

AN ORDINANCE TO AMEND THE CITY OF SOUTH FULTON'S CHARTER ARTICLE II, GOVERNMENT STRUCTURE, ELECTION AND REMOVAL, SECTION 2.16 (b) (1); ARTICLE III, ORGANIZATION OF GOVERNMENT GENERAL AUTHORITY AND ORDINANCE, SECTION 3.23 (a); AND ARTICLE IV, ADMINISTRATIVE AFFAIRS, SECTION 4.12 (a) (1) & (2) AND FOR OTHER LAWFUL PURPOSES

(Sponsored by Councilmembers Catherine Rowell, Carmalitha Gumbs and Mayor Pro Tem Helen Willis)

WHEREAS, the City of South Fulton ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia;

WHEREAS, the duly elected governing authority of the City is the Mayor and Council thereof ("City Council");

WHEREAS, pursuant to City Charter Section 3.10A, the City has established a City council – City manager form of government;

WHEREAS, the full and complete legislative and policy making authority of the City resides in the part-time city council;

WHEREAS, O.C.G.A. § 36-35-6 authorizes the City to amend its municipal charter through a duly adopted ordinance that has been legally advertised in the official organ of the county of the legal situs of the municipal corporation or in a newspaper of general circulation in the municipal corporation; and

WHEREAS, pursuant to City Charter Section 3.10 (b), the City Council is authorized to adopt ordinances and amendments it deems necessary, expedient, or helpful for the health, welfare, safety, comfort and well-being of the inhabitants of the City.

THE CITY COUNCIL OF THE CITY OF SOUTH FULTON HEREBY ORDAINS as follows:

Section 1. The City of South Fulton Charter, Article II, Government Structure, Election & Removal is hereby amended by deleting certain sentences and/or paragraphs and to read as follows:

ARTICLE II. - GOVERNMENT STRUCTURE, ELECTIONS, AND REMOVAL

Section 2.16 (b)(1) is hereby amended by striking this paragraph in its entirety as shown below.

Sec. 2.16. Removal of officers.

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

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

~~evidence and call witnesses. Any elected officer sought to be removed from office as provided in this section shall have the right of appeal from the decision of the city council via certiorari to the Superior Court of Fulton County; or~~

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

Section 2. The City of South Fulton Charter, Article III, Organization of Government, General Authority and Ordinances is hereby amended by deleting certain sentences and/or paragraphs and to read as follows:

ARTICLE III. - ORGANIZATION OF GOVERNMENT, GENERAL AUTHORITY, AND ORDINANCES

Section 3.23 (a) is hereby amended by striking the following sentences in this paragraph as shown below.

Sec. 3.23. City manager; appointment; qualifications; compensation; removal.

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

(b) The mayor or a councilmember may recommend the removal of the city manager from office in accordance with the following procedures:

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

(2) Within ten days after a copy of the resolution is delivered to the city manager, that person may file with the city council a written request for a public hearing. This hearing shall be held within 30 days after the request is filed. The city manager may file with the city council a written reply not later than five days before the hearing; and

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

(c) The city manager shall continue to receive the city manager's salary until the effective date of a final resolution of removal.

Section 3. The City of South Fulton Charter, Article IV, Administrative Affairs is hereby amended by deleting certain clauses, sentences and/or paragraphs and to read as follows:

ARTICLE IV. - ADMINISTRATIVE AFFAIRS

Section 4.12 (a) (1) and (2) is hereby amended by striking the following clause contained in paragraph (a) (1) and also by striking paragraph (a) (2) in its entirety as shown below.

Sec. 4.12. City attorney.

(a) (1) ~~Except as provided in paragraph (2) of this subsection,~~ The Mayor shall nominate and the city council shall confirm by a majority vote a city attorney who shall be a member of the State Bar of Georgia and shall have actively practiced law for at least seven years.

~~(2) In the event that the city council does not confirm the mayor's nomination, the mayor shall appoint another individual to be the city attorney and such second nomination shall also be subject to confirmation by the city council. If a second nomination and a subsequent third nomination for city attorney are not confirmed by the city council, the mayor shall appoint an attorney meeting the qualifications established by this section who shall serve as city attorney without such appointment needing to be confirmed by the city council.~~

(b) The mayor shall have the authority to remove the city attorney for good cause; provided, however, that an affirmative vote of five members of the city council may prevent the removal by determining that good cause for removal does not exist. If requested by a majority vote of the city council, the mayor shall provide in writing the reasons for such removal. Good cause may include but not be limited to the following:

- (1) Incompetence, misfeasance, or malfeasance in office;
- (2) Conviction of a crime involving moral turpitude or a crime punishable as a felony;
- (3) Failure at any time to possess any of the qualifications of office as provided by this section;
- (4) Gross misconduct in reference to the duties of office; or
- (5) Abandonment of office or neglect to perform the duties thereof.

(c) The city attorney shall be responsible for representing and defending the city in all litigation in which the city is a party, may be the prosecuting officer in the municipal court,

shall attend the meetings of the council as directed, shall advise the city council, mayor, and other officers and employees of the city concerning legal aspects of the city's affairs, and shall perform such other duties as may be required by virtue of the position of city attorney. The mayor shall set the compensation of the city attorney.

(d) An individual shall be designated as the city attorney, and such individual shall be an employee of the city. The city attorney shall not engage in the private practice of law, nor while serving as city attorney shall such individual represent any other governmental body, authority, agency, board, public corporation, or political subdivision.

(e) The city attorney shall be the department head for the city law department, and the city may hire assistant city attorneys to assist the city attorney as the mayor and city council deem necessary and appropriate.

(f) (1) Where not inconsistent with the Georgia Rules of Professional Conduct enacted by the State Bar of Georgia and the rulings of the Supreme Court of Georgia, this subsection shall govern the city attorney.

(2) The city attorney represents the city acting through its duly elected and appointed officials.

(3) If the city attorney knows that an elected or appointed officer, employee, or other person associated with the city is engaged in action, intends to act, or refuses to act in a matter related to the representation that is a violation of a legal obligation to the city, or a violation of law that reasonably might be imputed to the city, and that is likely to result in substantial injury to the city, then the city attorney shall proceed as is reasonably necessary in the best interest of the city. Unless the city attorney reasonably believes that it is not necessary in the best interest of the city to do so, the city attorney shall refer the matter to a higher authority in the city, including, if warranted by the circumstances, to the mayor and city council.

(4) Except as provided in paragraph (5) of this subsection, if despite the city attorney's efforts in accordance with paragraph (3) of this subsection the mayor and city council insist upon or fail to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and the city attorney reasonably believes that the violation is reasonably certain to result in substantial injury to the city, then the city attorney may reveal information relating to the representation whether or not Rule 1.6 of the Georgia Rules of Professional Conduct of the State Bar of Georgia permits such disclosure, but only if and to the extent the city attorney reasonably believes necessary to prevent substantial injury to the city.

(5) Paragraph (4) of this subsection shall not apply with respect to information relating to a city attorney's, or any other attorney's, representation of the city to investigate an alleged violation of law, or to defend the city or an officer, employee, or other constituent associated with the city against a claim arising out of an alleged violation of law.

(6) In dealing with the city's elected and appointed officers, officials and employees, and other constituents, the city attorney shall explain the identity of the client when the city attorney knows or reasonably should know that the city's interests are adverse to those of the individuals with whom the city attorney is dealing."

Section 4. It is hereby declared to be the intention of the Mayor and Council that: (a) All sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the City Council to be fully valid, enforceable and constitutional.

(b) To the greatest extent allowed by law, every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. No section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the City Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance.

Section 5. All Ordinances and parts of Ordinances in conflict herewith are hereby expressly repealed.

Section 6. The City Attorney, City Clerk and/or contracted City Codifier are authorized to make non-substantive formatting and renumbering edits to this ordinance for proofing, codification, and supplementation purposes. The final version of all ordinances shall be filed with the clerk.

Section 7. The effective date of this Ordinance shall be the date of adoption unless provided otherwise by the City Charter or state and/or federal law.

[signatures and voting tabulations appear on the following page]