

While the Georgia courts have, for the most part, declined to recognize any public policy-based or other judicially-created exceptions to the state’s employment at-will rule, municipal employers should remain mindful of the following legislatively-created exceptions (state and federal) that limit or restrict a city’s right to terminate the employment relationship or which otherwise regulate that relationship.

Georgia Whistleblower Act

Breaking with over two centuries of tradition, the Georgia Whistleblower Act (GWA) represents the first and only time in its history that the Georgia Legislature has established an employment-related cause of action for damages (O.C.G.A. § 45-1-4, as amended in 2005 and 2007). The GWA applies to all cities that receive state funds, regardless of the amount received or the size or revenue base of the city (O.C.G.A. § 45-1-4(a)(4)). Further, the GWA has been held to operate as a complete waiver of sovereign immunity, meaning that cities are liable for all damages awarded under the GWA in excess of any applicable insurance coverage (*Colon v. Fulton County*, 294 Ga. 93, 751 S.E. 2d 307 (2013)). Prior to this holding, a public employer’s waiver of sovereign immunity in GWA cases was, as in other cases, only to the extent it carried liability insurance (O.C.G.A. § 36-33-1(a); compare *Mims v. Clanton*, 215 Ga. App. 665, 452 S.E. 2d 169 (1994)). Even the municipal ante-litem notice statute has been held inapplicable to GWA claims (*West v. City of Albany*, 300 Ga. 743, 797 S.E. 2d 809 (2017)).

The GWA prohibits public employers from retaliating against an employee who discloses “a violation of or non-compliance with a law, rule, or regulation to either a supervisor or a government agency, unless the disclosure was made with knowledge that the disclosure was

false or with reckless disregard for its truth or falsity.” The GWA also makes it illegal for public employers to “retaliate against an employee for objecting to, or refusing to participate in, any activity ... that the public employee has reasonable cause to believe is in violation of or non-compliance with a law, rule, or regulation” (O.C.G.A. § 45-1-4(d)(2) et seq.). The GWA defines retaliation as “discharge, suspension, or demotion [or] any other adverse employment action taken ... against a public employee in the terms or conditions of employment for [engaging in protected activity under the Act]” (O.C.G.A. § 45-1-4(a)(5)).

To qualify as protected activity under the GWA, a disclosure must be made either to a federal, state, or local government agency or to a “supervisor,” which the Act broadly defines as including any individual given authority to: (1) “direct and control the work performance of the affected public employee,” (2) “take corrective action regarding a violation of or noncompliance with a law, rule, or regulation of which the public employee complains,” or (3) “receive complaints regarding a violation of or noncompliance with a law, rule, or regulation” (O.C.G.A. § 45-1-4(a)(6)).

Claims under the GWA must be asserted within one year of the employee’s discovery of the alleged retaliation or within three years of the occurrence of the alleged retaliation, whichever is earlier (O.C.G.A. § 45-1-4(e)(1)). In addition to the aforementioned compensatory damages, relief available under the Act includes lost wages and benefits, attorney’s fees and other expenses of litigation, and reinstatement (O.C.G.A. § 45-1-4(e)(2), (f)).

The First Amendment and Freedom of Speech

Unlike private sector employers, a city as a governmental entity is subject to the First Amendment, which is often implicated by personnel decisions. Furthermore, not unlike the liberty interests discussed above, all city employees have First Amendment rights, regardless of whether they are employed at-will or possess property interests in their continued employment.

While careful to acknowledge that an individual does not surrender his/her constitutional rights by accepting employment with a governmental entity, the courts have also recognized that the government—when acting as an employer—does have an interest in maintaining an efficient, productive, and safe workplace which necessitates some regulation of its employee’s speech and expression. Consequently, when evaluating First Amendment challenges to terminations or other adverse employment actions, the courts often find themselves attempting to strike a proper balance between the government’s interests as an employer and the employee’s interests in the speech or expression in question (*Alves v. Board of Regents*, 804 F.3d 1149 (11th Cir. 2015)).

In resolving such challenges, the court will initially consider whether the employee was acting in his capacity as an employee or as a private citizen when he engaged in the speech or expression in question and will also examine the speech or expression to determine whether it addresses a matter of public concern. With regard to the former inquiry, “[w]hen public employees make statements pursuant to their official duties, [they] are not speaking as citizens ... and the [First Amendment] does not insulate their communications from employer discipline” (*Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006)). With regard to the latter, whether speech or expression addresses a matter of public concern turns on its content (e.g., whether it related to any matter of political, social, or other concern to the community, whether it was a subject of legitimate news interest, or whether it was a subject of general interest, value, or concern to the public), as well as on the form it took and the context in which it occurred (*Connick v. Myers*, 461 U.S. 138 (1983)). If either of these inquiries is answered in the negative, then the employee’s First Amendment challenge will normally fail.

If the court determines that the speech or conduct in question was made by the employee acting in his capacity as a private citizen and that it addressed a matter of public concern, it will then balance the employee’s interest in engaging in the speech or conduct against the governmental employer’s interests in maintaining an efficient, productive, and safe workplace (*Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968)). Relevant considerations include: (a) whether the speech or expression disrupted (or threatened to disrupt) important working relationships; (b) whether it interfered (or threatened to interfere) with internal operations; (c) whether it undermined (or threatened to undermine) leadership’s authority; (d) whether it caused (or had the potential to cause) internal disciplinary problems; (e) whether it affected (or threatened to affect) morale; or (f) whether it damaged (or threatened to damage) public confidence in the employer (*Connick v. Myers*, 461 U.S. 138 (1983); *Anderson v. Burke County*, 239 F. 3d 1216 (11th Cir. 2001); *Waters v. Chaffin*, 684 F. 2d 833 (11th Cir. 1982)). Through its evaluation of these and similar factors, the court will reach a determination as to whether the reasons underlying the adverse employment action are sufficiently compelling as to justify the infringement upon the employee’s First Amendment rights.

The First Amendment and Freedom of Association

Although the types of associations protected by the First Amendment can vary greatly, ranging from membership in a labor union to more intimate associations such as marriage or friendships, the association most commonly at issue when an adverse employment action is challenged on freedom of association grounds is political affiliation (i.e., an employee’s political beliefs, membership in a political party, support for or opposition to a political candidate, or political activities such as attending campaign rallies, meetings or events, handing out fliers, etc.) (*Elrod v. Burns*, 427 U.S. 347 (1976); *Buckley v. Valeo*, 424 U.S. 1 (1976); *Rodriguez v. Doral*, 863 F. 3d 1343 (11th Cir. 2017)).

Provided that the employee's political associations are not manifested in the form of political activity while on duty, in uniform, on city-owned premises, while using city vehicles, copy machines, computers, email, or other equipment, systems, or supplies, they generally cannot form the basis for an adverse employment action without violating the First Amendment. An exception exists, however, when the employee holds a high-level, policy-making position or is considered a confidential employee; i.e., a position as to which political loyalty is necessary to perform its essential functions or as to which political confidences will be shared (*Branti v. Finkel*, 445 U.S. 507 (1980); *Elrod v. Burns*, 427 U.S. 347 (1976); *Rodriguez v. Doral*, 863 F. 3d 1343 (11th Cir. 2017); *McKinley v. Kaplan*, 262 F.3d 1146 (11th Cir. 2001); *McCabe v. Sharrett*, 12 F.3d 1558 (11th Cir. 1994)).

Title VII of the Civil Rights Act of 1964

Title VII is the first of a series of modern federal civil rights laws specifically enacted to regulate all facets of the employment relationship. Title VII makes it unlawful for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his/her compensation, terms, conditions, or privileges of employment because of his/her race, color, religion, sex, or national origin (42 U.S.C. § 2000e-2). For purposes of Title VII, harassment—including the creation and maintenance of a hostile work environment—is a form of discrimination if because of one of these protected classifications (*Meritor Savings Bank v. Vinson*, 477 U.S. 57, 63-69 (1986)).

The Pregnancy Discrimination Act of 1978 amended Title VII to clarify that the term “sex” includes pregnancy and pregnancy-related conditions (42 U.S.C. § 2000e(k)). As previously noted, recent court decisions have held that the term also encompasses transgender status/gender identity, although the 11th Circuit has reached a contrary conclusion with regard to sexual orientation (*Evans v. Georgia Regional Hospital*, 850 F. 3d 1248 (11th Cir. 2017)).

Title VII is applicable to private and public sector employers alike; however, nearly every type of claim based on intentional discrimination or harassment that can be asserted pursuant to Title VII can also be asserted pursuant to Section 1983 as a violation of the U.S. Constitution, typically the Equal Protection Clause of the 14th Amendment (*Whiting v. Jackson State Univ.*, 616 F.2d 116 (5th Cir. 1980)). Thus, unlike private sector employers, cities are subject to parallel claims for alleged discrimination or harassment under Section 1983. Such claims differ from Title VII claims in many critical ways, including that, in addition to the city itself, they may be asserted against individual city officials and employees and that damages awards under Section 1983 are not subject to the caps imposed by Congress of similar awards under Title VII (*Busby v. City of Orlando*, 931 F.2d 764, 772 (11th Cir. 1991); 42 U.S.C. § 1981a(b)(3)).

In view of the foregoing, cities and their officials and employees have an added incentive to prohibit and eradicate unlawful discrimination, including harassment, from the municipal workplace. At a minimum, this requires the adoption and distribution of a policy prohibiting unlawful discrimination and harassment, as well as periodic training to ensure that all officials and employees understand what the policy prohibits. Furthermore, the city must take steps to ensure that any discrimination or harassment that does occur in the workplace is discovered, which requires the implementation of an effective reporting procedure, encouraging employees to report potential violations, and training supervisors and managers in detecting and investigating potential violations. Finally, where it is determined that unlawful discrimination or harassment has occurred, the city must take prompt remedial action to prevent recurrence and address the needs of the victim. Cities that are unable to establish adherence to a strong prevent/detect/remedy policy face potentially substantial exposure under Title VII and Section 1983 (*Faragher v. City of Boca Raton*, 524 U.S. 775 (1988)).

Finally, like all subsequent federal civil rights legislation, Title VII prohibits retaliation against employees who oppose any alleged violations of the statute or who participate in any proceedings under the statute (42 U.S.C. § 2000e-3(a)).

Sex Discrimination

While Georgia has never enacted legislation truly analogous to Title VII, the state's Sex Discrimination in Employment Act (SDEA) does provide some overlap by prohibiting wage payment practices that discriminate on the basis of sex (O.C.G.A. § 34-5-1 et seq.). In particular, not unlike the federal Equal Pay Act, SDEA bars employers from compensating employees of one sex at a rate less than that paid to employees of the opposite sex for “equal work in jobs which require equal skill, effort, and responsibility and which are performed under similar working conditions, except where such payment is made pursuant to: (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a differential based on any other factor other than sex” (O.C.G.A. § 34-5-3(a)). SDEA also makes it unlawful to discharge or otherwise retaliate against any covered employee because he/she has complained to the employer or any other person, commenced any proceeding under SDEA, or testified or is expected to testify in any such proceeding (O.C.G.A. § 34-5-3(c)). In many instances, retaliation under SDEA would also be actionable under the Georgia Whistleblower Act.

Age Discrimination

The federal Age Discrimination in Employment Act of 1967 protects people who are 40 years old or older from discrimination because of age. Employers may not discharge, fail or refuse to hire, or otherwise discriminate against any individual with respect to compensation, terms or conditions, or privileges of employment because such person is 40 years of age or older unless there is a bona fide occupational qualification based on age (29 U.S.C. § 621 et seq.).

While the relief available under the two statutes varies greatly, the protection afforded covered individuals under the ADEA is otherwise analogous to Title VII.

A critical difference between the ADEA and Title VII is that cities (and their officials and employees) generally are not subject to parallel age discrimination claims brought pursuant to Section 1983. While some courts have held that, unlike Title VII, Congress intended for the ADEA to preempt such claims under Section 1983, others have noted that age-based classifications simply do not typically run afoul of the Equal Protection Clause (*Duva v. Board of Regents*, 654 Fed. Appx. 451 (11th Cir. 2016)). The prudent municipal employer nonetheless will incorporate age discrimination and harassment into the policy and training aspects of the aforementioned prevent-detect-remedy policy.

While Georgia law does not provide a cause of action for age discrimination, the legislature has not ignored the subject altogether. In this regard, state law prohibits any entity from refusing to hire, employ, or license any individual, or to bar or discharge any individual from employment, solely because of age unless the reasonable demands of the position require such a distinction. The individual must be “qualified physically, mentally, and by training and experience to perform satisfactorily the labor assigned to him or for which he applies” (O.C.G.A. § 34-1-2). The statute protects individuals who are from age 40 to age 70.

Disability Discrimination

In the same vein as Title VII and the ADEA, the federal Americans with Disabilities Act (ADA) prohibits discrimination by employers against qualified individuals with disabilities in virtually all aspects of employment, including the application process, hiring, advancement, termination, compensation, and training (42 U.S.C. § 12101).

Among other things, the ADA prohibits pre-employment inquiries into a person’s disability status (42 U.S.C. § 12112(d)(2)(A)). A city may require a medical examination after tendering an offer of employment and before the applicant begins work, and may condition the offer on the results of the examination (provided all entering employees in the same job category are subjected to the same requirement). The ADA also requires a city to provide “reasonable accommodation” of an otherwise qualified person with a disability, unless the employer can show that it would constitute an undue hardship (O.C.G.A. § 12112(b)(5)(A)).

Georgia law addresses the rights of disabled employees as well. The Georgia Equal Employment for Persons with Disabilities Code (previously the “Georgia Equal Employment for the Handicapped Code”) covers employers, including cities, employing 15 or more individuals (O.C.G.A. § 34-6A-2). This statute prohibits cities and other covered employers from discriminating against any person with a disability with respect to wages, rates of pay, hours, or other terms and conditions of employment because of such person’s disability, unless the disability restricts that person’s ability to perform the particular job or occupation

There are several critical differences between the ADA and Georgia Equal Employment for Persons with Disabilities Code. For instance, the Georgia statute's definition of "disabled person" is narrower than that of its federal counterpart, in that it excludes some physical and mental disorders or conditions included in the ADA. In addition, in stark contrast to the ADA, the Georgia law does not require any accommodation of an individual's disability. To the contrary, the statute prohibits discrimination based on disability, "unless such disability restricts that individual's ability to engage in the particular job or occupation for which he or she is eligible," and specifically states that it shall not be construed to prohibit the rejection of an applicant because he or she has a disability that interferes with the ability to perform the assigned job duties adequately (O.C.G.A. § 34-6A-4(a); O.C.G.A. § 34-6A-3(b)). Because the requirements of the ADA and State law are concurrent, however, prudent cities will focus their compliance efforts on the ADA's definitions, requirements, and prohibitions.

Finally, the ADA is analogous to the ADEA with respect to the threat of a parallel disability discrimination claim under Section 1983 seeking to impose individual liability against city officials or employees and/or to recover damages in excess of statutorily-established maximums. In this regard, the Supreme Court has held that classifications based on disability rarely trigger scrutiny under the Equal Protection Clause, while the majority view is that claims based on alleged violations of the ADA or the federal Rehabilitation Act must be brought under those statutes rather than via Section 1983 (*City of Cleburne v. Cleburne Learning Center*, 473 U.S. 432 (1985); *Holbrook v. City of Alpharetta*, 112 F. 3d 1522 (11th Cir. 1997)). As with the ADEA, however, the prudent municipal employer will include disability discrimination and harassment in the policy and training aspects of its prevent-detect-remedy policy.

Garnishment of Wages/Bankruptcy

Under Georgia law, city employees may not be terminated solely based on a single garnishment of their wages (O.C.G.A. § 18-4-7). This protection is expressly for a single garnishment, however, and is not extended to multiple garnishments. The federal Consumer Credit Protection Act contains a similar prohibition, while the federal Bankruptcy Act prohibits municipal employers from terminating or otherwise discriminating against an employee for having filed a bankruptcy petition (15 U.S.C. § 1674(a); 11 U.S.C. § 525).

Time Off to Vote/Jury Duty/Witness Subpoena

All Georgia employers, including cities, are required to permit their employees to take time off to vote in any federal, state, or local political election (O.C.G.A. § 21-2-404). To qualify for this statutory protection, the employee must be a registered and qualified voter and must provide the employer with reasonable notice of his/her desire to take time off to vote. The employee is not entitled to take such leave if his/her hours of work begin at least two hours after the polls open or end at least two hours before they close. The employee may take no

more than two hours, and the employer may specify the time. Although no court has addressed the issue, the Attorney General has determined that the time off must be with pay (1989 Ga. Op. Atty. Gen. 129). Note, however, that such time would not have to be treated by the city as time worked for overtime purposes.

Employees are also entitled to time off for jury duty and to attend court proceedings when their attendance is compelled by valid subpoena or other court order. This statute does not apply to an employee whose court attendance is because he/she has been charged with a crime (O.C.G.A. § 34-1-3).

Breastfeeding

Georgia law recognizes that babies have a right to breast-feed and that, in furtherance of this right, a mother may breast-feed her baby in any location, where the mother is otherwise authorized to be, provided the mother acts in a discreet and modest way (O.C.G.A. § 31-1-9).

Another Georgia statute further promotes the interests of breast-feeding mothers by providing that an employer may provide reasonable unpaid break time each day to an employee who needs to express breast milk for her infant child (O.C.G.A. § 34-1-6). While the statute does not make such break time mandatory, a recent amendment to the federal Fair Labor Standards Act (FLSA) does. In particular, this amendment requires employers to provide “reasonable break time for an employee to express breast milk for her nursing child for one year after the child’s birth each time such employee has need to express the milk” (29 U.S.C. § 207(r)(1)(A)). The FLSA also requires employers to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk (29 U.S.C. § 207(r)(1)(B); see also O.C.G.A. § 34-1-6(b)).

Finally, because lactation is a pregnancy-related medical condition, the EEOC has taken the position that less favorable treatment of an employee due to her need to breastfeed or express milk may raise an inference of pregnancy discrimination. According to the EEOC, “an employee must have the same freedom to address such lactation-related needs that she and her co-workers would have to address other similarly limiting medical conditions. For example, if an employer allows employees to change their schedules or use sick leave for routine doctor appointments and to address non-incapacitating medical conditions, then it must allow female employees to change their schedules or use sick leave for lactation-related needs under similar circumstances.”

Blood Donation

Municipal employees are permitted up to eight hours of paid leave in each calendar year for

the purpose of donating blood, while those who donate blood platelets or granulocytes are permitted up to sixteen hours of paid leave (O.C.G.A. § 45-20-30).

Family Medical Leave Act

Under the federal Family and Medical Leave Act (FMLA), eligible employees are entitled to 12 weeks (or 26 weeks under certain circumstances) of unpaid leave for specified qualifying events (29 U.S.C. § 2612). While all public employers, including cities, are covered by the FMLA regardless of size, not all city employees are eligible for FMLA leave. In fact, many cities throughout Georgia, despite being covered by the Act, have no employees actually eligible for FMLA leave. In this regard, to be eligible for leave, an employee must have been employed by the city for at least 12 months (which do not have to be consecutive), must have worked for at least 1,250 hours in the 12-month period immediately preceding the date on which the requested FMLA leave is to begin, and must be employed by a city that has at least 50 employees at (or within 75 miles of) the office or another location where the employee works (29 U.S.C. § 2611(2)).

An FMLA-eligible employee can take up to 12 weeks of FMLA leave (1) to care for a newborn child; (2) to have a child placed with the employee for adoption or foster care; (3) to care for his/her spouse, child, or parent with a serious health condition; (4) for his/her own serious health condition; and (5) for any “qualifying exigency” arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on active duty (29 U.S.C. § 2612(a)(1)). In addition, an eligible employee can take up to 26 weeks of FMLA leave to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member (29 U.S.C. § 2612(a)(3)). A city is also required to maintain the employee’s health benefits as if the employee were continuously employed during the leave period (29 U.S.C. § 2614(c)).

FMLA-eligible employees do not have to take the entire leave at once. Moreover, eligible employees may take leave under the FMLA intermittently or on a reduced leave schedule for his/her own serious health condition or that of his/her family member, or for a qualifying exigency (29 U.S.C. § 2612(b)(1)).

FMLA leave is generally unpaid; however, a city may require an employee to utilize accrued paid leave (vacation or sick leave) concurrently with his/her FMLA leave (29 U.S.C. § 2612(d)).

When an FMLA-eligible employee returns from FMLA leave, the city is required to restore him/her to the same position he/she held when the FMLA leave began or to an equivalent position with equivalent benefits and pay (29 U.S.C. § 2614(a)). An exception to the restoration requirement exists in the case of a “key employee” if the city can demonstrate that holding the position open would cause it substantial and grievous economic injury. For this exception to apply, the employee must be FLSA exempt and among the highest paid ten

percent of all employees within 75 miles of his/her worksite. The key employee must be notified upon commencement of the leave that he/she will not be restored at the end of the FMLA leave (29 U.S.C. § 2614(b); 29 C.F.R. §§ 825.217-219).

Because cities with no FMLA-eligible employees are still covered by the FMLA, they must comply with the posting requirements of the Act. In particular, all cities are required to post a notice explaining the provisions of the FMLA and providing information regarding the procedures for filing complaints for alleged violations of the FMLA. The notice must be conspicuously posted where it can be seen by both employees and applicants. When a city's workforce is comprised of a significant portion of non-English speaking employees, it must provide the notice in a language in which the employees are literate (29 U.S.C. § 2619(a); 29 C.F.R. § 825.300(a)(4)).

As a final note, cities should be aware that an employee who is unable to return to work upon expiration of his/her FMLA leave may nevertheless be entitled to additional leave as a reasonable accommodation under the federal Americans with Disabilities Act (ADA)—even if the employee has exhausted any and all other forms of leave available to him/her.

Military Leaves of Absence

Under the federal Uniformed Services Employment and Re-employment Rights Act (USERRA), upon the satisfaction of certain basic eligibility requirements, city employees are entitled to a leave of absence for military service and to return to their positions (or a position of like seniority, status and pay) following completion of their military service (38 U.S.C. § 4312). There is no differentiation between voluntary and involuntary military orders for purposes of USERRA (38 U.S.C. §§ 4303(13), 4312(h)). While USERRA does not apply to "state" military duty or governor call-ups of National Guard members, Georgia law provides employment protection for those persons engaged in the performance of ordered military duty that is comparable or sometimes greater to that provided by the federal law (20 C.F.R. § 1002.57(b); O.C.G.A. § 38-2-280).

Under USERRA, all written or verbal orders are considered valid when issued by competent military authority. Advance notice must be provided to the city either orally or in writing by the employee, unless precluded by military necessity. Failure to provide timely notice may result in a denial of the protections of the law (38 U.S.C. §§ 4303(8), 4312(a), (b), (h)).

A city cannot require an employee to apply for a military leave of absence or otherwise submit official documentation for prior approval of a military leave of absence, nor does it have the right to deny military leave, so long as the employee has not exceeded the five years of cumulative service provided under federal law. A city does have the right, however, to request such documentation to establish an employee's basic eligibility for protection under the law after periods of military leave of absence for more than 30 days (38 U.S.C. § 4312(c), (e), (f)(3)(A), (h)).

While USERRA does not require a city to pay an employee while on military leave of absence, Georgia law requires that city employees be paid their salary (or other compensation) for periods of military leave, or while going to and returning from such leave, for a period not exceeding a total of 18 days in a federal fiscal year. Furthermore, if the Governor declares an emergency, and a city employee is ordered to active duty as a member of the National Guard, the employee must be paid his/her salary (or other compensation) for a period not exceeding 30 days in a federal fiscal year (O.C.G.A. § 38-2-279(e)). Employees cannot be required to use vacation or other personal leave for military service, but may, at his/her request, be permitted to use any such leave that accrued before the beginning of the military service instead of unpaid leave (38 U.S.C. § 4316(d)).

An employee generally does not accrue vacation or sick leave while on military leave of absence; however, USERRA entitles such employees to the same benefits provided to employees on other types of unpaid leave (38 U.S.C. § 4316(b)). Thus, for example, if a city provides continued health, life or disability insurance to employees on other types of unpaid leave, then these same benefits must be provided to employees on military leave. Furthermore, for absences of less than 30 days, health insurance benefits must be continued as if the employee has not been absent. For absences of 31 days or more, coverage stops unless the employee elects to pay for COBRA-like coverage (for a period of up to 18 months) (38 U.S.C. § 4317(a)(2)). Regardless of whether such continuation coverage is elected, health insurance must be reinstated the day an employee is reinstated with no waiting period (38 U.S.C. § 4317(b)(1)).

Pension plans, if tied to seniority, are given separate detailed treatment under federal law. There is no requirement under the law for a city to continue pension contributions while the employee is away from work (although it may choose to offer this benefit). Upon re-employment, the employee must be treated as not having incurred a break in service with the city maintaining a pension plan and military service must be considered service with a city for vesting and benefit accrual purposes. A reemployed veteran has three times the length of service (not to exceed five years) to make payments, and the city is liable to fund any resulting obligation of the plan within the same time frame (38 U.S.C. § 4318).

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Three-MANAGEMENT-of-MUNICIPAL-GOVERNMENT/Planning-and-Land-Use.aspx

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Overview

Elected city officials have the ability to impact the landscape of Georgia in remarkable ways. Due to Georgia's status as a Home Rule state, the local level of government makes all land use decisions. Because land use decisions affect private property, all requests to change designated land uses (usually referred to as "zoning changes") must be made by elected officials, never by staff. In short, mayors and city councils are responsible for valuable economic, natural and community resources, and their decisions will have lasting impacts. How do cities, in the largest state east of the Mississippi River, plan for the use of our land areas, and how do we bring it all together and build communities that people are glad to call home?

Since 1989, with the passage of the Georgia Planning Act, every local government in Georgia has been required to complete a comprehensive plan in order to maintain its Qualified Local Government status (QLG). The 2014 update to the Minimum Standards and Procedures for Local Comprehensive Planning requires that each government update its comprehensive plan at least once every five years. The real utility of a local comprehensive plan does not simply come from updating the document regularly, but rather from actually implementing it well. Statewide discussions about water quality and quantity, housing opportunities, transportation, job availability and land conservation all highlight the need for an agreed-upon approach to these difficult topics, and our comprehensive plans offer such an approach. A properly developed and effectively used comprehensive plan can be the most effective tool a local government has to ensure that the inevitable changes that happen to all communities occur in a controlled, rational manner and bring about the results the community wants. Lester Bittel noted, "Good plans shape good decisions. That's why good planning helps to make elusive dreams come true."

Plans of any type, whether business, governmental or personal, ask and answer three basic questions:

1. What do you have?
2. What do you want to have?
3. What are you going to do to get it?

While Georgia’s comprehensive plans provide guidance for a variety of community topics, including economic development and regional cooperation, these plans mostly provide a roadmap for the physical development of the community—how we use and shape our land. “Land use” is a loosely used term that refers to any decisions made about land and zoning regulations. Generally, “planning and land use” assumes that decisions regarding a jurisdiction’s land are made in accordance with an adopted comprehensive plan. Therefore, by formulating and using a comprehensive plan, a city council is making decisions about the shape and form of the land under its jurisdiction and is directly impacting the design of the community. In short, what does the community look like and how does it function, both now and in the future?

Georgia is changing rapidly. In some places, those changes are obvious and expected; elsewhere, the changes often go unseen and have subtle, but meaningful, consequences. Leadership with a clear vision for the future is necessary to guide our communities into the 21st century. No matter the diversities in population, landmasses, natural resources or economic makeup of Georgia’s cities, sound planning and effective implementation can make a positive difference in each community and, collectively, the entire state.

Planning

What the Comprehensive Plan is For (The Purpose and Intent of the Plan)

Georgia’s Minimum Standards for Local Comprehensive Planning provide a guide to everyday decision-making for use by local government officials and other community leaders. Decision-making is difficult at the best of times, even more so when debated and made in the public eye. The comprehensive plan represents the voice of the citizens of the community—what they want the community to look like, what they cherish, what they would like to change, what they consider the prevailing needs and opportunities to be in the community. As such, the comprehensive plan should act as a guide for elected officials when making rational, fair, and predictable decisions about the future of their community. Simply put, the plan is the electorate’s instructions to its elected officials.

What the Plan Looks Like (The Components of the Plan)

When the minimum planning standards were updated in 2014, DCA significantly streamlined the required process of plan preparation and drastically reduced the size of the plan document itself. These “new” standards enhance the plan’s focus on various “elements” addressing specific aspects of the community. Three elements are required for every community’s plan: Community Goals, Needs and Opportunities, and the Community Work Program. Additional elements may also be required based upon local conditions within the specific community. While these additional elements may only be required for some

communities, it is still advisable for all communities to examine themselves and determine, for themselves, if they should opt to include these elements in their plans. The following table and paragraphs discuss each of the required elements.

Plan Element	Required For
Community Goals	All local governments
Needs and Opportunities	All local governments
Community Work Program	All local governments
Land Use	Communities with zoning or similar land development regulations
Capital Improvements	Governments that charge impact fees
Economic Development	Communities included in Georgia Job Tax Credit Tier 1
Transportation	Communities included in a Metropolitan Planning Organization
Housing	Entitlement Communities required to have a Consolidated Plan

In addition to the required elements, communities are encouraged to add optional elements into their comprehensive plan to address specific local needs. Examples of optional elements include Infrastructure and Community Facilities, Natural Resources, Community Sustainability, Disaster Resilience, Education, Greenspace, Historic and Cultural Resources, Human Services, Intergovernmental Coordination, Public Safety, Recreation, and Solid Waste Management. The local government itself should determine if it wishes to include any optional elements in its plan understanding that, while such a decision has no impact on DCA’s review or approval of the document, all elements must be prepared according to the minimum planning standards. Further information about these and other optional elements are available in the Supplemental Planning Recommendations produced by DCA.

Community Goals Element

Every comprehensive plan must have a Community Goals element. The purpose of the Community Goals element is to involve community leaders and stakeholders in developing a road map for the community’s future. The Community Goals are the most important part of the plan because they identify the community’s direction for the future. Community involvement in developing this plan is intended to generate local pride and enthusiasm about the future of the community, thereby leading citizens and leadership to ensure that the plan is implemented. The result must be an easy-to-use document readily referenced by community leaders as they work toward achieving this desired future of the community. Regular update of the Community Goals is not required, although communities are encouraged to amend the goals whenever appropriate.

The Community Goals must include at least one or a combination of any of the four components listed below:

1. **General Vision Statement.** Include a general statement that paints a picture of what the community desires to become, providing a complete description of the development patterns to be encouraged within the jurisdiction.

2. **List of Community Goals.** Include a listing of the goals the community seeks to achieve. Review the suggested community goals in the Supplemental Planning Recommendations for suggestions.
3. **Community Policies.** Include any policies the local government selects to provide ongoing guidance and direction to local government officials for making decisions consistent with achieving the Community Goals. Refer to suggested policies listed in the Supplemental Planning Recommendations for suggestions.
4. **Character Areas and Defining Narrative.** This option lays out more specific goals for the future of the community-by-community sub-areas, districts, or neighborhoods, and may also satisfy the Land Use requirements as discussed below.

Needs and Opportunities Element

Every comprehensive plan must have a Needs and Opportunities element. The list of locally agreed upon Needs and Opportunities should primarily identify the challenges that the community intends to address through the comprehensive plan and the available assets which it will use to do so. Additionally, the list of Needs and Opportunities provides outside organizations and community members the chance to engage in addressing challenges which may be outside of the local government's control. The list must be developed by involving community stakeholders in carrying out a SWOT (strengths, weaknesses, opportunities, threats) or similar analysis of the community. The list that eventually makes its way into the plan is the final list that local leaders, the steering committee, and other interested parties have agreed are the most pressing matters that require the community's attention over the following five years in order to achieve their goals. The following resources may also be enlisted to help stakeholders identify local Needs and Opportunities:

1. List of Typical Needs and Opportunities from the Supplemental Planning Recommendations
2. An analysis of Data and Information
3. Analysis of DCA's Quality Community Objectives.

Community Work Program

Every comprehensive plan must include a Community Work Program (previously called the Short Term Work Program) which lays out the specific activities the community plans to undertake during the next five years to address the priority Needs and Opportunities and achieve portions of the Community Goals. This includes any activities, initiatives, programs, ordinances, administrative systems (such as site plan review, design review, etc.) to be put in place to implement the plan. General policy statements should not be included in the Community Work Program, but should be included as Policies within the Community Goals. The Community Work Program must include the following information for each listed activity:

- Brief description of the activity
- Legal authorization for the activity, if applicable
- Timeframe for initiating and completing the activity
- Responsible party for implementing the activity
- Estimated cost of implementing the activity

- Funding source(s).

Alongside this work program in the comprehensive plan is a section called the Report of Accomplishments. It provides a status report on all the projects and activities that were included in the previous Community Work Program. It provides the community with an update of what items have been completed, are underway but not yet completed, have been postponed, or have been cancelled. Through this tool, the citizens and elected officials can see the local government's ongoing track record and have a better understanding of where they stand in achieving the community's long-term aspirations.

Land Use Element

Any community that has adopted district-based development regulations (e.g., zoning) must include a Land Use element in its comprehensive plan. The term "land use" is self-explanatory. It means just that—how does a community use the land within its jurisdiction? Is it a central business district or housing, industrial, retail, or conservation land? In the mid-20th century, when Georgia had a population of about a million people, our land seemed limitless. Now, as more than ten million people call Georgia home, discussions about how we use our land have taken a more urgent tone, even in rural areas of the state.

For example, Watkinsville, near Athens, experienced rapid growth since the beginning of the century. Its historic downtown has become a magnet for locally owned businesses. In order to maximize the existing urban design, Watkinsville's Character Area Map (a component of the Land Use Element) provides a guide for growth that will enhance the city core as the community grows in population. In addition, the city planned jointly with Oconee County and the cities of Bishop, Bogart and North High Shoals, and made joint decisions with these other jurisdictions about infrastructure, open space, and agriculture.

In our state, land use decisions like these are made by local governments—either city councils or county boards of commissioners. With changing populations and limited resources, these decisions become increasingly important each year. Local elected officials have enormous responsibility for the health, vitality and appearance of Georgia's landscape and natural resources. Making good decisions about our available resources may not be simple, but it is possible. Following the comprehensive plan can help take some of the emotion out of land use decisions and make those decisions more predictable and fair.

Two options exist for satisfying the Land Use Element requirement, Character Areas, or Future Land Use Map. A brief description of the two components is shown below:

1) Character Areas Map and Defining Narrative. Communities can choose to identify and map the boundaries of existing or potential character areas covering the entire community, including existing community sub-areas, districts, or neighborhoods. Character Areas are defined as specific geographic areas or districts within the community that have unique or special characteristics; have potential to evolve into a unique area with more intentional

guidance of future development through adequate planning and implementation; or require special attention due to unique development issues. A list of recommended character areas is provided in the Supplemental Planning Recommendations for suggestions.

In thinking about Character Areas, it is important to remember that the intent is not to identify areas with or without “character” or areas that have a “good” or “bad” character. Rather, in delineating Character Areas, a community identifies places that share similar characteristics. Some areas have characteristics the community will want to preserve or enhance. Other areas will have characteristics that the community would prefer to change in order to accomplish its overall vision and meet its goals. For each identified character area, the community must carefully define and describe a specific vision that includes the following information:

- Written description and pictures or illustrations that make it clear what types, forms, styles, and patterns of development are to be encouraged in the area.
- Listing of specific land uses and/or zoning categories to be allowed in the area.
- Identification of implementation measures to achieve the desired development patterns for the area, including more detailed sub-area planning, new or revised local development regulations, incentives, public investments, and infrastructure improvements.

2) Land Use Map and Narrative. The community may choose to prepare a Future Land Use Map that uses conventional categories or classifications to depict the location, parcel by parcel, of specific future land uses. The Future Land Use Map must be prepared using either the standard land use classification scheme (categories listed below) or the Land Based Classification Standards (LBCS) developed by the American Planning Association. The Standard Classification includes: Residential; Commercial; Industrial; Public/Institutional; Agriculture/Forestry; Transportation/Communication/Utilities; Park/Recreation/Conservation; Undeveloped/Vacant; and Mixed Use. The Future Land Use Narrative should explain how to interpret the map and what each land use category means in the context of a specific community.

The choice of approach in creating the Land Use Element should be informed by the individual needs and aspirations of the community itself. There are “pros” and “cons” to each approach that a qualified planner can help you weigh. However, there is no “magic number” of character areas or scientific formula to figure out exactly where the boundaries of the land use categories should be placed. The maps and narratives can be as unique as the communities they represent. Depending on the size, population, developed areas, natural characteristics and employment centers of a community, a map may show as few as three or as many as 20 different mapped areas.

If your Land Use Element appropriately identifies the unique, individual characteristics of your community in a way that makes sense to the elected body, the staff, and the citizens, then it is a “good” Land Use element. When the local government uses its map and narrative to make decisions about land use, community facilities, or capital improvements, then the comprehensive plan is put to its best possible use.

Additional Elements

1. **Capital Improvements Element.** Depending on the characteristics of your community, additional elements may be required. For communities that charge development impact fees, a detailed Capital Improvements Element to meet the Development Impact Fee Compliance Requirements is required and should be substituted for this plan element.
2. **Economic Development Element.** Local governments included in Georgia Job Tax Credit Tier 1 must complete the Economic Development Element, in which they first identify needs and opportunities related to economic development and then analyze the impact upon their community of such factors as diversity of the economic base, quality of the local labor force, effectiveness of local economic development agencies, programs, and tools. The regional Comprehensive Economic Development Strategy (CEDS) may be substituted for this element.
3. **Transportation Element.** Communities located within a Metropolitan Planning Organization must evaluate the adequacy of the road network, alternative modes of transportation, parking, railroads, trucking, port facilities, airports, and the transportation/land use connection; the MPO regional transportation strategy may be substituted for this element. Local governments designated as HUD Entitlement Communities must complete this element to evaluate the adequacy and suitability of existing housing stock to serve current and future community needs, but the Consolidated Plan for the community may be substituted.

Community Involvement

Because the plan ultimately belongs to the public, the comprehensive plan must be prepared with opportunity for involvement and input from stakeholders and the general public. Effective public participation, though admittedly difficult to accomplish, ensures that the plan reflects the full range of community’s needs and values. At a minimum, comprehensive plans produced in Georgia must follow the three steps listed below for involving stakeholders and the general public:

1. **Identification of Stakeholders.** The individuals responsible for producing the plan must compile a list of the individual stakeholders who need to have a voice in the development of the plan. A list of potential stakeholders can be found in the Supplemental Planning Recommendations. While a large number and variety of stakeholders may be helpful in preparing the plan, a small group must be appointed to form a steering committee which will guide the planning process. Members of the local government must be included among the selected stakeholders and be actively involved in plan preparation, such as serving on the steering committee. A steering committee representative of the entire community can foster buy-in from all segments of the population and is vital to the implementation of the comprehensive plan.
2. **Identification of Participation Techniques.** Because different types of people in different professions and of different demographic backgrounds and situations in life are more attuned to interacting with their government in different ways, a variety of methods of seeking public input is very helpful. The Supplemental Planning Recommendations contain a menu of potential community participation techniques which can be used to develop the plan.
3. **Conduct Participation Program.** The stakeholders should be invited to participate in activities and events using the participation techniques the steering committee settles upon. These public events are intended to solicit specific input on the content of the plan. Regular meetings of the steering committee should be held to provide input and feedback to the plan preparers as well as the general public while the plan is being developed.

The Quality Community Objectives

The Board of the Department of Community Affairs has adopted the Quality Community Objectives (QCO) as a statement of the development patterns and options that will help Georgia preserve its unique cultural, natural and historic resources while looking to the future and developing to its fullest potential. The QCO's are a useful guide for communities preparing their comprehensive plan and should be referenced throughout the planning process.

1. **Economic Prosperity.** Encourage development or expansion of businesses and industries that are suitable for the community. Factors to consider when determining suitability include job skills required; long-term sustainability; linkages to other economic activities in the region; impact on the resources of the area; or prospects for creating job opportunities that meet the needs of a diverse local workforce.
2. **Resource Management.** Promote the efficient use of natural resources and identify and protect environmentally sensitive areas of the community. This may be achieved by promoting energy efficiency and renewable energy generation; encouraging green building construction and renovation; utilizing appropriate waste management techniques; fostering water conservation and reuse; or setting environmentally sensitive areas aside as green space or conservation reserves.

3. **Efficient Land Use.** Maximize the use of existing infrastructure and minimize the costly conversion of undeveloped land at the periphery of the community. This may be achieved by encouraging development or redevelopment of sites closer to the traditional core of the community; designing new development to minimize the amount of land consumed; carefully planning expansion of public infrastructure; or maintaining open space in agricultural, forestry, or conservation uses.
4. **Local Preparedness.** Identify and put in place the prerequisites for the type of future the community seeks to achieve. These prerequisites might include infrastructure (roads, water, sewer) to support or direct new growth; ordinances and regulations to manage growth as desired; leadership and staff capable of responding to opportunities and managing new challenges; or undertaking an all-hazards approach to disaster preparedness and response.
5. **Sense of Place.** Protect and enhance the community's unique qualities. This may be achieved by maintaining the downtown area as a focal point of the community; fostering compact, walkable, mixed-use development; protecting and revitalizing historic areas of the community; encouraging new development that is compatible with the traditional features of the community; or protecting scenic and natural features that are important to defining the community's character.
6. **Regional Cooperation.** Cooperate with neighboring jurisdictions to address shared needs. This may be achieved by actively participating in regional organizations; identifying joint projects that will result in greater efficiency and less cost to the taxpayer; or developing collaborative solutions for regional issues such as protection of shared natural resources, development of the transportation network, or creation of a tourism plan.
7. **Housing Options.** Promote an adequate range of safe, affordable, inclusive, and resource-efficient housing in the community. This may be achieved by encouraging development of a variety of housing types, sizes, costs, and densities in each neighborhood; promoting programs to provide housing for residents of all socioeconomic backgrounds, including affordable mortgage finance options; instituting programs to address homelessness issues in the community; or coordinating with local economic development programs to ensure availability of adequate workforce housing in the community.
8. **Transportation Options.** Address the transportation needs, challenges, and opportunities of all community residents. This may be achieved by fostering alternatives to transportation by automobile, including walking, cycling, and transit; employing traffic calming measures throughout the community; requiring adequate connectivity between adjoining developments; or coordinating transportation and land use decision-making within the community.

9. **Educational Opportunities.** Make educational and training opportunities readily available to enable all community residents to improve their job skills, adapt to technological advances, manage their finances, or pursue life ambitions. This can be achieved by expanding and improving local educational institutions or programs; providing access to other institutions in the region; instituting programs to improve local graduation rates; expanding vocational education programs; or coordinating with local economic development programs to ensure an adequately trained and skilled workforce.
10. **Community Health.** Ensure that all community residents, regardless of age, ability, or income, have access to critical goods and services, safe and clean neighborhoods, and good work opportunities. This may be achieved by providing services to support the basic needs of disadvantaged residents, including the disabled; instituting programs to improve public safety; promoting programs that foster better health and fitness; or otherwise providing all residents the opportunity to improve their circumstances in life and to fully participate in the community.

The Plan Adoption Process and Qualified Local Government Status

The Georgia Planning Act requires that each local government (city and county) adopt a comprehensive plan in order to maintain its Qualified Local Government (QLG) status. While there is no state-imposed penalty for not completing and adopting a comprehensive plan (on the schedule created by the Department of Community Affairs), local governments without QLG status are not eligible for state-administered grants, loans, and some permits.

The detailed procedures for submitting a plan for review and then adoption by the city council is available in [Chapter 110-12-1-.04 of the Minimum Standards and Procedures for Local Comprehensive Planning](#). Below is a list of the activities leading up to a local government receiving its Qualified Local Government status:

1. **First Required Public Hearing.** The purpose of the first public hearing is to brief the community on the process to be used to develop the plan, opportunities for public participation in development of the plan, and to obtain input on the proposed planning process.
2. **Developing the Plan.** The plan should be developed through extensive community involvement, including at a minimum the use of a steering committee comprised of representative stakeholders.
3. **Second Public Hearing.** A second public hearing must be held once the plan has been drafted and made available for public review.
4. **Submittal to Regional Commission for Review.** The Regional Commission shall review the plan for potential conflicts with plans of neighboring jurisdictions, opportunities for interjurisdictional/regional solutions to common issues, and consistency with the adopted regional plan. The Regional Commission will then notify interested parties and submit the document to DCA for approval.

5. **DCA Review.** DCA will review the required elements of the plan for compliance with the Minimum Standards and Procedures. This review may result in identification of deficiencies that must be resolved before the plan can be approved. The Department may also offer advisory comments for improving the plan, but these are only for consideration by the local government.
6. **Report of Findings and Recommendations.** Within 40 days after submittal for review, the Regional Commission must transmit a report of findings and recommendations to the local government. If the Regional Commission or DCA rejected the plan, revisions must be made and an updated plan must be resubmitted.
7. **Adoption of the Plan.** Once DCA finds the plan to be in compliance with the Minimum Standards and Procedures, the local governing body may adopt the approved plan. Within seven days of local adoption of the approved plan, the local government must provide a copy of the adoption resolution to the Regional Commission. Within seven days of receipt of this written notice, the Regional Commission must forward this resolution to the Department.
8. **Qualified Local Government Certification.** Once DCA has been notified by the Regional Commission that a local government has adopted the approved plan, DCA will notify the local government that Qualified Local Government certification has been extended. Once adopted by the local government, the availability of the plan must be publicized by the local government for public information. This requirement may be met by providing notice in a local newspaper of general circulation, posting notice on the local government's website, or using similar means to notify the public of plan adoption and directing them where a complete copy of the plan may be reviewed.

Implementing the Plan

Every decision a city council makes is a step to implementing the plan—or not. Did you consider the character area description before rezoning a parcel of property? Is your vote consistent with that description? Then the council has just helped implement that comprehensive plan. Did you look at the Land Use Element? Did you make a decision consistent with the measures outlined there? Again, that decision helped implement your plan. Conversely, when a council votes inconsistently with its plan, it becomes increasingly difficult to show that the plan is the guide for community decisions, and the legal defensibility of future decisions is eroded.

Consider these questions as a guide to implementing the comprehensive plan for your city:

- Will this decision further the vision for the character area written in our comprehensive plan?
- Is this decision consistent with our Future Land Use Map or Character Area Map?
- Is this decision consistent with a stated policy in our comprehensive plan?
- Does this decision address a need or opportunity stated in our comprehensive plan?
- Does this decision address an item in our Community Work Program?

Infrastructure

Infrastructure decisions at the city level include what type of infrastructure and where to put it. The most common infrastructure types include:

- Roads and bridges
- Water
- Sewer
- Stormwater facilities
- Parks and recreation facilities
- Police, Fire and EMS facilities
- Libraries
- Schools (governed by local school boards)

The placement of these facilities determines in large part where future development will go as well. Land adjacent to public investment is more easily developed and is more likely to be converted from agriculture, conservation, or another “green” use to a more intensive use when public facilities become available. For this reason, a city council should be careful to avoid environmentally sensitive areas when choosing the location of water, sewer, and road facilities.

Consider also that building libraries and public safety facilities (especially fire stations and police precincts) invites residential development nearby. The placement of public facilities and investments directly impacts land use. City councils that consult their comprehensive plan to identify areas most receptive to development while avoiding those areas that cannot support development are ensuring the long-term viability of their communities.

Zoning and Sprawl

“Sprawl” refers to the conversion of land from a rural/agricultural nature to some form of suburban function, which is generally auto-dependent and lacking connectivity. On the surface, many people find the look and feel of a sprawling development pattern to be unpleasant. Beyond that, however, a broad body of research demonstrates that it is a significant detriment to the natural environment, a major contributor to traffic gridlock, and an inefficient drain on local government resources.

“Zoning” is the primary regulatory method used by local governments to influence, guide, and control development as they carry out their plans for physical and economic growth. Zoning codes are one of the “police powers” granted to cities. The administration of these codes is governed by Georgia’s Zoning Procedures Act (O.C.G.A. § 36-66-1 et seq.).

A zoning ordinance establishes the conditions under which land may be developed and used for particular purposes. It also contains a map that divides the jurisdiction into various districts for particular classes of residential, commercial, industrial, and other uses. A zoning ordinance specifies what types of development may take place in each zoning district of the jurisdiction. It stipulates the allowable size and height of structures and sets forth the

requirements for lot size, setbacks, street parking, and other related considerations. A zoning ordinance is *not* a comprehensive plan or a land use plan, but it can be used to implement such plans by controlling how land is used.

How does a zoning code influence sprawl? Most local zoning plans are designed to separate land uses. Residential uses are allowed in one area of the community, while retail and commercial uses are provided in another area. The original intent of zoning codes was to protect public health and welfare by removing particularly onerous uses, like heavy industry or landfills, from proximity to the rest of the community. However, this segregation of land uses gradually increased to result in a disconnection of nearly all land uses. Throughout the 20th century, most of America continued to require a separation of uses, resulting in communities that depend on automobiles for any movement around the community at all. Making room for all those automobiles only increased the sprawling landscape, as we required more parking spaces for more automobiles and wider streets to move the cars from place to place.

According to urban planning professor Dr. William Fulton, “between 1982 and 1997, the amount of urbanized land used for development in the United States increased by 45% (from 51 million acres to 76 million acres.) The population grew by only 17%.” This type of land conversion is grossly inefficient and resource-intensive. As such, the decisions made by local governments are even more pressing as we move into the 21st century. If the zoning code in your community seems to be promoting sprawling patterns, it probably is. Some of the first places to look to make improvements include the following:

- Parking requirements
- Street connectivity requirements
- Building setbacks (how far away from each other and the road buildings are required to be)
- Building height limitations
- Minimum lot sizes in excess of ½ acre when they are applied to all residential and commercial areas regardless of their location in the community.

While the zoning code in your community may need an overhaul, the decisions the city council makes regarding rezoning requests have enormous influence on sprawl as well. When houses are built far from a town center or any community resources, those decisions create sprawl. Those houses require roads, public safety coverage, schools, and a place to buy goods and services. Over time, those resources creep out to the houses, generally along a single roadway, creating a linear development pattern that devours land formerly used for agriculture, conservation, or another green use. In addition, that creep tends to weaken the viability of existing town centers, resulting in dead shopping centers, historic downtowns with no businesses, and non-productive gaps throughout the community. Not only is this development pattern visually unattractive, it is also inordinately expensive when providing public services.

Carefully crafting and implementing your comprehensive plan's land use element can reduce the spread of sprawl. Referring to the plan to make land use decisions provides local governments with a strong, defensible foundation on which to consider the best interests of the community as well as the property owner when making a decision about a zoning district or a rezoning request.

The Planning Commission

The planning commission is an advisory board appointed by the local elected body. If it is a joint city-county planning commission, some members are appointed by the county governing authority and others by the mayor and council. The planning commission's mission is to plan for the community's future. This role calls upon the commission to look beyond short-term solutions, the technical views of government staff and department heads, and the particular concerns of local special-interest groups. Members of the planning commission should have no actual or even potential conflicts of interest. They should be encouraged to attend training programs sponsored by DCA, the [Georgia Municipal Association](#), the Association of County Commissioners of Georgia, universities, professional associations, and state or regional agencies.

The planning commission ordinarily interprets the zoning ordinance and amendments and makes recommendations to the city council on rezoning requests. Many planning commissions also regulate the subdivision of land parcels. Some may also act as a "Design Review Board," meaning that they will review and make recommendations on the site and building design proposals, particularly for commercial development. The commission may receive technical assistance from a professional staff and department heads and consultants in performing these functions. If the city does not have a planning commission, the city council normally assumes planning commission functions.

Regional Planning and Land Use

As the largest state east of the Mississippi River, Georgia holds an amazing number and diversity of natural, historic, cultural, and archaeological resources. Many of these resources do not adhere to any manmade jurisdictional lines, but straddle cities, counties, and entire regions. These resources are so important to our state that Georgia has a regional approach to managing, protecting and enhancing these assets.

Regionally Important Resources

A Regionally Important Resource (RIR) is a natural or historic resource that is of sufficient size or importance to warrant special consideration by the local governments having jurisdiction over that resource. The Georgia Planning Act of 1989 (the same law that provides for comprehensive planning by local governments) authorizes the Department of Community Affairs to establish procedures for identifying RIRs statewide. DCA has

established rules for use by the Regional Commissions in preparing a Regional Resource Plan that systematically identifies the RIRs in each region and recommends best practices for use in managing these important resources.

Each regional commission has prepared a Regionally Important Resources Map and an accompanying resource management plan. Georgia's diversity provides us with a wealth of these resources, ranging from the Appalachian Mountains to the coastal plain. Our natural resources include floodplains, marshlands, steep slopes, and rivers and streams. Our historic resources include historic properties, archaeological sites, and cultural resources. Each regional commission utilized a resource nomination process to determine a final list of RIRs that form the foundation of the Regional Resource Plan. The state's goal is to create a green infrastructure network among these RIRs to preserve and enhance those special places that Georgians have deemed important. In this context, Green Infrastructure Network means a strategically planned and managed network of wilderness, parks, greenways, conservation easements, and working lands with conservation value that benefits wildlife and people, supports native species, maintains natural ecological processes, sustains air and water resources, links urban settings to rural ones, and contributes to the health and quality of life for the communities and citizens sharing this network. The network encompasses a wide range of elements, including natural areas such as wetlands, woodlands, waterways, and wildlife habitat; public and private conservation lands such as nature preserves, wildlife corridors, greenways, and parks; and public and private working lands of conservation value such as forests, farms, and ranches. Additionally, a portion of the Green Infrastructure Network incorporates outdoor recreation and trail networks. Each region's Regional Resource Plan is available on [DCA's Regional Planning webpage](#).

Regional Planning

Much like a comprehensive plan for a local government, the regional plan prepared by each regional commission should guide decisions for the region. The regional plan includes the region's vision for the future as well as the strategy for achieving this vision. Because the regional plan provides guidance for future decision-making about the region, it must be prepared with adequate input from stakeholders and the general public. The regulations governing regional planning require it to include three major components:

Regional Goals for the future development of the region

- A list of Regional Needs and Opportunities identified for further action
- An Implementation Program for achieving the regional vision and for addressing the identified Regional Needs and Opportunities. The implementation program must include:
 - Local Government Performance Standards that establish minimum and exceptional levels of performance expected of all actors in implementing the recommendations of the plan
 - A Regional Work Program listing regional commission responsibilities for implementing the plan.

More information can be found on [DCA's webpage for regional planning](#).

Developments of Regional Impact

Developments of Regional Impact (DRI) are large-scale developments that are likely to have regional effects beyond the local government jurisdiction in which they are located. The Georgia Planning Act of 1989 authorized the Department of Community Affairs to establish procedures for review of these large-scale projects. These procedures ensure communication between affected governments and provide a means of revealing and assessing potential impacts of large-scale developments before conflicts relating to them arise. At the same time, local government autonomy is preserved since the host local government maintains the authority to make the final decision on whether a proposed development will or will not go forward.

Population and Development Thresholds

Thresholds are used to determine whether a proposed development qualifies as a DRI. The thresholds vary by type of development and the population category of the county in which the proposed development will take place. There are various categories of development, each with separate thresholds, including (among others): office, commercial, hospitals, housing, industrial, hotels, mixed-use, airports, recreation, post-secondary schools, waste disposal, quarries and asphalt plants, wastewater treatment and petroleum storage, etc.

Because communities across the state and within each region have a wide range of population and development levels, the state is divided into tiers to determine what specific threshold is applicable to a given geographic area. For most of the state, this is reflected in two population-based tiers (Metropolitan Areas and Non-Metropolitan Areas). Within the territory of the Atlanta Regional Commission, thresholds are aligned with the Regional Development Map presented in that commission's regional plan. The thresholds vary because a development in an area with low levels of population and development intensity is likely to have a greater relative impact than it would have in an area with higher levels of population and development.

Local Government Role

The local government role related to DRIs includes the following:

- Identifying potential DRIs as part of their own local development review process. Examples of activities triggering the process include rezonings and issuance of development permits or building permits.
- Notifying the regional commission of all potential DRIs for intergovernmental review.
- The local government is strongly encouraged to take the findings of the RC into account when making a decision to approve, approve with conditions, or deny a proposed DRI.

- Local governments should take advantage of any opportunity to review DRIs proposed in neighboring jurisdictions and provide meaningful feedback if they see ways that adverse consequences of the development could affect their community or if there are ways to work collectively to maximize the potential benefits of important development projects.

Always contact your regional commission if you suspect that a potential development in your community could be a DRI or if you have any other questions about the program. Additional information about Developments of Regional Impact can be found on [DCA's webpage for DRIs](#).

Sources of Help

Most local elected officials serve a variety of roles in the community, and many juggle business and family as well. To make the responsibilities of planning and land use decisions easier, Georgia provides a variety of resources, both through individual technical assistance and web-based information. Local planning staffs are usually the first point of contact in planning matters, but even if a city does not have a professional planner on its staff, other staff members may be able to provide some information or insight regarding the planning matter at hand. Of course, in any situation involving legal matters, consult the city attorney.

The following organizations are public agencies and non-profit organizations dedicated to assisting local governments in Georgia. This list is not comprehensive but merely an overview of where to begin to look for assistance.

- [GMA](#) is a voluntary, non-profit organization that provides legislative advocacy, educational, employee benefit and technical consulting services to its members.
- [Regional Commissions](#) provide a wide variety of assistance to local governments in preparing and implementing comprehensive plans and are often the first place to call for planning help.
- [The Department of Community Affairs](#) can help local governments with planning, land use and plan implementation questions. As the state agency responsible for implementing the Georgia Planning Act, they will provide assistance regarding any aspect of the planning act and related rules.
- [The Carl Vinson Institute at the University of Georgia](#) provides education, assistance, research, policy analysis, and publications to assist public officials in serving citizens in Georgia and throughout the world.
- [The Fanning Institute](#) works with communities of all types, within and outside of Georgia. With expertise in community, economic, and leadership development, the faculty and staff of the Fanning Institute provide customized approaches to develop skilled community leaders, create vibrant communities, and promote prosperous economies.
- [The Georgia Institute of Technology Center for Quality Growth and Regional Development](#) produces, disseminates, and helps implement new ideas and technologies that improve the theory and practice of quality growth.

- The Georgia Planning Association encourages, promotes and assists physical, economic, and human resources planning within the State of Georgia.
- The Georgia Conservancy collaborates, advocates, and educates to protect Georgia's natural environment. Through its focus on clean air and water, land conservation, coastal protection, growth management and education, the Georgia Conservancy works to develop solutions to protect Georgia's environment and promote the stewardship of the state's vital natural resources.

Pulling it All Together

The 21st century is a time of great change for Georgia. Our demographics are changing, and there are more of us than ever before. In addition, because of our growing role as a global transportation and business hub, our economy is increasingly affected by the national and international economies. It may seem that the decisions made in city council chambers have little effect on the state as a whole, but in fact, these local decisions create the sum of change for Georgia that is our legacy. Urban design, even for the smallest of cities, can make an enormous impact on our built environment. As we grow and develop into the 21st century, our cities are an exciting place to focus our development efforts. In May 2010, the Southern Growth Policies Board quoted the Harvard Business Review in its report that cities are seeing a resurgence in interest from people wanting a more walkable, diverse lifestyle than suburban areas can provide. The original “downtown core” of even our smallest cities offers a place from which to start and maintain as we develop outwards. Because builders and developers generally develop a parcel at a time, rather than tackling an entire community at once, it is important for each city to have a clear, written vision as to how it would like its physical environment to build out. This vision can help a city knit an interesting urban fabric, even though it may take years to complete. All of Georgia's cities have seen both booms and busts. Some of the most interesting cities in the 21st century are those that fell on hard times in the mid-20th century, looked at their declines, and planned for how to change their futures. These turnarounds were not quick or easy, but they have paid big dividends for their citizens. Decatur, Brunswick, Savannah, Madison, Monticello, Greensboro, Athens, and many others have all made impressive progress toward being true “live-work-play” communities where people are choosing to move. Georgia's municipalities have the opportunity to consider the overall look and feel of the community they have as well as the community they want to be, and through effective planning they can greatly increase their chance of obtaining future goals and maintaining past successes.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Three-MANAGEMENT-of-MUNICIPAL-GOVERNMENT/Service-Delivery-Strategy.aspx

History of Local Government Service Delivery in Georgia

The work of Georgia's city elected officials is often directly affected by the decisions of corresponding county elected officials. County/city agreement is normally discretionary, but county/city agreements are compulsory for the receipt of sales tax revenues (Local Option and Special Purpose Local Option Sales Taxes) and for the adoption of a Service Delivery Strategy (SDS).

The Georgia Service Delivery Strategy Act, enacted by the General Assembly in 1997, established a process through which local governments within each county must come to an agreement about service provision. "The process...is intended to minimize inefficiencies resulting from duplication of services and competition between local governments and to provide a mechanism to resolve disputes over local government service delivery, funding equity, and land use" (O.C.G.A. § 36-70-20).

For nearly 200 years in the history of Georgia, county/city duplication of services, competition, and inefficiency were not major issues because of the clear legal distinction between the services of municipalities and county governments. Cities existed through charters as creatures of the state legislature for the purpose of providing urban services such as police and fire protection, water and sewer utilities, street maintenance, recreation, etc. Counties served as administrative arms of the state, and counties provided state-mandated functions such as courts, sheriff, health, welfare, and roads and bridge maintenance (including county roads in cities). For more details on this topic, please see James V. Burgess Jr. and Michael B. Brown, "The Issue of Double Taxation in Georgia," *Georgia Bar Journal* 21(7) (June 2016): 13-19.

These clear county/city service distinctions were disrupted by Georgia's rapid population growth between 1950 and 1970. Population migrated from Georgia cities and from other states into suburban areas of the state's most populous counties. Residents of these suburban areas sought the same urban services already provided within cities. However, cities' annexation authority was very limited, and county governments could only provide urban services to suburban residents through approval of the General Assembly with case-by-case passage of local constitutional amendments.

Service Delivery Expansion for a Growing Population

Facing a proliferation of local legislation and recognizing the problems of urban growth, in 1972, the General Assembly reviewed these issues through its State Planning and Community Affairs Committee. The Community Development Subcommittee reported,

In terms of the quality of our environment, we are suffering from the effects of unplanned, uncoordinated, haphazard growth and development. The results are urban sprawl, congestion, pollution and accelerating social ills which have hastened the white flight to the suburbs, leaving the decaying central cities to the poor, the black, and the elderly (*Journal of the House of Representatives*, 131st General Assembly, Regular Session, 1972: 4465).

The Urban Growth Subcommittee saw the need for new approaches and structural remedies to address these problems. The Subcommittee recognized county/city consolidation in Columbus and annexations in Macon and Albany as means of reform; however, the Subcommittee predicted these solutions would not work statewide:

Other alternatives, at least for service delivery, should be made available for urban areas, particularly one which precludes the need for local governments to return to the General Assembly for permissive authority. This is also a recognition of the profusion of local legislation which has already indicated the need for an equalization of authority among local governments (*ibid.*).

The Urban Growth Subcommittee proposed an amendment to the Georgia Constitution that would equalize service delivery authority between cities and counties. The amendment also gave cities and counties permission—but not the obligation—to establish special services districts. The General Assembly approved “Amendment 19,” which was adopted by Georgia voters in November 1973 (1972 GA Laws at 1552; GA Official and Statistical Register 1971-1972 at 1900). Local government had been fundamentally restructured: Georgia counties began exercising the same powers as cities—both jurisdictions could provide police, fire, sanitation, water/sewer, storm water, recreation, streets maintenance, etc. (Ga. Const. Art. IX, Sec. II, Par. III).

The amendment prohibited counties from providing these services inside cities without a county/city contract; however, the Amendment did not preclude counties from using their county-wide taxes to pay for urban services in unincorporated areas. County governing bodies determined that levying county-wide property taxes was (and continues to be) the most politically feasible way for counties to fund unincorporated area urban services. City residents continued to pay for urban services in their city tax bills. The problem of providing urban services to unincorporated areas was solved, but a new, more insidious problem was created: double taxation of city taxpayers who pay for urban services in both their city and county tax bills. Prior to the enactment of the equalization amendment, some city officials had expressed fears of tax inequities for city residents. Those fears proved to be well-founded.

Commencement of Double Taxation

As predicted by some city officials, GMA members soon began reporting statewide problems with double taxation. In 1977, GMA issued a report defining and identifying “double taxation” as “... The disparity that exists either when citizens of municipalities pay county and city taxes, and receive benefits or services only from the city, or when city – county agreements

provide for the joint financing of services with city residents also financing part of the county share” (*Double Taxation Handbook: A Guide to Determine the Impact* (Georgia Municipal Association, 1972), p. 1). The report states further:

Double taxation is one of the most severe and perplexing problems facing municipal officials today in Georgia. It is a problem that is constantly being discussed by city officials among themselves and their constituents and one which they are bringing to the attention of the Georgia Municipal Association, committees and Board of Directors of the Georgia Municipal Association.

For the past two years, a resolution on double taxation was passed at the annual business session of the Georgia Municipal Association urging the Georgia General Assembly to “place before the people of the state the proposed amendment to the Georgia Constitution which would require county governments to reduce millage rates of city residents in reasonable proportion to the full services not delivered to municipal residents” (ibid., p. i).

The report identified four mechanisms to mitigate the problem, including (1) county and city officials recognize the problem and devise equitable solutions; (2) establish County taxing districts comprised of incorporated and unincorporated areas with tax rates for each district; (3) consolidate county and city governments; and (4) enact corrective state legislation (ibid., pp. 2-3). The report was prophetic even if practical implementation of its recommendations did not occur for 20 years—and the problem of double taxation persists across Georgia today.

Passage of the Service Delivery Act

From 1975 to 1997, GMA and its leadership unsuccessfully strived to enact legislation to solve the problem of double taxation. GMA addressed the issue through its policy committees and special study groups. Finally, in 1995, the General Assembly created the Georgia Futures Commission comprised of state legislators, city and county officials, and business leaders; the group concluded that “Amendment 19” [now entitled the “Supplementary Powers Clause” of the Georgia Constitution] which authorized counties to provide municipal services, had led to “fruitless competition and duplication” between cities and counties (The Georgia Future Communities Commission, *A Strategy for Promoting Georgia’s Future Prosperity: Report of Recommendations*, Volume 1 (1998), p. 7).

The Commission made a number of recommendations to promote economy and efficiency in the delivery of local government services, to eliminate duplication of services, to reduce “turf conflict” between cities and counties, and to offer improved service delivery mechanisms (Georgia Future Communities Commission, *1997 Preliminary Recommendations, Cooperation, Innovation, and Shared Problem Solving* (September 1997), p. ii). The passage of HB 489, the Service Delivery Act, was one of the most important accomplishments of the Commission in addressing county-city tax inequities (identified by GMA 20 years earlier). The stated intent of the Service Delivery Act is, “... to provide a flexible framework within which local governments in each county can develop a service delivery system that is both efficient and responsive to citizens in their county” so as to avoid duplication of services and

competition. The Act also addresses county/city land use compatibility and water/sewer fees charged to customers located outside the geographic boundaries of the service provider (O.C.G.A. § 36-70-20 et seq.).

The key provisions of the SDS Act require that county services which are primarily of benefit to the unincorporated area—and the county share of county/city jointly funded services—must be funded with unincorporated area revenues including assessments and fees, insurance premium taxes, and property taxes derived from the unincorporated area. Furthermore, counties must account for and report these unincorporated area expenditures and revenues in unincorporated area special service districts (O.C.G.A. § 36-70-24(3)).

It is important to note that the Commission recommendations also facilitated the adoption of HB 491, “Local Government Uniform Charts of Accounts and Reporting,” which mandates statewide county-city financial and service delivery reporting (Georgia Future Communities Commission, *1997 Preliminary Recommendations, Cooperation, Innovation, and Shared Problem Solving* (September 1997), pp. iii-iv). The information from these reports (described in more detail below) has proven to be essential in the identification and elimination of county-city tax inequities.

Requirements of the Service Delivery Act: Components and Criteria

As of 1997, all Georgia cities and counties have been required to submit service delivery plans; counties and cities must submit SDS updates in conjunction with the adoption of revised comprehensive plans. The Georgia Department of Community Affairs (DCA) publishes SDS and comprehensive plan deadlines on its website. DCA also publishes detailed information about SDS, including the Act, forms and instructions, copies of plans statewide, and non-compliance local governments.

Required SDS Components

In order for the Service Delivery plan of each county and city to be approved by DCA, it must include four required components:

Component One

1) An identification of all local government services presently provided or primarily funded by each general purpose local government and each authority within the county, or providing services within the county, and a description of the geographic area in which the identified services are provided by each jurisdiction (O.C.G.A. § 36-70-23(1)).

The act does not specify the names, types, or number of services. But most plans include 30 to 40 services and follow the expenditure classifications required under the “uniform chart of accounts” statute described above. It is in the interest of cities to make clear distinctions among service types—especially Supplementary Powers services—to eliminate overlapping

county/city services. Preparation of a master table or spreadsheet showing services, providers, and geographic areas of service can be informative.

Component Two

2) An assignment of which local government or authority, pursuant to the requirements of this article, will provide each service, the geographic areas of the county in which such services are to be provided, and a description of any services to be provided by any local government to any geographic area outside its geographical boundaries. In the event two or more local governments within the county are assigned responsibility for providing identical services within the same geographic area, the strategy shall include an explanation of such arrangement (O.C.G.A. § 36-70-23(2)).

This component of the SDS plan (along with the funding component below) is essential to document double taxation and tax inequities. **Counties often argue that all of their services benefit everyone in the county.** Component 2 addresses this occasionally false county argument by documenting the exact geographic location of services such as buildings, facilities, infrastructure, staffing, and work districts. City residents can benefit from a county service only if services are actually present and provided in the city.

DCA forms require the preparation of legible maps to clarify some service areas; however, maps should be prepared for **every** service to assist in identifying service duplication. GDOT county and city maps can be used for this documentation. In some cases, cities may need to file open records requests with the county to identify facilities, infrastructure, work orders, staffing assignments, capital projects, etc. necessary to document the exact location of services. In its publication Government in the Sunshine, GMA provides sample documents to make open records requests.

Component Three

3) A description of the source of the funding for each service identified pursuant to paragraph (2) of this Code section (O.C.G.A. § 36-70-23(3)).

Most county double taxation arises from the use of county-wide taxes for services that are primarily for the benefit of the unincorporated area. Therefore, the plan should specify the exact source of revenue for each service, **especially county services in the unincorporated area.** Each service should be associated with specific assessments and fees and other sources of revenues following the uniform chart of accounts cited above. **County general fund revenues and Local Option Sales Taxes (LOST) cannot not be used to fund services that primarily benefit the unincorporated area (see Criterion Three described below) without the consent of cities and inclusion of this consent in the SDS** (for general fund revenues see O.C.G.A. § 36-70-24(3)(B); for LOST see *Nielubowicz et al. v. Chatham County*, GA Supreme Court 252 Ga. 330; 312 S.E. 2d 802).

Component Three gives cities the ability to identify county double taxation by documenting the county service, the county cost of service, and fees or revenues directly supporting the county service. By definition, the net cost of any such service is being funded by property taxes. This net cost may not come from county-wide property taxes but must be obtained from unincorporated area property taxes. The calculation of net cost is best determined from the county's own documents. County expenditures, revenues, and tax digests are available online from DCA ([reports](#) and [survey data](#)), the [Georgia Department of Revenue](#) (DOR), the [Carl Vinson Institute of Government](#), and other sources.

Component Four

4) An identification of the mechanisms to be utilized to facilitate the implementation of the services and funding responsibilities identified pursuant to paragraphs (2) and (3) of this Code section (O.C.G.A. § 36-70-23(4)).

County double taxation and service inequities should be readily identifiable upon the completion of Components One, Two, and Three. Component Four compels counties and cities to describe how services will be delivered or modified to meet requirements of the SDS statute.

Required SDS Criteria

In order for the plan of each county and city to be approved by DCA, it must meet four criteria:

Criterion One

1) The strategy shall promote the delivery of local government services in the most efficient, effective, and responsive manner. The strategy shall identify steps which will be taken to remediate or avoid overlapping and unnecessary competition and duplication of service delivery and shall identify the time frame in which such steps shall be taken. When a municipality provides a service at a higher level than the base level of service provided throughout the geographic area of the county by the county, such service shall not be considered a duplication of the county service (O.C.G.A. § 36-70-24(1)).

Criterion One complements Component Four above: it requires a description of services and information about the mitigation of any overlapping, duplicative, unnecessary, or competitive services. Criterion One then requires a timeframe for mitigation of this identified non-compliance.

Criterion One also addresses the issue of "higher levels of service" provided by cities, which is not considered a duplication of county services. **However, this SDS component is often abused by counties to justify double taxation of city residents.** County services may be limited to the unincorporated area, yet the county contends that the services are of county-wide benefit. In order for a county service to be of county-wide benefit, that service must be provided "throughout the geographic area of the county" (ibid.). By definition, a county

service cannot be limited to the unincorporated area and provide county-wide benefit. For example, county road maintenance may be limited to the unincorporated area, yet counties claim county-wide benefit. Also, for example, county recreational services and facilities may be only located within the unincorporated area, yet counties claim recreational services have county-wide benefit. The county then asserts that city recreational services are provided at a “higher level.” Any such false claims must be identified and factually addressed under the reporting requirements of Component Two described above.

Criterion Two

2)(A) The strategy shall provide that water or sewer fees charged to customers located outside the geographic boundaries of a service provider shall not be arbitrarily higher than the fees charged to customers receiving such service which are located within the geographic boundaries of the service provider.

(B) If a governing authority disputes the reasonableness of water and sewer rate differentials imposed within its jurisdiction by another governing authority, that disputing governing authority may hold a public hearing for the purpose of reviewing the rate differential. Following the preparation of a rate study by a qualified engineer, the governing authority may challenge the arbitrary rate differentials on behalf of its residents in a court of competent jurisdiction. Prior to such challenge, the dispute shall be submitted to some form of alternative dispute resolution (O.C.G.A. § 36-70-24(2)).

Criterion Two provides methods to address the frequent complaints of unincorporated area residents that they must pay higher water/sewer rates than inside-city residents when cities provide water/sewer services in unincorporated areas. Typically, inside-city water/sewer services have higher customer density than suburban, unincorporated areas. Lower water/sewer customer density results in higher per-customer costs for the extension and maintenance of lines, pumping stations, and infrastructure. Nevertheless, cities that operate water and sewer services beyond their boundaries must be prepared to document and demonstrate the fairness and justification for their water and sewer rates and fees.

Criterion Three

3)(A) The strategy shall ensure that the cost of any service which a county provides primarily for the benefit of the unincorporated area of the county shall be borne by the unincorporated area residents, individuals, and property owners who receive the service. Further, when the county and one or more municipalities jointly fund a county-wide service, the county share of such funding shall be borne by the unincorporated residents, individuals, and property owners that receive the service.

(B) Such funding shall be derived from special service districts created by the county in which property taxes, insurance premium taxes, assessments, or user fees are levied or imposed or through such other mechanism agreed upon by the affected parties which complies with the intent of subparagraph (A) of this paragraph (O.C.G.A. § 36-70-24(3)).

Criterion Three is the heart of the Service Delivery Act, especially in the sense that it addresses the ongoing double taxation identified by GMA after the passage of the Supplementary Powers constitutional amendment. Criterion Three compels counties to fund unincorporated area urban services in the same way that cities fund such services—from the residents and businesses that receive the services. Further, when cities and counties jointly fund services, the county may not fund its share of the cost from its general fund (and county-wide property taxes); instead, the county must also fund shared service costs derived from unincorporated area revenues. Counties that fail to meet these tests are not in compliance with the SDS statute, and city residents are being double taxed.

Counties and cities have flexibility in determining remedies to achieve SDS compliance. These could include differential property tax millage rates, revised LOST shares, county provision of services through contracts with the city, establishment of service authorities, or any other such arrangement meeting the approval of the city and the requirements of the SDS statute. However, in the absence of such an agreement, Criterion Three requires that county services primarily for the benefit of the unincorporated area must be funded with unincorporated area property taxes, assessments and fees, and insurance premium taxes through an unincorporated area special services district.

Criterion Three also provides a mechanism for multiple cities within a county to structure a service delivery plan that meets the needs of each jurisdiction. No city may be compelled to accept supplementary powers services from the county or from another city. However, the city must be prepared to provide or to fund such a service. Also, a city may face opposition when the city seeks to provide services (such as water/sewer) outside of city boundaries. All cities providing or seeking to provide services outside of their boundaries should ensure that the SDS plan identifies the service, provider, and geographic service area. Also, the city must enter contracts and agreements as required by law.

Criterion Four

4)(A) Local governments within the same county shall, if necessary, amend their land use plans so that such plans are compatible and non-conflicting, or, as an alternative, they shall adopt a single land use plan for the unincorporated and incorporated areas of the county. (B) The provision of extraterritorial water and sewer services by any jurisdiction shall be consistent with all applicable land use plans and ordinances (O.C.G.A. § 36-70-24(4)).

This criterion addresses two other sources of county/city conflict which are usually best addressed on a case-by-case basis.

Constitutional Officers

A 2004 amendment to the Service Delivery Strategy Act excluded sheriffs, clerks of the superior court, judges of the probate court, tax commissioners, their personnel, or services provided by them from the definition of “local government” (O.C.G.A. § 36-70-2(5.2)). The ostensible reason given for this amendment at the time was that the constitutional officers are elected county-wide and provide services on a county-wide basis. In some communities, however, this is not the case, particularly with respect to the sheriff. Some sheriffs provide patrolling and emergency response services only in portions of the county not served by municipal police. The service delivery act still requires identification of all services provided “by each general purpose local government and each authority within the county, or provided within the county” (O.C.G.A. § 36-70-23(2)). Thus, the actual impact of this amendment on service delivery agreements remains unclear. In addition, Georgia sheriffs have the same authorities and duties throughout the county (O.C.G.A. § 15-16-10). Therefore, cities may opt to receive law enforcement services from the sheriff in lieu of funding their own police force.

Renegotiation

Counties and cities must submit updated SDS plans along with comprehensive reports per the requirements enumerated by DCA. However, changes in revenue distribution, service provision, and comprehensive plans (specifically a full comprehensive plan update by a county), expiration of the existing service delivery agreement, and creation or abolition of local governments all may warrant the adoption of a new agreement. Cities and counties may also agree to amend their existing agreements (O.C.G.A. § 36-70-28).

In order for a service delivery strategy to be valid, it must be approved by a resolution adopted by the governing authorities of the county, every city within (or partially within) the county which has a population of 9,000 or more within the county, the city that serves as the county site, and by no less than 50% of the remaining cities within the county which contain at least 500 persons within the county (O.C.G.A. § 36-70-25). All city officials should note that the resolution includes a certification that:

Our service delivery strategy ensures that the cost of any services the county government provides (including those jointly funded by the county and one or more municipalities) primarily for the benefit of the unincorporated area of the county are borne by the unincorporated area residents, individuals, and property owners who receive such service (see DCA Service Delivery Form 4).

Sanctions and the Role of DCA

Counties are required to file the service delivery strategy agreement with the Georgia Department of Community Affairs (DCA) by their designated deadline. Counties and cities may request a 90-day deadline extension from DCA provided that all jurisdictions required to approve the final plan also approve the extension request. Within 30 days of receipt of the

agreement. DCA must verify that the agreement filed meets the components and criteria imposed by state law, but shall not approve or disapprove of specific elements of the strategy (O.C.G.A. § 36-70-26). If local governments are not successful in agreeing to a verified strategy, no state administered financial assistance or grant, loan, or permit, shall be issued to any local government or authority not included in the strategy or any project inconsistent with a verified strategy (O.C.G.A. § 36-70-27).

Dispute Resolution

If local governments are unable to reach an agreement prior to sanctions being imposed, some means of alternative dispute resolution shall be employed (O.C.G.A. § 36-70-25.1). This means that the local government must engage one or more mediators or other neutrals to assist in resolving the dispute. If alternative dispute resolution does not result in an agreement, the neutral must prepare a report that is provided to each governing authority and becomes part of the public record. The costs of the alternative dispute resolution must be shared by the parties to the dispute on a pro rata population basis, with the county population based on the unincorporated area (O.C.G.A. § 36-70-25.1(c)). If local governments are still not successful in reaching an agreement after sanctions have been imposed, the law provides that any of the parties may file a petition in superior court seeking mandatory mediation.

Insurance Premium Taxes—County Service Delivery Obligations

Georgia counties have special service delivery funding and reporting obligations if those counties collect insurance premium taxes. Essentially all counties collect the tax. County insurance premium taxes must be used for police, fire protection, waste collection and disposal, curbs, sidewalks, streetlights, and any other service provided by the county for the primary benefit of the unincorporated area—or reducing unincorporated area taxes if none of these services are provided. Counties collecting the tax must separate and document unincorporated area services and revenues in county financial records, budgets, budget adoption resolutions, and minutes (O.C.G.A. § 33-8-8.3 et seq.). Few, if any, counties fully meet these requirements. Counties' fulfillment of these statutory duties would give cities ready information to determine counties' SDS compliance.

Some counties' use of insurance premium tax revenues results in additional double taxation of city residents and businesses. Approximately 25 counties have County M&O Property Tax Millage Rates which are lower in the unincorporated area than in the incorporated area. These counties have effectively concluded that they provide no services which are primarily for the benefit of the unincorporated area, and they use insurance premium taxes to lower unincorporated area county property taxes. In most cases, cities in these counties maintain their own roads and provide their own police services. However, city residents must also pay

for county services limited solely to the unincorporated area, including sheriff law enforcement patrol, county road maintenance, sanitation, etc. Cities can put counties on notice of their obligations under the insurance premium tax statute, and adversely affected taxpayers can file class-action lawsuits to seek redress for over-payment of county property taxes (*Hamilton v. Montgomery County*, Case No. 13-CV-159 (Sup. Ct. Montgomery County)).

Service Delivery and Local Option Sales Tax Distribution

Georgia law requires that counties and cities re-determine LOST shares every decade according to eight distribution criteria. Six of these criteria require direct consideration of counties' and cities' service delivery responsibilities and agreements. The first criterion considers counties' and cities' service delivery responsibilities during business hours; for conventions, trade shows, and athletic events; for central business districts; and for unincorporated areas (O.C.G.A. § 48-8-89(b)(1)). The second criterion considers service delivery responsibilities of cities and counties to the resident population. The third criterion considers the existing service delivery responsibilities of each political subdivision (O.C.G.A. § 48-8-89(b)(2) and (3)).

Criterion Six requires consideration of the existing intergovernmental agreements among and between the political subdivisions (O.C.G.A. § 48-8-89(b)(6)). The most important comprehensive intergovernmental agreement in all counties and cities is the SDS plan and any supporting contracts and agreements.

Criterion Seven requires counties and cities to consider, "(7) The use by any political subdivision of property taxes and other revenues from some taxpayers to subsidize the cost of services provided to other taxpayers of the levying subdivision" (O.C.G.A. § 48-8-89(b)(7)). This criterion allows cities to identify counties' use of county-wide revenues—including property taxes—to subsidize services which are primarily for the benefit of the unincorporated area. Criterion Eight requires consideration of "(8) Any coordinated plan of county and municipal service delivery and financing," which is a clear reference to the Service Delivery Agreement and other county/city service arrangements (O.C.G.A. § 48-8-89(b)(8)).

The same information collected and used for SDS must be considered to determine LOST allocations based on the statutory distribution criteria. This determination should include a listing of services, service providers, geographic location of the services, cost of services, revenues associated with services, net cost of services and any service subsidy. County subsidy of a service that is primarily for the benefit of the unincorporated area can be mitigated through the reallocation of LOST funds to cities.

Conclusion

All city elected officials should have a working knowledge of SDS to prepare plans in compliance with the statute. Such knowledge is essential because cities and counties must certify that all county services which are primarily for the benefit of the unincorporated area and all jointly-funded services are funded with revenues derived from the unincorporated area. Knowledge of SDS is necessary to direct the alteration of services or funding sources during the term on an SDS agreement, which requires the consent of affected jurisdictions. Finally, county and city elected officials have an opportunity to use SDS—and any other legal means—to improve the efficiency and effectiveness of local government through service arrangements that best serve residents, businesses, and visitors.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Four-MUNICIPAL-SERVICES/Building-Codes-Enforcement.aspx

Building codes enforcement is an important issue facing Georgia's cities and counties. Georgia continues to attract thousands of new residents and new businesses each year. This growth requires construction of new housing, offices, commercial buildings, retail establishments, and industrial facilities. Ensuring that these new buildings are structurally sound and safe and assets to both their owner and the community where they are located makes local building code enforcement a high priority for Georgia's cities. Georgia's State Constitution and general law give local governments broad discretionary powers in the enforcement of the Georgia State Minimum Standard Codes. It is essential that local governments take the necessary steps to update their local ordinances to reflect current state law, particularly with respect to administrative and enforcement procedures.

Building Codes and the Progressive Community

Georgia's uniform construction codes are designed to help protect the life, health, and property of all Georgians from the hazards of faulty design and construction; unsafe, unsound, and unhealthy structures and conditions; and the financial hardship resulting from unnecessarily high construction and operating costs of houses, buildings, and similar structures. Municipalities are not mandated by state law to enforce the state building codes or to issue building permits and perform construction inspections. Rather, cities may choose which, if any, of the state minimum standard codes they intend to adopt and enforce within their jurisdictions. However, the Uniform Codes Act provides that "any municipality or county either enforcing or adopting and enforcing a construction code shall utilize one or more of the state minimum standard codes" (O.C.G.A. § 8-2-28). Therefore, in order for a city to have a building codes enforcement program, at least one of the state minimum standard codes must be adopted by local ordinance and enforced locally.

Purposes of Building Codes

Enforcing building codes is an important city function. The purposes of construction codes are to

- protect individual health by assuring construction of facilities that are structurally safe, weather-tight, properly ventilated, adequately lighted, and designed to encourage maximum safe usage
- save lives by preventing structural fires resulting from defective installation of materials or the installation of improper materials in existing and new buildings

- save construction costs by preventing the use of more materials than are required for new buildings or existing structures
- protect property by assuring that structures will serve the purposes for which they are designed
- encourage sound, steady growth by assisting builders, owners, and developers in the use of acceptable technological improvements in the building trades
- reduce the chances of costly litigation involving property disputes, interference in the use of light and air, or other matters that can arise during the course of construction, and
- permit qualification for federal grant assistance requiring code enforcement as a prerequisite to funding eligibility.

Advantages to City Enforcement of State Codes

There are a number of advantages to municipal enforcement of state building codes, including

- protecting the life, health, and property of citizens and thus helping to provide a better living environment
- establishing the foundation for a permit system
- helping to prevent the creation of slums and thereby contribute to the maintenance of a stable tax base
- helping to prevent the creation of blighted areas by the adoption and enforcement of blight ordinances
- providing a means of systematically updating property assessments
- obtaining lower insurance rates for residents
- fulfilling prerequisites for federal rehabilitation grants
- meeting the requirements of other state and federal laws, such as the Water Conservation Act
- ensuring that local construction is built in compliance with state codes, and
- demonstrating that the city is a progressive local government.

Uniform Codes Act

The Uniform Codes Act became effective on October 1, 1991 (O.C.G.A. § 8-2-1(2)). The act was adopted to establish standard building codes that are applicable statewide. Prior to that date, municipalities and counties could adopt any code or standard that they desired to enforce locally. This local control resulted in a great deal of variation in the construction codes and standards that were enforced throughout the state. This law authorizes the governing authority of any municipality or county to enforce the 14 state minimum standard codes. There are nine mandatory codes and five permissive construction codes that cities may adopt and enforce (O.C.G.A. § 8-2-20(9)(B)). Each of the 14 state minimum standard codes typically consists of a base code (e.g., the International Building Code as published by the International Codes Council and a set of statewide amendments to the base code). Georgia law provides that nine of these codes are “mandatory” (i.e., applicable to all construction, whether or not the codes are locally adopted or enforced) and five are

“permissive” (i.e., only applicable if a local government chooses to adopt and enforce one or more of these codes).

Since Georgia law gives the mandated codes statewide applicability, cities and counties are not required to and, in fact, should not adopt the actual codes themselves to enforce them (O.C.G.A. § 8-2-25(a)). Local governments should only adopt administrative procedures that authorize local enforcement of the state-adopted mandatory codes. However, local governments are empowered to choose which of the mandatory codes they wish to enforce locally.

State Minimum Standard Codes

Any structure built in Georgia must comply with nine mandatory construction codes (see Table 1), whether or not the local government chooses to enforce these codes locally. Note that the standard and Council of American Building Officials (CABO) codes are the same as the international codes. It is not necessary for local governments to adopt any of the mandatory state minimum standard codes because these codes have already been adopted as the official codes of Georgia by state law. However, in order to enforce any of the mandatory minimum standard codes, a city must adopt an ordinance or ordinances stating that it intends to enforce that code or codes.

The five optional codes are available for city or county adoption and enforcement (see Table 2). Unlike the mandatory codes, in order for a city to enforce one or more of these permissive codes within its jurisdiction, the city must first adopt the code or codes that it wants to enforce, either by ordinance or resolution. The city must file a copy of the ordinance or resolution adopting a permissive code and authorizing its enforcement with the Georgia Department of Community Affairs (DCA) (O.C.G.A. § 8-2-25(b)).

Table 1. Mandatory Codes

- International Building Code
- International Fuel Gas Code
- International Mechanical Code
- International Plumbing Code
- National Electrical Code
- International Fire Code
- International Energy Conservation Code
- International Swimming Pool & Spa Code
- International Residential Code^a

Note: All of the mandatory codes have Georgia amendments that are applicable statewide. For information regarding the Life Safety Code (NFPA 101) or the Georgia Accessibility Code please contact the State Fire Marshal's Office

^a The General Assembly specifically omitted the plumbing and electrical requirements of the International Residential Code for One- and Two-Family Dwellings. Therefore, the plumbing requirements of the International Plumbing Code and the electrical requirements of the National Electric Code must be used in one- and two-family construction.

Table 2. Permissive Codes

- International Property Maintenance Code
- International Existing Building Code
- National Green Building Standard
- Disaster Resilient Building Code IBC Appendix
- Disaster Resilient Building Code IRC Appendix

The State Codes Advisory Committee

DCA's state codes advisory committee plays a major role in the review and periodic update of the state construction codes. This committee is made up of 21 members who are experts in the various codes and who are chosen to represent the diverse interests of citizens, builders, financiers, designers, city and county code enforcement officials, and other groups. The Georgia Safety Fire Commissioner and the Commissioner of the Department of Community Health or their designees are ex-officio members of the advisory committee. The commissioner of DCA appoints the remaining members. The state codes advisory committee uses task forces to assist in the review of new codes or proposed amendments to existing codes. A task force is made up of experts in a particular field, such as building, mechanical, plumbing, electrical, gas, housing, fire prevention, or energy. Codes experts in the Department of Community Affairs provide staff support for these task forces.

State construction codes are reviewed, amended, and revised as necessary by DCA with the approval of the Board of Community Affairs. Code amendments to Georgia's codes may be initiated by the department or upon recommendation from any citizen, profession, state agency, political subdivision of the state, or the state codes advisory committee. New provisions and amendments or modifications of the state construction code requirements go into effect after approval by the Board of Community Affairs and upon filing with the Secretary of State in accordance with the state Administrative Procedure Act. The approval of the state codes advisory committee must be obtained before the proposed changes are submitted to the Board of Community Affairs. The board cannot alter the recommendations of the state codes advisory committee. It has two options: approve the recommendations as submitted by the state codes advisory committee or deny them and return them to the advisory committee.

Administration and Enforcement of the State Minimum Standard Codes

In order to properly administer and enforce the state minimum standard codes, cities and counties must adopt reasonable administrative provisions. These provisions should include procedural requirements for the enforcement of the codes, provisions for hearings and appeals from decisions of local inspectors, fees, and any other procedures necessary for the proper local administration and enforcement of the state minimum standard codes. Local governments are empowered to inspect buildings and other structures to ensure compliance with the codes, to employ inspectors and other personnel necessary for enforcement, to require permits and establish charges for such permits, and to contract with other governments for code enforcement (O.C.G.A. § 8-2-26(a)).

Some cities and counties have mistakenly assumed that DCA has adopted the "administrative" chapter (chapter 1 of each code), thereby providing local governments with the administrative procedures required by the law. This assumption is incorrect. DCA

has excluded the administrative chapters, and state law specifically allows local governments to adopt, by ordinance or resolution, any reasonable provisions or procedures necessary for the proper local administration and enforcement of the codes.

DCA periodically reviews, amends, and/or updates the state minimum standard codes. If a local government chooses to enforce any of these codes locally, it may only enforce the latest editions adopted by DCA (along with the statewide amendments also adopted by DCA). DCA has developed both a sample resolution and ordinance that can be used as a guide for local governments in the development of their administrative code procedures. Cities should contact the [Construction Codes Section at DCA](#) for a copy of this sample resolution or ordinance and for any technical assistance needed in the development of a local code enforcement program.

Appendices

It should be noted that the Uniform Codes Act states that the appendices of the codes are not enforceable by a local government unless they are (1) specifically referenced in the code text adopted by DCA or (2) specifically included in an administrative ordinance adopted by a municipality or county. If any appendices to a particular code have been adopted by DCA, they will be noted in the Georgia amendments to that base code.

Local Code Amendments

The Uniform Codes Act allows cities to adopt local amendments to the state minimum standard codes under certain conditions. DCA does not approve or disapprove any local code amendment. The department only provides recommendations to the local government. However, in order for a city to enforce any local code amendment, the local government must submit the proposed local amendment to DCA for review and recommendation (O.C.G.A. § 8-2-25(c)).

There are several requirements that local governments must meet in order to enact a local code amendment. These requirements are as follows:

- The requirements in the proposed local amendment cannot be less stringent than the requirements in the state minimum standard code
- The local requirements must be based on local climatic, geologic, topographic, or public safety factors
- The legislative findings of the city council must identify the need for the more stringent requirements, and
- The local government must submit the proposed amendment to DCA 60 days prior to the proposed local adoption and enforcement of any such amendment.

After a local government submits a proposed local amendment, DCA has 60 days in which to review the proposed amendment and forward its recommendation to the local government. DCA may respond in three ways: recommend adoption of the amendment, recommend against adoption of the amendment, or have no comment on the proposed amendment. If

DCA recommends against the adoption of the proposed amendment, the local governing body must specifically vote to reject DCA's recommendation before the local amendment may be adopted. If DCA fails to respond within the 60-day timeframe, the local government may adopt the proposed local amendment without any recommendation from the department.

After adoption by the local governing authority, copies of all local amendments must be filed with DCA. Once the adopted local code amendment has been filed with DCA, the local government may begin local enforcement. No local amendment becomes effective until the local government has filed a copy of the adopted amendment with DCA.

Building Code Enforcement Agency

Building code enforcement should be organized so that only an official directly concerned with enforcing city codes reviews the inspector's performance. The following criteria have been identified for successful local code enforcement programs (Richard L. Sanderson, *Code and Code Administration* (Chicago: Building Officials Conference of America, 1969)):

- The code enforcement agency should have departmental status.
- The code enforcement administrator or building official should be responsible directly and exclusively to the person serving as chief administrative officer of the city.
- All building code enforcement activity should be in one building code enforcement department/agency.
- Building code enforcement should be the sole function of that department/agency.
- All code enforcement staff should be properly trained and/or certified.
- Proper funding should be provided for training and certifications.

Permits and Inspections

Upon adoption, the building codes are enforced through a system of permits and inspections. Anyone planning construction or alterations covered by city codes must first submit a set of plans and specifications to the city building official. If these plans meet city code standards and other development regulations (i.e., zoning), a building permit is issued. The permit allows construction to proceed on the condition that the approved plans must be followed. The local building inspector makes periodic inspections to monitor compliance. Personnel requirements for building code enforcement vary with the size of the city, the volume of building activity, and the type of mandatory and optional codes being enforced. In larger cities, building code enforcement may require a department with several full-time staff members, while small cities may choose to contract with a county or another municipality that has a building code enforcement program or enter into an intergovernmental agreement establishing a joint building code enforcement system. There are several good examples of joint building code enforcement programs around the state.

Regulatory Fees

Local governments are authorized to charge regulatory fees (i.e., permit and inspection fees) to help defray the costs associated with building code enforcement activities. However, no local government is authorized to use permit or inspection fees as a means of raising revenue for general purposes. Therefore, the amount of regulatory or inspection fees charged by a city must approximate the reasonable cost of the actual regulatory activity performed by the city (see Table 3 for a sample schedule of permit fees based on the estimated cost of construction). Mechanical, electrical, and plumbing permit fees are usually calculated based upon the number of fixtures or devices that are to be installed as a price per fixture or device.

Table 3. Sample Schedule of Building Permit Fees

•Total Valuation	\$50 base fee plus below:
•\$1,000 and less	No fee, unless inspection required, in which case a \$15 fee for each inspection shall be charged
•\$1,001 to \$50,000	\$15 for the first \$1,000 plus \$5 for each additional thousand or fraction thereof, to and including \$50,000
•\$50,001 to \$100,000	\$260 for the first \$50,000 plus \$4 for each additional thousand or fraction thereof, to and including \$100,000
•\$100,001 to \$500,000	\$460 for the first \$100,000 plus \$3 for each additional thousand or fraction thereof, to and including \$500,000
•\$500,001 and up	\$1,660 for the first \$500,000 plus \$2 for each additional thousand or fraction thereof

Moving Fee

- For the moving of any building or structure, the fee shall be \$100.

Demolition Fee

- For the demolition of any building or structure, the fee shall be
 - 0 to 100,000 cu. ft., \$50
 - 100,000 cu. ft. and over, \$0.50 per 1,000 cu. ft.

Penalties

- Where work for which a permit is required by this code is started or proceeded prior to obtaining said permit, the fees herein specified shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of this code in execution of the work or from any other penalties prescribed herein.

Plan-Checking Fees

- When the valuation of the proposed construction exceeds \$1,000 and a plan for the construction is required to be submitted, a plan-checking fee is required to be paid to the building official at the time of submitting plans and specifications for plan review. Said plan-checking fee shall be equal to one-half of the building permit fee. Such plan-checking fee is in addition to the building permit fee.^a
- In eliminating the need for an applicant to state the value of the estimated construction cost, the Building Valuation Data Table, which is available from the International Code Council, may be used.^b

^a Applies to permit fees for all construction, including alterations.

^b The Building Valuation Data Table represents average square foot costs for most buildings. Costs are based on national averages and include total design, inspection, and construction of the particular building and appurtenances. The table presents 27 occupancy categories, e.g., dwelling, church, office, restaurant, and retail store. Each occupancy is sorted into nine types of construction, for which there is a square foot construction cost.

Building Codes Enforcement Training

To assist local government inspection officials in their building code enforcement responsibilities, DCA works closely with the [International Code Council \(ICC\)](#), the [Building Officials Association of Georgia \(BOAG\)](#), and other state and local training agencies to assist individuals looking for proper training. In addition, DCA provides on-site construction code technical assistance, information, and referral services to cities and counties.

Information and Assistance

For in-depth information and resources about Georgia's Construction Codes Program, including copies of the current state minimum standard codes and amendments, visit [DCA's website](#) and contact the Georgia Department of Community Affairs, Codes and Industrialized Buildings Program, 60 Executive Park South, NE, Atlanta, GA 30329-2231, (404) 679-3118, fax (404) 679-0572, e-mail: codes@dca.ga.gov.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Four-MUNICIPAL-SERVICES/Gas-and-Electric-Systems.aspx

Municipal Gas Systems

Historic Overview of Municipal Operated Natural Gas Systems

Natural gas is a market-driven commodity that rapidly grew in demand in the 1930s. In the 1950s, the Georgia Municipal Association established the GMA Gas Section, and in 1987 the Municipal Gas Authority of Georgia (MGAG) was formed by the Georgia General Assembly to assist municipal gas system owners.

Today, GMA's Gas Section and MGAG collectively represent 84 municipally owned public gas systems. The purpose of GMA's Gas Section is to coordinate and assist municipal natural gas systems in providing efficient, safe, and economic services to their consumers and communities. To ensure the best consumer experience, the Gas Section offers trainings and conferences for municipal operators along with research on best storage and production practices.

Municipal Gas Authority of Georgia

In the late 1980s, the Georgia General Assembly decided that certain political subdivisions of this state could own and operate gas distribution systems to serve their citizens and customers by providing them with gas. If the political subdivision was able to supply the resource and the citizens in the service area were able to receive it, then the delivery service had to be an adequate, dependable, and economical source of gas supplies.

As a result, the General Assembly declared there was a state need for a non-profit authority to assist municipalities in developing and promoting efficient gas supply practices for the public good. The authority was also enacted to offer financial assistance for additions and other expenditures for the municipal gas systems (O.C.G.A. § 46-4-80).

Today, the Municipal Gas Authority of Georgia is the largest non-profit natural gas joint-action agency in the United States, serving 79 members in a multi-state area. MGAG exists to aid municipalities with operating and growing their existing natural gas systems in the most efficient way possible. MGAG helps member systems to market their product effectively in residential, commercial, agricultural, and industrial markets.

Purchasing Natural Gas

According to Georgia's Public Service Commission (PSC), natural gas customers can purchase gas from one of three types of providers based on their location in the state:

1. an investor-owned local distribution company

2. a natural gas marketer
3. a municipal gas system.

- Liberty Utilities, Georgia's only local distribution company, is fully regulated by the PSC.
- Atlanta Gas Light Company (AGLC) became a pipes-only gas company in 1998, when it elected to open its territory to competition pursuant to the Natural Gas Competition and Deregulation Act of 1997. Ten certified natural gas marketers now serve customers on AGLC's system. The prices charged by marketers are market-based, but rates for AGLC's distribution service are still regulated by the PSC.
- In Georgia, 84 municipal gas systems provide natural gas to their residents. Prices for municipal gas service are not subject to PSC regulation.

Legislative Deregulation

Natural gas deregulation began with Senate Bill 215, which was passed by the Georgia Legislature and signed into law in 1997. This legislation allows Atlanta Gaslight Company to store and distribute natural gas in its facilities (pipelines, storage facilities, and other supporting services) and marketers to sell this natural gas to consumers. The Georgia Public Service Commission is tasked with administering gas deregulation. House Bill 1568 took effect in 2002 and charged the PSC with implementing rules that expanded consumers' rights.

The Natural Gas Competition and Deregulation Act's stated intent and purposes are to:

- promote competition
- protect the consumer during and after the transition to competition
- maintain and encourage safe and reliable service
- deregulate those components of the industry subject to actual competition
- continue to regulate those services subject to monopoly power
- promote an orderly and expeditious transition of the industry toward fully developed competition
- provide for rate-making methods which include the use of straight fixed-variable rate design, the recovery of certain stranded costs, and the use of alternative forms of rate regulation, and
- allow gas companies the opportunity to compete effectively in a competitive marketplace (O.C.G.A. § 46-4-.151(b)(1)-(8)).

The Act was amended in 1999 with House Bill 822, relating to customer assignment, and again in 2001 with Senate Bill 217, which addressed pricing, billing, meter reading, and other consumer issues.

Municipal Electric Systems

Historic Overview of Municipal Operated Electric Systems

In the early 1900s municipalities began to provide electric services to their citizens, originally in the form of wholesale power from small plants owned and operated by the municipality, which eventually evolved into larger generating stations connected by transmission systems. Electric demand drove down costs and allowed municipalities to become wholesale power customers of Georgia Power Company (GPC), an investor-owned electric utility.

It was not until the 1960s that the Federal Power Commission began using its regulatory authority over wholesale power supply contracts, which included those between Georgia Power Company and the municipal operators.

Georgia Power Company pursued wholesale rate increases to raise additional revenue for the buildout of new plants. This initiated the largest generation construction program to date and resulted in two nuclear plants, Hatch and Vogtle, along with two coal-burning plants, Wansley and Scherer.

Georgia Power Company asserted that their priority during a power shortage would be providing for their retail load, and it would not be responsible for the wholesale supply requirements for municipal systems. As a result, municipalities worked together through GMA's Electric Section, and GPC agreed to sell an appropriate share of its power facilities to municipal and electric membership corporations.

Municipal Electric Authority of Georgia

In 1975, the Georgia General Assembly created the Municipal Electric Authority of Georgia (MEAG) to acquire generation and provide wholesale power supply to municipalities (O.C.G.A. § 46-3-110). Prior relationships with energy providers had left cities vulnerable to supplier's ratemaking and service delivery. The formation of MEAG Power gives cities an option and enables local governments to control their energy decision-making. Today MEAG represents a total of 49 member communities.

Public Service Commission

Georgia Power Company is fully regulated by the Commission. Currently, GPC serves approximately 2.4 million customers in 155 of Georgia's 159 counties. The Commission has limited regulatory authority over the 42 electric membership corporations (EMCs) and 52 municipally-owned electric systems in the state. Without federal action, the electric industry in Georgia will remain traditionally regulated in its present form.

Some retail competition has been present in Georgia since 1973 with the passage of the Georgia Territorial Electric Service Act. This Act grants customers with manufacturing or commercial loads of 900 kW or greater a one-time choice in their electric supplier. It also provides eligible customers the opportunity to transfer from one electric supplier to another, provided all parties agree. The Commission resolves territorial disputes and customer complaints involving customer choice and approves requests for transfer of retail electric service.

Municipal Competitive Trust

In 1999, MEAG helped participants form the Municipal Competitive Trust to ready them for deregulation. Until such legislation comes to Georgia, the Competitive Trust helps participants manage their long-term financial security. The Competitive Trust has been applauded by the credit rating industry and has been instrumental in securing low-cost funding for MEAG and other participants.

Electric Cities of Georgia

Electric Cities of Georgia (ECG) officially incorporated in 1992 and operated as a trade organization through 2009. MEAG allocated more services to Electric Cities, and today they represent 52 municipal electric systems. ECG provides economic and strategic services to community-owned utility systems that sell public power. ECG advocates for local communities' infrastructural and economic success. ECG also partners with municipalities and industry experts to find cost-effective solutions that benefit the city, the community, and utility customers. Recognizing that a community-owned utility infuses the local economy, ECG exists to provide resources to ensure structural reliability and economic success.

Legislation on Electric Service

- The Georgia Territorial Electric Service Act of 1973 provides for exclusive service areas for each electric service provider (GPC, EMC, and Municipals) with limited exceptions (e.g., large load customer choice and corridor (existing line) rights) and provides protections from discrimination by electric providers.
- The Georgia Cogeneration and Distributed Generation Act of 2001 provides that customers who generate their own electricity may use that electricity free from most PSC regulation and provides for the process by which customer generators may sell electricity back to an electric supplier.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Four-MUNICIPAL-SERVICES/Historic-Preservation.aspx

Buildings, new or old, define our public spaces and cities. When people think of a particular place, they almost always envision what it looks like. For many cities in Georgia, community identity is framed by the historic architecture within the downtown, main street, riverfront, or neighborhood areas.

Historic resources are unique to their location and serve as a physical legacy of the cultural identity, historical significance, construction practices, planning efforts, and merit of a particular place with regard to investment and redevelopment. Preservation has the potential to drive heritage tourism, instill a sense of community pride, and create local jobs for specialized labor that is focused on unique aspects of the local building trade. Preservation is not simply about remembering the past. It can be used to guide the future by enriching the quality of life of a community.

Across the United States, there are more than 2,000 historic preservation commissions, represented by the [National Alliance of Preservation Commissions](#). Georgia has approximately [142 municipalities and counties with Historic Preservation Commissions](#), 95 of which are Certified Local Governments. Preservation efforts in Georgia began with the Historic American Buildings Survey (1934) and culminated in the establishment of the [Savannah National Historic Landmark District](#) (1966). Since then, preservation activities have continued to spread throughout the state. The field of preservation is nationally recognized and plays an important role in many of Georgia's higher learning institutions, including the University of Georgia and the Savannah College of Art and Design. It has become an economic driver for heritage tourism in many communities. Historic preservation goes beyond preserving a place. It can also be used to define destinations.

Enabling Legislation

National Preservation Efforts and Laws

Efforts to regulate and require the preservation of historic resources began in the 1930s with the creation of the first historic preservation zoning ordinance and commission for Charleston, South Carolina's historic district. During the same time, the French Quarter in New Orleans established similar procedures for the protection of its historic resources.

In 1966, the federal government passed the National Historic Preservation Act. This act and later amendments created the [National Register of Historic Places](#), which identifies culturally significant properties worthy of preservation. It requires that historically significant properties be considered during federal undertakings and provides financial incentives to property owners for rehabilitating these properties. The program is administered by the National Park

Service under the Secretary of the Interior. The Secretary of the Interior's Standards for the Treatment of Historic Properties were developed to determine appropriate preservation and rehabilitation practices. The act also established State Historic Preservation Officers, who help administer these programs statewide and provide linkages to the National Park Service (16 U.S.C.A. § 470 et seq.). Other agencies, including the Historic Preservation Advisory Council and the National Trust for Historic Preservation, work at the national and regional levels to help drive preservation policy and best practices.

State Preservation Efforts and Laws

Georgia's State Historic Preservation Office is known as the Historic Preservation Division of the Georgia Department of Natural Resources. This agency assists local governments, property owners, planners, and consultants with the implementation of the National Historic Preservation Act. Further, they coordinate National Register nominations, historic preservation tax credits, environmental reviews for Section 106 of the Historic Preservation Act, Certified Local Government programs/grants, and Georgia Historic Resources Survey programming.

Following the Historic Preservation Act of 1966, many communities implemented surveys and ordinances to identify and protect their own historic assets. In Georgia, surveys and documentation led to the establishment of the Savannah National Historic Landmark District. Through an amendment to the Georgia State Constitution, the Savannah Historic District Board of Review was established in 1973 to protect the historic resources within the district (Ga. Const. Art. VII, §1, ¶3(d)(1)). These actions paved the way for other communities in the state.

To better enable municipalities to form historic preservation commissions (HPCs) and provide for their protection through local zoning, the State of Georgia passed its own Historic Preservation Act in 1980 (O.C.G.A. § 44-10-2). This legislation allows governing bodies to appoint a commission to administer historic preservation guidelines or standards adopted by that governing body at a public hearing. It establishes the framework for what these guidelines should include and a procedure for allowing public notice and defensible decision making.

Once a governing body creates an HPC, the municipality is eligible to become a certified local government (16 U.S.C.A. § 470a(c)). The Certified Local Government program is managed by the Historic Preservation Division of the Georgia Department of Natural Resources, which provides assistance with historic preservation planning and training. By becoming a certified local government, a municipality can apply for federal historic preservation grant funds that can be used to inventory historic assets, provide planning and training, or cover actual construction costs for the rehabilitation of historic properties.

Several other organizations and historical societies work at the state and local levels to develop and promote preservation policy, including the Historic Preservation Advisory Councils of various Georgia regional commissions and the Georgia Trust for Historic

Preservation (see also the National Alliance of Preservation Commissions and the Georgia Alliance of Preservation Commissions) (16 U.S.C.A. § 468 et seq.).

Methods for Protecting Resources

Historic preservation enabling legislation and programming provide for a number of federal, state, and local tools that can be used to protect historic assets. Generally, these tools are implemented after a community identifies its cultural resources, appropriately structures zoning regulations, and establishes an HPC.

Identification of Cultural Resources

Identification and documentation of historic and archaeological resources provide the foundation for future planning or redevelopment. These activities can be conducted through countywide or city-based reconnaissance surveys administered through the Historic Preservation Division's Georgia Historic Resources Survey program. Surveys should be conducted by individuals who meet the Secretary of the Interior's Professional Qualifications Standards and who are able to provide the required information in a standardized format (36 CFR Part 61).

The surveys are used to identify properties or sites that may have significance and that may therefore be eligible for listing in the National Register of Historic Places. Extensive research and analysis are required to determine if a property can be listed. Prior to being submitted to the National Park Service, a proposal must be reviewed by the Georgia Historic Preservation Division National register staff before consideration by the Georgia National Register Review Board. Inclusion in the register is an indication that the property is worth preserving, and it can be a source of pride for a neighborhood or individual property owner. Formal designation as a historic place provides communities, neighborhoods, and properties with some protections from federally funded undertakings. The potential impact of any proposed changes to these properties by the federal government must be assessed, and all feasible alternatives must be considered in order to limit any adverse effect to significant resources. Owners of listed properties are eligible for federal and state tax incentives, which can have a significant impact on the financial strategy for redevelopment of older neighborhoods and corridors.

Zoning Regulations

Once cultural resources have been identified, a municipal governing body can adopt zoning regulations to help protect and preserve these assets. Any historic preservation zoning regulations that are adopted must be structured in accordance with the Georgia Historic Preservation Act as well as with other laws and authorities that regulate, protect, and promote public health, safety, morals, or general welfare (O.C.G.A. § 44-10-2). Case law has substantiated the argument that historic preservation is a legitimate governmental function (*Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978)).

The Historic Preservation Division has templates available on its website to assist local governments in preparing ordinances. The division must be given the opportunity to review and provide comments on any draft ordinance. A local ordinance establishes the procedures for appointing the HPC, providing public notice, identifying meeting procedures, and requiring a Certificate of Appropriateness (COA) for properties identified in the ordinance. A COA is the document approving a proposed material change in the appearance of a designated historic property or structure, site, or work of art located in a designated historic district (O.C.G.A. § 44-10-22(1)). Issuance of a COA by an HPC is required before a building permit is released. Guidelines or standards must be adopted for determining the criteria for issuance of a COA. The procedures for appealing a decision or requesting a variance from the ordinance should also be provided.

Historic Preservation Commission

Appointing an HPC is the first step in implementing a historic preservation ordinance. Members of the commission must reside within the historic preservation district of their municipality (or county). If a joint commission is created by a county and one or more municipalities, however, the local governing bodies involved may determine residency requirements for commission members. The commission comprises citizens who have a general interest in historic preservation. Commission members are not compensated for their services. A historic preservation ordinance may also establish minimum qualifications for commission members.

Commission Authority

The State Historic Preservation Office of the Department of Natural Resources has developed a model ordinance for establishment of HPCs, which are authorized to do the following:

- Prepare and maintain an inventory of all property within the city that has the potential for designation as historic property
- Recommend specific districts, sites, buildings, structures, or objects to be designated by ordinance as historic properties or historic districts
- Review applications for COAs and grant or deny the same in accordance with the local historic preservation ordinance
- Recommend to the city governing body that the designation of any district, site, building, structure, or object as a historic property be revoked or removed
- Restore or preserve any historic property acquired by the city
- Promote the acquisition by the city of façade easements and conservation easements, as appropriate, in accordance with the Georgia Uniform Conservation Easement Act of 1992 (O.C.G.A. § 44-10-1)
- Conduct educational programs on historic properties and general historic preservation activities
- Investigate and study matters relating to historic preservation and consult with historic preservation experts

- Seek local, state, federal, and private funds for historic preservation and recommend the use of any funds acquired to the city council
- Submit to the Historic Preservation Division a list of historic properties of designated historic districts
- Perform historic preservation activities as the official agency of the city's historic preservation program
- Receive donations, grants, funds, and gifts of historic property and acquire and sell historic properties.

The Georgia Historic Preservation Act requires that all appeals of HPC decisions be decided by the local governing body. Historic preservation requires coordination with a community's other planning efforts including sustainability, transportation, housing, economic development, development services, and code enforcement. Thus, it is recommended that a qualified historic preservation professional be retained who will assist the HPC and coordinate preservation efforts that are consistent with planning and development goals.

Characteristics of an Effective Commission

The work of an HPC often affects areas that are highly visible and essential to the identity of a community. Decisions of the HPC have a direct impact on the built environment and overall quality of life of that community. The credibility and integrity of the HPC through predictable, consistent decision making are important to ensure the continued support of the citizens of the community and the district. A loss of confidence in the commission could undermine public support of the historic preservation process.

It is important that HPC members be qualified and have a general interest in the task at hand. Typically, members include architects, builders, craftsmen, historians, attorneys, and residents of the district. Decisions of the HPC should be made based on the adopted standards and guidelines regarding appropriate redevelopment and new construction within the historic district. It is important that standards be applied consistently and fairly. It is beneficial for members and staff to receive training to ensure that they are informed of best practices and make decisions that are legally defensible. The Carl Vinson Institute of Government, working with the Historic Preservation Division, the Georgia Alliance Preservation Commissions, and the University of Georgia's Center for Community Design and Preservation, provides training opportunities for HPC members twice a year in various locations throughout the state.

The National Alliance of Preservation Commissions and the National Trust for Historic Preservation hold annual conferences in selected cities around the nation. It may also be helpful for HPC members to attend annual retreats so that they can reflect on their decisions and openly discuss the standards and procedures.

It is important to clearly define the role of the HPC within the structure of the local government since its historic preservation recommendations and decisions are highly visible in the community. Effective HPCs tend to have the following:

- Highly interactive relationships with the planning staff who support its operations
- Members who represent the full variety of skill sets, experience, and interests involved in the historic preservation field
- Credibility derived from observable knowledge and adherence to standards and procedures
- Members who review all proposals in accordance with accepted historic preservation standards
- Deliberations and decisions that illustrate a clear focus on the standards for review
- Open debate and discussion of historic preservation proposals
- Substantive participation in the development of new policies, procedures, and/or ordinances.

Development Opportunities

Historic preservation is not simply a set of restrictions designed to preserve the past but rather an opportunity to direct future redevelopment. Effective use of historic preservation as a strategy for economic development can allow for redevelopment that enriches community life and provides a system for sustainable growth.

Tools for Economic Redevelopment of Historic Resources

Heritage tourism is often a result of historic preservation efforts. However, historic preservation is actually a principal tool for economic redevelopment of a block, preservation of a single structure, neighborhood, main street, or entire city that can attract new industries seeking a specific quality of life for employees and a distinctive setting found only in older or historic neighborhoods.

Several federal programs work with the state and municipalities to administer funds for economic development that can be used for historic properties, either for planning and architectural services or for construction costs. These include Community Development Block Grants, Housing and Urban Development funds and grants, and Main Street programs available through the state or nonprofit organizations like the National Trust for Historic Preservation. Once a municipality is designated as a certified local government, it is eligible for state and federal matching grants for historic preservation activities.

Tax Incentives

Federal and state tax incentives are available for private individuals and in some cases nonprofit organizations who undergo efforts to preserve properties listed in the National Register of Historic Places. Qualifying properties may take advantage of a property tax freeze and rehabilitation tax credits for substantial projects that meet the Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67; Ga. Const. Art. VII, §1, ¶3; O.C.G.A. §§ 48-5-2, 48-5-7.2, 48-5-7.3, 48-7-29.8; Official Compilation Rules and Regulations of the State of Georgia 391-5-11, 391-5-13-.05). These programs are administered by the Historic Preservation Division of the Georgia Department of Natural Resources. For the federal tax

credit, the division coordinates with the National Park Service to review applications. The property tax freeze and tax credit are available for income-producing properties as well as owner-occupied private residences. They can be combined with other tax credits, including those for energy-efficient and low-income housing, to produce high-performance development that better meets the needs of the public. In Georgia, state credits can be sold or transferred and are often used to help finance sensitive rehabilitation projects that might otherwise not be financially feasible.

Land Use and Zoning

Designating and creating local historic districts is important in order to retain community character, but appropriate land uses and zoning districts must also be identified. Zoning originally was created to separate incompatible uses. However, it is now understood that a mix of uses is important to create a sustainable and vibrant community, especially in downtown areas. Other regulations regarding setbacks, parking, and density contribute to residents' quality of life. Land use and zoning should be examined to determine if they are in the best interest of the community in terms of growth and vitality. For example, an abundance of parking and low density can create "time zones" that correspond with workforce activity but that are not conducive to a "living city" that functions 24 hours a day.

Compatible Infill

Infill development is the reuse of vacant lots and underused or dilapidated properties in an already established area of a community. Infill development makes use of existing public facilities and infrastructure thereby reducing local government costs to support new development. Preserving the existing historic fabric of an area can be a springboard for soliciting new development. The form and placement of these new buildings should guide future growth. Infill is intended to respect the character of the community while adding important "new blood" to the architectural system of the city. New design need not replicate the buildings of the past but can energize the area by respecting the existing building forms and providing continuity along the street. In commercial areas, incorporation of entryways and storefronts along the street with limited parking at the rear can help enliven pedestrian rights-of-way and build walkable communities. In residential areas, new infill structures that maintain the rhythm of buildings along the street and that are built with appropriate materials compatible with their neighbors helps rebuild historic neighborhoods instead of displacing residents.

Sustainability

The most sustainable building is the one that already exists because less energy is required to maintain an existing building than to construct a new one. An existing building embodies materials that have already been harvested, manufactured, and transported; in that sense, it is "sustainable." The savings in terms of these expenditures are often overlooked when comparing rehabilitation to new construction. Many historic districts and neighborhoods

already possess the principal elements of sustainability; they are pedestrian-friendly and are located near services, jobs, schools, and transportation. Thus, they can provide a high quality of life for their residents.

When the option to rehabilitate an existing building is not available, the sustainable building practice of infill development can provide a number of benefits to the existing community and new residents. Construction and redevelopment in areas where infrastructure exists reduces the cost for establishing new infrastructure, mitigates the amount of stormwater runoff, and limits sprawl. Occupants have access to established transportation routes and the amenities provided by surrounding development. Reusing existing buildings reduces the need to extract, manufacture, or transport additional raw materials. Passive energy systems, such as the location and type of windows and siting of a building to obtain radiant heat in the winter and allow for optimum ventilation and shading devices (porches) in the summer, can be designed within structures to capture natural energy and reduce reliance on traditional, more energy-intensive systems. Location of infill redevelopment near schools, workplaces, services, and entertainment limits residents' reliance on gas-powered transportation methods and increases opportunities for exercise through walking and bicycling. Materials used in historic buildings, with the exception of lead paint and asbestos, are generally nontoxic and more durable than most modern products. They are also typically easier to replace in-kind because they were made from local resources and are thus more readily available.

Many communities in Georgia have moved towards adopting sustainable practices and adopted Leadership in Energy and Environmental Design (LEED) Certification Standards established by the [United States Green Building Council \(USGBC\)](#) to set the standard for new "green" construction. This system often works well within historic areas. Redevelopment of historic sites can also incorporate the LEED rating system but should respect the historic character of the building.

Potential Challenges

Historic preservation is often met with fear which leads to opposition. Redevelopment of a historic neighborhood can lead to higher taxes or the displacement of existing residents. It can also be seen as an impediment to affordable housing and as a cause for delays in development. There are other social issues accompanying gentrification, in addition to increased property values, that can lead to displacement of existing residents and businesses. However, acknowledging this trend and integrating strategies to maintain moderate rent prices and taxes through economic development tools, tax credits and property freezes into redevelopment plans can help offset some of these financial impacts on residents. This can also help retain the population, stabilize older neighborhoods, and enhance the quality of life for existing residents as well as the existing character of a neighborhood.

Housing Market and Affordability

The nature of historic preservation processes may cause communities to rely solely on private developers and the local housing market to provide affordable housing. Historic designation has been shown to lead to increased property values, and the resulting market speculation can increase the overall cost of rehabilitation and elevate property sales prices. Salvageable historic properties in economically depressed areas can experience rates of appreciation equal to or greater than the basic market rate. This environment of growing speculation and increased project costs can make it unaffordable for low-income persons and discourage developers of affordable housing, who require lower acquisition and production costs. Higher rents or sales prices resulting from the preservation process can exacerbate household instability and contribute to the persistence of poverty. Developers and investors who are drawn to making profits may undermine the provision of the long-term affordable housing needed to maintain a diverse and economically stable community. In designated historic areas, development that is focused on retaining low-income residents and maintaining affordable housing choices increasingly depends on the establishment of effective policy. Multiple reasons exist as to why resident displacement may occur for those living in a community engaged in historic preservation. However, this displacement can be mitigated by including requisite strategies in the overall development plans for a neighborhood.

Funding Structures

One of the most significant challenges to developing affordable housing is the funding structure. While the structure of public financing for affordable housing and historic preservation continues to change, two of the leading tools utilized in the development of affordable housing are the federal Historic Rehabilitation Tax Credit and the Low-Income Housing Tax Credit. Both incentives are regulated by the Internal Revenue Service and are used to raise private equity capital for rehabilitation/construction activities. Depending on the area and population group affected, circumstances may allow for the inclusion of additional resources from the Community Development Block Grant program as well as Section 8 and the Community Partners Program through the National Trust for Historic Preservation. As a result of the multiple challenges associated with the intersection of affordable housing and historic preservation, some communities have successfully established preservation partnerships functioning through one organization that combines historic rehabilitation with compatible infill construction. These types of partnerships (e.g., the Savannah Landmark Rehabilitation Project) are able to combine private and public investment as well as utilize tax credits to leverage other cash investment.

Bureaucratic Process

Projects that receive federal funding must be reviewed to identify any potential impacts to properties that are listed or eligible for listing in the National Register of Historic Places. This review is required by Section 106 of the National Historic Preservation Act and can slow down a project and be burdensome on the property owner or city staff. Often, the Georgia State Historic Preservation Officer, the Historic Preservation Advisory Council, and a local

municipality will establish a programmatic agreement for local administration of Section 106. The agreement would allow a qualified preservation professional to review routine projects receiving Housing and Urban Development or Community Development Block Grant funds in order to expedite the process.

Infill and Land Acquisition

Scattered site projects that involve infill development generally require the assemblage of land. This necessity can often be addressed through a city-sponsored land bank program. Land banking is a real estate asset management strategy used in both the public and private sectors in which a local quasi-governmental agency acts as a depository or reserve for real estate for the purpose of economic development (J. Terrance Farris, The Barriers to Using Urban Infill Development to Achieve Smart Growth. *Housing Policy Debate* 12 (2001): 1–30). In 1990, the Georgia Assembly enacted legislation authorizing interlocal cooperation and the creation of legal independent land bank authorities (O.C.G.A. § 48-4-4). As a quasi-governmental entity, a land bank authority is given special powers to acquire and assemble multiple abandoned or encumbered properties and then legally transfer the land to responsible nonprofit or for-profit private developers for redevelopment. Municipal land banks take on the initial risk of preparing the land in areas that have uncertain real estate markets. These authorities help developers establish a foothold in transitional neighborhoods in order to increase the potential for attracting more private investment until the housing market and, ultimately, the neighborhood are rebuilt.

Conclusion

Historic preservation is an important tool for economic development that maintains community character and inspires future growth. Each community has its own character. Identification of historic assets, determination of their significance, and preservation of those assets are important steps in retaining community character. Adopting codes and ordinances that protect these resources and guide future development help sustain that character for future generations. Utilizing creative funding opportunities available to historic properties and adopting local policies that support investment in older neighborhoods helps to retain the current population and preserve our collective heritage.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Four-MUNICIPAL-SERVICES/Public-Safety.aspx

Police Services

The delivery of police services in the United States is overwhelmingly a function of local government. In fact, local units of government make up the largest percentage of all expenditures for this purpose and employ 66 percent of all police officers nationwide. More than two-thirds of Georgia's municipalities provide police services with departments ranging in size from 1 to more than 1,700 full-time sworn officers (according to 2016 data from the [Bureau of Justice Statistics](#)).

A police department that is well operated can be a great advantage to a city. Because the police are so visible at all times of the day and night throughout a community, to some extent they become a gauge by which citizens measure the quality of the entire spectrum of municipal services. Further, a well-managed department can help avoid costly litigation. Police departments can also be a source of time- and resource-consuming litigation. Suits may be lodged based on many grounds, such as claims that officers were improperly or insufficiently trained or were negligently employed or assigned, that they were not supervised, or that officers used excessive force in making arrests. Moreover, officers today seem more inclined to sue their employers, claiming that they have been sexually harassed or discriminated against on the basis of race or gender or that other important rights have been violated. A department that is improperly administered and operated can be a significant liability that can literally cost a city millions of dollars for just one incident of wrongful behavior.

A well-operated police department can be a considerable asset to a city. It can be a source of pride and can enhance economic development because it is one of the aspects that industries or businesses evaluate very carefully when considering moving to a community.

The Functions of a Police Department

According to the [American Bar Association](#) (ABA), all municipal police departments must

1. identify criminal offenders and criminal activity and, where appropriate, apprehend offenders and participate in subsequent court proceedings
2. reduce the opportunities for the commission of some crimes through preventive patrol and community problem solving
3. aid individuals who are in danger of physical harm
4. protect constitutional guarantees
5. facilitate the movement of people and vehicles

6. assist those who cannot care for themselves
7. resolve conflict
8. identify problems that are potentially serious law enforcement or governmental problems
9. create and maintain a feeling of security in the community
10. promote and preserve civil order
11. provide other services on an emergency basis
12. conduct criminal investigations, including forensic investigations of unsolved crimes
13. engage youths in public safety education via school resource officers as well as school-based and community-based programs
14. maintain a public information program to provide the public with timely public safety
15. maintain police records system, and
16. maintain an ongoing dialogue with civic, church and municipal leaders and community members concerning public safety issues.

Police-Community Relations

The ABA not only lists what the public perceives to be the police role—investigations, apprehension, and assistance in prosecution—but also includes functions associated with preserving the peace and order of a community. Despite popular perceptions of the police as crime fighters, in actuality, police officers spend no more than 15 percent of their time actually enforcing the law. The rest of the time they are engaged in delivering social services, such as mediating a dispute between two families regarding what one child said or did to another, helping the victims of natural disasters, and providing a link between those in need of help and the social service agency best able to assist them.

In response to these demands for police to spend time on community problems other than those that are purely crime-related, a method referred to as community oriented policing (COP) has emerged. COP is primarily characterized by ongoing attempts to promote greater community involvement in the police function and customized police service. Nationwide, many law enforcement agencies are implementing community policing strategies to help combat criminal activity, build relationships with community stakeholders, and transform negative perceptions of law enforcement.

In contrast to traditional policing, which is largely reactive to crime, COP is proactive, attempting through the use of timely information to resolve community problems before they become crime problems. In this context, the individual officer no longer simply responds to calls for services and reported crimes. Instead, patrol officers also become coordinators of municipal services and neighborhood welfare.

Elected officials should engage in conversations and take steps toward implementing innovative community policing strategies for the purpose of building stronger, safer municipalities. Since each municipality differs in size, socioeconomic status, racial and cultural make-up, the programs implemented will differ and should be tailored to the needs of each city.

Organizing Police Services

General principles such as avoiding excessively wide spans of control should be followed, but there is no single best way to organize a police department. Many factors will influence the actual organizational structure, including the types of services provided, the extent of specialization, the total number of personnel, and the preferences of the chief.

Although there are a number of possibilities for structuring a police department, it is generally recognized that all of its elements fall into three broad categories: line, auxiliary, and staff (see Table 1 below).

Line units seek to achieve directly the broad goals prescribed for the police. The primary element of line services is uniformed patrol. In a large city, about 45 percent of the force will be assigned to uniformed patrol. Other line units include traffic and investigation. Auxiliary services are immediately supportive of the line units, including operation of the jail/detention facility, communications, the crime laboratory, records and criminal identification files, and evidence storage. Staff services also support the line function but less directly than do auxiliary services. Staff services include training, fiscal management, recruitment and selection, planning and research, and public information efforts. Only the largest cities have police departments with the full range of line, auxiliary, and staff elements. Medium-sized municipalities with a quarter to a half million residents may lack one or more elements, such as a crime laboratory, while the smallest police departments will have only the patrol elements.



Employment and Training Standards

Municipal law enforcement officers must meet the minimum standards of the Georgia Peace Officer Standards and Training Act, which created the Peace Officer Standards and Training (POST) Council to certify persons subject to the act (O.C.G.A. § 35-8). Certification is based upon statutorily specified pre-employment standards and successful completion of a mandatory 408-hour basic law enforcement training course, which must be completed within six months of a person's appointment as a peace officer (O.C.G.A. § 34-8-9(a)).

To fulfill pre-employment requirements, a person must:

1. be at least 18 years of age
2. be a citizen of the United States
3. have a high school diploma or its recognized equivalent
4. not have been convicted by any state or by the federal government of any crime, the punishment for which could have been imprisonment in a federal or state prison or institution, nor have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law
5. be fingerprinted and a search made of local, state, and national fingerprint files to disclose any criminal record
6. possess good moral character as determined by investigation under procedure(s) established by the council
7. be found, after examination by a licensed physician or surgeon, to be free from any physical, emotional, or mental conditions that might adversely affect the exercise of the powers or duties of a peace officer; and
8. successfully complete a job-related academy entrance examination provided for and administered by the council.

Additionally, most departments also require an oral interview with the hiring authority or its representative to determine the applicant's appearance, background, and ability to communicate. As do all Georgia peace officers, chiefs of police and heads of law enforcement units must annually attend a minimum of 20 hours of training with certain courses mandated starting January 1, 2017. Officers who fail to complete this training may lose their power of arrest unless they secure a waiver of this requirement from POST. Any chief of police or department head of a law enforcement unit whose term or employment began after June 30, 1999, is required to complete 60 hours of executive law enforcement training in addition to the basic required training. This additional requirement may be waived if the chief or department head has served as a police chief or department head of a law enforcement unit since December 31, 1992, without more than a 60 day break in service and has previously completed the required executive training or other equivalent training (O.C.G.A. § 35-8-20 et seq.).

When law enforcement agencies believe in and are supported with a budget for training, there is a greater likelihood that your city will see fewer liability claims. Training produces smarter and more professional officers who are capable of making better judgments. The smaller the training budgets, the more opportunity for liability claims because officers without sufficient training may act on survival instincts alone, and their decisions may not be based on what they have been trained to do.

Accreditation of Law Enforcement Agencies

The Commission on Accreditation for Law Enforcement Agencies (CALEA) is a private, nonprofit organization formed in 1979 by four national associations: International Association of Chiefs of Police (IACP), National Organization of Black Law Enforcement Executives (NOBLE), National Sheriffs' Association (NSA), and Police Executive Research Forum (PERF). The commission has developed a national set of law enforcement standards for all types and sizes of state and local agencies, including municipal departments. There are two tiers, with Tier 1 requiring that 189 standards be met, while Tier 2 has 484 standards. CALEA fosters police professionalism, which is reflected in the stated purpose of its accreditation programs:

to improve the delivery of public safety services, primarily by: maintaining a body of standards, developed by public safety practitioners, covering a wide range of up-to-date public safety initiatives; establishing and administering an accreditation process; and recognizing professional excellence.

The accreditation process is a voluntary undertaking. Recently, significant movement toward accreditation has been spurred by two factors. First, since most of the standards identify topics and issues that must be covered by written policies and procedures, successful accreditation offers a defense, or "liability shield," against civil litigation (Gary W. Corder, "Written Rules and Regulations: Are They Necessary?" *FBI Law Enforcement Bulletin* 58, no. 7 (July 1989), p. 18). Second, CALEA provides a nationally recognized system for improvement. Fundamental to the accreditation process is assessment, beginning with self-assessment (Russell Mass, "Written Rules and Regulations: Is the Fear Real?" *Law and Order* 38, no. 5 (May 1990), p. 36). During this stage, an agency undergoes a critical self-evaluation that addresses the complete range of law enforcement services provided. Later, the agency is assessed by an outside team of law enforcement professionals who are brought on site to determine whether the agency has complied with applicable standards for a department of its type and size.

CALEA enjoys wide support among police executives and community leaders. Its accreditation process can be a substantial benefit to a municipal police department that has performance problems. This process is not without its critics, however. Some view it as "window dressing long on show and short on substance," a reference to the fact that some departments allegedly meet the standards by developing the necessary policies and then fail to actually follow them. Other critics have maintained that the process is control-oriented and at odds with the important value of individual initiative.

Some law enforcement agencies that wish to undergo self-evaluation and improvement may not be financially able or willing to make the commitment to the CALEA process. The State of Georgia Law Enforcement Certification Program offers a professionally recognized

methodology to make systematic improvements to such agencies.

The State of Georgia Law Enforcement Certification Program was developed in late 1996 through the collaborative efforts of the Georgia Association of Chiefs of Police (GACP), the Georgia Sheriffs' Association, the Georgia Peace Officer Standards and Training Council, the Georgia Municipal Association, the Association County Commissioners of Georgia, and the Georgia Police Accreditation Coalition. Although voluntary, the certification provides a comprehensive blueprint for effective, professional law enforcement. The process of certification begins with an agency's self-assessment, including review of the certification program's standards manual, determination and demonstration of the agency's compliance with the standards, and establishment and implementation of new procedures to address those standards not currently met by the agency. GACP then conducts an on-site assessment of the agency, observing the entire agency and interviewing its personnel. Finally, after reviewing the report of the on-site team, the Joint Review Committee either approves or denies certification, and, if approved, the award of certification is made to the agency.

Municipal Jails

Ordinarily, municipal jails or detention facilities are operated by police departments. The typical municipal jail is a holding facility for accused persons who have not been able to secure release on their own recognizance or bond or who are awaiting a preliminary hearing or trial. Because a jail's population typically consists of pretrial inmates, turnover may be as much as 75 percent every three days. Most jails also hold other types of prisoners, such as "overflow" inmates from other jurisdictions, inmates awaiting transfer to another facility, federal violators being housed pursuant to a contract, and offenders serving short-term sentences.

Some cities decide to contract with other municipalities or a county for the provision of pre-trial jail services. This is usually done with the passage of an intergovernmental agreement between the two bodies. Liability issues, housing fees, and medical treatment and expense payments are clearly specified. Charges are most often based on the number of prisoners housed in the facility per day. When a municipality uses their county jail for pre-trial detention it can also be debated that there should not be an additional cost to the municipality because the municipal residents are already paying county taxes for the facility.

Jail inmates retain all of their rights as citizens, except as may necessarily be limited to properly operate the facility. When a city operates a jail, it assumes responsibility for the safe, legal, and humane custody of the inmates. Inmates have considerable rights. Jailers have

been successfully litigated against for reasons such as unsanitary jail conditions, inadequate feeding, recreational facilities, and visitation policies, and protection from assaults by other inmates.

Jail Standards and Training

Georgia state statutes provide some guidance as to the requirements for operating a jail, and a body of specialized case law has evolved regarding this area (O.C.G.A. § 424-4-2). Serious problems can arise when personnel are assigned to jail duty without proper training. The basic entry-level training course prescribed by POST does not constitute such training. It is an excellent foundation for general police work, but all personnel assigned to the jail must complete the 80-hour jail training course offered by the Georgia Public Safety Training Center (GPSTC) in Forsyth (O.C.G.A. § 35-8-24). Because of the extreme liability risk involved in operating a jail, municipalities should carefully evaluate the need to do so. When a jail is established, it should be in full compliance with applicable standards.

Fire and Emergency Services

Fire departments have changed from being the primary providers of fire prevention and suppression services to an integral component of a community's homeland security system. The transition has been a natural extension of fire departments developing an all-hazards response system. Fire departments now provide hazardous materials response, technical rescue, emergency medical treatment, and other specialized functions along with traditional fire prevention and suppression functions.

In more urbanized areas fire departments spend most of their time responding to medical emergencies. In these departments it is important to have properly trained Emergency Medical Technicians and Paramedics. It is also extremely important that stations, equipment, and personnel are staged properly so that emergency medical assistance can arrive in time to deliver assistance that will make a difference. Fast effective response times can be one of the key benefits to living in a developed city.

In general, any fire department of a municipality shall have the authority to:

1. protect life and property against fire, explosions, hazardous materials, or electrical hazards
2. detect and prevent arson
3. administer and enforce the laws of the state as they relate to fire departments
4. conduct programs of public education in fire prevention and safety
5. conduct emergency medical services and rescue assistance
6. control and regulate the flow of traffic in areas of existing emergencies, including rail, highway, water, and air traffic, and

7. perform all such services of a fire department as may be provided by law or which necessarily appertain thereto (O.C.G.A. § 25-3-1).

In order to carry out its mission and authority, a municipal fire department must be legally organized. The chief administrative officer shall notify the executive director of the Georgia Firefighters Standards and Training Council (GFSTC) if the organization meets the minimum requirements and rules to function as a fire department. In order to be legally organized, a fire department must

1. be established to provide fire and other emergency and non-emergency services in accordance with standards specified solely by the Georgia Firefighter Standards and Training Council and the applicable local government
2. be capable of providing fire protection 24 hours a day, 365 days per year
3. be responsible for a defined area of operations depicted on a map located at the fire station, the area of operations of which shall have been approved and designated by the governing authority
4. be staffed with a sufficient number of full- or part-time or volunteer firefighters who have successfully completed basic firefighter training as specified by the Georgia Firefighters Standards and Training Council, and
5. possess certain minimum equipment, protective clothing, and insurance (O.C.G.A. §§ 25-3-22, 25-3-23).

The municipality responsible for the establishment and operation of a fire department should adopt a formal statement of purpose and define the responsibilities of the fire department. A functioning fire department needs

1. master planning
2. adequate equipment and facilities
3. effective fire communications
4. employment and training standards
5. ongoing training
6. a fire prevention program
7. knowledge of the fire-rating process, and
8. a sufficient water supply.

Master Planning

A fire plan can be used to improve fire department efficiency. The plan normally contains a survey of existing services and a schedule for improving them. The plan should be revised regularly to reflect changes in the department's scope of mission.

Adequate Equipment and Facilities

Fire departments need various types of equipment, including

1. vehicles to transport firefighters to fires
2. vehicles to transport and pump water to fires

3. equipment on the vehicles to fight fires, such as pumps, ladders, hose, self-contained breathing apparatus, and fire extinguishers
4. protective clothing, such as coats, helmets, and boots
5. rescue equipment to be used in vehicle accidents such as the jaws of life
6. medical diagnostic equipment, backboards, immobilization devices, medication, ADTs and bandaging
7. hazardous substance devices such as brooms and other items that contain or soak up chemicals and gasoline
8. decontamination units
9. communication devices for individuals and equipment, and
10. heated fire stations located at sites that best serve the greatest number of residences and businesses. If possible, the stations should be large enough to conduct training sessions.

Effective Fire Communications

Citizens should be able to call a well-publicized emergency telephone number to report fires. Volunteer firefighters need to be equipped with communication devices such as smart phones or pagers. The central dispatcher sends a signal activating a “beeper,” or pager, which is carried by volunteer firefighters who respond to the alarm. Vehicles traveling to the fires should have the capacity for constant two-way communication with the dispatcher, other fire departments, and law enforcement agencies in the area.

Employment and Training Standards

Georgia law requires that all firefighters, fire and life safety educators, fire inspectors, and fire investigators meet certain standards. The Georgia Firefighters Standards and Training Council is charged with the establishment of uniform minimum standards of employment and training and certification of those individuals who meet the standards (O.C.G.A. § 25-4).

Any person employed or certified as a firefighter shall

1. be at least 18 years of age
2. not have been convicted of a felony in any jurisdiction within 10 years prior to employment (with certain exceptions)
3. have good moral character as determined by investigation under procedure(s) approved by the council
4. be fingerprinted and a search made of local, state, and national fingerprint files to disclose any criminal record
5. be in good physical condition as determined by a medical examination and successfully pass the minimum physical agility requirements as established by the council, and
6. possess or achieve within 12 months after employment a high school diploma or a general education development equivalency.

As a condition of continued certification, all firefighters shall train, drill, or study at schools, classes, or courses at the local, area, or state level as specified by the council (O.C.G.A. §

25-4-8 et seq.).

Fire Prevention Program

Without commitment, any effective fire prevention program is difficult to implement. Every fire department should encourage fire prevention because it saves lives and prevents property damage, which is a personal and community loss. From 2014 to 2018, the National Fire Protection Association (NFPA) reported a yearly average of 494,000 structure fires per year or about one per minute. Overall, the number of structure fires decreased steadily from 1977, when NFPA began gathering fire statistics. This trend can be attributed to successful fire prevention efforts. Fire prevention programs remain a good investment because they coordinate resources from throughout the community to address the fire loss problem. New efforts in fire-safe building design, fire sprinkler installations, and fire inspection are required to reduce community fire loss and tax base erosion.

Fire prevention programs should have three main areas of focus: enforcement, education, and engineering. Building codes and fire code enforcement address two of the main fire prevention elements. Properly planned and constructed buildings and facilities reduce risks to the public and firefighters who live and work in Georgia cities. Fire sprinkler systems in buildings are not only preventive mechanisms but also reduce insurance costs and the need to maintain surplus water supply for firefighting. Installing fire sprinklers in residential occupancy buildings, including single-family homes, will represent the next step in reducing the number of lives lost in fires. Fire safety education can yield positive results by ensuring community awareness. A study of fire loss and fire causes can direct resources to educational activities such as safe home cooking and heating, installation and maintenance of smoke detectors, and escape planning.

The Fire-Rating Process

Every fire chief should understand how fire departments are evaluated for insurance purposes by the Insurance Services Office (ISO). Fire personnel should understand the basis for the department's existing rating and what is required to improve it.

For the purpose of establishing homeowners' and fire insurance rates, each fire department is rated or classified by ISO. In making the evaluation, ISO uses the Fire Suppression Rating Schedule as a guide for evaluating fire suppression capabilities. It places departments in one of 10 classes, with a Class 1 rating being the best and Class 10 the worst. To meet the minimum level of protection recognized by ISO, a fire department must have at least a Class 9 rating.

In evaluating fire departments, ISO representatives measure three principal features of the fire suppression system: fire alarms and responses, fire department, equipment personnel and training, and water supply and hydrant location. In each of these three areas, ISO inspectors assign credits based on the quality of performance. The final rating depends on the percentage of total possible credits received.

Water Supply

Fire suppression efforts depend on an adequate supply of water to fight fires. Flow and pressure required for industrial and commercial fires are typically greater than those required for residential fires. An ongoing program of fire hydrant inspection and maintenance helps to ensure adequate water pressure.

Emergency Management

Emergency management is a government function that centers on coordinating available resources in planning for, responding to, and recovering from a wide variety of events that can injure significant numbers of people, do extensive damage to property, and generally disrupt community life. Local elected officials are responsible for providing emergency management services for their communities as part of the duty to maintain law and order and protect lives and property. In our state, emergency management is a collaborative effort among local governments, the Georgia Emergency Management Agency (GEMA), and the Federal Emergency Management Agency (FEMA) (42 United States Code Annotated (U.S.C.A.) § 5121 et seq.; O.C.G.A. § 38-3-1).

Emergency Management Organizations

Many counties and cities have established emergency management agencies, with a paid full- or part-time or volunteer director. The number of staff and the complexity of operations vary widely, depending on community needs and resources. Although some federal monies are available to support local programs, most activities are funded from local resources. The general authority for program rules and regulations is found in federal and state law.

Regarding disaster relief assistance, Georgia law provides that any county or city that does not establish a local emergency management organization will not be entitled to any state funding for such assistance (O.C.G.A. § 38-3-35). In Georgia, there are 161 local emergency management agencies, including 159 county organizations and 2 city agencies. Local directors are appointed by the director of the Georgia Emergency Management Agency (GEMA) but are nominated by the local governing body and serve at the pleasure of local officials.

Program Functions

Generally speaking, the goal of local emergency management organizations is to save lives, protect property, and coordinate the rapid restoration of essential services and facilities in time of disaster, whatever the cause (natural or technological) and whenever the occurrence. Many routine work activities associated with these organizations are common to risk-management or mitigation programs in the private sector.

A functioning, operational program must have an emergency operations plan that clearly defines available resources and the responsibilities, authority, and channels of communication for all involved personnel, including law enforcement officers, firefighters, and social service representatives. In order to properly prepare a plan, local officials should first conduct a hazard and risk analysis of the community, assess current capabilities, and take affirmative action to ensure that additional resources are available when needed. In addition, the plan should be routinely exercised to ensure its effectiveness and currency. Finally, key emergency management staff from all affected agencies and social service groups, such as the Red Cross, should receive appropriate training in response and recovery activities.

A Changing Focus

Over the last 50 years, the emphasis in emergency management has shifted away from a concern with civil defense preparedness toward a fuller awareness of the wide variety of potential disasters and emergencies faced by communities. While tornadoes, flooding, hurricanes, and other natural calamities are the most visible types of disasters, they are not the only ones. For example, recent improvements in technology have produced a growing potential for chemical spills and leaks, nuclear accidents, and other technological hazards. Such emergencies, characterized by rapid onset, low predictability, and a high potential for destruction, may soon become the major emergency management problem facing many communities because they present the greatest risk and are the most difficult to control. Some communities have even defined events such as prison escapes as emergencies and have developed plans and response actions accordingly. Of course, what constitutes a disaster or emergency for a particular community depends largely on its size and complexity, its array of resources, and its capability to effectively manage problems.

Standards for Emergency Management Directors

Georgia law establishes certain qualifications and performance standards that local emergency management organization directors must meet (O.C.G.A. § 38-3-27). Local directors who are employed full-time are required to

1. be at least 21 years of age
2. not have been convicted of a felony
3. have a high school education or its equivalent and have completed certain emergency management training courses
4. be capable of writing response and recovery plans, and
5. be routinely available to respond to emergency scenes and to coordinate emergency response of public and private agencies and organizations.

Similar requirements apply to paid part-time directors.

Animal Control

Municipal officials often receive complaints about animals. State law requires cities to regulate or license animals in the control of rabies. This responsibility is shared with the county board of health, which has primary responsibility for the prevention and control of rabies and must appoint a county rabies control officer (O.C.G.A. §§ 31-19-1, 31-19-7).

Although taxpayers (particularly those who are not animal owners) may complain about the cost of an animal control program, they usually look to the local government not only to control rabies, but also to solve nuisance animal problems. In response, some communities have initiated programs to combat the problems of pet overpopulation and animals roaming free. The goal of these programs is responsible pet ownership. Four main components of the programs are

1. an animal control ordinance that makes the owner legally responsible for the pet
2. an enforcement program that employs properly trained field officers to patrol the community
3. a facility that provides humane and sanitary housing for animals, and
4. a public education program to inform pet owners that responsible pet ownership is the law (Phyllis Wright and Susan B. Stauffer, "Practical Management of Animal Problems," *Management Information Service Report* 13 (Washington, DC: International City Management Association, April 1981)).

Two potential sources of revenue are available to help fund such an animal control program. For example, a municipality can establish an animal licensing process that requires owners to register every cat and dog and to pay a registration fee. Registration of animals not only raises revenue for the animal control program, but also aids in owner identification (so that a lost animal can be returned to its owner) and in regulating animals in the city. Permits for

commercial animal establishments, such as kennels and pet shops, are another revenue source.

Although a municipality can administer its own animal control program, it may choose to contract with a local humane society to do so. The city then pays the society to provide services such as pet sterilization, public education in the responsibilities of pet ownership, and animal shelter facilities and staff. A municipality may also sign an intergovernmental agreement with their county to allow the county jurisdiction over animal control violations within the municipality.

If a community is having issues with bears, coyotes or other wild animals, the municipality can contact state wildlife officials. Licensed trappers are also a possible resource.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Four-MUNICIPAL-SERVICES/Telecommunications,-Cable,-and-Video-Services.aspx

In most Georgia communities, telecommunications as well as cable and video services are provided by private companies. A small number of cities also provide these services, but the trend in recent years has been for cities to sell their systems due to competition from private providers and the high cost of staying current with technology. Any city that is contemplating the possibility of providing telecommunications, cable and video services is advised to consult with an expert in the field. Organizations such as GMA and private consultants can assist in evaluating municipal delivery systems. Care should be taken when choosing consultants to ensure they are completely objective.

If a municipal government is to evaluate the possibility of providing telecommunications or cable services to its community, certain steps should be taken to ensure success. Most importantly, the municipal and community leadership should evaluate why the city should provide these services. If strong support by the city's elected officials exists, then the extensive evaluation necessary to make informed decisions can take place. A municipality must comply with the Georgia Fair Cable Competition Act (O.C.G.A. § 36-90-1) in determining whether to provide cable television service. Among other things, the law requires the preparation of a cost-benefit study and public hearings. If a city is considering operating its own telecommunications system in conjunction with, or independent of, cable television service, Georgia Public Service Commission rules and procedures may apply. It should also be noted that specialized personnel may be needed to effectively operate a cable or telecommunications system.

Telecommunications

As of July 1, 2008, telephone companies certified by the Public Service Commission are required by Georgia law to obtain local government approval to maintain and operate lines and facilities in municipal streets and municipal rights-of-way (ROW) (O.C.G.A § 46-5-1 et seq.). The law creates a standardized local application process and a standard form of "due compensation" to be paid by telephone companies. Due compensation comes from companies serving retail end-use customers located within the boundaries of a municipality and is set at three percent of local recurring revenues. If a telephone company does not have retail end-use customers located within municipal boundaries, the payment of due compensation will be in accordance with the rates established by the Georgia Department of Transportation. The law preempts and replaces the local franchising process. The municipality has only 15 business days to notify an applicant if the application does not contain the information required by the statute. GMA can provide assistance in reviewing these applications.

Cable and Video Services

In 2007, the Georgia legislature adopted the Georgia Consumer Choice for Television Act (O.C.G.A. § 36-76-1 et seq.), which establishes an alternative statewide regulatory scheme for the provision of cable or video service (i.e., a “state franchise”). The law affects any community that has a cable operator, regardless of whether a local franchise agreement is in effect or has expired. Any provider of cable service can apply for a state franchise from the Georgia Secretary of State and “opt out” of the local agreement. New providers can enter the market under the provision of a state franchise instead of seeking a local franchise. Local franchising, however, remains an option under state law, but local negotiations will likely be influenced by the terms and 45-day application period for the issuance of a state franchise. In addition, the Federal Communications Commission now requires local governments to process franchise applications from new providers in less than six months. Cities that do not have staff experienced in telecommunications and cable franchise matters would be well served to retain an expert to provide assistance in the local franchise negotiation process and to evaluate whether the provider is satisfying its obligations under the local agreement or state franchise. GMA can provide this assistance as well as keep cities informed of federal and state regulations that impact their authority and control over municipal rights-of-way through its Telecommunications and Right-of-Way Management Program.

Small Cell Antennas and 5G Technology

Elected officials should be aware of emerging technologies such as small cell antennas for 5G LTE networks that the telecommunication industry is deploying in municipal rights-of-way and will continue to focus on throughout the coming years. Small cell antennas are smaller modules that attach to infrastructure in the ROW. Although small cells represent an industry shift away from 100+ foot monopoles, the coverage range for small cells is much less than traditional poles, meaning municipal governments can anticipate more permit requests for small cells than previous technologies. Currently there are no state regulations in the Georgia Code for the deployment of small cell technologies. Permitting fees and ROW access fees are negotiated between the wireless telecommunication provider and the individual municipality and usually reflect the rates set by the Georgia Department of Transportation or other applicable model agreements. GMA encourages municipalities to seek counsel prior to entering into any contracts with companies for small cell deployment.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Four-MUNICIPAL-SERVICES/The-Role-of-Elected-Officials-in-Community-and-Ec.aspx

Economic Development for Cities

There are 538 cities in Georgia, with 44% having fewer than 1,000 residents, and 83% having fewer than 10,000 residents (based on 2016 [U.S. Census population estimates](#)). Although these numbers may be surprising, the reality is city officials frequently do not have the tax base to devote a lot of financial resources to economic development initiatives. That is why it is important to have an economic development strategy that is reasonable and represents the interests of the mayor, council, and citizens. More importantly, the strategy should be coordinated with the economic development strategies of other governmental entities, including chambers of commerce, development authorities and convention and visitors bureaus. And, of course, resources should be allocated for economic development activities that support these combined strategies for the most effective and efficient use of government funds.

The Strategy

The first step in developing an economic development strategy is gathering input from council members, citizens, and other interested individuals and organizations. Ideas and information gathered should then become part of the economic element of your [comprehensive plan](#). After adoption of your government's comprehensive plan, the economic development element of that plan should become the strategy that the community follows and supports. With limited resources to finance economic development efforts, it is important that municipal officials partner with other governments and organizations to ensure successful implementation of the strategy.

Special Knowledge is Required

Every elected official should have knowledge of 1) the essentials of development, 2) the "players" that can assist and support a community's strategy, and 3) the tools that are available to assist with economic development projects. Economic Development related training is available through GMA in partnership with the [Georgia Academy for Economic Development](#). The organization offers a regional program that introduces elected officials to the following concepts, strategies, and resources:

- The three essentials of development are leadership development, community development, and economic development.
- The players may include bankers, educators, attorneys, existing business representatives, local, regional and statewide economic development professionals, regional development centers, state agencies, and others.

- The tools include, but are not limited to, Downtown Development Authorities, Development Authorities, financing programs, quality growth principles, incentives, hotel/motel taxes, Freeport, city business improvement districts, tax increment financing, infrastructure, affordable workforce housing, education and workforce training programs, business retention initiatives, entrepreneurial development programs, and publicly owned available land or buildings.

Development Essentials

How do you, as an elected official, ensure that your city has the three essentials of development?

Leadership is generally considered the key component for successful economic development. You should encourage the implementation of formal leadership development programs, both youth and adult. Not every city needs a program, but there should be an annual program in every county. Elected officials should participate in these programs as a class participant and an alumni presenter. Elected officials should develop programs to recognize citizens that participate in local leadership programs and should look to class graduates when making appointments to boards and leadership positions in the community. In building a strong leadership base in your community, one should encourage inclusiveness, not exclusiveness. The more that you can encourage the recruitment and participation of all sectors of your community, the more successful you will be in implementing your economic development strategy.

Community development is the second essential of economic development. Community development includes social infrastructure, physical infrastructure, and workforce development. Social infrastructure includes the provision of basic human services, effective and efficient governance, and educated, capable, and visionary leadership. As an elected official, you don't have to have a Ph.D., but you do need to participate in training opportunities provided by your association, colleges, and universities that give you the training and knowledge that you need to be an effective municipal official. Water, sewer, stormwater, gas, electricity, transportation networks, telecommunications, and fiber optics are all essential parts of physical infrastructure. As a municipal official, you must ensure that these amenities are provided in the most efficient manner possible at the lowest cost available. Dependable, efficient and cost-effective infrastructure may be the key ingredient in reaching your economic development goals. Finally, a strong K-12 educational system, opportunities for post-secondary training and degrees as well as workforce training to meet the specific needs of employers are additional ingredients that must be considered when developing your strategy.

The third essential for a successful strategy is the **economic development** component. Business retention and expansion, entrepreneur development, small business support, financial incentives and new business recruitment are all parts of a complete strategy. In addition, tourism development and downtown development are effective strategies for many cities. As an elected body, the city council must understand the issues that impact your

existing business base. Recognition that your existing businesses are the most important element in this mix is vital. There are tools that can help a community determine the impacts of local government policies on local businesses. Your comprehensive plan economic element should identify niches in your community that an entrepreneur can successfully fill. Identification of your community's assets can help you determine appropriate targets for business recruitment. New business development can include everything from film and movie, heritage and nature-based tourism, recreation and natural resource development, retirement, and alternative agriculture opportunities to downtown development. Without a strong, vibrant downtown many of these alternatives may not even be possible. The importance of investing and maintaining a strong downtown business core is discussed later, as is economic development financing.

It's a Process, Not an Event

There are many resources that local, regional, state and federal organizations can provide to support your economic development efforts. It is incumbent on you to educate yourself about these resources. Remember that economic development is a process, not an event. There must be a long-term commitment of time and resources from a broad cross-section of your community. You must work to ensure that you have the three essentials of development to ensure sustainable economic development success.

Without a plan that has the buy-in of your citizens, players, and partners, you cannot sustain development. Your goal is to create wealth for all your citizens and to guide growth and development with a plan that creates and retains wealth while encouraging reinvestment in your community.

To learn more about special economic development training opportunities and leadership skill development, visit [Georgia Academy for Economic Development](#) or contact [Corinne Thornton](#) at (706) 340-6461.

Downtown Development in Georgia

Downtown development has proven to be an essential part of a community's overall economic development strategy. It can be argued that a healthy and vibrant city or town center is one of the most important elements of an effective economic development program. Even if people do not live in the city proper, polls have shown that people identify with their nearest city or town and view it as their hometown. These same polls have shown overwhelmingly that people value a safe, vibrant, and healthy downtown. The downtown area of a city is often the largest employer in a city—it is almost always in the top three. The collection of retail, office, governmental, and service workers located in downtown can be from the low hundreds in a small town to over a thousand in a larger city. And these jobs are by their very nature diversified, so that most downtowns remain a strong and flexible employment center.

Downtown is also critical in the development of *classic* and cultural tourism. Studies have shown that small towns and historic places are second only to beaches in terms of the most desirable places to visit, and a city's downtown and surrounding neighborhoods are the embodiment of the history and culture of a community.

Downtown is also a ready-made business incubator, particularly for small service-based businesses that need limited space at an affordable rate. And since 80% of all workers are employed in small businesses across America, downtowns continue to provide reasonable space for the emerging small businesses that form the backbone of the American economy.

Across Georgia, downtowns are experiencing a housing boom, with everything from small-scale upper floor rehabilitations for apartments to the construction of major new developments in and around downtown. In the smallest to the largest of cities, investors are discovering the benefits of investing in our downtowns, and people are discovering the joys and benefits of living downtown.

Finally, investing in downtown development has returned some significant dividends statewide. The Georgia Main Street Program began in Georgia in 1980 as one of the original pilot state coordinating programs of the National Main Street Initiative launched by the National Trust for Historic Preservation. The Georgia Main Street program began with five local communities, and it presently has 111 participating communities throughout the state. In FY 2015-16 alone, 3,652 net new jobs were created, 1,019 new businesses were opened, and 661 building rehabilitation projects were completed in Georgia's Main Street communities, with total public and private sector investment exceeding \$588 million. That is reason enough for city leaders to continue to nurture downtowns as the heart and soul of their cities.

Technical Assistance for Downtown Development

The Department of Community Affairs' Office of Downtown Development coordinates the Main Street program. This program assists Georgia cities and neighborhoods in the development of their core commercial areas. Assistance provided by the Office of Downtown Development emphasizes community-based, self-help efforts grounded in the principles of professional, comprehensive management of core commercial districts. Communities are expected to work within the context of historic preservation and the National Main Street Center's Four-Point Approach to Downtown Revitalization[™].

The Office of Downtown Development offers a tiered-level approach to the Georgia Main Street Program, with the following tiers: Downtown Start-Up Program; Classic Main Street Program; Georgia Exceptional Main Streets; and Downtown Affiliate Network. Classic Main Street communities make up the vast majority of the network of communities and are designated as nationally accredited Main Street America cities.

Elected Officials Role in Downtown Development

Elected officials can and must play an active role in encouraging downtown development. The following is a list of steps local officials can take to help foster and sustain meaningful downtown development activity:

- 1. Encourage Public Discussion on the Need for Downtown Revitalization.** If no downtown revitalization effort exists, begin a series of public meetings to discuss the need for revitalization. Invite speakers from nearby successful Georgia Main Street cities to share their stories, and invite speakers from GMA, DCA, UGA, or other partner organizations to discuss resources available to assist your community in starting up a revitalization effort.
- 2. Build a Public/Private Partnership to Support Downtown Development.** Bring together key members of the community, representing both the public and the private sectors, to discuss downtown revitalization. Build an initial public/private leadership group to explore the various ways a revitalization effort can be started and sustained over time. This always needs to be done with the active involvement of property owners and merchants in your downtown.
- 3. Authorize a Downtown Development Authority.** By state statute, every city in Georgia has the authorization to create a Downtown Development Authority (DDA) through city council action. All that is required is a resolution from council to declare the need for the authority, appoint authority members, and establish reasonable downtown development boundaries to activate the authority. Start by sending representatives of the public and private sectors to the next GMA-sponsored DDA training program. For more information on Downtown Development Authorities, please visit this [GMA website](#).

Provide Consistent Support for Downtown Revitalization

Just like the economic development process, understand that downtown revitalization is a process, not a project, product, or event. By working incrementally overtime, success will be achieved and—most importantly—sustained.

To learn more about DCA's services, please contact [Jessica Reynolds](#), Director, Office of Downtown Development, at (404) 679-4859.

The Georgia Cities Foundation

The [Georgia Cities Foundation](#) (GCF) is a non-profit organization originally established by the Georgia Municipal Association. The goal of the Foundation is to promote economically sustainable projects and build partnerships to help ensure the long-term health and economic vitality of Georgia's downtown areas. This is being accomplished through the infusion of capital via a revolving loan fund program. Through its revolving loan fund program, GCF desires to assist in the rehabilitation and adaptive reuse of historic and dilapidated downtown buildings throughout Georgia, thus allowing these structures to thrive again as retail shops, offices, restaurants, theatres, and residences.

The Georgia Cities Foundation works in partnership with DCA to obtain the maximum level of state financial support for GCF projects. Most of the GCF loans that have been made to cities have been matched dollar-for-dollar with loan commitments from DCA through their state-funded Downtown Development Revolving Loan Fund program.

The Foundation also works closely with local banks in most of its loan projects. The Foundation's revolving loan fund program is not designed to compete with local banks; rather, the Foundation seeks to work with conventional lenders, private developers/investors, DCA, and others to develop a successful financing structure for each potential downtown project. The infusion of a low-interest GCF loan, when combined with conventional bank financing, results in a "blended" interest rate that is below market rates. The result is reduced debt service costs, which allows many project developers/investors to proceed with their good, but difficult, downtown projects that might be impossible to complete otherwise. Another result is access to capital, which has become extremely important since the Great Recession, as most banks are no longer willing to provide 80-90% financing for downtown projects.

The GCF Revolving Loan Fund program welcomes applications from cities in Georgia in conjunction with their Downtown Development Authority, which are requesting financial assistance in their efforts to revitalize and enhance their downtown areas.

Georgia Downtown Renaissance Partnership Programs

Downtowns in Georgia are the heart of our communities and are integral to the economic prosperity of our cities and state. The Georgia Downtown Renaissance Partnership was created to foster vibrant downtowns. The Partnership provides access to technical assistance for clear and concise strategic downtown visions and plans for local government leaders, downtown development authorities, chambers of commerce, downtown merchants, property owners, lending institutions, and citizens. The Partnership seeks to ensure all downtowns and cities in Georgia have the tools needed to realize their vision and potential.

In 2013, the Georgia Downtown Renaissance Partnership developed the following programs to assist cities with downtown strategic visioning, planning, design and technical services:

- **Renaissance Strategic Visioning & Planning (RSVP) Program:** This program assists cities in creating an initial vision and short-term work program for their downtown areas.
- **Downtown Renaissance Fellows Program:** Through this program, an undergraduate landscape architecture student at UGA is assigned to work with a participating city during the summer months, providing technical and design services.
- **Downtown Renaissance Planning & Design Studio:** During an academic semester, students within UGA's College of Environment & Design are provided an opportunity to focus their skills and knowledge on a downtown project.

For additional information about the [Georgia Cities Foundation](#), please contact [Perry Hiott](#), GCF Managing Director, at (678) 686-6207.

Georgia Downtown Association

The [Georgia Downtown Association](#) (GDA) is a non-profit association that promotes the economic redevelopment of Georgia's downtowns. Through advocacy, education and marketing, GDA works to focus the public's attention on the value of downtown. GDA has several programs that are designed to increase the opportunities for and multiply the talents of its members. Membership in the Georgia Downtown Association includes cities, Downtown Development Authorities, businesses, professionals, and other individuals interested in downtown development.

In partnership with DCA and other sponsors, GDA helps coordinate the Annual Georgia Downtown Conference. The conference provides up-to-date information on downtown development techniques and strategies and includes nationally known keynote speakers, hands-on work sessions, topical roundtables and panels, as well as plenty of networking opportunities. The conference is open to the public. For more information on GDA, please contact [Janice Eidson](#) at (678) 686-6256.

Economic Development Financing in Georgia

With limited resources to finance economic development efforts locally, it is important that city officials partner with other governments and organizations to ensure successful implementation of a city's economic development strategy. There are many resources that local, regional, state, and federal organizations can provide to support your economic development efforts to foster business retention and expansion, entrepreneur development, small business support, and new business development.

Economic development financing in Georgia is largely a collaborative partnership of several state-wide partners, including DCA, the Georgia Department of Economic Development, the OneGeorgia Authority, the Georgia Environmental Finance Authority, the U.S. Department of Agriculture - Rural Development, and the Department of Revenue. In addition, the Board of Regents, the Advanced Technology Development Center, and the Georgia Research Alliance often partner to provide support during the application-review process, including scientific vetting and Georgia Tech's market analysis, equity valuation, and review of business plans.

Many of the state's economic development financing programs are housed in the Department of Community Affairs' Office of Economic Development (OED). OED's goal is to be responsive to local government needs, especially in the area of accessing the department's economic development finance programs. DCA's economic development programs deliver millions of dollars in grants and loans annually to Georgia communities.

These include two dozen financing programs, some of which DCA manages directly as well as other financing programs, such as the Georgia Cities Foundation's downtown program and the OneGeorgia Authority, with which DCA has contractual relationships.

Most of OED's economic development finance programs have a rolling application cycle, meaning an application can be made at any time as long as there are funds available. Since an application is generally only required to meet a minimum threshold level for funding, OED has taken a very proactive stance in efforts to inform local governments about the department's programs and at the same time provide technical assistance early on in project development through the Office of Field Services (OFS) within the Community Development and Finance Division. Within the OFS are economic development field services representatives that are experts in these programs. It is important to note that often there is more than one pathway to funding a project, and bringing in the experts early on in project development can be key to developing a successful financing strategy.

Some of the advantages that OED brings to the overall financing picture are the strategic processes that DCA has developed. These stretch across relationships with statewide partners and include:

- helping local governments identify their community and economic development needs
- once the needs are identified, help to find which financing program best fits their overall needs
- early on in project development, assessing how competitive a project may be and to the extent possible, help mitigate any shortcomings prior to the submittal of an application
- during application review, OED's credit unit analyzes and underwrites projects as a critical part of the department's due diligence
- on-going monitoring and technical assistance during project implementation
- and identifying best practices to share with other communities.

Examples of projects that DCA's economic development programs can fund include:

- Grants
 - Infrastructure for businesses creating or retaining jobs
 - Brownfield redevelopment (publicly-owned land)
 - Site acquisition and site prep for rural communities (publicly-owned land)
 - Project funding for 37 North Georgia Appalachian communities
- Loans
 - Buildings, equipment or other fixed assets for businesses creating or retaining jobs
 - Speculative buildings in rural communities
 - Downtown development
 - Brownfield redevelopment (privately-held land)

The OED developed a very useful resource, the [Economic Development Finance Packet](#), which is a comprehensive listing of state, federal and local programs that are designed to promote economic development and business enhancement. For further information, please contact [Joanie Perry](#), Director, Community Finance Division, at (404) 679-3173.

Other Partners in Community and Economic Development in Georgia

In addition to the resources mentioned, there are many other public and private organizations that support community and economic development throughout the state. A few of these organizations are listed below:

Georgia Department of Community Affairs – Community Services

DCA has staff assigned to assist communities in all regions of the state. [Regional Representatives](#) serve as DCA's first point of local government/community contact for brokering, supporting, and implementing departmental programs and services. Throughout the state, cities can find a DCA staff member available to help with their community and economic development interests.

Georgia Department of Economic Development

The [Georgia Department of Economic Development](#) is the state's sales and marketing arm and lead agency for attracting new business investment, encouraging the expansion of existing industry and small businesses, developing new domestic and international markets, attracting tourists to Georgia, and promoting the state as a location for film, video, music and digital entertainment projects, as well as planning and mobilizing state resources for economic development.

Georgia Department of Natural Resources - Historic Preservation Division

A division of the Georgia Department of Natural Resources, the [Historic Preservation Division](#) assists Georgia communities and its citizens in historic preservation education and programs and the Historic Preservation Tax Credits. In addition, it works with other partners to develop and sponsor training programs on building preservation issues, provides technical assistance, and administers a preservation grant program for the state.

Georgia Economic Developers Association

The mission of the [Georgia Economic Developers Association](#) is to provide and promote networking and professional development opportunities and to shape economic development public policy.

Georgia Power, Georgia Electric Membership Corporation, MEAG Power

Though many Georgia utility companies assist at the state and local level with community and economic development, [Georgia Power](#), [Georgia Electric Membership Corporation](#),

MEAG Power, and Electric Cities of Georgia have provided significant sponsorships and direct assistance to community and economic development throughout the state. They also have staff available to assist when needed.

OneGeorgia Authority

Utilizing one-third of Georgia's share of the Tobacco Master Settlement Agreement, the goal of the OneGeorgia Authority is to offer financial partnerships with rural communities to create strong economies in all business sectors, allowing new and existing industries, both large and small, to flourish.

U.S. Department of Agriculture

USDA - Rural Development provides funding to eligible cities around the state for important local and regional economic development projects and programs.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Four-MUNICIPAL-SERVICES/Water,-Wastewater,-Stormwater.aspx

The Importance of Water to Georgians

Water is a life-sustaining resource essential to all Georgians and to economic growth in Georgia. Competition for this resource requires a balanced and integrated approach to efficiency, conservation, consumption, and return to a healthy ecological balance for Georgia. State Regional Water Planning Councils are tasked with providing guidance while operating under federal and state laws and regulations protecting the water supply and water quality. Over the last two decades, Georgia's legislative body and governors have passed numerous laws to protect and enhance this finite resource.

The 2004 Comprehensive Statewide Water Management Planning Act mandated the development of a statewide water plan requiring the state to manage its water resources in a sustainable manner to support the state's economy, to protect public health and natural systems, and to enhance the quality of life for all citizens (O.C.G.A. § 12-5-522(a)). In 2008, the Georgia Comprehensive Statewide Water Management Plan was adopted. This plan is the leading document guiding the oversight for water, wastewater and stormwater management for Georgia. In 2010, the Water Stewardship Act was adopted, requiring water conservation in Georgia and the enhancement of water supply throughout the state.

The federal government through the Clean Water Act has set forth a framework to protect and restore water quality by maintaining the chemical, physical, and biological integrity of the nation's waters. These programs provide for pollution control, permitting, setting water quality standards, wetland protection, and a host of other metrics addressing our nation's water resources.

The United States Environmental Protection Agency (EPA) primarily provides oversight of the implementation of these programs, while it is the responsibility of the Georgia Environmental Protection Division (EPD) to implement the components of the federal requirements under the Georgia Water Quality Control Act and the Georgia Safe Drinking Water Act.

Additionally, there are various state regulations, policies, and acts crafted for the protection of our water resources in the state. One affecting each municipal government is the 1975 Erosion and Sedimentation Act, which addresses construction sites and the protection of soil and water resources. As an elected official, the development community will approach you as your staff apply the enforcement measures provided in the Manual for Erosion and Sediment Control in Georgia known as the "Green Book". Furthermore, the Georgia Stormwater Management Manual (GSMM), commonly referred to as the "Blue Book," will present additional challenges for the development community.

Water

Definition

In Georgia, drinking water comes predominately from two sources: surface water and ground water. The pumping of raw water (untreated water) collects drinking water from the ground or from streams, rivers, or reservoirs (impoundments). The water is transferred in underground pipe systems to treatment facilities for processing and treatment for release to the distribution system for residential, commercial, and industrial use and consumption.

Regulatory Framework

Federal Level

The 1974 Safe Drinking Water Act (SDWA) is the federal law that protects public drinking water supplies throughout the country. Under the SDWA, EPA sets standards for drinking water quality. EPA provides technical and financial programs to ensure drinking water safety through the Drinking Water State Revolving Fund (DWSRF).

State Level

Under the SDWA, Georgia establishes policies, procedures, requirements, and standards to implement the Georgia Safe Drinking Water Act of 1977 (Act No. 231 O.C.G.A. Section 12-5-170 et seq., as amended), and to carry out the purposes and requirements of the Federal Safe Drinking Water Act (PL93-523).

Local Public Water Systems

Water systems in Georgia are permitted by EPD for treatment plants and distribution systems. If the local system pumps either surface water or ground water, the provider is required to obtain a withdrawal permit. As the owner of an operating permit, the public water system is required to monitor water quality, maintain records, perform periodic lab analyses, and if necessary notify customers of violations that could result in serious health effects. A Consumer Confidence Report (CCR) is required annually which provides customers information about the water sources, contaminant testing, and health concerns. The State of Georgia requires operators to be certified by the Georgia State Board of Examiners for both water and wastewater treatment and laboratory analysis. There are 13 classes of licenses which the Board governs. There is a critical need for additional operators in the state. Commissioners need to maintain competitive pay scales to retain their current staff and attract new employees.

The Safe Drinking Water Act allows smaller water systems special consideration regarding the use of treatment technologies and other resources for implementation of their program and to ensure that these systems have the technical, financial, and managerial capacity to comply with drinking water standards. All systems must assess their vulnerability to terrorist acts and other intentional acts of contamination. If you are a ground water public facility, you must comply with Rule 391-3-2, which establishes procedures to obtain a permit to withdraw,

obtain, or utilize ground water. The permittee must provide information concerning the amount of ground water withdrawn, its intended use, and the proposed aquifer or aquifers of withdrawal to EPD.

Major Issues in Public Water Systems

1. **Condition of Water Infrastructure:** The American Society of Civil Engineers (ASCE) ranks the condition of America's infrastructure and awarded a grade of "D+" in its most recent report. Local municipal water systems and their governing bodies across Georgia have tough decisions to make in the next decade due to aging infrastructure and its repair. As an example, the water system in the city of Griffin will be 50 million dollars in debt by the year 2020 and will need an additional 50 million dollars to complete plant and distribution upgrades. The useful life of pump stations, raw water transmission mains, and water treatment plants has long been exceeded. These assets will present major challenges for municipal officials to address.
2. **Public Appreciation of the Value of Water:** The public does not have a good understanding of water and its value. Most of us get up in the morning, turn on the faucet, and expect the water to flow. Water facilities and distribution systems are usually out of sight and out of mind. Local water system providers and local public officials have failed to fully educate the public on drinking water and its value, which is delivered daily to residential, commercial, and industrial customers in their community.
3. **Funding for Capital Improvements Projects:** In a recent survey by the American Water Works Association, respondents identified financing capital improvements as the second most important issue facing the water industry (the most important concern being the renewal and replacement of aging infrastructure). Local elected officials are faced with the challenge of doing more with less while water projects are in need of funding for repair, replacement, and rehabilitation. In addition, future water supply and advanced treatment require local elected officials to make difficult decisions on ratemaking.
4. **Retiring Workforce and Its Replacement:** The water world is subject to the same pressures as other industries with the retirement of baby boomers. Similar to other governmental agencies, municipal water professionals are not attracting the millennial generation for succession of its workforce. Non-competitive wages continue to plague the industry as an obstacle to recruitment. Succession planning is critical to staff treatment plants and collection systems management. Managers need to seek all avenues possible to maintain the workforce.
5. **Drought Management:** Local municipal water systems in Georgia are required to have Drought Management Plans and contingencies. Water supply is not a concern until drought periods lead to declining reservoirs.

6. **Customer and Community Relations:** Local water systems and public officials need to improve communication and education concerning the challenges of water stewardship. Developing public support is critical to managing water resources. Aging infrastructure and upgrading assets will require water and wastewater rates to be assessed, and rate increases may be needed to make improvements. Communicating with and educating the public can lead to reduced pushback by ratepayers when rates have to be increased.
7. **Recovering Costs for Service and Investment:** In the survey cited above, 37% of systems reported that they are currently struggling to cover the full cost of providing services. Water has been—and continues to be—an undervalued service. Local governments that provide water are entitled to receive the full cost of service just as cable, power, and phone providers are.
8. **Government Regulations:** Local governing bodies need to educate themselves to understand how water is regulated by the EPA and that regulatory agencies are constantly changing policies and requirements. The future top targets for regulatory change are likely to be disinfection byproducts (DBPs), pharmaceuticals, and personal care products (PPCPs). Local providers will have to invest in advanced technologies to treat water in order to comply with new water quality standards.
9. **Energy Usage and Cost:** The cost of energy continues to climb. Outside of personnel costs, energy is the largest cost in utility operations budgets. Providers must continuously look to improve energy consumption by utilizing new technologies and efficiencies with new equipment and more efficient process management.
10. **Climate Change:** Climatic issues are a fact. Over the last two decades, Georgia has experienced numerous droughts. These droughts have demonstrated the vulnerability that water providers have in their water supply. Drought management plans and conservation plans must be reviewed and updated on a regular basis. Local providers and government leaders must insure resiliency and sustainability to protect and enhance the precious resource of water to meet daily needs in homes, businesses, and industries. Minimizing risk and insuring resiliency is critical for each community to survive and provide economic growth.
11. **Utility Cybersecurity:** In the 21st century, we experience daily hacks into the internet, operating systems, and financial institutions. Water providers need to insure network integrity. Supervisory Control and Data Acquisition (SCADA) systems operate water tanks, water treatment processes, and distribution systems. Investment in information technology (IT) is critical to protect the treatment and distribution of water in our communities.

Wastewater

Definition

Wastewater is water that has been used in homes, in businesses, or as part of industrial processes. The wastewater is collected and transported through a network of underground

pipes and then conveyed to wastewater treatment facilities for processing. Once the wastewater is treated, it is returned to creeks, streams, or rivers. In some communities, wastewater is treated to a certain level and then land applied for further natural treatment. In other communities, septic tanks provide the treatment, and the process is located on each site.

Regulatory Framework

Federal Level

As part of environmental law, the 1972 Clean Water Act (CWA) uses two methods to protect the quality of water, both monitoring the water quality and controlling discharge from point sources (33 U.S.C. §1251 et seq.).

State Level

Residents of Georgia depend on rivers, streams, lakes, and subsurface waters for their public and private water supply, and agricultural, industrial, and recreational uses. The Georgia Water Quality Control Act (WQCA) governs the impacts on the water quantity and quality within the state (O.C.G.A. § 12-5-2). EPD is charged with establishing and maintaining the quality and quantity of Georgia's water resources (O.C.G.A § 12-5-21(b)). It is Georgia's policy that water resources be utilized prudently for the maximum benefit of the people, in order to restore and maintain a reasonable degree of purity in the waters and an adequate water supply, and to require, where necessary, reasonable usage of the State waters and reasonable treatment of sewage, industrial wastes, and other wastes prior to their discharge into the State waters (O.C.G.A. § 12-5-21(a)).

Major Issues in the Wastewater Industry

1. **Maintaining or Expanding Asset Life:** No wastewater treatment plant and collection system is immune from the aging and deterioration of the asset. Local providers should regularly conduct condition analysis of their assets for the implementation of short-, intermediate- and long-range capital improvement. Revenue sufficiency is critical in the maintenance of the treatment and collection systems. Managers must seek to find the latest and proven technologies for the repair, rehabilitation, and/or replacement of infrastructure. In most cases, assets can be rehabilitated allowing for long-range planning and the replacement of the asset in a manageable solution.

2. **Customer Rates:** Water and wastewater rate models developed by financial rate consultants can be a useful tool for planning future capital improvements and operational needs of the system. Staff and commissioners can evaluate the timing and implementation of strategic rate increases in these models. Wastewater, just like water infrastructure, is quite expensive. Again, public education and information needs to be a critical milestone in gaining public support and buy-in for understanding rate increases. As an elected official or board member, tough decisions need to be planned and promoted to the citizens on a routine basis to insure transparency and understanding when rates need to be increased.
3. **Maintaining Services While Budgets Decline:** Wastewater is a direct reflection of water consumption. Utilities have seen a decline in revenues over the last several years due to water conservation rates, more efficient appliances, and a better understanding of water usage. Revenues may decline but system assets have to be maintained, and the operation of treatment facilities must still take place. Wastewater effluent must meet water quality standards in the discharging of wastewater, thus requiring a reliable revenue stream to meet water quality standards.
4. **Reducing Sewer Overflows, Infiltration, and Inflows:** As wastewater collection systems begin to age, the integrity of the pipes begins to fail causing water to enter the collection system. This creates several issues for the provider. One, the treatment plant is treating unnecessary rainwater and not sewerage, which is quite costly. Second, when large amounts of water enter the collection system, it can cause sewer overflows due to the surcharge of collection pipes, resulting in sewer spills and fines for illicit discharges to the waters of the state. Repairs, rehabilitation, or replacement will be necessary and costly to improve aging infrastructure.
5. **Aging Workforce:** See above in the section on water.
6. **Government Regulations:** Local governing bodies need to educate themselves to understand regulatory issues passed down by the EPA. Water quality regulations are constantly changing. The future top targets for regulatory change are likely limits in ammonia and phosphorus in the effluent discharge to creeks, streams and rivers. Local providers will have to invest in advanced technologies to treat wastewater in order to comply with new water quality standards.
7. **Energy Usage and Cost:** See above in the section on water.

Stormwater

Definition

Stormwater is water from rain and other sources, which drains to street collection systems consisting of curb, gutter, inlets or drainage swales and flows to creeks, streams, and/or river systems. In many cases, the runoff sheet flowing to these creeks, streams, and river systems never enters the engineered collection system.

Importantly, there are at least two types of collection systems in municipal storm drainage systems.

The first is a collection system where storm water runoff is collected in pipes and swales and then transported to natural water systems (usually untreated). This system is known as a Separate Stormwater Separate System or MS4, which is the most common type in Georgia. The second collection system is a Combined Sewer Overflow (CSO) system where wastewater and stormwater enter into the same pipe system and are treated at a wastewater treatment facility.

Regulatory Framework

Federal Level

The 1972 Clean Water Act (CWA) uses two methods to protect the quality of water: monitoring water quality and controlling discharge from point sources. The latter method is addressed more specifically in the National Pollutant Discharge Elimination System (NPDES).

State Level

The Georgia EPD has been delegated by the EPA under Section 405 of the Federal Water Quality Control Act of 1987 (which amended Section 402) to establish regulations setting forth NPDES permit application requirements for stormwater discharges. Phase I of EPA's stormwater program was promulgated in 1990 under the CWA. In 1999, EPA published its Stormwater Phase II Final Rule, which expanded its rulemaking to smaller communities. EPD enforces its stormwater rules under the Georgia Rules and Regulations for Water Quality Control providing for municipal, construction, and industrial permitting (O.C.G.A. § 12-5-20).

Major Issues in Stormwater Systems

1. **Stormwater Management Funding:** As in most cases, funding for stormwater management is a challenge for cities in Georgia. In 1998, the city of Griffin created the first stormwater utility to address stormwater management funding. Since that time over 65 stormwater utilities have been created to address stormwater administration, operation and maintenance, environmental issues and capital improvements. For more information on existing stormwater utilities in the state, including fee structures, see the latest Georgia Stormwater Utilities Report issued by the Environmental Finance Center at the University of North Carolina and the Georgia Environmental Finance Authority (GEFA). Stormwater drainage pipes, culverts, and other assets are frequently well beyond their useful life and are in dire need of replacement or rehabilitation. The creation of stormwater utilities and their user fees have aided immensely in the efforts to address the issues mentioned above. The courts have upheld the user fee for stormwater as legitimate and defensible. Still, after 20 years, challenges to the legitimacy of their existence have lingered. Cities may apply for additional funding for stormwater capital improvements through low-interest loans from GEFA in the form of Clean Water State Revolving Fund (CWSRF) loans.

2. **Meeting Regulatory Requirements:** The Clean Water Act (CWA) framework requires programs to protect and restore surface water quality. These programs are required to restore and/or maintain the chemical, physical, and biological integrity of the waters of the United States. EPD is responsible for the implementation of the NPDES MS4 Permitting Program, which provides for water pollution control permitting, water quality standards, and non-point source pollution management. The program is reviewed every five years. Changes and modifications to the program can be problematic for local governments requiring additional funding to meet the limits of the program. Stormwater management is relatively new in the water world, and local officials may find it difficult to meet all existing stormwater requirements. In many cases, these requirements affect the development community. Local officials will be challenged with charges from developers that the program requirements are affecting economic growth in the community.
3. **Erosion and Sediment Control:** The Erosion and Sedimentation Control Act (O.C.G.A. § 12-7-1 et seq.) is another regulatory requirement that can result in challenges from developers to local officials. Sediment must be controlled on site for all development. When not in compliance, developers are issued stop work orders on construction projects, which delays their ability to work and can be interpreted as an impediment to economic development. The Georgia Soil and Water Conservation Commission has published a [Manual for Erosion and Sediment Control in Georgia](#) that provides additional information and technical guidance.
4. **Stream Buffers:** Stream buffers are protected in the state of Georgia. A buffer of 25 feet for warm water streams and a buffer of 50 feet for cold-water trout streams are currently mandated by state law. However, there are frequent attempts in the state legislature to redefine what a stream buffer is and what can take place in the buffer. Similarly, landowners continuously complain to local elected officials that buffers in many instances are affecting what they can do with their property.
5. **Best Management Practices (BMPs):** As previously mentioned, stormwater rules, policies, and regulations are relatively new. The engineering profession and Best Management Practice (BMP) design companies have a hard time defining their effectiveness and the calculated value of pollutant removal in the treatment of stormwater. The Georgia Stormwater Management Manual (GSMM) "Blue Book" mentioned above lists and defines regulatory requirements of these BMPs. Contention starts when local stormwater programs enforce them. Developers challenge the merits of BMPs and the interpretation from local staff. Once again, local elected officials are likely to encounter pushback when implementing the GSMM.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Five-FINANCING-and-REVENUES/Capital-Improvements-Planning.aspx

Introduction

Advanced planning for significant capital expenditures can be one of the most important financial management efforts that local governments undertake. Local governments are almost always attempting to balance limited financial resources with needs that exceed available funding. Planning ahead for large capital asset acquisitions is not only prudent financial management but also makes for better and more transparent policy decisions.

While operating budgets focus on current-year costs and revenues, effective capital planning requires governments to take longer-term views, forecasting needs and revenue sources well into the future. Long-range capital asset planning can be challenging and time consuming—particularly to governments unfamiliar with it—but the benefits are many and worthwhile.

What is a Capital Asset?

A capital expenditure is simply the acquisition of a capital asset. A capital asset can be defined as significant property that has a useful life beyond one year and reaches a minimum dollar value, also referred to as the capitalization threshold. Capital assets may include, but are not limited to, items such as land and property, buildings, renovations, vehicles, roads, technology, infrastructure, and other similar things. An important tool that helps provide structure and guidance in the delivery of these projects is a community's multi-year Capital Improvements Plan (CIP), sometimes called a Capital Improvements Program.

What is a Capital Improvements Plan?

A CIP is an adopted financial plan that identifies and describes recommended future projects, their anticipated costs, how they are proposed to be funded, and schedules when they are to be undertaken. Usually, it is updated and adopted annually. It is important to understand that it is a tool that assists with decision-making. CIPs typically have a three-to six-year time horizon, although it is appropriate in some circumstances to extend a CIP's time projection years beyond, particularly for large infrastructure efforts like water and sewer expansions.

To appreciate the purpose, value, and limitations of a Capital Improvements Plan, it is important to be aware of the differences between an operating budget, capital budget, and a CIP. An operating budget is a formally established budget for ongoing operating expenses such as salaries and fuel. Usually, they are adopted annually and cover a single fiscal year. A capital budget is a formally established budget for a specific capital asset acquisition such as a new road or library. In a capital budget, funding is appropriated for a particular purpose, and expenditures are made against it. Capital budgets are separate from annual operating budgets, thereby allowing projects to be implemented across multiple fiscal years without annual re-appropriations. With capital budgets, allocated money stays within the project's budget after a fiscal year ends, allowing for more flexibility of implementation. Furthermore, this separation allows for the operating budget to cover only actual operating costs. Without this separation, expensive one-time acquisitions would inaccurately and unnecessarily inflate a particular year's operating budget.

A CIP, on the other hand, is not a budget. Rather it is a multi-year financial planning tool designed to assist with capital budgeting. It typically recommends and describes what, how, and when future capital improvements or purchases will be made. It describes which community projects have been identified as likely capital projects and the projected cost for completing each project. The CIP is essentially a statement of intent that a community desires to undertake a capital project at some point in the future. It assists a community with planning for anticipated future expenses and allocating appropriate revenues.

In short, a CIP identifies potential projects with estimated cost projections, whereas a capital budget actually allocates specific funds for a defined project during its year(s) of implementation.

Benefits of a CIP

The benefits of a well-implemented CIP are numerous and varied. There are significant financial, administrative, and policy benefits that a community can realize. Benefits include, but are not limited to, a) reducing ad-hoc decision-making, b) improving allocation of resources, c) coordinating decision making, d) assisting with project delivery, e) connecting to long-range planning, and f) increasing transparency.

A. Reduces Ad-hoc Decision-Making

Without an adequate plan, decisions tend to be made in an uncoordinated and haphazard manner. Important but sometimes unexciting projects tend to get overlooked during budget evaluation and development. A CIP helps keep these projects on everyone's radar. Additionally, new citizens, staff members, elected officials, and others are continually bringing new ideas to the table. Having an adopted multi-year plan improves continuity to project selection and implementation. A CIP allows decision-makers to point to a coordinated plan

that has projects in place and a process to get new projects considered. It can reduce the “shiny object syndrome” by focusing on long-established projects instead of the newest idea that comes along.

Capital projects are usually large and expensive and therefore often very visible to the community. Undertaking a thoughtful, collaborative planning process ensures these projects are appropriately vetted, designed well, and effectively implemented so the money invested in them is well spent.

B. Improves Allocation of Finite Resources

A CIP improves financial predictability and stability. It helps identify major acquisitions, allowing a jurisdiction to plan in advance. This is particularly important for replacement or repair of significant capital assets. Projects can be identified and scheduled to be undertaken as funding permits. Adequate advanced planning allows time to identify potential funding sources and/or make financial decisions based on both needs and revenues. A CIP also assists jurisdictions in saving money and implementing “pay-as-you-go” financing. Additionally, it allows for future operating expenses from potential projects to be identified early and incorporated into long-range financial plans.

Capital projects that call for the use of debt, such as bonds, require special consideration. Repayment terms should not extend longer than the useful life of the financed project. The commitment of future revenues for debt service obligations impacts the government’s ability to fund future projects—or may require a voter referendum. A well-executed capital budgeting process helps to ensure the government is evaluating long-term decisions about funding and projects.

C. Coordinates Decision-Making

In a well-designed CIP, multiple projects are analyzed and compared against one another. This coordination allows for more effective cross-departmental comparisons and evaluations. In a well-planned CIP, criteria are used to evaluate and rank the need and value of projects. This leads to more informed and effective decision-making by staff and elected officials.

D. Assists with Project Delivery

A CIP also helps with managing and allocating staff resources. Every project to be implemented requires a certain amount of staff resources. A well-designed CIP helps to ensure that projects are spaced appropriately and undertaken in a coordinated logical manner.

E. Connects to Long-Range Plans

Capital projects should be based on overall community goals and needs. Many capital projects are the results of long-range strategic planning efforts completed by the community, such as Comprehensive Plans, Strategic Plans, and other Master Plans. Connecting long-range fiscal planning with these plans increases the likelihood that the goals and visions contained within the plans will actually be implemented.

F. Increases Transparency

Good plans include public involvement efforts to allow for comment and input on potential projects at various times in the process. Citizens should be encouraged to weigh in and influence the plans, thereby increasing program acceptance. Furthermore, well-executed plans also include enough information to adequately describe projects for the average reader after plan adoption. This provides the community with information about the jurisdiction's goals, plans, and direction.

Challenges and Drawbacks

While a CIP provides important benefits, there are some things to consider when drafting and implementing your plan. Challenges include a) staff time and resources, b) worthy projects can get stymied, and c) communities' expectations can become entrenched.

A. Staff Time and Resources

From project generation to development of cost estimates to economic forecasting, good CIPs require time, expertise, and sometimes money to create. While it is not necessary to have an expansive and detailed CIP, certain minimum efforts must be undertaken to ensure the value of the plan. Adequate staff and/or consultant time is necessary to generate ideas and data to actually produce the document.

B. Worthy Projects Can Be Stymied

While CIPs can help support continuity, unwavering devotion to any adopted plan can at times lead to inflexibility. This can also be true for inflexible CIPs that can unintentionally penalize worthy new projects. Facts and circumstances change and when worthy projects arise, they can and should be evaluated for inclusion in a community's plan. At times, worthy projects can and should jump ahead of other projects for various reasons. Each year, projects should be analyzed, refined, reprioritized, and sometimes simply eliminated. A CIP should be viewed as a tool for decision-making and not as a substitute for it.

C. Entrenched Community Expectations

CIPs are plans; they should not be static, and adjustments need to be made over time as appropriate. Project estimates made several years in advance may sometimes be inaccurate as the project gets closer to reality due to changes in project scope, unknown facts, general economic conditions, and other factors. This can make future cost estimation tricky. Care should be taken when making estimates, particularly for projects that are expected to be completed multiple years in the future.

Additionally, some projects that appeared worthy at one time may not be desired any longer for whatever reason. Citizens and other interest groups may rely on the CIP too heavily and expect it to be implemented exactly as written. It is appropriate and necessary to review projects and revenues regularly and decide whether projects should be abandoned based on the newest information available.

CIP Process

CIP development often occurs in parallel with, but separate from, the annual budget process. Each community should tailor its process to reflect its own systems and culture. Public involvement can and should occur along the way at any point in time the community or the jurisdiction wishes. In its most basic outline, the following are steps to CIP development and adoption: a) develop CIP policies to guide the process, b) create a list of potential capital projects, and c) adopt the plan.

A. Develop CIP Policies

The first step to developing a CIP for the first time is to create local policies that will guide the plan. After the first year of plan development, policies will need to be reviewed and adjusted accordingly.

1) Define Capital Projects. Perhaps the most fundamental policy question relates to what capital projects should and should not be included in the CIP. Not all capital acquisitions must be included in the CIP. Generally, the more costly the asset, the more likely it is to be included in the CIP. Lower value equipment, even if it has a useful life beyond one year, generally does not warrant special attention and financial planning. As such, the financial value of a capital asset becomes an important criterion and should be established by each community. There is no one right answer; the appropriate financial level depends entirely on the individual community. Smaller communities may find that \$5,000 is a suitable amount for inclusion, whereas larger jurisdictions may establish financial thresholds of \$25,000 or even more.

Figure 1. Selected Threshold Levels for Inclusion in CIP

City	2016 Population	Minimum Value
Hillsborough, NC	6,568	\$100,000
Conyers, GA	15,919	\$5,000
Mauldin, SC	25,188	\$5,000
Gainesville, GA	40,000	\$20,000
Largo, FL	83,065	\$100,000
Athens-Clark Co., GA	123,371	\$30,000
Glendale, AZ	245,895	\$50,000
Greensboro, NC	287,027	\$100,000

Source: Adapted from Capital Budgeting and Finance: A Guide for Local Governments with updated figures

2) Length of the CIP. Another important item for consideration is the actual length of time the CIP will project into the future. CIPs typically look between three and six years ahead. If it extends far beyond a six-year period, cost estimating will be increasingly difficult and less reliable. It should be noted that for some specialized CIPs, longer timeframes are entirely appropriate. However, in general, a common CIP length is five years into the future.

3) Create Evaluation Criteria. It is likely that many more projects will be proposed, eligible, and considered than funding will allow. Another challenge is evaluating widely different projects from multiple departments. While this is a useful part of the CIP, it can add complexity. It is important to establish criteria in order to evaluate potential projects, help simplify the process, and improve decision-making. The criteria are sometimes weighted by importance to the community. Eventually each project will be scored against the criteria and ranked.

The following are some potential criteria. However, each community should develop its own as appropriate:

- It is a mandatory project.
- It is a maintenance project based on approved replacement schedules.
- It will improve efficiency.
- It is mandated by policy.
- It has a broad extent of usage.
- It lengthens the expected useful life of a current asset.
- It has a positive effect on operation and maintenance costs.
- There are grant funds available.
- It will eliminate hazards and improve public safety.
- There are prior commitments.
- It replaces an asset lost to disaster or damage.
- Project implementation is feasible.
- It is not harmful to the environment.
- It conforms to and/or advances the community's goals and plans.
- It assists with the implementation of departmental goals and policies.
- It provides cultural, aesthetic, and/or recreational value.

4) Establish Review Team(s). In most cases, a larger list of potential projects will be developed than can likely be funded. Establish review teams to evaluate the projects and develop a single unified list for ultimate consideration by elected officials. There is no one right make-up of review teams. However, they should have access to information and data to make informed recommendations. In some communities, review teams are comprised only of staff members who make recommendations to elected officials. In other cases, citizen committees are created for this specific purpose. In others still, elected officials themselves participate in all stages of the process, including serving as the review team(s). Finally, there can also be a combination of any of the above as desired. Whatever the team makeup, it is important to identify early on who will be tasked with identifying and reviewing the projects. In some larger organizations, multiple review teams are established to look at projects on a department-by-department basis.

5) Develop a Schedule. After establishing policies to guide the plan, the next step is to develop an overall schedule for project identification, evaluation, and adoption. It generally takes several months to go through the entire process—depending on size and complexity of

the eventual CIP. Also, it is important to incorporate public input sessions into the process. This may occur through public hearings, written comment periods, stakeholder meetings and/or other processes. A clearly established and published schedule increases transparency and public acceptance. Additionally, it establishes important deadlines to keep the plan on track.


B. Develop Capital Project List

After policies and a schedule are established, the task of project identification and selection begins. Ultimately, the CIP is simply an adopted list of recommended capital projects and a timeframe for their implementation. However, that list is usually created only after a longer list of potential projects is developed, analyzed, and culled.

1) Identify Potential Projects. Long-range plans, studies, community input, staff and elected officials, and others serve as good sources for potential projects.

Many communities rely heavily on adopted strategic and long-range plans, such as Comprehensive Plans, to begin populating a list of potential projects. Even if a community is fortunate to have detailed long-range plans with many potential projects, actual project descriptions (including scope and cost estimates) must be created. For each potential project, a brief project description should be developed with enough detail explaining it and including a cost estimate.

Figure 2. Sample Project Description

<p>Project: BUFORD HIGHWAY RECONSTRUCTION Total Cost: \$13,210,698 Proposed Funding Year: FY 18 Proposed Funding Source: Multiple</p>	
<p>Project Description: This GDOT project will upgrade Buford Highway to improve local pedestrian, bicycle, and vehicular mobility around Downtown Suwanee and to encourage business development along the Buford Highway corridor. Exact scope of the project will be determined when the project is bid, but corridor improvements have been designed between McGinnis Ferry Road and the entrance to George Pierce Park. GDOT will let this project to bid in summer 2017, with bids anticipated for submittal in August 2017. It should be noted that the current construction estimate is based upon GDOT cost estimates and will be updated upon receipt of actual bids.</p> <p>This overall project estimate includes contributions from GDOT of \$5.79 million (through an LCI grant) and Gwinnett County of \$2.1 million.</p>	

Source: City of Suwanee 2018 CIP

Some communities also solicit potential projects from citizens. This may be done formally or informally and can provide a good opportunity for additional community input and buy-in.

Often important capital projects, such as large equipment purchases, fall outside of larger strategic planning efforts and should be included. Staff department heads often are asked to identify such projects; include them as well for evaluation by the review team(s) and incorporation into the plan. In such cases, senior staff should evaluate the proposed list and decide what eventually should be submitted to the CIP review team for consideration.

It is important to recognize that not every project imaginable should be submitted and analyzed in great detail by the review team. It is a balancing act between thoughtfully analyzing projects and spending time on projects that are unlikely to ever be undertaken.

2) Review and Prioritize Projects. Once a list of potential projects is developed, the submitted projects should be evaluated against an adopted scoring matrix. The review team should meet and go through the potential program. Typically, points are assigned and the projects are ranked accordingly. Be sure to maintain enough flexibility with scoring to allow for unexpected benefits or drawbacks to be taken into consideration when ranking projects. It is impossible to plan for every potential factor and circumstance.

Figure 3. Sample Scoring Matrix

	Funding	Legal Mandates	Public Health & Safety	Implementation Feasibility	Operating Budget Impact	Environmental Impact	% of City Population Served	Preservation of Facility	Project Life	City Plans & Goals	Departmental Plans & Goals	Recreational/Aesthetic Value	Frequency of Use (Average)	Intangible Benefits (Optional)	Total
Equipment & Vehicles															
City Vehicles - Replacement	9	0	3	15	6	0	10	9	0	0	0	0	10	0	62
Police Vehicles - New Purchases	9	0	0	15	0	0	10	0	0	2	9	0	10	15	70
Police Vehicles - Replacement	9	0	3	15	6	0	10	9	0	10	0	0	10	20	92

Source: City of Suwanee CIP

3) Develop a Draft Implementation Plan. Project ranking is important, but it does not necessarily determine if and when an actual project will be undertaken. Important real-world factors must be considered in determining an actual plan.


After the review team ranks projects, difficult decisions are often required in order to develop a draft CIP. At this point, there is typically a list of potential projects with cost estimates, but no logical order. The review team must analyze future anticipated revenues, staff workload, potential funding sources, and other important factors to create a multi-year implementation plan. It is important to note that a project's rank at a particular position does not necessarily mean that it will be completed sooner than other projects. The actual cost of the project, funding sources, and other important intangible factors must be taken into consideration. However, at the end of the day, a single list of prioritized recommended projects broken down by year must be created for consideration.

C. Adopt a Plan

The CIP should be formally adopted by the local jurisdiction. If elected officials do not participate along the entire way, they will need adequate time to review the information prior to making a decision and adopting the plan.

Work sessions are useful in allowing the review team to present the recommended list to the elected body prior to adoption of the plan. At such meetings, discussions about the process, projects, and other factors can occur. Assumptions and estimates can be discussed. Projects that did or did not make the list can be explained. There can be as few as one, or there can be many work sessions. However, they should be incorporated into the process and scheduled. Ultimately, the governing authority should have a formal vote to consider and approve the plan by formal vote following local procedures and requirements.

Figure 4: Excerpt from Suwanee's CIP



SUMMARY OF PROJECTS BY CATEGORY

PROJECT	FY 18	FY 19	FY 20	FY 21	FY 22	TOTAL
City Vehicles - New						
City Vehicles - Replacement	-	37,500	39,500	-	43,500	120,500
Police Vehicles	39,000	160,000	40,000	85,000	126,000	450,000
Public Safety Projects: Parks Video Surveillance	190,000	165,000	200,000	200,000	125,000	880,000
Public Safety Projects: Police Body Cameras	35,000	-	-	-	-	35,000
Public Safety Projects: Police Investigation Software	33,500	24,000	-	-	-	57,500
Public Safety Projects: Police Radio Upgrade	-	10,000	-	-	-	10,000
Public Safety Projects: Radar Signs	60,000	61,500	33,600	-	-	155,100
Public Works Equipment - New Purchases	9,225	9,600	10,000	10,500	11,000	50,325
Public Works Equipment - Replacement	224,500	100,000	-	-	-	324,500
Public Works Equipment - Replacement	17,000	93,000	115,000	85,000	70,000	380,000
TOTAL	\$ 608,225	\$ 660,600	\$ 438,100	\$ 390,500	\$ 375,500	\$ 2,462,925

Source: City of Suwanee FY18 Budget

A Few Tips

A. Remain Flexible

Over time, not all capital purchases must be specifically listed in the CIP. The CIP should be treated as a tool to assist with decision-making. There will invariably be times when large acquisitions must be made outside of normal budget cycles. This is understandable and

acceptable. While it is prudent to review the CIP prior to large acquisitions, not every purchase has to be included in the CIP before it is acquired.

B. Include Disclaimers

Include information for the reader that the CIP is a “plan” to assist with decision making and can change. Individual projects are subject to change, and there is no guarantee that one will be completed either within the recommended timeframe or at all. Furthermore, be sure to include language that indicates that cost estimates are just that: “estimates.” The capital budget for a project is typically adopted outside the CIP process, much further in the future when designs may have been completed, bids have been received, and/or other refined costs are actually known.

C. Use Round Financial Figures

As much as practical and appropriate, use round figures when projecting future costs. This helps convey that the numbers are estimates and subject to change. For example, use an anticipated cost as \$100,000 and not \$98,436. The more specific the figure, generally the more difficult it is to change in the future. Additionally, where appropriate consider using inflationary figures to help manage cost increases. Over a five-year time period costs can escalate by 25% or more simply due to inflation.

D. Understand that the CIP Will Improve Over Time

Developing a CIP that works for your community takes some trial and error. Start simple. Over time, communities will include more relevant information and delete other information. Taking too big of a leap early on is common, but it can create issues over time, such as including too many projects or projects with incomplete information.

Conclusion

Any community that chooses to utilize a CIP should be commended. The process can appear daunting and cumbersome. However, the benefits are many and worthwhile. Each jurisdiction should expect some setbacks and be prepared to learn from mistakes along the way. There is no single way to develop and implement a CIP as each community must account for local culture, staffing, policies, and procedures.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Five-FINANCING-and-REVENUES/Financial-Policies.aspx

City councilmembers make decisions relating to financial matters on a regular basis. However, only a limited number of cities have adopted formalized financial policies to help make these decisions. What are financial policies? Why should city councilmembers adopt them? What obstacles will need to be overcome? How are financial policies developed? This chapter reviews each of these questions.

What Are Financial Policies?

Financial policies are the rules that govern financial decisions in a city. City councilmembers adopt these policies and follow them when making financial decisions about the future of their cities. Once city officials adopt financial policies, most subsequent financial decisions are simplified because the issues have been deliberated during the policy adoption stage.

Cities might adopt financial policies covering the following topics:

- operating budget and equity (fund balance) reserves
- capital improvements plan or program (CIP)
- debt revenue
- accounting, auditing, and finance reporting
- purchasing
- cash and investment.

Questions that city councilmembers need to ask as they work to develop policies are presented below in Table 1.

Operating budget and equity (fund balance) reserves	<p>Which funds should be budgeted?</p> <p>Is the budget balanced?</p> <p>Is a contingency budgeted?</p> <p>How much fund balance is maintained?</p> <p>Is the fund balance used in balancing the budget?</p> <p>What is the legal level of budgetary control?</p> <p>Should a more detailed level of budgetary control be established?</p> <p>Is the budget process centralized or decentralized?</p> <p>What happens to appropriations at the end of the year?</p> <p>What budgetary basis of accounting is used?</p> <p>Is a budgetary reporting system maintained?</p> <p>Who will perform budget adjustments/amendments during the year?</p>
Capital improvements program (CIP)	<p>How are capital projects defined?</p> <p>What period of time does the CIP cover?</p> <p>What evaluation criteria are used to prioritize capital projects?</p> <p>How much of the CIP is funded each year from the annual operating budget?</p>
Debt	<p>When is debt issued?</p> <p>What type of debt is issued? How much debt is issued?</p> <p>What are the maturity dates of debt issuances?</p> <p>What are the actions undertaken to maintain positive relations with bond rating agencies?</p> <p>What are coverage ratio requirements/targets?</p>
Revenue	<p>What is the goal for establishing and maintaining a diversified revenue sources?</p> <p>What are the collection policies?</p> <p>What collection methods (such as tax sales, liens, collection agencies, etc.) are used?</p> <p>How are revenue projections developed, how often, and what period of time do they cover?</p> <p>How are property tax rates calculated?</p> <p>How are user fees and charges set, and how often are they updated?</p> <p>Should a revenue manual be developed by the city?</p>
Accounting, auditing, and financial reporting	<p>How is the independent auditor selected?</p> <p>What is the level of audit coverage?</p> <p>Who prepares financial reports for internal use, and what type of reports will be prepared?</p> <p>Does the city participate in the GFOA certificate of achievement program with the production of a comprehensive annual financial report (CAFR)?</p> <p>Does the city use audit or finance committees?</p> <p>Does the city have an internal audit staff?</p> <p>Are generally accepted accounting principles (GAAP) being followed?</p>
Purchasing	<p>Is the purchasing system centralized or decentralized?</p> <p>Should written purchasing rules and regulations be developed? Who should award bid contracts?</p> <p>Which thresholds should be established for purchasing activity such as requiring formal bids, written quotes, telephone quotes, petty cash, etc.?</p> <p>Should local bidder preference be authorized?</p> <p>Should the city utilize cooperative purchasing such as the Georgia state contracts?</p>
Cash and Investments	<p>Should the city spread cash among local banks, rotate banks, or pool cash and investments?</p>

Should the city perform a banking services bid?
 Is competitive bidding used for investment instruments?
 What are the investment objectives of the city?
 What are the authorized investment instruments?
 How are qualified institutions defined?
 What collateralization procedures are needed by the city?
 Should the local government investment pool (Georgia Fund 1) be used?

Many cities have some financial policies even though the elected officials have not formally adopted them. Often these policies result from precedent, and they become standing practices within a city. For example, a city's property tax rate might not have been changed for a number of years. The city has no written policy that limits increasing the tax rate, yet everyone "just knows" that the position of the city councilmembers is not to raise property taxes. Obviously, an informal policy is at work in that city. It is advantageous for city leaders to document those standing practices into a more formalized policy document to assist staff within the organization as well as the councilmembers which follow their legacy.

Adopting Financial Policies: Considerations

There are a variety of reasons why city councilmembers should adopt financial policies:

- 1) Financial policies can provide city elected officials with the opportunity to review their present approach to financial management with an overall, long-range perspective.** Generally, during budget preparation, city councilmembers spend most of their meeting time reviewing the annual operating budget. And, because of the annual budget process, city officials are generally "annually oriented" in their financial planning. Fortunately, financial policies require city councilmembers to conduct financial planning on a long-range basis, which can only improve a city's financial management.
- 2) Financial policies can improve city councilmembers' credibility and the public's confidence in them.** When citizens are aware that the city council has adopted meaningful financial policies, they feel confident that the councilmembers are providing sound financial management for the city.
- 3) Financial policies can save time and energy for both the city council and the city's administrative staff.** It has been said that 80 percent of the decisions that city councilmembers make relate in some way to finance (e.g., hiring additional personnel, purchasing new vehicles, evaluating where to locate a new fire station). Therefore, if financial policies are in place, the amount of time at council meetings spent on financial issues can be minimized. Such policies also allow the city's administration to move ahead with financial matters as it follows the adopted financial policies, rather than wait for decisions from the city council.

4) Formulating financial policies can be educational for city councilmembers. Because most city councilmembers have a heavy workload, discussions of financial issues are sporadic. The process of developing financial policies provides city elected officials the opportunity to become educated on all facets of city financial management.

5) Financial policies can provide continuity for the city and its city council. If financial policies already exist, newly elected officials who are assuming office should not have to make major changes in the financial management of the city. Of course, the fact that financial policies are in place does not mean that the elected officials cannot or should not change the policies. It simply means that existing financial policies promote necessary continuity for city operations.

6) Financial policies can provide a basis for coping with fiscal emergencies. Revenue shortfalls and emergencies requiring unanticipated expenditures can have a severe fiscal impact on a city unless financial plans and policies have been established to handle them. Financial policies are critical for a city to maintain financial solvency.

Obstacles to Overcome

Unfortunately, certain perceptions and some very real situations can become obstacles to city councilmembers when considering developing financial policies. Councilmembers themselves may resist developing long-range financial plans. As stated earlier, because of the annual budget cycle, councilmembers tend to think of financial planning on an annual basis. Also, they may believe that developing a long-range financial plan is not worthwhile because so many things can change over time.

There is also a political dimension. In the process of developing financial policies, many important issues will be discussed at public meetings, and each elected official's position on specific financial issues will therefore become public knowledge. Some city officials may be reluctant to reveal too much about how they feel about a particular topic (e.g., increasing property taxes).

Finally, the task of developing financial policies is very time-consuming and is therefore perceived as a drawback. It usually takes a number of special meetings or work sessions for the city council to deliberate the policies. Weighing these very real concerns against the benefits of adopting financial policies should make overcoming hesitations more acceptable and certainly possible. The time and effort necessary will be worthwhile for the future financial condition of the city.

How to Develop Financial Policies

City councils must complete various steps before they can adopt financial policies. One of the first steps is to have the city administration begin developing and drafting financial policies. The city administration might present the city council with a work plan for developing financial policies, which would include most of the topics covered in this chapter. For example, the work plan might include

- the definition of financial policies
- the purpose and benefits of financial policies
- a review of the obstacles to developing financial policies
- the types of financial policies to be considered (with samples for each topical area)
- the methods of developing financial policies, and
- strategies for using financial policies.

Once the city council concurs and chooses the areas for policies, the city administration should begin drafting policies consistent with other adopted policies, as necessary. A good way to begin is to review policies adopted by other cities in the state and nation. In addition, sample policies and hands-on training in the financial policy area are available from the [Carl Vinson Institute Governmental Training and Education Division](#).

After the city administration drafts the policies, the city council should devote as many work sessions as necessary to reviewing these policies. This process will be time-consuming but educational for the city council.

The city council might decide to hold a public hearing on the financial policies to allow for citizen input. Finally, the policies should be adopted formally through a resolution or ordinance. All policies can be maintained in a policy book and be reviewed periodically (possibly annually and/or after newly elected city councilmembers take office), but quite often policies are incorporated into the city's finance ordinance or resolution. See Table 2 for a selection of financial policy areas, issues, and sample policy language.

Area	Issue	Sample Policy
Operating budget and equity (fund balance) reserves	Fund balance amounts to maintain	The city will attempt to establish a fund balance reserve for the general fund to pay expenditures caused by unforeseen emergencies, to cover shortfalls caused by revenue declines, and to eliminate any short-term borrowing for cash flow purposes. This reserve will be maintained at an amount that represents approximately \$300,000 or three months of general fund operating expenditures, whichever is greater.
Capital improvements program	Capital assets thresholds	For the capital improvements program, all land and land improvements and building projects costing \$20,000 or more are classified as capital assets within the capital projects fund. Equipment costing \$5,000 or more with an estimated useful life of two or more years is considered a capital asset and purchased as a capital outlay line item within the operating budgets of the departments.
Debt	When to use capital leases rather than outright purchases	Capital leases are used to finance equipment purchases at any time that the cost of the equipment purchases exceeds 12 percent of the general fund budget.
Revenue	Review of fees and charges	The city will review all fees and charges annually in order to keep pace with the cost of providing that service.
Accounting, auditing, and financial reporting	Auditor selection	Every four years the city will issue a request for proposal to independent auditors to provide an audit for the city's operations. The current auditing firm is eligible to propose on this audit.
Purchasing	Centralized purchasing	The city will maintain a centralized purchasing system through which all city purchases for both goods and services will be coordinated by the purchasing department.
Cash and investments	Selection of banks for normal banking operations	Every three years the city will issue a request for proposal to independent banks to provide normal banking services for the city's operations.

Summary

The importance of financial policies cannot be overemphasized. Laws provide specific guidance regarding some of the issues that financial policies address. However, city councils are given much latitude regarding the context of the financial policies. The city and its elected officials should make every effort to adopt meaningful financial policies. However, when the

policy is adopted, it is critical that both the city administration and city council follow these policies fully.

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The ability to borrow is a major area of municipal finance. In addition to taxation and intergovernmental aid, local governments borrow funds to finance capital expenditures and to meet operating expenses. This chapter provides general information about municipal debt. However, individual transactions can be complex; they require that elected officials understand the economic risks associated with borrowing funds to finance municipal projects as well as the legal requirements for disclosure of information to the municipal bond marketplace and the various professionals involved in the transaction.

Economic Considerations

Before deciding to borrow any appreciable amount, municipal officials should consider the economic constraints on borrowing. Preparation of a comprehensive forecast of future revenues and expenditures is essential. The forecast should provide sufficient detail so that steps can be taken to ensure a flow of funds for debt liquidation as well as for existing and planned expenditures in other areas.

This chapter considers how and when municipalities in Georgia may incur indebtedness. The topics discussed include types of debt instruments available to municipalities, fundamental legal restraints and exceptions, and marketing municipal bonds.

Types of Debt Instruments

If a city decides to borrow, it must determine the form or type of indebtedness to incur. Several types of debt instruments are available. The most commonly used forms are bonds (both general obligation bonds and revenue bonds) and promissory notes.

Bonds are classified into different categories according to source of payment, time of maturity, and type of issuer. With respect to source of payment, bonds are either repaid from general revenues of the issuing municipality or from a particular source of revenue. Bonds

that are repaid from the city's revenues are referred to as general obligation or full faith and credit bonds, meaning that the city promises to pay the interest and retire the principal. The money to pay these bonds will normally come from taxes levied by the municipality. Bonds that are repaid solely from a specific source of revenue are called revenue bonds. Revenue bonds cannot be paid out of general municipal funds; money to repay revenue bonds is generated by the project purchased or constructed from the proceeds of the bond sale.

On the basis of date of maturity, bonds may be generally classified as those that mature in 1 to 5 years (short-term bonds), 5 to 10 years (intermediate bonds), or more than 10 years (long-term bonds).

Fundamental Legal Restraints and Exceptions

Georgia cities possess the authority to contract for or incur indebtedness only as authorized by the Georgia Constitution and other applicable law. Before attempting to borrow money, a municipality should know the limits on its power to go into debt as well as the types of borrowing not subject to debt limitations.

Debt Limitations

Generally, the Georgia Constitution limits indebtedness to 10% of the assessed value of all taxable property located within a municipality (Ga. Const. Art. IX, § 5, ¶1). This provision also states that no new debt may be incurred without the assent of a majority of the qualified voters voting on the question of whether the city should incur the debt (Ga. Const. Art. IX, § 5, ¶1. See O.C.G.A. §§ 36-80-10 through 36-80-15 (election for authorization of unbonded debt) and O.C.G.A. § 36-82-1 et seq. (bonds)). It should be noted that under past constitutions (the 1983 constitution prohibits local amendments), a number of local constitutional amendments were passed authorizing certain municipalities to issue bonds in specified amounts for specific purposes in excess of the 10 percent limit. All local amendments were continued in force until July 1, 1987. Only those local amendments specifically continued by the governing authority or the General Assembly as provided in Art. XI, § 1, ¶4 of the Georgia Constitution are still in effect.

Exceptions to the 10% limitation and the required election include

- funds granted by and loans obtained from the federal government or any agency pursuant to conditions imposed by federal law

- funds borrowed from any person, corporation, association, or the state to pay in whole or in part the cost of property valuation and equalization programs for ad valorem tax purposes, and
- temporary loans (Ga. Const. Art. IX, § 5, ¶4 et seq.).

A city may enter into a contract with an authority and levy taxes to meet its contractual obligations to the public authority as long as the contract between the city and the public authority is authorized by the intergovernmental contacts clause of the state constitution (Ga. Const. Art. IX, § 3, ¶1(a); *Building Authority of Fulton County v. State of Georgia*, 253 Ga. 242, 321 S.E.2d 97 (1984); *Nations v. Downtown Development Authority of the City of Atlanta*, 256 Ga. 158, 345 S.E.2d 581 (1986); *Clayton County Airport Authority v. State of Georgia*, 265 Ga. 24, 453 S.E. 2d 8 (1995); *Reed v. State of Georgia*, 265 Ga. 458, 458 S.E.2d 113 (1995)).

Special District Debt

Municipalities may incur debt on behalf of special districts created to provide local government services in such districts. Before doing so, the city must provide for the assessment and collection of an annual tax within the district sufficient to pay the principal and interest of the debt within 30 years. The state constitution requires that such debt must be approved by a majority of the voters of the special district voting in a special election held for that purpose. A municipality cannot incur any debt on behalf of a special district that, when added to the rest of the municipality's outstanding debt, exceeds 10 percent of the assessed value of all taxable property within the municipality. The proceeds of the tax collected from the special district must be used exclusively to pay off the principal and interest of the debt incurred on behalf of the special district (Ga. Const. Art. IX, § 5, ¶2. See also Ga. Const. Art. IX, § 2, ¶6, which provides for the creation of special districts).

Temporary Loans

The constitution also provides that, subject to certain conditions, cities may incur debt by obtaining temporary loans in each year to pay current expenses. These are commonly known as tax anticipation notes or "TANs." The conditions for such temporary loans include the following requirements:

1. The aggregate amount of all such loans shall not exceed 75% of the municipality's total gross income from taxes collected in the preceding year.
2. Such loans are payable on or before December 31 of the calendar year in which they are made.

3. No such loan may be made when a prior temporary loan is still unpaid.
4. The municipality shall not incur an aggregate of temporary loans or other contracts, notes, or obligations for current expenses in excess of the total anticipated revenue for the calendar year (Ga. Const. Art. IX, § 5, ¶5).

Be aware that Georgia cities cannot simply go to the local bank and borrow money. Any municipal borrowing or financing must carefully comply with applicable law and should be fully evaluated by the city attorney well in advance.

Exceptions to Long-Term Debt Limitations

A municipality may incur debt of a relatively long-term nature in several ways without being subject to constitutional debt limitations or election requirements.

Revenue Bonds

One method of incurring debt is through the issuance of revenue bonds for the purchase or construction of public works designated as revenue-producing facilities by the Georgia Revenue Bond Law (Ga. Const. Art. IX, § 6, ¶1. See also O.C.G.A. §§ 36-82-60 through 36-82-85). The Georgia Constitution provides that both the principal and interest must be paid only by revenue pledged to the payment of such bonds. Because of the promises or covenants made to the purchasers of the bonds (the bondholders), city officials may be required to increase the rate for services providing the revenue stream to pay off the bonds. One of the most common uses of revenue bonds is to pay for constructing or expanding water and sewer systems or other utility systems.

Revenue bonds are not deemed to be debts of the municipality, and a municipality may not levy or use taxes to pay any part of the principal or interest of such bonds (Ga. Const. Art. IX, § 6, ¶1; O.C.G.A. § 36-82-66). Because revenue bonds are not debt of the municipality, the municipality is not required to obtain the assent of the qualified voters before issuing them. The maturity date of revenue bonds cannot exceed 40 years (O.C.G.A. § 36-82-64).

Development Authorities Debt

Creating a development authority that can incur debt itself through the issuance of revenue bonds for the development of trade, commerce, industry, and employment is another method of incurring debt. Revenue bonds issued by a development authority do not constitute debt of the municipality, but municipalities can contract with development authorities and pledge their full faith and credit and levy taxes to meet their obligations under the contract as

mentioned previously (Ga. Const. Art. IX, § 6, ¶3; O.C.G.A. § 36-62 (governing development authorities); *Stephenson v. State of Georgia*, 219 Ga. 652, 135 S.E.2d 380 (1964)). Examples of development authority projects include the acquisition, construction, improvement, or modification of any property to be used as or in conjunction with the production, processing, storing, or handling of agricultural, mining, manufactured, or industrial products; a sewage or waste disposal facility; constructing, equipping, or remodeling industrial facilities; sports facilities or convention or trade show facilities; airports, docks, or other mass commuting and parking facilities; other listed projects; and any other such project that would further the public purpose of the law (O.C.G.A. § 36-62-2).

Multiyear Installment Purchases and Leases

Another method of financing involves the use of multiyear installment purchases or leases (O.C.G.A. §§ 36-60-13, 36-60-15). To provide for the terms and conditions under which cities may enter into multiyear lease, purchase, or lease purchase contracts to acquire property or services, Georgia law provides that such a contract

- must terminate absolutely and without further obligation on the part of the municipality at the close of the calendar or fiscal year in which it was executed and at the close of each succeeding calendar or fiscal year for which it may be renewed
- may provide for automatic renewal unless positive action is taken by the municipality to terminate it, and the nature of such action shall be determined by the municipality and be specified in the contract
- shall state the total obligation of the municipality for the calendar or fiscal year of execution and further state the total obligation that will be incurred in each calendar or fiscal year of the renewal term, if renewed
- must provide that title to any supplies, materials, equipment, or other personal property is to remain in the vendor until fully paid for by the city. However, a municipality may accept title to property, subject to the contract, and transfer title back to the vendor if the contract is not fully consummated
- the principal portion of the contract, when added to the amount of general obligation debt incurred by the city pursuant to Article IX, section 5, paragraph 1 of the state constitution, must not exceed 10% of the assessed value of all taxable property in that city
- any real or personal property being financed by such contract must not have been the subject of a failed referendum within the preceding four calendar years unless such property is required to be financed by a court order or imminent threat of a court order, as certified by the municipal governing authority
- a public hearing must be held after publication of notice in a newspaper of general circulation on any contract for the acquisition of real property

- average annual payments on any contract with respect to real property must not exceed 7.5% of the governmental fund revenues of the municipality for the preceding calendar year plus any available special county 1% sales and use tax proceeds.

In addition to the above, such contracts may contain

- a provision for automatic termination in the event that appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the municipality under the contract
- a provision for the payment by the municipality of interest or the allocation of a portion of the contract payment to interest, or
- any other provision reasonably necessary to protect the interest of the municipality.

Such contracts are deemed not to create a debt of the city for the payment of any sum beyond the calendar or fiscal year of execution or, in the event of a renewal, beyond the calendar or fiscal year of the renewal. Nothing in this law restricts cities from executing contracts arising out of their proprietary functions (O.C.G.A. §§ 36-60-13, 36-60-15).

Utilizing this law, the Georgia Municipal Association has created several financial programs that allow municipalities to purchase on a multiyear basis without referenda essential items such as firefighting and law enforcement vehicles, staff vehicles, utility equipment, computers, and public facilities.

Marketing Municipal Bonds

Besides fulfilling legal requirements, other factors are involved in the successful marketing of a municipality's debt.

- The municipality should obtain expert financial and legal advice. Since experts keep up with the bond market and confer with others in the field, their counsel may save considerable interest expense. When selecting a financial advisor it is important to ensure that such a person is experienced, properly licensed, and provides independent advice.
- Municipal officials should fully understand the transaction being proposed. If the elected officials do not understand the transaction and the ongoing obligations it will place on the municipality, they should not approve the transaction. The elected officials also have an obligation to ensure that all of the financial information disclosed about the city in the course of the transaction is accurate. Elected officials should familiarize themselves with disclosure rules before approving any transaction and ensure that processes are in place to comply with any ongoing requirements. The Government Finance Officers Association (GFOA) website is a resource to begin learning more about these legal requirements, as are the U.S. Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB).

- The timing of the bond issue must be carefully considered. Because interest rates on new bond issues fluctuate, officials should attempt to time the sale of bond issues to take advantage of favorable market conditions.
- A bond attorney should be selected before the first bond resolution is passed. An accompanying favorable legal opinion from a bond attorney whose opinion is recognized as marketable will have a positive effect on the bids of bond underwriters.
- A proposed bond sale should be publicized in local newspapers, in the foremost state financial paper, and in financial publications with national circulation as well as online sources. Notices should usually appear at least two weeks in advance of the sale and provide enough information so that underwriters can prepare their bids.
- A municipality that is selling bonds must be prepared to present comprehensive data about the community, particularly its economic base and its financial situation. This requirement will necessitate engaging recognized engineers and accountants not only to aid in planning and supervising capital improvements but also to compile pertinent information. Engineers can help predict construction costs and future capital requirements. Accountants can provide data on anticipated earnings and expenses, the city's credit history, and other facts about the economic and social life of the community.
- A municipality issuing bonds has a continuing obligation to make financial disclosures, in particular disclosing any material event that could affect the municipality's ability to repay the bonds. Any Georgia municipality considering entering into an interest rate swap agreement, interest rate cap agreement, or other interest rate agreement needs to comply with O.C.G.A. § 36-82-252, which requires the municipality to have an interest rate management plan in place prior to entering into such agreement.

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A municipality's capacity to generate revenue is determined by the revenue-raising authority granted to it under state law. Georgia, like most states, requires that municipal budgets be balanced. Municipal budgeting processes are somewhat revenue-driven because municipalities cannot budget expenses that will exceed the available revenue; at the same time, certain governmental expenses cannot be avoided, and revenues must be adjusted where possible to fund services demanded by citizens and businesses as well as to comply with state and federal mandates.

This chapter describes the revenue sources currently available to Georgia municipalities. The primary revenue sources for municipalities in Georgia are taxes, non-tax revenues such as fees, and enterprise funds. Municipal elected officials have the challenging task of balancing revenue sources in a manner that provides sufficient funds for municipal services while maintaining equity among taxpayers.

Revenue Patterns

Local governments in the United States operate in an intergovernmental system. They generate revenues from their own sources as authorized by the state and receive intergovernmental revenues in the form of federal and state aid. According to the [Georgia Department of Community Affairs](#), Georgia municipalities in Fiscal Year 2016 derived most of their \$8.15 billion in total revenue from their own sources, with intergovernmental revenue (\$391 million) accounting for only 4.8 percent of total municipal revenue.

Municipal revenue sources are often divided into two categories: general fund revenues and enterprise funds. While enterprise funds (charges for municipal water and sewer service, municipal gas service and municipal electric service for example) account for more than half of total municipal revenues (\$4.26 billion statewide, or 52 percent of total municipal revenues), if one excludes enterprise fund revenues and examines general fund revenues (\$3.89 billion statewide), the four highest municipal revenue sources are (1) property taxes, (2) sales taxes, (3) excise and special use taxes (e.g., alcoholic beverage, insurance premiums, hotel-motel, and occupation taxes) and (4) service charges and other revenues. Municipal property taxes generated \$1.06 billion (27.2 percent) in general fund revenues, with most property tax revenue coming from taxes on real and personal property. Sales taxes accounted for \$876.4 million (22.5 percent) in general fund revenues, with municipal excise and special use taxes generating \$705.37 million (18.1 percent) of general fund revenues.

Tax Revenue

Most municipalities in Georgia generate the majority of their general fund revenues through taxation. In fact, taxes comprise roughly two-thirds of municipal general fund revenues state-wide. As such, it is important to have a good understanding of how municipal tax revenues are generated in order to maximize their revenue-producing potential and achieve and maintain a balanced revenue stream.

Taxes on Property

Ad Valorem Property Tax

In Georgia, property taxes, also known as *ad valorem* (according to value) taxes, are an often maligned but critical source of revenue for municipal governments. While the property tax can be the object of criticism (often resulting from the property assessment process and the annual or biannual billing), it is an important component of municipal revenue systems. Its attributes include the following:

1. It provides a stable and predictable source of revenue.
2. It is a benefits tax in that those who pay it—residents and non-residents—receive a direct benefit from doing so. Property tax revenue is used by municipalities to finance property-related services such as public safety and sanitation services as well as the construction of publicly-owned infrastructure such as streets, curbs and sidewalks, and storm drainage systems.
3. The property tax rate can be adjusted to generate the amount of revenue necessary to provide municipal services.
4. Citizen input can affect the property tax rate, giving citizens a voice in how much property tax revenue is generated. Unlike other forms of taxation, the property tax rate is established annually through a vote of the city council in a public meeting. If a citizen disagrees or agrees with the proposed tax rate, that citizen has the opportunity to voice his or her opinion.
5. The tax on real property is difficult to evade, thus making collection and enforcement easier and less expensive.
6. The property tax has enabled local governments in the United States to achieve their unique form of autonomy from state and federal control, thereby forestalling centralization of power at higher levels of government.

Exemptions and Uniformity

Property taxes are levied on all property that is not specifically exempt from taxation. Moreover, property taxes must be uniform across the same class of property. This means that property values must be determined in a uniform manner and the same tax rate must

apply within a class of property. Importantly, municipalities use property values established in the county tax digest and approved by the Georgia Department of Revenue.

Homestead Exemptions

State law provides the following homestead exemptions to certain homeowners in Georgia:

- The standard statewide homestead exemption is a \$2,000 exemption from county and school taxes (except for school taxes levied by municipalities) and except to pay interest on and to retire bonded indebtedness. The \$2,000 is deducted from the 40 percent assessed value of the homestead. Note that this statewide homestead exemption does not apply to municipal taxes.
- Residents 65 years of age or over may claim a \$4,000 exemption from all county ad valorem taxes if the income of that person and his or her spouse does not exceed \$10,000 for the prior year.
- Residents 62 years of age or over that are residents of each independent school district and of each county school district within the state may claim an additional exemption from all ad valorem taxes for educational purposes and to retire school bond indebtedness if the income of that person and his or her spouse does not exceed \$10,000 for the prior year. This exemption may not exceed \$10,000 of the homestead's assessed value.
- Residents 62 years of age or over may obtain a floating inflation-proof county homestead exemption, except for taxes, to pay interest on and to retire bonded indebtedness, which increases along with increases in the homestead's value. Total household income may not exceed \$30,000. This exemption does not affect any municipal or educational taxes and is meant to be used in the place of any other county homestead exemption.
- Any qualifying disabled veteran may be granted an exemption of \$60,000 plus an additional sum from paying property taxes for county, municipal, and school purposes. The additional sum is determined according to an index rate set by the United States Secretary of Veterans Affairs. The value of the property in excess of this exemption remains taxable. This exemption extends to the un-remarried surviving spouse or minor children as long as they continue to occupy the home as a residence.
- The unremarried surviving spouse of a member of the armed forces who was killed in or died as a result of any war or armed conflict may receive a homestead exemption from all ad valorem taxes for county, municipal, and school purposes in the amount of \$60,000 plus an additional sum determined according to an index rate set by the United States Secretary of Veterans Affairs.
- The unremarried surviving spouse of a peace officer or firefighter killed in the line of duty is eligible for a homestead exemption for the full value of the homestead for as long as he or she occupies the residence as a homestead.

In addition to the homestead exemptions granted by state law, the Constitution allows local homestead exemptions to be enacted through local acts of the General Assembly. Local homestead exemptions may not be enacted unless they are enacted as local legislation by

the General Assembly. A local bill may create a homestead exemption for county, municipality or school district, but a bill creating a homestead exemption for county or school district tax purposes does not create a homestead exemption for municipal tax purposes. A local homestead exemption may be tailored to the needs of the local government and may create an exemption in a specific dollar amount or, as has been the recent trend, may enact a “floating homestead exemption” in which the dollar value of the homestead exemption increases along with the increase in the assessed value of the home. Local homestead exemptions may apply to all homeowners or may be tied to age or income restrictions.

Inventory Tax—Freeport Exemptions

Although property tax exemptions are generally granted statewide, the Georgia Constitution allows municipalities and counties to determine locally whether to enact a Freeport Exemption (Level One and/or Level Two). A Level One Freeport Exemption is a property tax exemption for the following types of personal property: inventory of goods that are in the process of being manufactured or produced; inventory of finished goods manufactured or produced in Georgia that are held by the manufacturer or producer (the exemption is for a period of up to a year from the date the goods are manufactured or produced); and inventory of finished goods that, on January 1, are stored in a warehouse, dock, or wharf and that are destined for shipment outside of Georgia (the exemption is for a period of up to a year from the date the goods are stored in Georgia). A Level Two Freeport Exemption is a property tax exemption for all business inventory which would not otherwise qualify for a Level One Freeport Exemption. If a municipal or county governing authority wishes to provide the Freeport Exemption, it must hold a voter referendum to approve the exemption. The amount of the exemption can be set at 20, 40, 60, 80 or 100 percent of the value of the property.

Assessed Value

Municipalities are required to tax tangible real and personal property at 40 percent of the fair market value. As an exception to this rule, municipalities that were allowed to assess properties at a value greater than 40 percent in 1971 may continue to assess at that value. The state constitution authorizes special favorable assessment values for certain kinds of property, such as rehabilitated historic property, landmark historic property, bona fide residential transitional property, and bona fide conservation-use property not exceeding 2,000 acres.

Taxation of Motor Vehicles

The Georgia Constitution allows motor vehicles (defined as self-propelled vehicles) to be taxed in a different manner from other types of property. Significant changes regarding the taxation of motor vehicles were approved by the Georgia General Assembly during the 2012 legislative session. O.C.G.A. § 48-5C-1 (effective March 1, 2013) exempts vehicles that require a title at the time of title application from sales and use tax and annual ad valorem tax

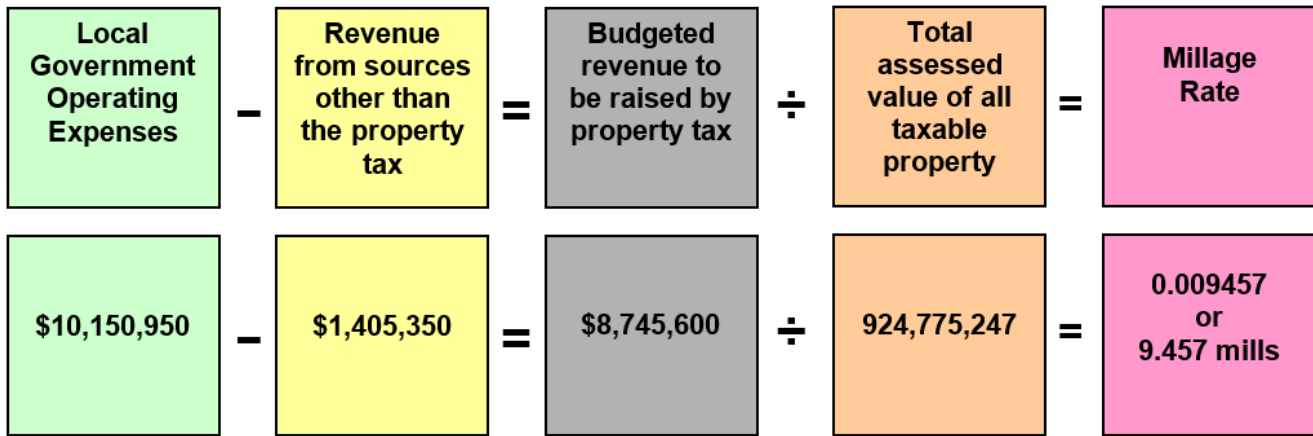
(TAVT), also known as the "birthday tax". TAVT is a one-time tax that is imposed on the fair market value (or taxable base) of the vehicle. The manner in which fair market value is determined depends on whether the motor vehicle is new or used. The rate is adjusted on an annual basis, but in no event can the rate exceed 9 percent. The state and local governments split the revenue from the title tax fee based on percentages set in state law. GMA provides detailed information on these changes in the [Municipal Officials Guide to Tax Reform: HB 386](#).

Taxation of Mobile Homes

The Georgia Constitution also allows mobile homes to be treated as a separate class of property. Mobile homes that are owned in Georgia on January 1 are subject to ad valorem taxation. Owners of mobile homes must obtain a mobile home location permit on or before May 1 from the county tax commissioner in the county where the owner lives. The taxes due on the mobile home must be paid at the time of application for the mobile home permit, or at the time of the first sale or transfer of the mobile home after December 31 or on May 1, whichever is first.

Millage Rate

Municipal tax rates, or millage rates, are established by the municipal governing authority. The tax rate is stated in terms of mills, with one (1) mill representing \$1.00 per \$1000 in assessed value, or 10 mills equal to 1 percent of a property's assessed valuation. The tax rate is determined by dividing the amount of money the municipality needs from property taxes by the amount of the tax digest. See the table below for an example of the calculation used to determine the millage rate.



Courtesy of the Department of Revenue

The millage rate is then multiplied by the assessed value of each taxable property. For example, a property with a fair market value of \$100,000 would, in most cities, have a \$40,000 assessed value (40 percent of \$100,000). Applying the millage rate established in Table 1, this property would be charged a property tax of \$378.28 (\$40,000 x 0.009457 = \$378.28), without accounting for a homestead exemption or other exemptions or preferential treatment that may apply. For more information about adopting a budget for your municipality, see GMA's [A Budget Guide for Georgia's Municipalities](#).

Five-Year History

At least two weeks prior to establishing the millage rate, the municipality must publish its five-year history in a report in a newspaper of general circulation in the county. The report must contain the following information:

- The total current assessed value of all taxable property in the municipality and the proposed millage rate for the current year
- The total assessed value for each of the preceding five years and the millage rate for each of the preceding five years
- The proposed dollar amount of property taxes to be levied in the current year and the dollar amount of property taxes levied in each of the preceding five years
- The percentage increase and total dollar increase for each year included in the report over the previous year.

Taxpayer Bill of Rights

Municipal officials must acknowledge that property taxes may be increased even when the millage rate does not increase through increases in the assessed value of property. In order to determine if there is an increase in property taxes from existing properties, meaning properties that were included in the previous year's tax digest as opposed to new or improved properties, the city must determine the rollback rate. The rollback rate is the millage rate that, when applied to current assessed values, would yield the same amount of revenue that the municipality collected the previous year. If the municipality proposes a millage rate greater than the rollback rate (i.e., one that would result in a cumulative tax

increase on existing properties), the city must advertise its intent to increase taxes and conduct at least three public hearings prior to adoption of the millage rate. Note that this process does not apply to growth in the digest caused by new or improved properties.

Real Estate Transfer Tax

With certain exceptions, a real estate transfer tax is imposed at the rate of \$1 on the first \$1,000 and 10 cents on each additional \$10 on any conveyance of real property when the value of the interest transferred exceeds \$100. The clerk of superior court collects the tax and at least once every 30 days distributes it among the state and the local governments where the property is located in proportion to the millage rate levied by each taxing jurisdiction or district. **Because this revenue is distributed based on each local jurisdiction's millage rate, it is important for every municipality to adopt a gross millage rate, even if the municipality uses the Local Option Sales Tax (see below) to roll the millage rate back to a net millage rate of zero.** The gross millage rate is used to determine a municipality's share of the real estate transfer taxes paid in the county in which the municipality is located.

Intangible Tax

The intangible personal property tax was repealed in 1996, whereas the intangible tax on long-term real estate notes was preserved. Long-term real estate notes, which are notes that fall due more than three years from the date of execution and are secured by real estate, are subject to an intangible recording tax of \$1.50 for each \$500 of the face amount to be paid before such notes can be recorded in the superior court clerk's office. The maximum intangible recording tax on a note is \$25,000. Examples are mortgages, deeds to secure debt bonds for title, or any other real estate security instrument that give the lender a resource to be used if the principal obligation is not paid. In counties with a population of 50,000 or more, this tax is collected by the superior court clerk, and in counties with a population of less than 50,000, this tax is collected by the county tax commissioner. Revenue from the intangible tax on long-term real estate notes is distributed to the state, the county, municipalities, the school district(s), and to other local taxing districts in proportion to relative millage rates levied by the state and each local taxing district.

Local Sales Taxes

Local Sales Tax Cap

The local sales tax is another important source of revenue for municipalities. Generally speaking, municipalities may receive revenue from the joint county and municipal Local Option Sales Tax (LOST) and the Special Purpose Local Option Sales Tax (SPLOST). One city, Atlanta, is authorized to impose a Municipal Option Sales Tax for water and sewer purposes. The aggregate of all local sales and use taxes imposed within the boundaries of a county is capped at 2 percent. The law provides five exceptions to this cap:

1. A sales tax for capital projects for education purposes (ESPLOST) does not count toward this limit.
2. Any county that levies a sales tax for MARTA and that does not levy a homestead option sales tax (i.e., Fulton County) is permitted to exceed the 2 percent cap by levying a special purpose local option sales tax (SPLOST) for water and/or sewer capital projects for up to five years.
3. A 1 percent increase to the LOST is allowed for a consolidated government with a tax freeze in place that was created through a local constitutional amendment (i.e., Columbus-Muscogee County).
4. A municipal sales and use tax for water and sewer purposes, which may be levied in a city with an average wastewater flow of no less than 85 million gallons per day (i.e., Atlanta), is exempt from this cap.
5. Regional and single-county transportation sales taxes do not apply to this limit.

Local Option Sales and Use Tax (LOST)

The LOST is a special district tax jointly imposed by the county and the municipalities located wholly or partly within the county. The boundaries of the special district are coterminous with the boundaries of the county. Subject to voter approval, a sales and use tax of 1 percent may be imposed on the purchase, sale, rental, storage, use, or consumption of tangible personal property and related services within the county. Proceeds from this tax are collected by the Georgia Department of Revenue and disbursed to the county and the qualified municipalities within the special district based on the percentages negotiated by the county governments and the municipal governments located wholly or partly within each county. One percent of the amount collected is paid into the general fund of the state treasury to defray the costs of administration. This tax is generally subject to the same exemptions that apply to state sales tax (see O.C.G.A. § 48-8-3 for a complete list of sales tax exemptions). Importantly, the state sales tax exemption for eligible food and beverages does not apply to the majority of the LOSTs currently in effect. However, the LOSTs in Taliaferro and Webster counties exempt food and beverages because they were initially enacted after October 1, 1996.

All counties and municipalities that impose a LOST are required to renegotiate the distribution certificate for the proceeds of the tax following each decennial census. The next renegotiation will begin in July of 2022. The criteria to be used in the distribution of such proceeds and the process to resolve conflicts between the county and qualified municipalities are set by state law (O.C.G.A. § 48-8-89(b)). If the county and cities fail to renegotiate such certificates as required by law, then the revenue source ceases to exist. Previously, there was a process for a judge to issue a decision on the split called “baseball arbitration.” However, this option is no longer available to local governments.

The LOST is used to provide municipal services and to reduce property taxes. As a requirement for receiving LOST revenues, a municipality must calculate a LOST rollback. The rollback demonstrates to the property owner the reduction in property taxes that is due to the LOST. This rollback is determined by subtracting the revenues received by LOST

during the previous year from the amount of property taxes that would need to be collected if the LOST revenue did not exist. This amount is then divided by the tax digest to determine the millage equivalent of the LOST revenue that was received. This millage equivalent is known as the LOST rollback. The tax bill for each property taxpayer must show the LOST rollback as well as the reduced dollar amount of the property tax bill resulting from the receipt of such revenue.

When a local sales or use tax is paid on an item in another local jurisdiction, a tax credit against this tax is available to the purchaser unless used as a credit against another local sales and use tax levied in the county. Also, the tax may not be imposed upon the sale of tangible personal property that is ordered by and delivered to the purchaser at a point outside the county under certain conditions or if a local option income tax is in effect. To date, no local government has imposed a local option income tax.

Special Purpose Local Option Sales and Use Tax (SPLOST)

The SPLOST is another significant source of city revenue. The revenues from this voter-approved tax must be used for voter-approved capital outlay projects and must be kept in a separate account, not comingled with other municipal revenues (O.C.G.A. § 48-8-111). This additional 1 percent sales and use tax is imposed on the purchase, sale, rental, storage, use, or consumption of tangible personal property and related services. The tax is collected by the Georgia Department of Revenue and disbursed to the county. One percent of the amount collected is paid into the general fund of the state treasury to pay for administration costs.

Like LOST, SPLOST is a special district tax. However, SPLOST proceeds may only be used to fund municipal capital projects or to retire general obligation debt. Funding of municipal projects may be determined through one of two processes: through an intergovernmental agreement or through a default distribution that is based on population and project types. Unlike the LOST, the SPLOST is a time-limited tax. Generally, the duration of the SPLOST is limited by the process of selecting projects and the types of projects selected, but with the exception of consolidated governments, the maximum time for which a SPLOST may be called is six (6) years. The SPLOST is subject to the same exemptions that apply to the LOST, except that the sales tax exemption for eligible food and beverages does not apply to SPLOST, regardless of when the tax was imposed.

Only one SPLOST may be levied at any time in a special district. A voter referendum to impose a SPLOST may only be held on certain election dates. In even years, a SPLOST referendum may be held in conjunction with the presidential preference primary (in a presidential election year), the general primary in July, or during the November general election. In odd years, a SPLOST referendum may only be held on the third Tuesday in March or on the Tuesday after the first Monday in November.

Regional Transportation Investment Act Regional Sales Tax (TIA)

In 2010, the Georgia Legislature enacted the Transportation Investment Act (TIA), which set up a process to allow voters in each of Georgia's 12 service delivery regions to vote on a referendum to enact a ten-year 1 percent sales tax for transportation purposes within their region. This is a special district tax with the special district defined as the service delivery region. In 2012, voters in three middle-Georgia regions (River Valley, Central Savannah River Area (CSRA) and the Heart of Georgia Altamaha (HOGA)) approved a TIA referendum for a 10-year one percent sales tax to fund regional and local transportation improvements. TIA revenues may be used for a wide range of transportation projects. State law requires that 75 percent of TIA funds must be used for projects on an "Approved Investment List", which encompasses all modes of transportation including roads, bridges, airports, bike and pedestrian trails, and transit. Twenty-five percent of the Special District's TIA proceeds are divided among all local governments within the special district for use on transportation projects as determined by the local government (the discretionary funds). Additional information about the TIA can be found in O.C.G.A. §§ 48-8-240 through 48-8-255 and on the [Georgia Department of Transportation \(GDOT\) website](#).

The Georgia Transportation Funding Act of 2015 (HB170) authorized regions that did not have a TIA to try again to pass a regional transportation tax and allowed the TIA for future referenda to be approved for increments of .05 percent, up to 1 percent.

TSPLOST

Another provision of the 2015 Transportation Funding Act authorized voters in individual counties to approve a TSPLOST to pay for transportation projects (O.C.G.A. § 48-8-110.1). Beginning in 2016 in metro Atlanta counties served by either MARTA or GRTA and beginning in 2017 for the rest of the state, any county that is not participating in a regional transportation sales tax may call for a time-limited TSPLOST for use on transportation purposes if either a SPLOST, a second LOST, or a MARTA sales tax is levied within a county. The TSPLOST can be imposed for a maximum of five years. If the county and all qualified municipalities enter into an intergovernmental agreement to call for a TSPLOST, the rate of the tax may be up to 1 percent (in increments of .05 percent), and 30 percent of revenues must be spent on projects on the [Statewide Strategic Transportation Plan \(SSTP\)](#). The intergovernmental agreement shall include arrangements for the distribution of proceeds. If an intergovernmental agreement is not entered into by the county and all qualified municipalities, the rate of the tax may not exceed .70 percent and shall be determined by the county governing authority. As outlined in O.C.G.A. 48-8-260, TSPLOST revenues may be used for "transportation purposes" including capital projects and the retirement of general obligation debt for "roads, bridges, public transit, rails, airports, buses, seaports, including without limitation road, street, and bridge purposes pursuant to paragraph

(1) of subsection (b) of Code Section 48-8-121, and all accompanying infrastructure and services necessary to provide access to these transportation facilities, including new general obligation debt and other multiyear obligations issued to finance such purposes.”

Municipal Sales Tax

The city of Atlanta is authorized to levy a municipal option sales and use tax (MOST) to fund water and sewer capital projects. Like the SPLOST, the MOST is subject to voter approval through a public referendum. The MOST was first levied in 2004. It may be levied for a maximum of four years and may be renewed through referenda twice. A city may only impose one MOST at a time. Sales of motor vehicles are exempt from the MOST; however, sales of motor fuels, food and beverages, and natural and artificial gas are subject to the tax. As with the LOST, 1 percent of the revenue collected from the tax is paid into the state general fund to defray the cost to the state of administering the tax.

Excise and Special Use Taxes

Alcoholic Beverage Excise Taxes

Municipalities may levy the following excise taxes on alcoholic beverages (some exceptions apply):

- *Distilled Spirits*—up to 22 cents per liter on package sales and up to 3% of the sale price of a drink on sales to the public
- *Wine*—up to 22 cents per liter, and
- *Malt Beverages*—up to \$6.00 per bulk container (no more than 15.5 gallons) to be paid by the wholesaler and up to 5 cents per 12 ounces when sold in bottles, cans or other containers.

Insurance Premiums Taxes and License Fees

Each municipality may levy a tax of 1 percent on life insurance companies based on gross direct premiums on policies of persons residing within their boundaries. Each municipality may levy a gross premium tax of no more than 2.5 percent on all other types of insurance companies doing business in Georgia. Insurance premiums taxes are collected by the Georgia Commissioner of Insurance and distributed to the municipalities levying the taxes based on premiums allocated on a population ratio formula.

Each municipality may also impose and collect a license fee on insurance companies doing business in the municipal limits. The maximum fees are based on population (O.C.G.A. § 33-8-8).

A municipality must file its ordinance imposing an insurance premiums tax or an insurance license fee with the Commissioner of Insurance in order for the ordinance to be valid and

enforceable (O.C.G.A. § 33-8-8 et seq.).

Business and Occupation Taxes and Regulatory Fees

As a general rule, municipalities may levy and collect business and occupation taxes on businesses and practitioners with offices or locations within the municipal limits. Certain people and types of businesses, such as non-profits, businesses regulated by the Public Service Commission, blind persons, and motor common carriers, are exempt from occupation taxes regardless of whether they have an office or location in the municipal limits. Further, a business without a location in Georgia may be subject to an occupation tax in Georgia; however, only the local government for the county or municipality in which the out-of-state business does the highest dollar volume of business may impose an occupation tax on that business.

Municipalities may use one or a combination of the four acceptable methods of taxation: the flat tax, profitability ratios, gross receipts, and number of employees. A number of professions are permitted by law to choose between payment of an occupation tax imposed under the city's normal occupation tax ordinance or a flat fee, not to exceed \$400, set by the city. Examples include lawyers, doctors, dentists, veterinarians, and accountants. An occupation tax may not act as a precondition on the practice of law. A municipality is not required to impose an occupation tax, but if it chooses to do so it must adopt an ordinance or resolution imposing the business and occupation taxes.

A municipality may charge a regulatory fee to cover the cost of regulating a business or a business activity. Importantly, regulatory fees may not be used to generate revenue. Instead, the amount of the revenue fee must approximate the reasonable cost of the regulatory activity performed.

For more information about occupation taxes and regulatory fees or to view a sample occupation tax or regulatory fee ordinance, see GMA's [Occupation Taxes and Regulatory Fees: Make Them Work for Your City](#).

Financial Depository Institutions Business License Tax

A municipality may levy a business license tax on depository financial institutions (such as a bank or savings and loan institution) that have an office located within their jurisdictions. The

maximum rate of this tax is 0.25 percent of the financial institution's Georgia gross receipts. A municipality may provide that the minimum annual tax per depository financial institution may not exceed \$1,000. For more information on local taxation of financial depository institutions, see O.C.G.A. § 48-6-93.

Hotel-Motel Taxation

Each municipality may impose an excise tax on charges made for rooms, lodging, or accommodations furnished by hotels, motels, inns, lodges, and tourist camps, campgrounds, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value. The law provides several different authorizing provisions for levying a hotel-motel tax, many of which were drafted with a specific municipality or county in mind. The amount of the levy and the expenditure requirements vary based on which alternative is used. Because of this variance, it is important for a city to be aware of the expenditure requirements of the specific hotel-motel tax provision under which it is levying the tax. In fact, the specific provision used must be included in the ordinance imposing the tax. Depending on the authorizing provision, a municipality may levy a hotel-motel tax at a rate of 3 percent or less or at a rate of 5, 6, 7, or 8 percent.

The hotel-motel tax cannot be levied on rooms, lodgings, or accommodations in the following situations:

- After the first 30 consecutive days of continuous occupancy
- To any persons who certify that they are staying in such room, lodging, or accommodation as a result of the destruction of their home or residence by fire or other casualty
- On charges for the use of meeting rooms and other facilities or to any rooms, lodgings, or accommodations provided without charge, or
- On rooms, lodgings, or accommodations furnished for one or more days to Georgia state or local government officials and employees traveling on official business.

Generally, at least some of the hotel-motel tax proceeds must be spent on promoting tourism through a contract with a private-sector non-profit that focuses on tourism, a state agency, or another entity as authorized by law. A new authorizing provision permits some hotel-motel tax proceeds to be used to fund tourism product development, which is typically capital projects designed to enhance tourist attractions. Any municipality levying a hotel-motel tax must include in its annual report of local government finances to the Department of Community Affairs a schedule of all revenue from the hotel-motel tax that is spent for the purposes required by law. The schedule must identify the project or projects funded and the party or organization with whom the city contracted with respect to each expenditure. For more information about levying hotel-motel taxes, see GMA's [Hotel-Motel Taxes and Tourism Q&A](#).

Excise Taxes on Rental Motor Vehicles

A municipality may impose an excise tax of 3 percent on the rental charge for the rent or lease of a motor vehicle for 31 or fewer consecutive days. A municipality may not levy this tax on a vehicle that is either picked up or returned outside the state of Georgia. A municipality must expend the proceeds of this excise tax on the promotion of industry, trade, commerce, and tourism; capital outlay projects for the construction and equipping of convention, trade, sports, and recreation facilities or public safety facilities; and maintenance and operation expenses or security and public safety expenses associated with those capital outlay projects. Proceeds may also be expended pursuant to intergovernmental contracts for those types of capital outlay projects. This excise tax is scheduled to terminate no later than December 31, 2038. For more information see O.C.G.A. § 48-13-90 et seq.

Costs Associated with Tax Collection

While the property tax involves relatively high administrative costs, non-property tax revenue involves high compliance costs. In administering the property tax, the government maintains parcel records, assesses the value of property, calculates individual tax liability, and distributes tax bills to property owners. The taxpayer is simply responsible for paying the bill. In many cases, this task is handled by the bank through an escrow account. Because the taxpayer is minimally involved in the process, the compliance costs are low, while the administrative costs to the collecting agency are extremely high.

On the other hand, non-property taxes are essentially taxpayer-administered, relying to a large extent on voluntary compliance. The individual or firm maintains records of taxable transactions, tabulates the tax base, calculates liability, and makes the payment. The city conducts private audits to ensure an acceptable level of compliance. In such voluntary systems, administrative costs are minimized, and the taxpayer bears the bulk of total collection costs.

Nontax Revenue

Nontax revenues are also important sources of general fund revenues for municipalities. Primary among nontax revenues are franchise fees, fines, forfeitures, court fees and costs, and interest earned on invested funds. Service charges and intergovernmental and miscellaneous revenues make up the remainder of other general funds received.

Franchise Fees

Municipalities enter into franchise agreements, or contracts, with electric, gas, telephone, and cable television companies, as well as with other public utilities doing business within the municipality. Typically, franchise agreements establish the terms under which a utility may use the municipal right of way. One of several terms in the franchise agreement, the franchise fee is the charge paid by the utility for rental of the right of way. This rental fee is often a specified percentage of the utility's gross receipts within the municipality but can be determined based on other factors.

Fines, Forfeitures, Court Fees, and Costs

Revenue from these sources includes traffic and parking fines, fines from violations of municipal ordinances, forfeitures of money posted to guarantee appearance in court, and court fees and costs.

User Charges

Municipalities may charge citizens or other governments for services provided by the municipality. The amount of such charge may partially or totally offset the cost of providing the service. Services for which user fees may be charged include, but are not limited to, water, sewage disposal, garbage collection, and recreation. Note that fees charged for water or sewer services outside the geographical boundary of a municipality may not be unreasonable or arbitrarily higher for customers located outside its boundaries than for those located within its boundaries.

Alcoholic Beverage Licenses

A person or business must have a license from a municipality to sell alcohol, retail or wholesale, within that municipality. In addition to the excise tax on alcoholic beverages (see above), municipal governing authorities are authorized to establish the amount of an annual license fee. The amount of the license fee is somewhat limited by state law. For example, a municipality may not charge persons or businesses selling, manufacturing or distributing distilled spirits more than \$5,000 annually for a license. Additionally, wholesalers of malt beverages who do business in more than one municipality or county in the state may only be charged a maximum of \$100 by a municipality or county that is not the wholesaler's principal place of business. See GMA's [Distilling the Basics of Municipal Alcoholic Beverage Regulation](#) for more information.

Development Impact Fees

Development impact fees may be imposed by municipalities to finance public facilities such

as water, sewer, roads, stormwater, parks, public safety facilities, and libraries needed to serve new growth and development. The idea behind impact fees is that the new growth should, at least in part, pay for itself rather than placing the costs of new growth on existing taxpayers. Importantly, impact fees may only be used for system-wide improvements, which will benefit the community in general. In order to charge impact fees, a municipality must adopt a Capital Improvement Element that contains a schedule of improvements and identifies service areas and levels of service, as well as an impact fee ordinance that establishes the fee to be charged for each type of service for which an impact fee will be levied.

Intergovernmental Revenues

Intergovernmental revenues are typically provided in the form of grants or loans from the federal or state government. While intergovernmental revenues represent a small portion of total municipal revenues in Georgia, these grant and loan programs are made available through a variety of state and federal agencies.

Federal Grants and Loans

Historically, federal funds have been provided to municipalities through general revenue-sharing and block and categorical grant programs. General revenue-sharing funds are no longer available to local governments. Unlike revenue-sharing funds, which could be spent with wide discretion and did not require recipients to provide a matching contribution, block and categorical grants must be spent for specific purposes and usually require a matching contribution. One of the best known examples of federal grants to local governments is the community development block grant (CDBG) program. Administered by the Georgia Department of Community Affairs (DCA), the primary objective of CDBGs is to expand economic opportunities, principally for people of low or moderate income.

The United States Department of Agriculture (USDA) provides rural development grants and loans to help finance small municipal and rural water, wastewater, and solid waste systems. These funds are available to rural communities and municipalities with 10,000 or less in population. USDA Rural Development funds are also available for financing certain community buildings such as police and fire stations. Matching funds are required for grants.

Other federal grants and loans may be available to your municipality through the United States Department of Housing and Urban Development (HUD), the United States Environmental Protection Agency (EPA), the United States Department of Justice (DOJ), the Federal Emergency Management Agency (FEMA), and other federal agencies. Often, these grants and loans are administered through state agencies such as the Department of Community Affairs, the Georgia Criminal Justice Coordinating Council, and the Department of Transportation. Municipalities may also access federal funds through working with their congressional delegation. GMA publishes [grants and awards opportunities](#) while offering a newsletter subscription for your convenience.

State Grants and Loans

Depending on the amount of revenue available in the state budget, the state makes various grants and loans available to municipalities. Some of the most common state grant and loan programs include:

- The [Georgia Environmental Facilities Authority](#) makes low-interest loans and grants for water and sewer projects and for land conservation.
- The [Georgia Department of Transportation](#) provides funding in the form of Local Maintenance and Improvement Grant (LMIG) funds (formerly LARP and State Aid).
- The [One Georgia Authority](#) provides grants and loans to Georgia's rural areas to assist in economic development.
- The [Department of Community Affairs](#), in addition to administering federal grant programs, administers the Downtown Development Revolving Loan Fund, which provides bridge loans to assist with downtown development projects, and administers the Main Street, Better Home Towns, and Signature Communities programs, among others.
- The [Georgia Department of Natural Resources](#) provides grants for recreational trails and historic preservation.

A municipality may wish to contact the [Regional Commission](#) in which it is a member for assistance with grant applications.

Other Revenue Sources

Borrowed Revenue

A municipality may borrow funds to meet operating expenses and to finance capital expenditures. Commonly used instruments include tax anticipation notes. These short-term loans must be repaid by December 31 of the year in which they were issued and are generally used to fund maintenance and operation expenditures until property tax receipts are collected later in the year. Other borrowing mechanisms include general obligation

bonds, certificates of participation, multiyear installment purchase agreements, and revenue bonds. Bonds, certificates, and installment contracts are repaid from either general city funds or from a particular source of revenue, such as an enterprise fund.

A municipality is required to hold a referendum prior to issuing general obligation debt. This debt is backed by the full faith and credit of the city and is typically repaid through a dedicated millage rate or from SPLOST funds, if a SPLOST was approved in conjunction with the general obligation debt. Revenue bonds are repaid solely from specific revenue generated by public works facilities purchased or constructed with the bonds and, by law, are not debts of the municipality. The borrowing of funds is subject to numerous legal restrictions, procedures, and requirements. Voter approval is not required for temporary loans, revenue bonds, certificates of participation, or multiyear installment purchase agreements. Borrowing is discussed more fully in the Handbook chapter Municipal Indebtedness.

Other

While less significant than taxes, fees and intergovernmental revenues, municipalities are able to glean meaningful revenue from other sources. These sources include leases, investments (such as interest), parking fees, the sale of contraband property, the sale of property relating to a crime involving controlled substances, the sale of property used in the unlawful dumping of sewage, and the sale of weapons used in the commission of a crime.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Five-FINANCING-and-REVENUES/Operations-Budgeting.aspx

In developing and adopting a balanced operating budget, municipalities are creating far more than a legal document. A budget serves as a planning tool, a communication tool, an allocation of resources, a description of governmental activities, and proof of the commitment to the efficient use of taxpayers' dollars. A budget is the product of revenue estimation, expenditure plans, policies, and procedures. A budget becomes the framework to determine the number of employees, organizational structure, level of services provided, capital investment, and other day-to-day functions. A budget and its development is as unique to each municipality as political, economic, and geographical factors are to the operations of Albany, Dillard, Roswell, and all other cities across the state.

A budget facilitates the administration's task of delivering reliable service, assists in dealing with changing conditions, becomes a tool for reporting governmental activities, and measures the government's performance. While the adopted budget is a legal document, created by ordinance or resolution, it provides the public with a record that describes the activities to be undertaken during the upcoming fiscal year. In communicating a budget's many functions, a reliable system of procedures, data, and information will help foster the public's trust in government. When used correctly, a budget is a means to forecast revenues, estimate expenditures, reveal the status of the government's long-range plans, and serves as a cohesive policy document over time.

State Legal Requirements

The Official Code of Georgia identifies the legal requirements for a balanced budget, outlines the steps in the approval process, and clarifies the legal level of budgetary control. O.C.G.A. § 36-81 is dedicated exclusively to the local government budgetary process and imposes the following requirements:

- Local governments must establish an official fiscal year for the municipality's operations by resolution, ordinance or local law.
- Each municipality must prepare a proposed budget for submission to mayor and council.
- Notify the public that the budget proposal is available for public review.
- Conduct a public hearing at least one week prior to the adoption of the budget resolution or ordinance.
- Adopt a budget resolution or ordinance, which can contain dollar amounts different from the amounts contained in the proposed budget.

- Adopt a balanced budget for governmental funds such as the general fund, special revenue funds, debt service funds, and permanent funds. Municipalities are not required to adopt annual budgets for fiduciary funds, internal service funds, or enterprise funds such as water and sewer funds. Capital project funds are required to operate under a project-length balanced budget.
- Adopt budget amendments by ordinance or resolution.
- Provide for an audit of the financial affairs and transactions of all funds and activities in accordance with generally accepted accounting practices (GAAP).
- Submit a copy of the audit report to the Georgia state auditor within 180 days after the close of the fiscal year or the close of each second fiscal year in the case of cities not required to be audited annually.
- Local government budgets which total \$1 million dollars in expenditures must submit a copy of their budget (and annual audit) to the Carl Vinson Institute of Government (using the [Local Budget Login](#)) within 30 days of budget adoption (or completion of the audit).

Additionally, the legal level of control is identified as the departmental level within each fund unless a more detailed level of control is established. Overspending at the level of budgetary control adopted by the mayor and council or commission would result in a violation of the law. Transfers of appropriations within any fund below the legal level of control (department) only require the approval of the budget officer; however, the law does not define departments. Also, any transfers above the legal level of control will require mayor and council or commission approval.

The Budget Process

The budget includes three distinct phases: **1) development and preparation, 2) implementation and execution, and 3) audit and review**. Based on this process, staff is responsible for developing the budget for the following year, implementing the current budget, and at the same time reviewing and preparing for the audit of the previous year's budget. Due to the array of tasks associated with the budget cycle it is vital that staff has a comprehensive understanding of the elements of the budget cycle.

To accomplish the **development and preparation** phase of the annual budget, Georgia Code § 36-81-5 provides an outline of the process. The first phase is focused on developing revenue projections, expenditure plans, goals, objectives, and the adoption of the budget among other things. During this initial phase of the budget process the governing authority sets policy parameters that determine revenue and expenditure levels, conducts public hearings, and adopts a balanced budget.

It is important for the municipality to develop clear guidelines for managing the budget development and preparation. The mayor and council should set budget principles as guidelines for staff as they consider requests and budget modifications. For instance, if the

municipality has funds available above their stated reserve policy, then the mayor and council should identify if those funds can be used for capital, operating, or ongoing expenses.

In addition to budget principles, the mayor and council should establish clear and broad goals for the community. These should include improvements or accomplishments the mayor and council would like to see achieved over a five- to ten-year planning horizon. An example of one such goal is improved pedestrian mobility. By having this goal, staff understands that sidewalks, bike lanes, transit access points, and new development regulations will be designed and installed to achieve this goal. As a result, staff can ensure that operating and capital requests take these goals into account.

As the budget is developed and prepared for public review, revenue projections and the identification of new revenue should be completed in accordance with the policies outlined by the governing authority. As economic conditions change, the importance of accurate revenue estimates should not be underestimated as municipalities are continually challenged to use limited resources more effectively. Also, the demand for more services can strain scarce resources as new requests impact available funding for existing programs. The economy and service demands have placed additional importance on the forecasting of revenue and expenditures. Forecasts should also include an evaluation of the medium and long range to ensure the jurisdiction’s fiscal well-being.

To complete the various tasks associated with the development of an annual budget, a budget development action plan (Budget Calendar) should be generated to efficiently outline the activities of the budget process. This Budget Calendar should include due dates, activities, and responsible parties. Utilizing the budget calendar as a budget action plan should be similar to the following with a timeline of four to six months in length:

Due Date	Activity	Responsible Party
August 1	Mayor and Council evaluate policies and goals	Mayor and Council
August 15	Budget preparation forms prepared for distribution	Budget Officer
September 1	Kick-off meeting with staff; distribution of budget information manual; revenue estimates are complete	Administration Budget Officer
October 1	Budget requests returned	Management Team
October 2 – 15	Analyze department requests	Administration and Budget Officer

October 16 – 30	Assemble budget requests, compare with revenue estimates, and compile the budget document	Budget Officer
November 1	Proposed Budget to Mayor and Council	Budget Officer
November 15	Advertise for Public Hearing	Clerk or Budget Officer
December 1	Conduct Public Hearing	Mayor and Council
December 15	Final Review and Adoption	Mayor and Council
January 1	Budget is effective	Budget Officer

After the budget development action plan or the budget calendar are developed, staff should create and prepare to disseminate the budget information manual. The budget information manual helps ensure the budget is consistently prepared in accordance with the government policies and the desires of the administration. It is critical for the guidelines in the manual to communicate any constraints or assumptions that will guide the decision-making process. The manual will be used to prepare departmental budget requests and should include the following:

- The budget calendar
- A statement of the budget policy
- Cost factor guidelines, such as pay increase levels and inflationary factors
- Price lists and commonly used vendor web sites which may be used to determine costs associated with products purchased by the government
- Request forms, expenditure forms, and detailed instructions for completing the forms and budget estimates
- Revenue and expenditure guidelines, and
- Uniform Chart of Accounts.

To facilitate the collection of data, a systematic approach may include expenditure request forms as a method to engage department heads in the budget process. Expenditure request forms should encompass the various components of the expense categories including salaries and benefits, contracted services, purchased services, supplies and capital outlay. Combining the forms with detailed instructions and guidelines will provide staff with a streamlined method to guide the budget development in a standard format. The requests should clearly be identified as a one-time expenditure, or if ongoing funding will be required for the request (i.e. future budgets will be impacted).

While the expenditure request forms will help identify service modifications due to shifting geographic or economic conditions, many expenditure changes are associated with maintaining the government's infrastructure. Evaluating the impact of new facilities, maintaining existing capital, assessing changes to state or federal regulations, quantifying matching grant funds, and anticipating legal judgments are essential steps in determining the jurisdiction's minimum expenditures for the upcoming year. Also, the cost of payroll, including any changes, should be compiled in accordance with market standards.

When the revenue projections are finalized and expenditure plans completed, the next step is to begin the approval process. This is the responsibility of the mayor and council. As the budget is presented to the mayor and council, a copy must be made available to the public, and a notice identifying the location of the available budget document must be placed in a newspaper. Prior to the adoption of the budget, the mayor and council must conduct at least one public hearing. If there are significant changes to the proposed budget, a local government should consider having a public work session with elected officials prior to the adoption of the budget to provide additional details and to provide a forum for them to ask questions and gain a full understanding of the budget. After the hearing and any modifications, the budget is adopted by ordinance or resolution.

After the adoption of the annual budget, local governments begin to **implement and execute** the expenditure plans by controlling expenditures in a way that is consistent with the adopted budget, continuously assessing revenue collection and monitoring resource use. Budget implementation invariably requires adjustments to adapt to changing economic conditions, to address unforeseen circumstances and opportunities, or to respond to citizen demands. Ensuring sufficient cash is available when demands are placed on public resources is critical in the execution of government services.

As departments execute the operating budget, monitoring activity is essential for ensuring compliance with budgeted expenditures. As a result of maintaining conformity with state law, an encumbrance system of accounting should be employed. An encumbrance identifies commitments for services or products that have yet to be performed or delivered. Allocating an encumbrance against budgetary accounts helps guarantee that total actual expenditures plus related commitments do not exceed appropriations. Without encumbering funds, future services or purchases could result in overspending. Encumbrance accounting facilitates effective cash planning, control, and management of government funds. Finally, encumbrance accounting ensures sufficient balances to cover expenditures.

While encumbrances exert some control over the day-to-day activities of local government, city governments face changes or challenges every day, thus prompting amendments to the existing budget. Amendments above the legal level of control require mayor and council approval and may occur when the municipality experiences shortfalls in revenue, expenditures associated with unexpected events such as severe weather, award of a new

grant, or a capital purchase not originally considered in the initial budget. Budgetary changes are not objectionable; however, sufficient information is important for accountability, decision making that is based on the original budget, and management of resources.

The final stage of the budget process is the **audit and review phase**. State law requires that cities have their financial statements audited on an annual basis by an independent auditor unless otherwise authorized under state law. Local governments with less than \$550,000 in expenditures may elect, in lieu of an annual audit, to provide for an annual report of agreed upon procedures. The agreed upon procedures shall include as a minimum: proof and reconciliation of cash, confirmation of cash balances, a listing of bank balances by bank, a statement of cash receipts and cash disbursements, a review of compliance with state law, and a report of agreed upon procedures. Further, these audited statements must be submitted to the Georgia Department of Audits within 180 days of the end of the fiscal year. Staff prepares for the audit in compliance with the Generally Accepted Accounting Principles (GAAP) developed by the Governmental Accounting Standards Board (GASB). Additionally, local government budgets which total \$1 million dollars in expenditures must submit a copy of their budget to the Carl Vinson Institute of Government within 30 days of budget adoption.

To prepare for the audit, staff will gather documents such as minutes of council meetings, bank statements and reconciliations, bank accounts, invoices, agreements, bid documents, financial reports, and other items of importance. While documents are gathered, schedules of activity will be developed, which include fixed-asset acquisitions and disposals, inventory balances, adjusting entries, and investment balances. These documents and files are used to provide feedback to the mayor and council regarding the integrity of financial transactions, efficiencies of programs, and effectiveness of policies and programs. The annual financial report will also include a letter from the auditor containing their judgment on the financial statements, results of operations, and cash flows of proprietary funds.

Budget Formats

Jurisdictions should develop a budget policy which encompasses two sections. The first should address long-term needs, and the second should outline goals, objectives, and priorities for the coming year. Identifying the long-term needs will assist in developing a financial plan, capital improvement plan, and budget options. The long-term financial plan will ensure programs will be maintained within the municipality's means and will allow decisionmakers to better understand the long-term implications of policies, programs, and assumptions. Cities should develop an annual budget policy statement, which is consistent with the long-range plans, by outlining its goals, objectives, and priorities for the coming year. The policy statement is the mayor and council's directive to administration, department heads, and staff regarding the jurisdiction's financial outlook, economic factors, itemization of priorities, and guidelines to follow in preparing budget requests.

In order to achieve the goals outlined in the budget policy, information is required to be quantified and shared. The budget document becomes the venue for this exchange of ideas and information. As a result of the differing goals and data requirements, budgeting may take on many formats. Some budget formats include Line-Item Budgeting, Program (or Priority) Budgeting, Performance Budgeting, Zero-Based Budgeting, and others. The chosen format will depend on the philosophy of the jurisdiction's mayor and council.

A **line-item budget** is a control-based budget which takes the form of detailed line-item descriptions of expenditures. The line-item budget is a list of the municipality's revenues and expenditures in vertical columns. The line-item budget is widely used and offers many advantages such as:

- Easily prepared
- Straightforward
- Simple to administer
- Easily understood by elected officials, employees and citizens, and
- Easy to monitor.

When adopted as the legal level of control, a line-item budget becomes inflexible for minor adjustments and is not as responsive to unanticipated issues as other budgeting formats. If utilizing broad categories, the format may provide no method for determining the cost of a particular service or if priorities are being achieved.

Program (or Priority) budgeting focuses attention on results and activities as opposed to what a municipality buys. In a program or priority budget, revenues and expenditures are linked to a municipality's goals and objectives and identify the anticipated results and outputs of associated investments. The benefits of program budgeting include:

- Presents budget investments in a format that enhances the community's understanding of services
- Focuses attention on goals, needs, and capabilities, and
- Establishes an informed basis upon which cities make decisions.

Using this type of budget, the elected officials gain insights into the daily activity of departments and employees. Elected officials are able to determine if these activities align with the goals of the municipality. If not, then the resources may be reallocated to services, programs, or projects that move the city toward its goals. Program or priority budgeting will assist municipalities in making sound, stable financial decisions; however, the system requires a significant amount of time to establish and maintain. Also, data collection is difficult as programs will overlap between and within departments.

Performance budgeting is similar to program budgeting, except that budget indicators are used to measure performance which is tied to expenditures. When a municipality employs performance budgeting methodology, it allocates funding to conduct a certain number of

court calendar calls a year. Performance budgeting provides the mayor and council with spending data related to the amount of service delivered by any given program. Also, the exact cost of the service can be determined. One issue with performance budgeting is that it can be difficult to determine a quantitative measure for services such as Fire and Rescue or Administration.

Zero-based budgeting is a comprehensive review of all departmental functions whereby all expenditures, rather than only incremental increases, must be approved. To accomplish a zero-based budget, department heads complete a budget information package that details each of the department's programs. The department head would identify the level of service that could be provided based on different levels of funding, including a zero-funding level. After completing a package on each service, the department head then expresses an opinion on each of the programs and prioritizes each service. The advantages of a zero-based budgeting approach are:

- Cutbacks can be made based on lowest priorities
- Requires a thorough evaluation of all programs on a continuing basis
- Detects inflated budgets
- Identifies opportunities for outsourcing, and
- Drives managers to find cost-effective ways to improve operations.

Zero-based budgets can be time-consuming, making it difficult to define decision units, and candor of the managers must be reliable and uniform. The process can also be costly, requiring a level of staff expertise that is not always available.

State law does not provide a specific method a municipality must follow; rather, a municipality must identify its budgetary focus and detail to include in its budget document. The philosophical decision should be evaluated against community priorities and an appropriate level of expertise and staffing associated with the process.

Budget Policies

In carrying out budget-making responsibilities, the mayor and council must address numerous issues and questions on a recurring basis (at least annually). A sensible solution is to develop policies to repeat questions and formalize policy statements as guidance regarding mayor and council expectations. Those questions include how to manage the stabilization funds, debt management, and use of prior-year unused appropriations.

Stabilization funds can have various names, such as reserves, rainy day funds, unassigned fund balance, working capital, or contingency funds. These funds provide flexibility for municipalities to address economic downturns, emergencies, unforeseen opportunities, one-time expenditures, or cash flow issues. In developing a policy to guide the creation, maintenance, and use of this resource for fiscal stabilization, it is important to recognize that

these financial resources help protect against reducing service levels or raising taxes due to a temporary shortfall in revenue. A policy on building and maintaining fund balance should include the process to accumulate a fund balance, the purpose for which funds may be used, the minimum and maximum level of funds retained, and replenishment plans for when the funds are used. Recently the Government Accounting Standards Board (GASB) issued a statement regarding the classification of constraints placed on stabilization funds, sometimes referred to as “The New Fund Balance”. The classifications include:

- Non-spendable—generally meaning that it is not expected to be converted to cash
- Restricted—constraints are imposed by creditors, grantors, contributors, or laws and regulations of other governments
- Committed—constraints are imposed by formal action of the government’s highest level of decision making authority
- Assigned—constraints placed as a result of the municipality’s intent to use for a specific purpose but not classified as committed or restricted, and
- Unassigned—the residual amount for the General Fund representing the fund balance that has not been restricted, committed, or assigned. The General Fund should be the only fund that reports a positive unassigned fund balance amount.

Cities should adopt debt policies which integrate with other financial policies, including operating and capital budget policies. The policy should reflect regulatory requirements and the government’s financial condition. Issuing debt commits a municipality’s revenues, thus limiting flexibility to respond to changing conditions. Therefore, debt should be managed to maintain a sound fiscal position and to protect credit quality. The policy should outline the following:

- Purposes for which debt may be issued
- Identifying the limitations for debt supported by revenues of enterprise funds
- Matching the life of the capital asset with the maturity of the debt
- Short-term debt program
- Types of permissible debt
- Refunding of debt, and
- Limitations resulting from legal provisions or financial constraints.

At the end of most fiscal years a municipality will have an unspent portion of the budget. Georgia law does not address the use of unspent budgets specifically. A mayor and council may determine the appropriate use of these funds in a number of methods including:

- Allow the unspent appropriations to lapse at the end of the year and not roll forward
- Any appropriation that is encumbered is added to the subsequent budget, or
- Allow all unspent funds to be carried forward.

Adopting a financial policy will clarify whether an item approved in a previous budget is carried over to subsequent budgets. Further, it may provide a mechanism to develop a funding source for capital projects, debt financing, or accumulation of appropriations for future departmental activities.

Uniform Chart of Accounts

The Georgia General Assembly passed the Local Government Uniform Chart of Accounts and Reporting Act in 1997. The Georgia Department of Community Affairs developed the chart of accounts for all units of local government, which was approved by the Georgia Department of Audits in 1998. Local governments were required to begin using the uniform chart of accounts no later than the fiscal year ending 2001. The uniform chart of accounts lists the account titles that an accounting system will use. The chart also introduced a numbering system which is recommended but not required. The list and numbering system is not comprehensive, and local governments should evaluate the classification system as needed. The account code includes the fund number, account class, function, activity, department, and account information (balance sheet account, revenue source, and expenditure object). Local governments are required to utilize the uniform chart of accounts in accounting reports, financial reports, and reports to the state.

Rules and Resources

GMA offers a Budget Guide for Georgia's Municipalities, which provides an overview of the budget process, the laws that affect budget preparation and adoption, and the process of preparing and adopting a budget. This guide is designed to give newly elected officials and those just learning about the municipal budget process general information about the roles of various appointed and elected officials in the budget process and to describe the steps involved in adopting a balanced general fund budget.

The Government Finance Officers Association (GFOA) established the Distinguished Budget Presentation Awards Program (Budget Awards Program) in 1984 to encourage and assist state and local governments to prepare budget documents of the very highest quality. The Budget Awards Program encourages both the guidelines established by the National Advisory Council on State and Local Budgeting and the GFOA's recommended practices on budgeting. The program then recognizes individual governments that achieve these goals. Documents submitted to the Budget Awards Program are reviewed by selected members of the GFOA professional staff and by outside reviewers with experience in public-sector budgeting.

While GFOA provides an excellent opportunity to improve budgeting practices, the Governmental Accounting Standards Board (GASB) is recognized as the official source of generally accepted accounting principles (GAAP) for state and local governments. GASB was established in 1984 by agreement with the Financial Accounting Foundation and 10 national associations of state and local government officials. The organization establishes and improves financial reporting for governments, as governments are fundamentally different from for-profit businesses; the needs of the users of governmental financial statements are different from the needs of the users of private-sector financial statements.

GASB does not have enforcement authority, and its standards are not laws or regulations. Compliance with GASB's standards is typically evaluated through the audit process, as auditors render opinions on the fairness of financial statement presentations in conformity with GAAP.

Audited financial statements are required by the Official Code of Georgia Annotated, Section 36-81-7. The State of Georgia contains 538 cities which submit audited financial statements to the Georgia Department of Audits and Accounts (State Auditor). This code section also requires the State Auditor to review these financial statements to ensure compliance with generally accepted accounting principles, generally accepted government auditing standards, and federal and state regulations.

Municipalities failing to submit acceptable audit reports to the State Auditor are subject to state law restricting state funds for local governments. The law states: "No state agency shall make or transmit any state grant funds to any local government which has failed to provide all the audits required by law within the preceding five years." The State Auditor has produced a set of documents which assist cities in satisfying financial reporting requirements. Georgia law identifies financial reporting requirements based on the government's level of annual expenditures.

Municipalities having annual expenditures of \$550,000 or more are required to have an annual audit. If expenditures are less than \$550,000, a municipality may elect to provide for a biennial audit covering both years. Either the audit report or report of agreed-upon procedures is required to be submitted to the State Auditor. Should the annual audit or report contain findings or recommendations, the municipality is required to submit a corrective action plan and comments on the findings and recommendations.

Summary

The Official Code of Georgia requires local governments to adopt a balanced operating budget by ordinance or resolution. The law also provides for an outline of the budget process, the establishment of the legal level of control, and required financial reporting of the mayor and council's activities. While the law offers an outline of the budget activities, local governments should establish a budget development action plan that includes a calendar of activities, budget information packets, expenditure request forms, and information related to the municipality's procurement activities. The budget information manual should be developed based on the budget format selected as the most appropriate for achieving the community's goals and objectives. Regardless of the budget format, state law requires the use of the Uniform Chart of Accounts established by the Department of Community Affairs (DCA) in accounting reports, financial reports, and reports to the state. The information provided in reports to the state is consistent as a result of the Uniform Chart of Accounts. While the accounts are similar across the state, it is imperative that local governments adopt

budget policies related to stabilization funds, debt, prior-year appropriations, and other budgetary issues to ensure the municipality's responsiveness if economic conditions change. Finally, these policies should reflect the guidance provided by the professional organizations established to improve the budget and reporting process. By utilizing the outline established in the Official Code of Georgia, identifying a budget format that helps achieve community goals, and utilizing the professional guidance in establishing budgetary policy, city leaders can improve the financial flexibility necessary to respond to changing demands.

Handbook for Georgia Mayors and Councilmembers

gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Five-FINANCING-and-REVENUES/Understanding-City-Finance.aspx

During each year, usually monthly, city finance staff prepares financial statements for the city council. At the end of the fiscal year, the auditors spend one to three months preparing their report and audited financial statements, which they ultimately present to the city council. What do the numbers in these financial statements mean? Are they important? How can city councilmembers better understand them? This chapter answers these questions and addresses other city financial reporting issues.

Georgia cities are subject to specific accounting and financial reporting guidelines, standards, and rules. The Department of Community Affairs has developed a local government uniform chart of accounts that municipal governments began using in 2000. In addition, the Governmental Accounting Standards Board (GASB) issues financial reporting standards that municipal governments must implement. This chapter discusses these requirements and standards.

Financial Reporting

Financial reports are classified according to their content and the purposes for which they are issued. Different types of financial reports may be issued for different user groups according to how the reports will be used (internal or external) and when they are completed (interim or annual).

Interim financial reports are typically prepared monthly by management, normally for internal use, including that of the city council. Most cities issue some type of interim report to assist with their day-to-day management. Annual financial reports, which include data regarding operations in the previous year, are designed for external readers, such as citizens or bond rating services. Annual reports are less useful to city councilmembers because of the timing of their preparation. Because these reports are usually independently audited by a certified public accounting firm, it may take up to six months after the close of the fiscal year to complete this annual report. In addition to the regular annual report, some cities prepare a comprehensive annual financial report, which includes introductory, financial, and statistical information.

Types of Statements

Generally, governments prepare two types of financial statements: balance sheets (sometimes called statements of net position) and operating statements (sometimes called statements of activities or statements of revenues and expenditures/expenses). Balance sheets are financial statements that present what the city owns, what it owes, and what its worth is (i.e., fund balance or net position).

Operating statements are directed toward control over revenues and expenditures/expenses in the primary operating funds. The budgetary operating statement, which includes revenues and expenditures/expenses that are compared with the final revised budget and changes in fund balance, is most commonly used. A budgetary operating statement should be most useful to city councilmembers, particularly during the year, because it compares budgeted revenues with actual revenues and budgeted expenditures/expenses with actual expenditures/expenses. This kind of statement allows councilmembers to monitor overspending and to determine if revenues are being received as projected.

Municipal Versus Business Finances

Before one can understand city financial statements, it is important to note the differences between the financial operations of a municipality and those of the business world. Cities have objectives that are different from those of commercial enterprises; they operate in a different economic, legal, political, and social environment. Cities use capital assets to provide services, whereas businesses use capital assets to generate revenues. These differences often require accounting and financial reporting techniques unique to local governments.

Business enterprises exist to maximize economic profits. The “bottom line,” or profits and losses presented on an operating statement, is a reasonable indicator of the success of a business. For a city, however, the bottom line usually is not an accurate indicator of its success. If a city reports more revenues than expenditures in a fiscal year, is that good? If a city spends more than it receives in a fiscal year, is that bad? Whether a city reports more revenues than expenditures or spends more than it receives in a fiscal year is not all-important. The primary objective of a city is to provide services to its constituents within budgetary constraints. There is little regard for the bottom-line concept. The GASB financial reporting standard (discussed below) tends to move some city financial reporting toward private-sector accounting as statements are summarized and accounting entries are done like the business world.

Legal Requirements

In business, substantial discretion is allowed in obtaining and using resources. By contrast, Georgia municipal government financing and spending activities are subject to very specific legal and contractual provisions. To adequately review city financial reports, councilmembers should be familiar with municipal legal requirements.

Annual Operating Budget

Each year, Georgia cities adopt a budget showing where the money to operate the city comes from and how it will be spent. The annual operating budget plays a more expanded role in municipal government than it does in business. Budgets are an important internal planning tool for both business and government, but in municipal government they also play an important external role. Because a city is a public entity, parties inside (e.g., department directors) and outside (e.g., citizens) the city government may participate in the development of the annual operating budget. The law requires Georgia cities to conduct public budget hearings in which interested parties have an opportunity to ask questions and offer suggestions about the proposed budget. In most cities, very few people participate in budget hearings, but occasionally interested constituents attend budget hearings to express their opinions. For example, because the size of the budget usually affects property taxes, it is not uncommon for property owners to attend budget hearings. Once the city council adopts the budget, it establishes spending limits that cities normally cannot exceed unless the council legally changes (i.e., amends) the budget. These limits create spending constraints for city administrators that usually do not exist in the private sector.

Accounting and Financial Reporting

Generally accepted accounting principles (GAAP) are the accounting rules followed by most accountants in business and government alike. GAAP provide a set of uniform minimum standards and guidelines for financial accounting and reporting. Therefore, all financial statements prepared on a GAAP basis are comparable, regardless of the legal jurisdiction or geographic location of the government. Georgia law requires cities to prepare their audited financial statements in conformity with GAAP.

GAAP is used differently in business and government. The Governmental Accounting Standards Board (GASB) establishes GAAP for governments, and the Financial Accounting Standards Board sets standards for business. GASB, a nonprofit entity located in Norwalk, Connecticut, is made up of a full-time chairperson and six part-time board members and has a research and technical activities director and a permanent staff of accountants working under the direction of the chairperson. When applied to business financial statements, GAAP provide information (i.e., the profit or loss) that investors and creditors need to decide whether (and how much) to invest in stock or to loan money to a particular business. By contrast, individuals do not invest capital in government; therefore, governmental GAAP financial statements emphasize legal compliance (e.g., budget information).

Because city councilmembers have oversight responsibility for municipal financial operations, the rules that GAAP provide for preparing financial information to demonstrate accountability are very useful. Councilmembers are responsible for setting financial policies, which includes determining how much money the city may spend through the adoption of the annual operating budget and monitoring progress toward meeting those budgetary goals.

Independent Audits

Most cities have independent audits conducted in conformity with GAAP and generally accepted governmental auditing standards (GAGAS). GAGAS consist of the auditing rules that independent certified public accountants (CPAs) must follow when auditing municipal financial statements. In an independent audit, the CPA expresses an opinion as to the fairness of a city's basic financial statements in conformity with GAAP. In other words, the auditor verifies that the financial statements present fairly the financial position and results of operations for the year ended.

Why Are Cities Audited?

The GASB and the Government Finance Officers Association (GFOA) have long recommended that the financial statements of all local governments be audited independently in accordance with GAGAS. In addition, Georgia law requires cities that spend at least \$550,000 annually or have a population in excess of 1,500 to be audited annually; most other cities are required to be audited at least every two years. Because cities operate largely on involuntary resources in the form of taxes, which are entrusted to elected and appointed officials for the provision of public services, an audit by an independent certified public accounting firm is essential to ensure that public funds have been expended as legally required. There is another significant reason for an independent audit: because some of the country's larger cities have experienced financial difficulties, buyers of local government debt securities often rely on financial statements as a basis for investment.

City officials can realize many benefits from obtaining independent audits:

1. The results of financial and compliance audits can help elected and appointed officials in their decision-making roles.
2. The additional assurances provided by audited financial statements and the audit testing of legal compliance allow officials to make more confident decisions concerning the future of municipal operations.
3. Audit results also may point the way to constructive changes that benefit the city and its officials.
4. Audits include a review of a city's internal accounting controls, which helps curtail circumstances permitting inefficiencies or fraud.

Types of Audits

Most independent audits conducted on behalf of cities are classified as both financial and

compliance audits, whereas audits in the private sector are almost always financial audits. A financial and compliance audit expands the scope of the audit beyond validating financial records to include the city's compliance with various finance-related legal and contractual provisions. This aspect of auditing is very important because, as mentioned earlier, municipalities must operate within a legally regulated environment.

Most cities in Georgia have an annual audit conducted by a CPA, in accordance with GAGAS. One type of financial audit is the single audit mandated by the provisions of the 1996 amendments to the U.S. Single Audit Act of 1984. The purpose of the single audit is to have one city-wide audit that will encompass not only local resources, but also all state and federal grants.

The Uniform Chart of Accounts

In 1997 the Georgia General Assembly passed legislation with significant implications for municipal financial reporting. As required by the legislation, the Georgia Department of Community Affairs (DCA) developed a local government uniform chart of accounts and a set of community indicators that allows state and local policymakers to monitor the social and economic conditions of Georgia communities. The primary purpose of a state chart is to provide a uniform format for local government financial reporting and accounting, allowing state agencies to collect more reliable and meaningful financial data and information from local governments. It is currently in its fourth edition.

All Georgia cities are required to comply with this uniform chart of accounts in reports to state agencies. Cities must also classify their transactions in conformity with the fund, balance sheet, revenue, and expenditure classification descriptions in the chart, and their accounting records should reflect these account classifications. Although local governments are not required to use the chart's numbering system in their own accounting systems, they may find that using the uniform chart of accounts for accounting purposes facilitates their financial reporting to DCA and other state agencies.

The DCA requires local governments to submit reports on their services and operations as a condition of receiving state-appropriated funds from the department. These reports are produced using data from the local government finance and operations surveys administered by the department. The community indicators report is developed using data from these surveys and other sources for all local governments in the state with annual expenditures of \$250,000 or more. A community's report focuses on demographic patterns, economy, finance, education, health, social environment, civic participation, and selected municipal government services. Any city that receives state funds from the governor's emergency fund or from a special project appropriation must submit a grant certification form to the state auditor in conjunction with its annual audit. This form requires the city council and the auditor of the city to certify that the grant funds were used solely for the purpose for which the grant

was made. Failure to submit this certification results in forfeiture of the grant and the return of any grant funds already received by the local government. If cities do not receive a specific amount of grant funds, a single audit is not required.

Fund Accounting

Fund accounting requires cities to keep separate records for each individual fund, which includes having a separate balance sheet and operating statement. GAAP define a fund as an entity with separate accounting records for a specific activity. For example, a city might account for a state grant in one fund and record the proceeds from a building bond sale in another fund. GAAP encourages cities to keep the minimum number of funds to be in legal compliance. Fund accounting can complicate manual bookkeeping. The use of a computer and computerized government accounting systems for fund accounting greatly simplify the process.

Generic Fund Types

For city councilmembers to be able to read and understand city financial statements, they need to know the nature and purpose of 11 fund types (defined by GAAP as generic fund types), which are grouped into three categories. These categories are important because the accounting rules that cities must follow may be applied differently to each of the fund categories.

Figure 1: Fund Types

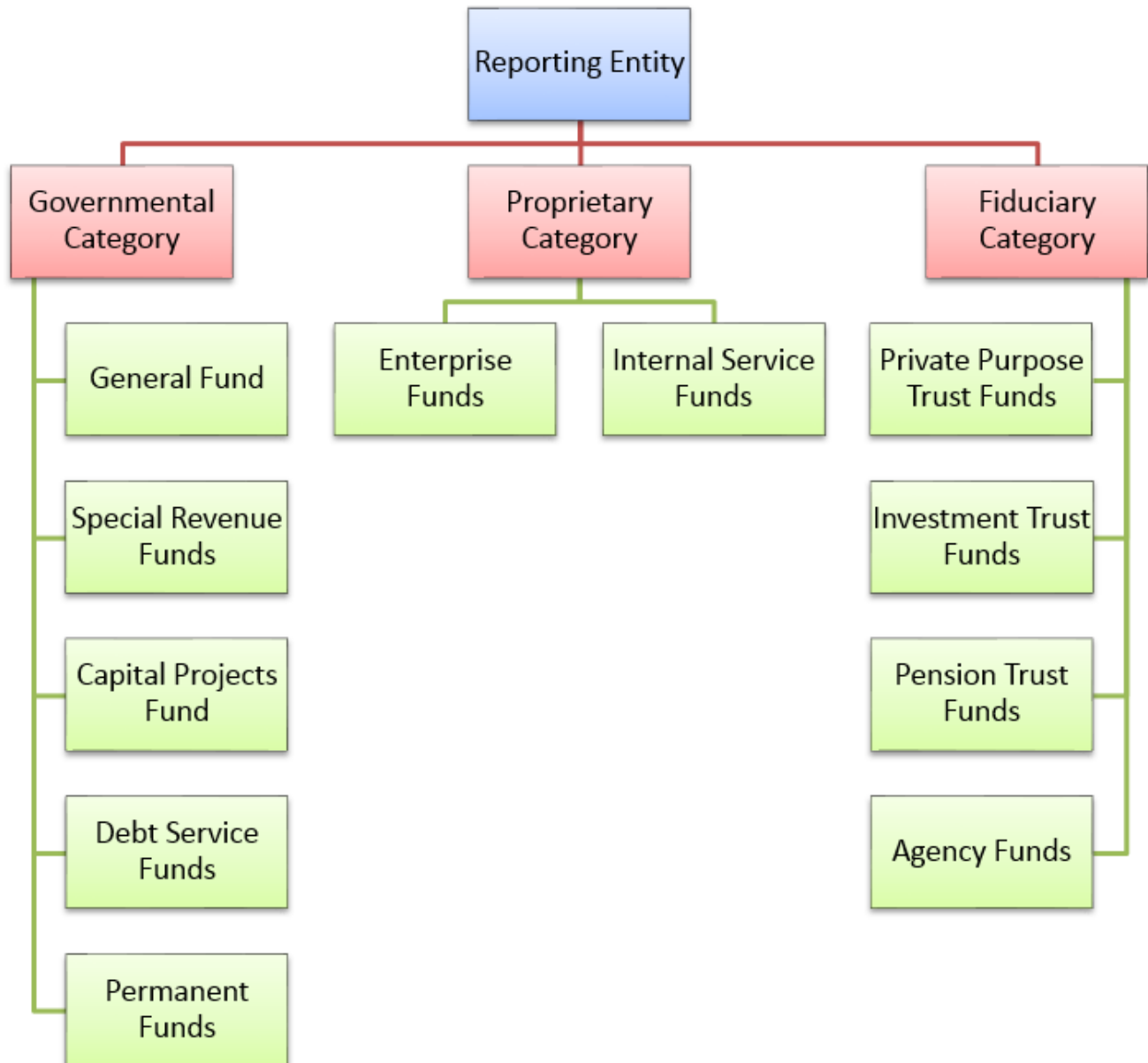


Figure 1 presents a fund organizational chart illustrating the three categories and the relationship of categories A, B, and C to the 11 generic fund types. The categories are briefly described here:

1. **Governmental fund types.** Used to account for general municipal functions (e.g., police department, public works, parks and recreation).
2. **Proprietary fund types.** Used to account for city activities that are similar to private-sector businesses (e.g., water and sewer, other utilities).
3. **Fiduciary fund types.** Used to account for assets held by a city in a trustee or agent capacity (e.g., the city is the administrator of a trust for nongovernment purposes).

Five generic fund types are categorized within governmental funds:

1. **General fund.** Used as the chief operating fund for the city. All financial resources not required to be reported in another fund are accounted for in the general fund. Departments like streets, parks and recreation, clerk, and general government are normally here.
2. **Special revenue funds.** Used to account for resources that are legally or administratively restricted for specific purposes. A federal grant fund might be classified here.
3. **Capital projects funds.** Used to account for resources restricted for major capital outlays. The proceeds from building bond issues to build new libraries that will be repaid from property taxes would be accounted for here.
4. **Debt service funds.** Used to account for the payment of principal and interest on general long-term debt, such as a building bond issue.
5. **Permanent funds.** Used to report resources that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the city's programs (that is, for the benefit of the city or its citizenry). For example, the perpetual care of a cemetery that the city operates could be classified as a permanent fund.

The two following generic fund types are classified as proprietary fund types:

1. **Enterprise funds.** Used to account for operations that are financed and operated in a manner similar to business enterprises. Public utilities are the most common city activity reported in this way.
2. **Internal service funds.** Used to account for operations that provide goods or services primarily to other departments within the same city on a cost-reimbursement basis. Cities often report as internal service funds activities such as data processing, motor pools, and print shops. Normally the larger cities use internal service funds.

Included in the fiduciary fund are:

1. **Agency funds.** Used as holding accounts for assets belonging to some entity other than the city. For example, a trust for nongovernment purposes is classified as an agency fund.
2. **Pension trust funds.** Used by cities to account for their own (single employer) pension plans. In other words, the retirement assets held for the city's employees who have retired or will retire are reported here. Only a few Georgia municipalities maintain their own single employer pension plans.
3. **Private purpose trust funds.** Used to report trust arrangements under which principal and income benefit individuals, private organizations, or other governments. These funds do not benefit the reporting city.
4. **Investment trust funds.** Used to report external investment pools.

Financial Reporting

The GASB establishes financial reporting requirements for state and local governments

throughout the United States. Its goal is to provide a framework for governmental financial reporting that is easily understood and comparable to others, both in the public and private sector. GASB requires two levels of reporting in the annual financial report: fund-level reporting and government-wide reporting.

Fund-level Financial Reporting

GASB requires municipalities to provide information about funds in annual reports. To sharpen the focus of financial statements, cities are required to report information about their most important (or “major”) funds, including the city’s general fund, separately and their less important (or “nonmajor”) funds in the aggregate.

Fund statements assess the “operating results” of many funds by reporting the amount of cash on hand and other assets that can easily be converted to cash. These statements show the performance (in the short term) of individual funds using the same indicators that many cities use when financing their current operations.

Fund-level reporting basically requires municipalities to present balance sheets and operating statements for each fund category (i.e., governmental, proprietary, and fiduciary). In addition, cities are required to provide budgetary comparison information in their annual reports, both original and final with explanations regarding the changes. Many cities revise their original budgets over the course of the year for a variety of reasons.

Requiring cities to report their original budget in addition to their revised budget increases the usefulness of the budgetary comparison.

Government-wide Financial Reporting

Municipal financial managers are asked to share their insights in a required management’s discussion and analysis (MD&A) by giving readers an objective and easily readable analysis of the government’s financial performance for the year. Municipalities include government-wide financial statements in their annual financial report, prepared using accrual accounting for all of the government’s activities. Most governmental utilities and private-sector companies use accrual accounting, which measures not only current assets and liabilities, but also long-term assets and liabilities, such as capital assets (including infrastructure) and general obligation debt. It also reports all revenues and all costs of providing services each year, not just those received or paid in the current year or soon after year-end (like the modified accrual basis). Cities are to prepare both a government-wide balance sheet (known as the statement of net position) and a government-wide operating statement (known as the statement of activities), with aggregate governmental activities and aggregate business-type activities.

These government-wide financial statements help users

- assess the finances of the city in total, including the current year’s operating results
- determine whether the city’s overall financial position improved or deteriorated

- evaluate whether the city’s current-year revenues were sufficient to pay for current-year services
- understand the cost of providing services to its citizenry
- see how the city finances its programs through user fees and other program revenues versus general tax revenues, and
- understand the extent to which the city has invested in capital assets, including roads, bridges, and other infrastructure assets.

Basis of Accounting

When does a city record the sale of water? When the customer uses the water, when the city reads the meter, or when the customer pays the bill? The basis of accounting answers this type of question. Basis of accounting refers to when revenues, expenses (on the accrual basis of accounting) or expenditures (on the modified accrual basis of accounting), and related assets and liabilities are formally recognized in the accounting process and reported in the financial statements.

Like basis of accounting, the “measurement focus” (an interrelated concept) is reflected in a municipality’s financial statements. Measurement focus indicates what the financial statements are trying to communicate; that is, what is being measured by the statements. Most cities use two types of measurement focus:

1. Current financial resources measurement focus. Financial statements using this focus, commonly known as “flow of funds,” report only current assets (i.e., those that the city can convert to cash quickly) and current liabilities (i.e., those due in the short term) on their balance sheets. The difference between these assets and liabilities, or the fund balance, is considered to be the amount available for spending. On these statements, the emphasis is on accountability. The financial data and information assist city councilmembers in their oversight function.
2. Economic resources measurement focus. Financial statements using this focus report all assets and liabilities on their balance sheets. The difference between all assets and all liabilities is the capital, or equity, of the fund. On these statements, the emphasis is on “profit” or “loss.” City councilmembers can thereby monitor financial projections.

Measurement focus determines what is measured in the financial statements; the basis of accounting determines when transactions are formally recognized in the financial statements. When measurement focus is determined, the basis of accounting to be used is determined as well. Basis of accounting is a difficult concept. However, in order to understand municipal financial statements, city councilmembers need to understand the different bases of accounting and which funds in their city use which basis at which financial reporting level.

GAAP find two bases of accounting acceptable for cities: accrual and modified accrual. Other existing bases are unacceptable. The most common unacceptable basis of accounting is the cash basis. On the cash basis, the city records the revenue when the money comes in; when the city writes the check, it reports the cost. While using this type of basis may be simple, ultimately it is not truly informative. The cash basis of accounting fails to recognize receivables and payables (i.e., amounts still due to or owed by the city). Therefore, under the cash basis of accounting, the financial statements do not accurately represent the financial position or results of city operations.

The Accrual Basis of Accounting

Cities use the accrual basis, which is used by most major corporations, in all government-wide statements and for their proprietary and fiduciary fund types. When cities use the accrual basis, they report revenues in the financial statements when they earn revenue: a city earns the revenue when it provides the service. For example, when a resident waters his or her yard, the city has provided for the use of water and earned that revenue, even though the city does not record the revenue until the water meter is read and the number of gallons the customer used is calculated. A city reports expenses when they are incurred; that is, when the city owes a supplier for an item purchased or owes an employee for a service performed. For example, once an employee works one day, an expense is incurred because the city owes the employee a day's pay. GAAP has special rules regarding when cities must formally recognize taxes and grants.

Using the accrual basis of accounting, a city can purchase capital assets (equipment, vehicles) and report them on the balance sheet as assets and not as costs in the operating statement. However, each year the city must include in the operating statement a charge for the use of each capital asset, based on its estimated useful life. This charge is called depreciation.

On the accrual basis of accounting, all liabilities (both short term and long term) are included on the balance sheet. For example, when a city issues long-term bonds for an enterprise fund (e.g., the water fund), the bonds payable are reported as a liability on the balance sheet of the enterprise fund, but this transaction is not reported on the operating statement. When a portion of the principal is paid, the liability is reduced, but the operating statement is not affected. However, any interest costs are reported as an expense.

The Modified Accrual Basis of Accounting

The other acceptable basis of accounting, the modified accrual, is used by cities to report their governmental fund types at the fund reporting level. Under modified accrual accounting, revenues are reported when they are considered to be available—not when they are earned, as in the accrual basis of accounting. Availability of revenue (i.e., when it is formally recognized as revenue) primarily differentiates these two bases of accounting.

“Available” means the city will collect the revenue in the current year or shortly after the end of the year to pay liabilities from the current year. For example, if the fiscal year ends on June 30 and the city will receive revenue for that fiscal year in July, it will probably be reported as revenue as of June 30, as long as it relates to the year just ended. However, if the available revenue is not received until December, it will probably not be reported as revenue for the year ending June 30 because it cannot be used to pay outstanding liabilities on June 30.

On both the accrual and modified accrual bases of accounting, an expense or expenditure, respectively, is recognized when the liability is incurred, but the due date for payment of a liability affects how it is reported. If payment for the liability is not due at year-end, on the modified accrual basis, the liability is not reported as an expenditure at the time incurred. On the accrual basis, the due date of the payment, or when the city pays the liability, does not affect when the city reports the expense.

On the modified accrual basis, cities report capital assets, such as equipment and vehicles, as expenditures on the operating statement; they are reported as assets on the balance sheet on the accrual basis. However, because the city has acquired assets, these purchases also are reported separately in the city’s capital asset system but not on its governmental fund type balance sheet. When the modified accrual basis of accounting is used, depreciation is not reported in the operating statement because the city already has reported the total cost of the capital asset as an expenditure when purchased.

Long-term debt generally cannot be reported on the balance sheet of a fund that uses the modified accrual basis of accounting. When a city sells bonds and cash is received, the proceeds from the sale of bonds are reported on the operating statement in a special section called “other financing sources/uses.” Although the city must pay back the principal on the bonds, the liability is not reported in the governmental fund type. Therefore, a balance sheet at the fund level for governmental funds will not include any long-term liabilities. However, cities do report both their capital assets and their long-term debt at the government-wide reporting level, as the basis of accounting there is the accrual basis.

To summarize, when it comes to fund accounting it is about what you measure when you look at financial statements. The accrual basis measures total resources (capital assets and non-current debt), while the modified accrual basis measures the current resources (cash, receivables, payables, etc.).