



GMA Annual Convention

Municipal Law Update

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What is the Law?

- “The aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action.” – Black’s Law Dictionary
- “The law is never static; it is always changing, being interpreted or redefined, as regulators and judges strive, with varying degrees of success, to ensure that the law constantly reflects changes in society itself.” – Old Maxim

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What is the Law?

Two Main Sources of Law

- Legislative Law
 
- Judicial Law
 

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The Georgia Legislature

- “The Senate and House of Representatives shall organize each odd-numbered year and shall be a different General Assembly for each two-year period.” – Ga. Const. Art. 3, §4, ¶1
- This means that the Georgia Legislature operates on a biennium calendar (a specified two-year period), starting in each odd year and ending each even year.

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2021-2022 Biennium

- 1689 House Bills Introduced
- 1310 House Resolutions Introduced
- 644 Senate Bills Introduced
- 879 Senate Resolutions Introduced
- GMA tracked about 420 different pieces of legislation in our tracking system that could potentially impact cities

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2022 Legislation Bills that PASSED

- Annexation Dispute Process
- Zoning Procedures
- Single-County TSPLOST
- ROW Fees
- Municipal Court Judge Removal Process
- Sexual Harassment Whistleblower Claims
- Delivery Robots


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GEORGIA MUNICIPAL ASSOCIATION **Carl Vinson Institute of Government UNIVERSITY OF GEORGIA**

Annexation Dispute Process(HB 1461)

- Effective: *July 1, 2022*
- The result of extensive negotiations and work between ACCG and GMA
- HR 222 (2021) created the House Study Committee on Annexation




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Annexation Dispute Process(HB 1461)

- Georgia law allows counties to object to municipal annexations for a small number of reasons



- Old law required municipalities to notify the county of a petition of annexation upon receipt but HB 1461 changes that timeline to a period of 30 days from acceptance by the municipality
- Additionally, the city will have to notify any impacted school system


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Annexation Dispute Process(HB 1461)

- Old law often required notices to be sent via certified mail or statutory overnight delivery
- New law allows for hand delivery, electronic mail, certified mail, or statutory overnight delivery, provided that the means of delivery allows for verification of the delivery of such notice




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Annexation Dispute Process(HB 1461)

- If a county objects they would be required to deliver the objection to the city and to the Department of Community Affairs no later than the end of the forty-fifth day following the municipalities earlier notice (up from 30 days in the old law)




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Annexation Dispute Process(HB 1461)

- DCA would have better ability to get timely notice of objections under the new law
- CVOIG, provided state funding, will be required to provide at least one training program per year to train new potential arbitration panel members




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Annexation Dispute Process(HB 1461)



- DCA is also tasked to create a list of court reporters and hearing officers that can be used at the request of arbitration panels.
- Arbitration panels would have sixty days to reach a decision but the chairperson of the panel can extend the deadline up to ten business days


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Annexation Dispute Process(HB 1461)

- The city and county can agree to postpone the arbitration process for up to 180 days which will stay the normal sixty-day time-period




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Annexation Dispute Process(HB 1461)

- DCA will be required to maintain a database and record of arbitration panel decisions and publish an annual report, making such available on their website.



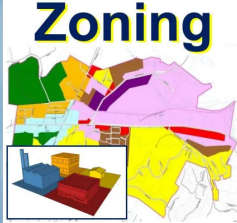
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Annexation Dispute Process(HB 1461)

Zoning



- Cities will not be allowed to change the zoning, land use, or density of the annexed property for a period of two years (up from one year) unless the change is made in the SDS agreement or comprehensive plan adopted by the city and county.
- The city and county can agree to provide for changes in less than two years

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Annexation Dispute Process(HB 1461)

- Notice of the time and place of an annexation hearing is required to be sent to the mail address reflected in the property tax records for each property owner whose property is in the area of annexation under the 60% method of annexation

**NOTICE
OF
PUBLIC
HEARING**

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Zoning Procedures (HB 1405)

- Effective: *July 1, 2022 and applies to all zoning and quasi-judicial decisions occurring on or after that date; however, no zoning or quasi-judicial decision prior to July 1, 2023 shall be rendered invalid or void because of a local government's failure to implement language required by the legislation in their ordinances*

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Zoning Procedures (HB 1405)

- City of Cumming v. Flowers, 300 Ga. 820 (March 6, 2017) – zoning board decision was quasi-judicial and local ordinances could not create a separate means of appeal not authorized by statute
- Diversified Holdings, LLP v. City of Suwanee, 302 Ga. 597 (November 2, 2017) – further clarified the contours of zoning jurisprudence


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Zoning Procedures (HB 1405)

- Allows for local governments to provide by ordinance or resolution administrative officers, boards, or agencies for the exercise of delegated, quasi-judicial zoning powers and to set procedures and notice requirements for hearings



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Zoning Procedures (HB 1405)

- Creates a new definition of "quasi-judicial officers, boards, or agencies" which will have powers to hear appeals of administrative decisions, and hearing and deciding on applications for variances, special administrative permits, special exceptions, conditional use permits, and other similar permits not enumerated as a "zoning decision"

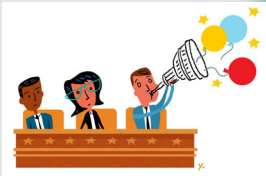
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Zoning Procedures (HB 1405)

- Clarifies which zoning decisions need hearings and how many hearings are required for each type of zoning decision
- Sets forth the hearing process for quasi-judicial officers, boards, and agencies and the notices required for those




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Zoning Procedures (HB 1405)

- Local governments will be allowed to adopt specific standards and criteria governing quasi-judicial decision making authority




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Zoning Procedures (HB 1405)



- Creates a new statute governing the review process for both zoning decisions and quasi-judicial decisions


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Zoning Procedures (HB 1405)

- Appeals or challenges by opponents will stay all legal proceedings in furtherance of the action unless they would cause imminent peril to life or property




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Single County TSPLOST (HB 934)

- Effective: May 2, 2022
- *Increased sales tax collection over previous years caused several single county T-SPLOSTs to end unexpectedly*




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Single County TSPLOST (HB 934)




- Old law allowed single county T-SPLOST to be collected for the earlier of when: (1) An estimated revenue amount was collected; or (2) The maximum time reached (5 years)
- HB 934 allows the tax to be imposed for the maximum period when an intergovernmental agreement has been entered into between the county and all qualified municipalities in the county

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Single County TSPLOST (HB 934)



- Also restricted referendum in odd numbered years to only the first Tuesday following the first Monday in November

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ROW Fees (HB 328/ HB 1044)

HB 328
• Effective: *July 1, 2022*

HB 1044
• Effective: *July 1, 2022*



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ROW Fees (HB 328)

- During the summer of 2021, the Georgia Department of Transportation (GDOT) proposed changes to rules governing the rates applicable for use of municipal ROW by telephone companies
- O.C.G.A. 46-5-1(b)(18) previously stated that telephone companies were responsible for paying cities at rates set by GDOT regulation

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ROW Fees (HB 328)

- The newly proposed rules did not set rates but set fees and was adopted by the GDOT Board on September 13, 2021
- After comment by GMA, the GDOT Board delayed implementation of this fee structure for municipalities to July 1, 2022 in a rule update enacted on November 11, 2021.

RATES AND FEES




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ROW Fees (HB 328)

- The delayed Rule kept municipal compensation from \$5000 per mile in urban areas and \$1000 per mile in rural areas and \$2000 per mile in semi-urban areas until July 1, 2022




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ROW Fees (HB 328)




- Effectively, the rule change gave GMA one legislative session to work on a fix or cities across the state would be left with an inability to collect rates for use of the city ROW by telephone companies

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ROW Fees (HB 328)



- HB 328 allows cities to provide written notice that telephone company has failed to comply with due compensation requirements for four or more consecutive quarters, which will subject the company to civil penalties

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ROW Fees (HB 328)

- The penalties must be imposed within three years of the first quarter in which the telephone company failed to comply and cannot exceed ten percent of the total due compensation



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ROW Fees (HB 328)

- The new payment structure will go in effect on January 1, 2023, and for any telephone company providing broadband within a city they will pay 5 cents per linear foot annually
- For telephone companies that do not provide broadband within a city they will pay 19 cents per linear foot annually

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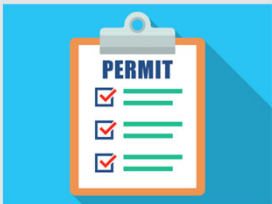
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ROW Fees (HB 328)

- Additionally, there is a one-time permit application which cannot exceed the lesser of the city's actual and reasonable direct costs for administration or \$100




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ROW Fees (HB 328)

- Any telephone company which is switching the method of paying due compensation will be required to notify the city within ten calendar days prior to the end of the first quarter where the new due compensation payments are to be assessed or begin accruing




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ROW Fees(HB 1044)

- Gwinnett County, City of Brookhaven, Athens-Clarke County v. Netflix, Hulu, Disney, DirecTV, and DISH Network, Superior Court of Gwinnett County (Decided February 18, 2022) 20-A-07909-10
- Local governments argued that various streaming and satellite companies owed franchise fees under the Georgia Consumer Choice for Television Act




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ROW Fees (HB 1044)

- Originally started with SB 529, but was later added to HB 1044
- Made slight amendments to the Georgia Consumer Choice for Television Act to ensure the holding in the Gwinnett County litigation



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ROW Fees (HB 1044)

- Added to the exception for the definition of "cable service" to include video programming accessed via a service over the internet, including digital audiovisual works



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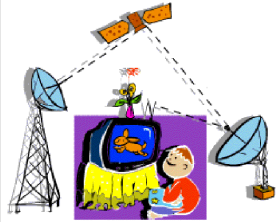
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ROW Fees (HB 1044)

- Added to the definition of "video service" to clarify that the term did not include "direct-to-home satellite services"



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Municipal Court Judge Removal Process (HB 1275)

- Effective: *July 1, 2022*
- During the 2016 legislative session significant changes were put into law governing when and how municipal court judges could be removed from office


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Municipal Court Judge Removal Process (HB 1275)

- Over the past few years since the enactment of the 2016 law, some flaws had been discovered



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Municipal Court Judge Removal Process (HB 1275)

- The new legislation ensures that appointed municipal court judges will serve a minimum of a one-year term from the date of appointment, unless the city provides for a longer term




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Municipal Court Judge Removal Process (HB 1275)

- The new legislation provides for specific information which must be included in a petition for removal of a judge



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Municipal Court Judge Removal Process (HB 1275)

- The legislation requires notice of the time and place for a hearing which must be at least 20 days prior to the hearing
- Provides specifically how the notice must be sent




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Municipal Court Judge Removal Process (HB 1275)



- Allows for the judge to be represented by counsel at his or her expense
- Allows for subpoenas to be issued for the attendance of witnesses and production of documents

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Municipal Court Judge Removal Process (HB 1275)

- Provides that the hearing be recorded at the expense of the city and that witnesses must take an oath
- The city will be required to state the basis for the decision to remove the judge from office




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Municipal Court Judge Removal Process (HB 1275)

- The chief judge of the superior court must appoint a senior judge to act as presiding officer over the hearing who will be compensated by the city at a rate not to exceed \$500 per day




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Municipal Court Judge Removal Process (HB 1275)

- Vacancies can be filled for a period not less than 30 nor more than 60 days in a temporary manner



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Sexual Harassment Whistleblower Claims (HB 1390)

- Effective: *July 1, 2022*
- Legislation followed a very public news story involving a Georgia city involving complaints of sexual harassment by a police captain and an internal investigation


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Sexual Harassment Whistleblower Claims (HB 1390)

- Legislation provides for a definition of “sexual harassment”




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Sexual Harassment Whistleblower Claims (HB 1390)

- Anyone working for a local government will have a cause of action for retaliation against the local government if the local government has discharged, suspended, demoted, or taken any other adverse action against the individual because the individual...



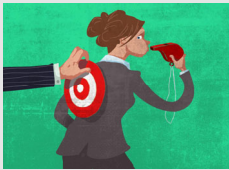
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Sexual Harassment Whistleblower Claims (HB 1390)

- Opposed sexual harassment
- Made a report or filed a complaint of sexual harassment ...



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Sexual Harassment Whistleblower Claims (HB 1390)

- Instituted or caused to be instituted, assisted, or participated in an investigation, proceeding, hearing or action related to sexual harassment, or
- Provided information, testified, or is known by the local government to be planning to testify in any such processing related to sexual harassment


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Sexual Harassment Whistleblower Claims (HB 1390)

- Such individuals will be able to institute a civil action in superior court within one year of discovering the retaliation or three years after the retaliation, whichever is earlier




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Delivery Robots (HB 1009)

- Effective: *July 1, 2022*




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Delivery Robots (HB 1009)

- Creates a new definition in the motor vehicle code for “Personal delivery device” which would basically be delivery robots
- Delivery robots are designed to carry cargo, have an unladen weight of 500 pounds with 600 pounds when carrying cargo



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Delivery Robots (HB 1009)


- Creates a definition for “personal delivery driver operator” who would be the person who controls or monitors the robot
- Creates a definition for “personal delivery device owner” which is somewhat self-explanatory

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Delivery Robots (HB 1009)



- The robots will be authorized to operate on highways and sidewalks as long as a 4-foot zone is left for access for persons with disabilities
- Cannot be used on highways with speed limits greater than 45mph
- Can be used on bike paths and shared use paths


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Delivery Robots (HB 1009)

- The robots will be required to emit a sound when within six feet of a vehicle or person
- Robots cannot travel faster than 20 mph on roads or bike lanes or 4 mph on sidewalks or crosswalks




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Delivery Robots (HB 1009)

- Violations of law will be attributable to the owner
- Robots will be required to have braking systems, lights visible from 500 feet if operated at dawn or dusk, and have prominently displayed ID numbers and contact information




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Delivery Robots (HB 1009)

- Owners must have insurance coverage of at least \$250,000
- Duties are placed on the operator to contact law enforcement when there are accidents
- Civil penalties can be imposed of up to \$500 for certain violations of law



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Delivery Robots (HB 1009)

- Local governments, unless an exception exists, cannot enact ordinances on:
 - Design, manufacture, or maintenance of robots
 - Licensing, registration, or certification of robots
 - Taxation
 - Insurance
 - Types of cargo which can be carried
 - Operations
 - Restricted access on sidewalks or roads


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Delivery Robots (HB 1009)

- Local governments can prohibit hours of operation on sidewalks, bike paths, and shared paths as long as the restrictions do not prohibit operation between sunrise and sunset
- Local governments can prohibit operation on property of schools, hospitals, stadiums, coliseums, or government buildings




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Delivery Robots (HB 1009)

- Local governments can set geographically limited areas of the operation of robots so long as they are not more restrictive than state law and the area is no greater than seven linear miles
- Local governments have to have a public hearing prior to passage of any ordinance




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Delivery Robots (HB 1009)

- Highways are considered under the jurisdiction of the city if it is part of the municipal street system
- Robots cannot be used within a "surface transportation project" which is a project meant to impact 10,000 or more acres and contains at least ten transit miles within the local government



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Judicial Cases

- Important Judicial Cases from the past year
 - Shurtleff v. City of Boston, 142 S.Ct. 1583 (May 2, 2022)
 - City of Austin v. Reagan National Advertising, 142 S.Ct. 1464 (April 21, 2022)
 - Ladies Memorial Association v. City of Pensacola, 11th Circuit, 2022 WL 1536750 (May 16, 2022)
 - Carson v. Brown, Georgia Supreme Court, 2022 WL 1308719 (May 3, 2022)
 - RCC Wesley Chapel Crossing, LLC v. Allen, 313 Ga. 69 (December 14, 2021)

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Judicial Cases

- Important Judicial Cases Pending Currently
 - Camden County v. Sweatt, S22A0837 (Case Pending Before the Supreme Court of Georgia)
 - City of Winder v. Barrow County, A22A0834 (Case Pending Before the Georgia Court of Appeals)
 - Sons of Confederate Veterans v. Henry County, S22G0039 and Sons of Confederate Veterans v. Newton County, S22G0045 (Cases Pending Before the Supreme Court of Georgia)


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Shurtleff v. City of Boston

- City allowed private groups to use one of the flag poles in front of city hall to fly a flag of their choosing during events sponsored by the group but refused to allow organization to fly the Christian flag
- Supreme Court held that the city program did not express government speech and the refusal was impermissible discrimination based on religious viewpoint




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City of Austin v. Reagan National Advertising



- Billboard owners filed suit against city claiming that the city ordinance which distinguished between on-premises signs and off-premises signs violated the First Amendment
- The Supreme Court held that a regulation of a sign is not automatically content based and the city's regulations were content neutral and not subject to strict scrutiny


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Ladies Memorial Association v. City of Pensacola

- City Council decided to remove Confederate monuments from a city park and faced a challenge
- The 11th Circuit held that alleged injuries to free speech, equal protection, and due process were not concrete enough to establish standing and the harms to the preservation to state history were not concrete either




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Carson v. Brown

- The Georgia Court of Appeals held that a landowner had a vested right to develop property to the old zoning code merely because the county planning director confirmed the zoning on the property
- The Georgia Supreme Court held that the landowner did not, in fact, have such a vested right




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RCC Wesley Chapel Crossing, LLC v. Allen

- Vehicle owner filed a class action suit against a parking lot owner for negligence, premises liability, false imprisonment, conversion and under Georgia RICO for having his vehicle booted
- Georgia Supreme Court held that there was no common-law right to boot trespassing vehicles




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Camden County v. Sweatt

- Camden County sought to locate a rocket launch facility in the county but some dissatisfied citizens sought to repeal the Board's actions through a ballot initiative pursuant to the County Home Rule Provision found in Article IX, Section II, Paragraph I of the Georgia Constitution
- Cities have a nearly identical provision in OCGA 36-35-3
- Question: Does this provision give general legislative power to the electorate to exercise directly via a ballot initiative?




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City of Winder v. Barrow County

- Winder and Barrow County were able to come to agreement on almost all of the services, but one of the outstanding issues was funding of road maintenance services
- The county and ACCG argue that funding should be split based upon who has the service available to them
- The city and GMA argue that funding should be based upon geography




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City of Winder v. Barrow County

- The statute states that "[t]he 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




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Sons of Confederate Veterans



- Confederate veterans associations brought actions against Henry and Newton Counties for their removal of confederate monuments
- The Georgia Court of Appeals held that the associations had no concrete and particularized injuries as to confer standing
- Question before Georgia Supreme Court: Whether these are private monuments on public property and whether the associations had standing?

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Federal Rules and Regulations

- ARPA Treasury Rule
- February 28, 2022 – The United State Treasury provided updated guidance on reporting requirements for recipients of American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds (SLFRF) .
- There was an April 30, 2022 reporting deadline for ARPA SLFRF for Non-Entitlement Units of Local Government (NEUs) – which is generally cities with less than 50,000 residents

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Federal Rules and Regulations

- The Treasury Department rearranged the reporting tiers in the Compliance and Guidance Reporting document from six to five. Starting after April 30, 2022, NEUs with a grant of more than \$10 million will have to report on a quarterly basis instead of yearly.
- In the final rule, local governments were able make an irrevocable decision as to whether it will take the \$10 million standard allowance or use the lost revenue calculation. Municipalities had to decide in their April 30, 2022, report which option it was electing.

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Federal Rules and Regulations

- Consolidated governments (city/county governments) are only required to file once per reporting period, and such reports will cover the total SLFRF allocations received by the jurisdiction. This includes non-entitlement units of local government and/or Units of general local government within counties that are not units of general local government (Non-UGLGs).
- To facilitate reporting, each NEU will need a NEU Local government Number. This is a unique identification code for each NEU assigned by the State or territory to the NEU as part of its request for funding.

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Federal Rules and Regulations

- For municipalities that must file quarterly reports, quarterly reports will cover one calendar quarter and must be submitted to the Treasury by the last day of the month following the end of the period covered.
- Local governments should report the program income earned and expended to cover eligible project costs, if applicable.
- Local governments do not need to submit separate monthly subaward reports to FSRs.gov as required pursuant to the 2 CFR Part 170, Appendix A.

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Federal Rules and Regulations

- Local governments should also note that subrecipients do not include individuals and organizations that received SLFRF funds as end users. Such individuals and organizations are beneficiaries and not subject to audit pursuant to the Single Audit Act and 2 C.F.R. Part 200, Subpart F.
- A local government must provide detailed information to the Treasury if aid is provided to impacted industries other than tourism, and hospitality.
- The Treasury Department will require local governments that pursue water and sewer projects to provide additional reporting data *once the project starts*.
- Please see: <https://www.gacities.com/Trending-Topics/American-Rescue-Plan-Act/Funding.aspx> for more information

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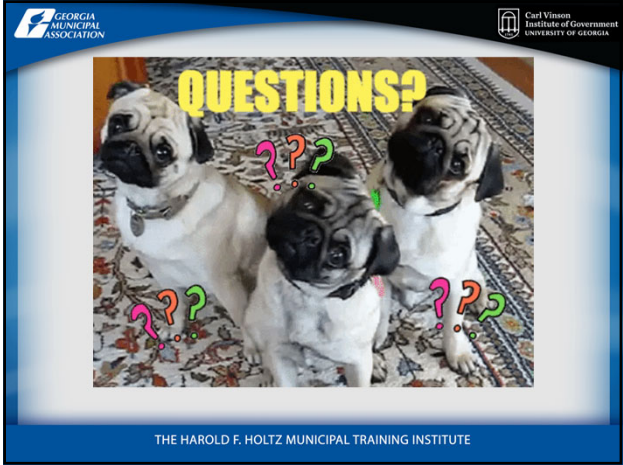
2022 Legislation

Bills that DID NOT PASS

- Calculating Regulatory Fees (HB 302)
- Truck Weights (HB 496)
- PTSD Workers' Compensation (HB 855/ SB 484)
- Build to Rent (HB 1093/ SB 494)
- Municipal Tax Collection (HB 1280)
- De-annexation Procedures (HB 1439)
- Homeless Camps (SB 535)

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