The Handbook for Georgia Mayors and Councilmember, Online Edition, has been created to increase access to the information that is needful for effective municipal governance. In order for elected and appointed municipal officials to be effective in serving their communities, a proper understanding of municipal administration is indispensable. The Georgia Municipal Association is pleased to help shape that understanding through a variety of courses offered in conjunction with the Carl Vinson Institute of Government, including the Newly Elected Officials Institute. This resource has also been prepared for the purpose of aiding officials with their understanding the municipal process.

Today, as much as or more than ever, citizens are becoming more interested in their government. They want to know what is being done, the purpose of the work, the cost to them as taxpayers and the benefit to them as citizens. While it is important that the elected and appointed officials are able to confidently convey this information to their citizens, it is the GMA’s hope that this reference, in online form, will be able to aid citizens in their efforts to gain a better understanding of the municipal processes. City officials are encouraged to first, aid citizens through direct dialogue and second, point them to this resource for an increased understanding.

The GMA has chosen to make this publication available via the web for another reason as well. Often times, researchers from both near and far seek information about the municipal government structure and administrative processes within our state. It is the hope of this organization that many of the preliminary inquiries of these researchers will be answered through this publication that is available worldwide.

An additional benefit of this online format is the frequency of updates to information. Changes are made each year in the state legislature that affect many of the subjects contained herein. Due to this, the GMA will be prompt to update the information within this resource to provide readers with the most accurate information possible.

If you have questions or comments regarding the publication or if you find any technical problems (i.e. broken links, inaccessible pages, etc.) with the resource, please contact the Georgia Municipal Association, and we will be glad to investigate the issue.
Created in 1933, the Georgia Municipal Association (GMA) is the only state organization that represents municipal governments in Georgia. Based in Atlanta, GMA is a voluntary, non-profit organization that provides legislative advocacy, educational, employee benefit and technical consulting services to its members.

GMA's membership currently totals 521 municipal governments, accounting for more than 99% of the state's municipal population. A 63-member Board of Directors, composed of city officials, governs GMA. Program implementation is charged to the Executive Director and staff of over 80 full-time employees.

GMA is pleased to make available this publication which is a combined effort of city officials, staff of state agencies, local government consultants, Carl Vinson Institute of Government staff, and GMA staff.

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Part One: STRUCTURE OF MUNICIPAL GOVERNMENT

Effective Relations: Roles of Mayors, Councilmembers and Appointed Officials
Effective Relations: Roles of Mayors, Councilmembers, and Appointed Officials*

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 of government. 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 the 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 it can also be painful, frustrating, and controversial. Elected leadership can successfully bring a community together or it can divide a community. 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 most 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.

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* This chapter includes significant material developed by Jim Calvin, former city manager and executive director of the Georgia Municipal Association.
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 upon 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 and 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 in a surprise manner 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 end result and the 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 range 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 get others not to follow them but to join them.
Part One: STRUCTURE OF MUNICIPAL GOVERNMENT
Municipal Government Structure

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 of these roles 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 policy-making 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 provides the primary policy role, while the mayor provides 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 of 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 policy-making role, while the mayor provides the primary executive role. However, 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.

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.¹

**Council–Manager Form**

Under this form of government, the city council provides the primary policy-making 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.²

**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 the future of their community.

Responsibilities of the City Council
The council is the city’s legislative and policy-making 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 policy-making 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

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


Other Forms of Government

Commission Form

Another form of municipal government, although it is not common in Georgia, is the commission form. Under this form of government, the council members (“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

<table>
<thead>
<tr>
<th>Form of Government</th>
<th>Primary Policymaking Role</th>
<th>Primary Executive Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mayor-council</td>
<td>Shared by city council and mayor</td>
<td>Mayor (perhaps with the assistance of an appointed administrator)</td>
</tr>
<tr>
<td>“strong” mayor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mayor-council</td>
<td>Shared by city council and mayor</td>
<td>Mayor, although executive authority is sharply limited by requirement of council concurrence for various administrative actions and by the long ballot*</td>
</tr>
<tr>
<td>“weak” mayor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Council-manager</td>
<td>City council</td>
<td>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.</td>
</tr>
</tbody>
</table>

* In the “weak” mayor form, the typical existence of several separately elected administrative officers, who often operate beyond effective control of the mayor or city council, generally dilutes policy-making and executive authority.
Municipal Government Structure

**“Strong” Mayor**

- Voters
  - Elect
  - Mayor
    - City Council
      - appoints City Clerk
      - City Attorney
      - Police Chief
      - Public Works Director
      - Fire Chief
      - Finance Director
      - Utilities Director
      - Recreation Director

- Mayor appoints
  - Finance Director
  - Utilities Director
  - Parks and Recreation Director

**“Weak” Mayor**

- Voters
  - Elect
  - Mayor
    - City Council
      - appoints City Clerk
      - City Attorney
      - Auditor

- Mayor appoints
  - Fire Chief
  - Public Works Director
  - Utilities Director
  - Parks and Recreation Director

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Council concurrence required for appointment of heads
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…” 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.

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 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.

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1 See generally, Georgia Municipal Association, Model Municipal Charter, 4th ed. (Atlanta, Ga.: Georgia Municipal Association, 2007)  
2 Ibid.  
3 National Civic League, Model City Charter, 8th ed. (Denver, Colo.: National Civic League, 2003)  
4 International City/County Management Association (ICMA), Internet Website, http://icma.org  
7 O.C.G.A. § 36-35-6.
Part One: STRUCTURE OF MUNICIPAL GOVERNMENT

Municipalities: Sources and Limits of Powers
Municipalities: Sources and Limits of Power

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.” 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.

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.”
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. 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.

Code section 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 3 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 7 nor more than 60 days apart. Publication is also required for 3 weeks within a period of 60 days immediately before final adoption. There are limitations on changing provisions included in the charter by initiative. 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.

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;

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;

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.\(^\text{13}\)

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.\(^\text{14}\) For more information see the GMA Municipal Redistricting Guide available at www.gmanet.com.

### Supplementary Powers

The Supplementary Powers provision, also known as Amendment 19 for the designation it had in 1972 when ratified by the voters as an amendment to the Georgia Constitution, 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.\(^\text{15}\) 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.\(^\text{16}\)

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.\(^\text{17}\) However, intergovernmental agreements entered into 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.\(^\text{18}\)
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 Chapter 14). 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…."

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.” 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. 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.

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. 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. The new law also narrowed the definition of blight.

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. Many of these new provisions have not been litigated, so courts have not had an opportunity to provide additional clarity to the law.

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.” 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. Such contracts must deal with activities, services or facilities that the contracting parties are authorized by law to undertake or provide. Intergovernmental contracts are frequently used to facilitate financing deals in conjunction with downtown development authorities, urban redevelopment authorities or other types of authorities.
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. 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. 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. 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. 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. 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.

**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...” 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.

In a case involving a county contract with a private company for fire protection services, the court applied this provision. 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.\(^{45}\)

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.\(^{46}\)

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.\(^{47}\) 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.\(^{48}\) 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\(^{49}\) or to allow sales of liquor by the drink pursuant to O.C.G.A. § 3-4-91 or 3-4-92.\(^{50}\)

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.”\(^{51}\) Although this provision contains an exception allowing the expenditure of money for purely charitable purposes, the authority to make charitable contributions must be specifically authorized by the General Assembly in a general statute or in local legislation. The authority to spend for general welfare purposes is not enough.\(^{52}\) All charitable donations must be purely charitable.\(^{53}\)

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.\(^{54}\)

**Other Georgia Constitutional Provisions**

The 1945 and the 1976 Georgia Constitutions recognized two types of constitutional amendments; there were general constitutional amendments submitted to the people of the entire state and there were local constitutional amendments submitted only to the people of the political subdivisions directly affected.\(^{55}\) 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.\(^{56}\) 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.\(^{57}\) Local constitutional amendments have been recognized by the courts to continue to have constitutional status.\(^{58}\)
Population acts are laws which classify and apply to political subdivisions based on population and are generally prohibited by the Georgia Constitution. 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.

General law takes precedence over a local act. 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 of the 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 having 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.
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.64

**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.

An early case stated as follows:

> [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.65

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.66

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.67

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.68

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.69
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.70

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.71 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.” 72

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.73 The Georgia Supreme Court has held that a rezoning of property 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.74

**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.75 Public funds can be expended to perform any public service or public function authorized by the State Constitution or by law.76 Issues of municipal taxation are more fully covered in Chapter 26.

**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.77 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."78 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."79 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.
NOTES


2 Id.


4 GA. CONST. Art. IX, Sec. II, Par. II.

5 O.C.G.A. § 36-35-3

6 O.C.G.A. § 36-34-2

7 O.C.G.A. § 36-35-3(a).

8 O.C.G.A. § 36-35-3(b).

9 Id.

10 O.C.G.A. § 36-35-5.


12 O.C.G.A. § 36-35-6. See also Lawal v. State, 273 Ga. App. 891, 893, 616 S.E.2d 205, 207 (2005) (holding that a city can impose a punishment for each offence, that each day is a separate offence, that fines are cumulative, and that jail terms may run consecutively).


14 O.C.G.A. § 36-34-1

15 GA. CONST. Art. IX, Sec. II, Par. III(a).

16 GA. CONST. Art. IX, Sec. II, Par. III(b).

17 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), see also Cobb County v. City of Smyrna, 270 Ga. App. 471, 606 S.E.2d 667 (Ga. App. 2004) (holding that a city can use a county water line that was brought into the city by annexation, regardless of whether a service agreement exists).

18 GA. CONST. Art. IX, Sec. II, Par. III(c).

19 GA. CONST. Art. IX, Sec. II, Par. IV; See O.C.G.A. § 36-66-1 et seq.

20 GA. CONST. Art. III, Sec. VI, Par. II.

21 GA. CONST. Art. IX, Sec. II, Par. V.

22 U.S. CONST. Amendment 5; GA. CONST. Art. I, Sec. III, Par. I.

23 O.C.G.A. Title 22; O.C.G.A. 32-3-1 et seq


25 O.C.G.A. § 22-1-1(9).

26 O.C.G.A. § 22-1-1(9)(B).

27 Id.

28 O.C.G.A. § 22-1-1(1).

29 O.C.G.A. § 22-1-2(b)-(c).

30 GA. CONST. Art. IX, Sec. II, Par. V.

31 GA. CONST. Art. IX, Sec. III, Para. I.


34 GA. CONST. Art. IX, Sec. II, Par. VI.

35 O.C.G.A. § 48-4-81.


37 O.C.G.A. § 36-43-5.

38 O.C.G.A. § 36-44-8.
See O.C.G.A. § 33-8-3 regarding expenditure of insurance premiums tax revenues to provide services to unincorporated area residents. But see Channell v. Houston, --- S.E.2d ----, 2010 WL 2718170 (2010) (holding that sheriffs are elected officers, not employees of the county, and that the county cannot create a special district for the provision of the sheriff’s office).

GA. CONST. Art. IV, Sec. V. Par. II

Id.

GA. CONST. Art. III, Sec. VI, Par. VI


See Mayor of Athens v. Camak, 75 Ga. 429, 435 (1885).

Smith v. Board of Commissioners of Hall County, 244 Ga. 133, 259 S.E.2d 74 (1979).


GA. CONST. Art. IX, Sec. IV, Par. II.

O.C.G.A. § 36-36-58.

O.C.G.A. §§ 3-4-41, 3-4-91, and 3-4-92.

GA. CONST. Art. IX, Sec. II, Par. VIII.

Miller v. City of Cornelia, 188 Ga. 674, 4 S.E.2d 568 (1939).


O.C.G.A. § 21-5-30.2(b).

GA. CONST. 1945, Art. XIII, Sec. I, Par. I; GA. CONST. 1976, Art. XII, Sec. I, Par.I.

GA. CONST. Art. XI, Sec. I, Par. IV.

GA. CONST. Art. XI, Sec. I, Par. IV(b).


GA. CONST. Art. III, Sec. VI, Para. IV.


GA. CONST. Art. III, Sec. VI, Par. IV.

O.C.G.A. § 36-80-19.

Id.

O.C.G.A. § 24-7-22.


GA. CONST. Art. IX, Sec. IV, Par. I.

GA. CONST. Art. IX, Sec. IV, Par. II.

U.S. CONST. Art. VI.

U.S. CONST. Amend. 1.

Powers and Duties of the Mayor and Council Members

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 executive powers of the mayor vary depending on the city’s charter and the form of government the city has.

GMA’s Georgia Model Municipal Charter, 5th Ed., 2014:

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 the 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.

International City/County Management Association (ICMA): http://icma.org/en/icma/home
Georgia City-County Management Association (GCCMA): http://www.gccma.com/
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 as a whole 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

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.¹

Depending on the form of government the city has, 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.

Powers and Duties of the Mayor Pro-Tem

Many city charters allow the selection of a Mayor Pro-Tem from among the council members. This individual is responsible for fulfilling the duties of the mayor in the event that 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 Council Members

Council members 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 Mayor-Council/“Strong Mayor” form of government, the city council’s administrative powers are very limited. However, under the Mayor-Council/“Weak Mayor” form, city council members 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 council members. State law places limitations and procedural requirements on the adoption of salary adjustments for elected municipal officials. More information about increasing pay for municipal officials can be obtained in the following article available on the GMA website: [http://www.gmanet.com/Advice-Knowledge/Articles-and-Resources/Compensation-Increasing-Municipal-Elected-Officia.aspx](http://www.gmanet.com/Advice-Knowledge/Articles-and-Resources/Compensation-Increasing-Municipal-Elected-Officia.aspx).

**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 council member unless he or she first resigns that council position. 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 manner in which a recall election is held. 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 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.”

**Administrative Powers in the Georgia Code**

Georgia Code enumerates the administrative powers of the municipal governing body to be as follows: 7

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, in the event that 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; and
7. the power to grant franchises for public utilities.

**Taxation and Expenditure of Public Funds**

The governing authority is empowered by the Georgia Constitution 8 to levy and collect taxes and fees within its corporate limits in order to pay for public services and functions as authorized by the constitution or by general law. 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 9, to enter into contracts 10 and to issue revenue and other types of bonds. 11

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 with regard to bonded and other indebtedness. 12 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 13, or revenue bonds 14.
**Budgets and Audits**


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. Cities with a population of 1,500 or less or with expenditures less than $300,000 are required to complete an audit every two years, and the audit must cover both fiscal years. 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.” The city’s authority to enter into contracts comes primarily from home rule powers and from the municipal charter, which usually grant 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.

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 land use 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 council members 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 council members 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.

**Number of Board Members; Method for Appointing Members; Term Length; Compensation; 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.

A park 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. 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.
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.” The Zoning Procedures Law 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 insure that the public is afforded due process when cities regulate the use of property through zoning.

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, 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 has to file a resolution declaring the need for such an authority.

Beginning in 1995, Georgia law began requiring all authorities to register with the Georgia Department of Community Affairs (DCA). Failure to do so results in the authority being prohibited from incurring debt or issuing any credit obligation. Authorities also are required to provide an annual Report of Registered Authority Finances to DCA. In 2010, a total of 948 authorities were registered with the Department of Community Affairs. More information about authorities can be found on the DCA website at http://www.dca.ga.gov/development/research/programs/lga.asp.

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; and
- 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. (Note: 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.
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; and
- 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; and
- 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

Georgia code 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 for the purpose of developing trade, commerce, industry, and employment opportunities. The tax is limited to 3 mills per dollar upon the assessed value of the property subject to taxation by the municipality.

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 5 to 9 members who usually serve staggered terms of 4 to 6 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. 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. And, while at least 3 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.

**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. 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.

**Downtown Development Authority**

The objective for activating a downtown development authority (DDA) is to revitalize and redevelop municipal central business districts. The push to create DDAs began in the late 1970’s 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 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 provided that 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. 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, however, it cannot operate for a profit. 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.

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.

**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.

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. 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.\(^\text{42}\)

In exchange for tax relief from the city, the authority may agree to pay the city for improvements services, and facilities furnished by the city for the benefit of any housing project.\(^\text{43}\) 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.\(^\text{44}\) 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.\(^\text{45}\)

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.\(^\text{46}\)

**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.\(^\text{47}\) 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.\(^\text{48}\) The governing authority may provide funds for airports or landing fields, acquire easements for lights and markers, and police all airport facilities.\(^\text{49}\) 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.\(^\text{50}\)

In 2010, DCA reported that there were 35 registered single and multi-jurisdictional airport authorities in Georgia.\(^\text{51}\) These 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.\(^\text{52}\)

**City or Independent School Boards**\(^\text{53}\)

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.\(^\text{54}\) 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
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existence before the 1945 constitution and amended since 1945 vary as to the powers granted city boards of education. Cities that do not currently have a school system are constitutionally forbidden to create a new independent school system. 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.

There are 21 independent 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 school in the independent school district. The board can hire teachers and other personnel upon the recommendation of the school superintendent. 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. 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.

In order to qualify for state funds, the board of education must raise money to operate the schools, which is accomplished primarily through taxation. 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.

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.  

Members of local school boards are typically elected to four year terms. 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.

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; and 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.

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.

Georgia School Board Association: http://www.gsba.com/
Georgia Department of Education: http://www.doe.k12.ga.us/
List of Georgia School Districts: http://georgiainfo.galileo.usg.edu/gaschooldistricts.htm

Regional Commissions

A Regional Commission 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.

History

The State of Georgia allowed local governments within a region to join together and assess dues to pay for professional staff to work on projects of mutual benefit within the region. These groups were called "Area Planning and Development Commissions" (APDCs). The Georgia
Planning Act of 1989 reconstituted the APDCs as Regional Development Centers (RDCs). The Planning Act of 1989 authorized RDCs to develop, promote, and assist in the establishment of coordinated and comprehensive planning in the state. The RCs underwent yet another transition in 2009 as a result of House Bill 1216, becoming Regional Commissions.

**Functions and Powers**

RCs do not have taxing authority, and rely on per capita dues from member local governments. In order to be eligible for state grants and loans, each Regional Commission 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 estimate of population. RCs provide technical and planning services to member local governments, and also 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 Georgia Department of Community Affairs website at:

A map of the Regional Commission Boundaries:

A directory of Regional Commissions:

Model RC bylaws:
http://www.dca.ga.gov/development/PlanningQualityGrowth/DOCUMENTS/Publications/RegionalCommissions/ModelBylaws.doc
NOTES

1 Georgia Model Municipal Charter, 4th Ed., Georgia Municipal Association, p. 50
2 O.C.G.A. 36-35-4
4 O.C.G.A. 45-5-1a
5 O.C.G.A. 21-4-3 (7)b, 21-3-4
6 O.C.G.A. 36-35-3
7 O.C.G.A. 36-34-2
8 Ga. Const., Art. IX, §4
9 Ga. Const., Art IX, §5
10 O.C.G.A. 36-91-20
11 Ga. Const., Art IX, §6; O.C.G.A. 36-38; 36-82; 36-34-6
13 O.C.G.A. 36-60-13
15 O.C.G.A. 36-81-7
16 O.C.G.A. 36-30-2
20 O.C.G.A. 36-64-3
21 O.C.G.A. 36-64-5
22 O.C.G.A. 36-64-6
23 O.C.G.A. 36-64-7, 36-64-8, 36-64-9, 36-64-10, 36-64-11
24 Ga. Const. Art. IX, §2, ¶4
25 O.C.G.A. 36-66-1 through 36-66-5
26 Model Code: Alternatives to Conventional Zoning, Georgia Department of Community Affairs, April 2002, §7-3.
27 The section providing overview information about authorities is adapted from a information developed by the Department of Community Affairs on Local Government Authorities
28 O.C.G.A. 36-62-3
29 O.C.G.A. 31-7-72
30 O.C.G.A. 8-3-50
31 O.C.G.A. 12-8-54
32 O.C.G.A. 36-42-4
33 O.C.G.A. 36-62-5.1
34 O.C.G.A. 36-62-4
35 O.C.G.A. 36-42-2
36 O.C.G.A. 36-42-7
37 O.C.G.A. 31-7-72
38 O.C.G.A. 31-7-84, 31-7-72e
39 O.C.G.A. 31-7-72, 31-7-74
40 O.C.G.A. 8-3-2, 8-3-4
41 O.C.G.A. 8-3-30, 8-3-32, 8-3-70, 8-3-72
42 O.C.G.A. 8-3-3, 8-3-8, 8-3-11, 8-3-30
43 Ga. Const., O.C.G.A. 8-3-8
44 O.C.G.A. 8-3-11, 8-3-12
45 O.C.G.A. 8-3-155
46 O.C.G.A. 8-3-50, 8-3-51
47 O.C.G.A. 6-3-20
48 O.C.G.A. 6-3-25
49 O.C.G.A. 6-3-24, 6-3-26, 6-3-27
50 O.C.G.A. 6-3-25
51 Georgia Department of Community Affairs, 2010 List of Registered Local Government Authorities (online)
53 Portions of this section are from the Georgia School Board Association’s online legal reference.
54 O.C.G.A. 20-2-240, 20-2-270 to 274
55 Ga. Const. Art. VIII, Sec. 5-2
56 Ga. Const. Art. VIII, Sec. 5-1
58 O.C.G.A. 20-2-211
59 O.C.G.A. 20-2-167
62 O.C.G.A. 48-5-405
63 Ga. Const. Art. VIII, Sec. 5, Para. 2; O.C.G.A.20-2-51
64 O.C.G.A. 20-2-52, 20-2-54.1
65 O.C.G.A. 20-2-55
66 O.C.G.A. 20-2-109
67 Ibid.
Part One: STRUCTURE OF MUNICIPAL GOVERNMENT

Municipal Courts
MUNICIPAL COURTS

There are many different types of courts in Georgia including both 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.¹

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.² State courts are county level trial courts that only exist in some counties and have jurisdiction over certain civil matters and misdemeanor criminal cases.³ 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.⁴ Magistrate courts are county level courts that hold first appearance hearings for state and superior court and have jurisdiction over county ordinance offenses.⁵ Magistrate judges also issue warrants authorizing searches and arrest.⁶ 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.⁷ Decisions in municipal court may be appealed to the superior court and from there to the Court of Appeals or possibly the Supreme Court.⁸

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.⁹ 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.¹⁰ Misdemeanor defendants in Georgia are entitled to a jury trial.¹¹ 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 necessary. 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.¹² It is necessary that interpreters be provided for defendants that have a limited proficiency in the English language.¹³

The governmental interest in a criminal prosecution in municipal court is usually represented by a municipal court solicitor or a city attorney acting as a solicitor. Although some municipal courts allow police officers and code enforcement officers to present the prosecution side of a case in municipal court, this may lead to difficulties as the rules of evidence, state law,
and constitutional law are often sufficiently complex enough to require an attorney to represent the government as well as the defense.

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.\textsuperscript{14}

\textbf{Jurisdiction}

\textbf{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 as such in some cases may carry penalties of up to one year in prison and a one thousand dollar fine.\textsuperscript{15}

\textbf{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.\textsuperscript{16}

\textbf{Ordinance Violations}

Cities may proscribe certain conduct that is not already prohibited by state law and provide for appropriate punishment.\textsuperscript{17} State law establishes that the maximum punishment for ordinance offenses is six months incarceration and fines of one thousand dollars per offense.\textsuperscript{18} 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 upon the size of the city’s caseload. Although state law does not require that municipal court judges be attorneys, many municipal charters require that the judge be a member of the Georgia Bar and surveys indicate that almost all municipal court judges are attorneys. Most municipal judges are appointed by the governing authority of the city although a few are elected. 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 state Supreme Court. 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 of sitting in an impartial manner, and advising defendants of their rights and are prohibited from participating in ex parte communications with municipal officials. Municipal court judges are required to obtain training from the Municipal Courts Training Council.

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 govern 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. Employees assigned to work in municipal court should thus be properly trained. State law requires that municipal court clerks receive annual training.

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 Standards 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. 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.30

Solicitors

Prosecutors in municipal court are usually called solicitors. They have the responsibility of bringing the prosecution or case on behalf of the government. Depending on the size of the city’s caseload, solicitors can be part-time or full-time. In some instances, the job of prosecuting in municipal court is one of the responsibilities of the city attorney. In a few places, police officers have been used to present routine cases for prosecution, but as court mandates have resulted in more defense attorneys appearing in municipal court, it is no longer prudent to allow the city to go without representation in municipal court. 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.31 If a municipality chooses to have its own employees serve as probation officers, they must receive training required by state law.32 Both the municipal court judge and the governing authority of the city must agree to a contract with a private probation company.33 Case law suggests that a municipal court judge may be terminated for not agreeing to a probation contract desired by the city.34

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.35
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; and 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.

NOTES

1 See generally Chapter 2 of Title 15 of the O.C.G.A.; Chapter 3 of Title 15 of the O.C.G.A.; Ga. Const. Art. VI, § 1, ¶ 1; Ga. Const. Art. VI, § VI, ¶ II.
2 See generally Chapter 6 of Title 15 of the O.C.G.A.
3 See generally Chapter 7 of Title 15 of the O.C.G.A.
4 See generally Chapter 9 of Title 15 of the O.C.G.A.
5 See generally Chapter 10 of Title 15 of the O.C.G.A.
6 Id.
7 See generally Chapter 32 of Title 36 of the O.C.G.A.
8 See generally Chapter 4 of Title 5 of the O.C.G.A.
9 See generally U.S. Const. Amendment 5 & 14.
14 See e.g. O.C.G.A. § 40-6-391.
15 See O.C.G.A. § 17-10-3(a)(1).
17 O.C.G.A. § 36-35-3.
18 O.C.G.A. § 36-35-6(a)(2).
21 http://www.gajqc.com/
22 http://www.gasupreme.us/
24 Id. 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. See Black’s Law Dictionary, West Publishing (6th ed. 1990).
26 Code of Judicial Conduct 3(B)(7).
27 See e.g. O.C.G.A. § 15-21-134.
29 O.C.G.A. § 17-12-1 et. seq.
30 See e.g. O.C.G.A. § 15-21-134.
31 O.C.G.A. § 42-8-100(g)(1).
33 O.C.G.A. § 42-8-100(g)(1).
35 O.C.G.A. § 17-10-3.
Handbook for Georgia Mayors and Councilmembers

FIFTH EDITION

Part One: STRUCTURE OF MUNICIPAL GOVERNMENT

Municipal Elections
Municipal Elections

Elections are perhaps the most fundamental element of representative democracy. Steps, therefore, 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. 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 can not be closely related to any municipal candidate. 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 then the actual election. Qualifying is the process through which candidates indicate their desire to run for office and 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 can not pay the fee. Qualifying fees for nonpartisan municipal offices are 3% of the previous years 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. The overwhelming majority of municipal elections in Georgia are non-partisan and therefore the election cycle tends to be rather short. Qualifying for most municipal elections takes place over a period of 3 to 5 consecutive days usually beginning on the last Monday in August, but always ending before the following Friday at 4:30 p.m. 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. Most cities conduct their own qualifying and appoint their own election superintendent for this purpose.

Write-In Candidates

Georgia does allow for write in candidates, however, write-in candidates must also 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 7 days after the closing of the regular qualifying period. 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 for 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. 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 however, 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 provide that candidates run simultaneously for multiple posts with the top vote getters filling the seats. Many cities contact 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. There are four specified election dates per year on which such elections may be held, with specific timelines for calling the election. At the time of publication, 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; and for even numbered years, the third Tuesday in March; 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, the third Tuesday in September, and the third Tuesday after the first Monday in November.

**Home Rule**

Although there is some room for variation of the means of electing members of a city governing authority, almost all such changes must be made by the state legislature. Any such changes made by the legislature must in turn be precleared by the United States Department of Justice under Section 5 of the federal Voting Rights Act. 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. (At the time of publication, the City of Sandy Springs was the only local government in Georgia that was not a “covered jurisdiction”.) Although the Justice Department will not review any change that has not already been formally adopted by a state or local government, any such state or locally adopted changes are frozen under the Justice Department reviews and approves them.
For more information on local redistricting plans see the 2001 Georgia Municipal Redistricting Guide.

NOTES

1 See O.C.G.A. 21-2-70.
2 O.C.G.A. § 21-2-70.1.
3 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. Id.
5 O.C.G.A. § 21-2-131(b)(5); O.C.G.A. § 21-2-131(d)(3); O.C.G.A. § 21-2-132(g).
8 Id.
9 O.C.G.A. § 21-2-133.
10 Id.
11 O.C.G.A. § 21-2-9(b).
13 See e.g. Chickamauga City Charter as amended, Ga. Law 1913, p. 665.
14 See e.g. O.C.G.A. § 3-4-91, authorizing the sale of distilled spirits by the drink.
15 See O.C.G.A. § 21-2-540.
16 Id.
17 O.C.G.A. § 36-35-6(a)(1).
20 Id.
Part One: STRUCTURE OF MUNICIPAL GOVERNMENT

Liability of Public Officials and the City
Liability of Public Officials and the City

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.¹

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 according to Black’s Law Dictionary, 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.²

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.³ Additionally immunity is waived for the performance of non-governmental, often called proprietary, functions.⁴ For example, a hospital is not covered by sovereign immunity because it performs the same functions as a private hospital.⁵

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.⁶ 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.⁷ Local governments can increase the waiver of immunity by adopting a resolution or ordinance doing so or 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.

**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.

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. 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 work forces, 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 twenty-two extra months in jail. Courts have also declined to extend sovereign immunity to inspectors when their failure to do an adequate job causes damages.
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. 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. Cities can also be held liable in a nuisance action when a construction project disrupts drainage and causes damage.

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 pertinent 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. 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.

Under Section 1983 there is no respondeat superior liability. 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 1983.22

**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.23

**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.24 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.25

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.26 It is enough if the officials have fair warning that their conduct violates established law.27 This is particularly true when the existing case law strongly indicates unconstitutionality and the conduct of the officials or employees is particularly egregious.28

**INDEMNIFICATION, INSURANCE AND RISK MANAGEMENT**

Cities are authorized to purchase liability or indemnity insurance covering mayors and councilmembers as well as city employees.29 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.30 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.31 However, a city is not required to defend such actions.32 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. 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. 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**

In recent years, the Georgia Legislature has taken on the issue of illegal immigration. The legislature has passed a series of laws which attempt to curb the flow of such immigration into the state. In order to effectuate these laws the state relies heavily upon local governments, including municipalities, 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 some serious penalties for the municipality and for municipal employees and officials.

One requirement under Georgia’s immigration laws places a mandate upon municipalities to obtain affidavits from every contractor performing work for the city on public works contracts, including contracts involving the operation, maintenance, and repair of building and structures.
Municipalities face possible loss of qualified local government status if they fail to follow the provisions of this area of Georgia’s immigration laws.\textsuperscript{36}

In addition to the requirements for contractors, municipalities must obtain affidavits from private employers who employ a certain number of employees or face the possibility of criminal or civil action brought by the Attorney General.\textsuperscript{37} 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 newly created Immigration Enforcement Review Board, which may lead to civil fines of up to $10,000.00, restitution for the cost of the violation, and removal from office or employment.\textsuperscript{38} Therefore, the potential liability for public officials, employees and municipalities is substantial in regards to compliance with Georgia’s immigration laws.

\section*{NOTES}

\begin{itemize}
\item[1.] CSX Transportation, Inc. v. The City of Garden City, 325 F.3d 1236 (2003).
\item[3.] O.C.G.A. § 36-33-1.
\item[4.] Ibid.
\item[5.] Thomas v. Hospital Authority of Clarke County, 264 Ga. 40, 440 S.E.2d 195 (1994).
\item[6.] O.C.G.A. § 36-92-1 et seq.
\item[7.] Effective January 1, 2008: $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.
\item[8.] O.C.G.A. § 36-92-4.
\item[9.] Ibid.
\item[10.] Cameron v. Lang, 274 Ga. 122, 123, 549 S.E.2d 341 (2001)
\item[12.] McGee v. Hicks, 303 Ga.App. 130, 132, 693 S.E.2d 130, 131 (2010).
\item[16.] Ibid.
\item[19.] Misek v. City of Chicago, 783 F.2d 98 (1986).
\item[21.] Ibid.
\item[22.] City of Cave Spring v. Mason, 252 Ga. 3, 310 S.E.2d 892 (1984).
\item[24.] 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).
\item[26.] Hope v. Pelzer, 122 S.Ct. 2508 (2002)
\end{itemize}
Ibid.

Sheldon Nahmod, Professor of Law, Chicago-Kent College of Law, “Section 1983 Overview and Update”, 50th Annual Institute for City and County Attorneys (Athens: Institute of Continuing Legal Education in Georgia), 35


O.C.G.A. § 36-85-1 et seq.

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)

O.C.G.A. § 13-10-91(b).

O.C.G.A. § 13-10-91(b)(7).

O.C.G.A. § 36-6-60(j).

O.C.G.A. § 45-10-28(c).
Part One: STRUCTURE OF MUNICIPAL GOVERNMENT

Ethics, Conflict of Interest, and Abuse of Office
Ethics, Conflict of Interest, and Abuse of Office

Public Trusteeship

Trust is the key word that describes the appropriate relationship between a local government’s elected officials, other public officials, and their constituency. An elected official serves only as a result of the trust which the majority of the electorate have 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.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.2 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’s 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.3 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. The Georgia courts have sought to negate even the “appearance of wrongdoing.”

One court decision involving a mayor who owned a car dealership illustrates this concept. The city for which the mayor served engaged in sealed competitive bids for police cars for the city. The mayor’s dealership had the lowest bid for the cars and therefore won the contract. The court, careful to avoid suggesting that the mayor took any wrongful action or improperly influenced the council’s decision, invalidated the car purchase contract. The court conceded that the contract with the mayor’s dealership was the lowest and most advantageous bid from the perspective of the city, but found that the situation presented an appearance of wrongdoing which could not be tolerated. The mayor in question had the opportunity to profit because of his position with the city plus a natural human temptation to profit from the public business. Even though the mayor did not use any influence in obtaining the contract award, the contract was void as against public policy.

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. For additional details on state and federal ethics laws, campaign disclosure requirements and local ethics ordinances, please see GMA’s publication “Ethics in Government: Charting the Right Course” (2010 edition).

**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. 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. 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 didn’t vote or attempt to influence members of the council. 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.  

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.

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. 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.

Another statutory provision of interest to public officials is the code of ethics for governmental service. The code presents 10 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. Thus, a city official cannot also serve on a municipal planning commission, serve as city clerk, or hold office as city building inspector.
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. 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. 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. 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. 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.
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.23

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.24 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:

a. Food or beverage consumed at a single meal or event;
b. Legitimate salary, benefits, fees, commissions, or expenses associated with a public official’s nonpublic business;
c. An award, plaque, certificate, memento, or similar item given in recognition of the public official’s civic, charitable, political, professional or public service;
d. Food, beverages, and registration at group events to which all members of the governing authority are invited;
e. 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;
f. A commercially reasonable loan made in the ordinary course of business;
g. Any gift with a value less than $100;
h. Promotional items generally distributed to the general public or to public officials;
i. A gift from a member of the public official’s immediate family; or
j. 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.25

Any person convicted of bribery is subject to a fine of not more than $5,000 or imprisonment for not less than 1 or more than 20 years or both.26 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.\(^{27}\)

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\(^{28}\) or (2) attempting to influence official action of any other public officer or employee of the city.\(^{29}\) Upon conviction, the officer may be punished by imprisonment of not less than 1 or more than 5 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.\(^{30}\) 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.\(^{31}\)

Any public officer who willfully and intentionally violates the terms of his or her oath of office is to be punished by imprisonment for not less than 1 or more than 5 years.\(^{32}\) 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 1 to not more than 5 years.\(^{33}\) 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.\(^{34}\)

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 2 to 10 years. Under this statute, willfully removing public records from the premises of the public office is considered stealing the public records.\(^{35}\)

In addition to the infractions previously described, 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.\(^{36}\)

\textit{Campaign Financial Disclosure, Personal Financial Disclosure and Lobbying}

Details on the state law applicable to campaign financing and disclosure\(^{37}\) 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. 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 Georgia Government Transparency and Campaign Finance Commission. In each nonelection year, the reports must be filed on June 30 and December 31. In each election year, the reports must be filed on 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. 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.

Public officers, candidates and their campaign committees may file electronically or may file by certified mail or statutory overnight delivery. However, filers are encouraged to file electronically to ensure that their reports are received in a timely fashion by the Commission.

For each campaign disclosure report that is filed late, the Commission will impose a late fee of $125.00. An additional late fee of $250.00 will be imposed on the fifteenth day after the due date and yet another late fee of $1,000.00 will be imposed on the forty-fifth day after the report was due.

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. Late filing of personal financial disclosure reports is subject to the same schedule of late fees applicable to campaign disclosure reports.

There are also state laws relating to registration and reporting by persons who lobby the General Assembly and persons who lobby local governments.

Finally, Georgia law forbids the expenditure of public funds to influence the outcome of an election. 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. 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 member of the family 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/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 includes a spouse, mother, father, brother, sister, son, or daughter of the official. (This law is described more fully in Chapter 14.) Knowingly failing to comply with these requirements or knowingly violating the other provisions of this law can result in conviction of a misdemeanor.

**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 five ethics principles are designed to guide the elected officials as individuals and as a governing body. These principals are:

- Serve others, not ourselves
- Use resources with efficiency and economy
- Treat all people fairly
- Use the power of our position for the well being 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 are 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 the GMA publication “Ethics in Government: Charting the Right Course” (2010 edition) and visit the GMA website for more information on the “Certified City 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.

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. The Hobbs Act defines extortion as “obtaining of property from another…under color of official right.” 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. 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.

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. 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.

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. 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.

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. 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.
addition to individuals, local governments are considered persons that can be held liable under
the FCA. 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. 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. The federal government may intervene in the case or not 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.

Additionally, a public official may be subject to recall by the electors pursuant to the provisions
of the Recall Act of 1989. 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.

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.

NOTES

1 GA. CONST. Art 1, § 2 ¶1.
4 Ibid. (decided under previous statutory law).
5 O.C.G.A.§ 36-30-6.
Story v. City of Macon, 205 Ga. 590, 54 S.E.2d 396 (1949).

Hardy v. City of Gainesville, 121 Ga. 327, 48 S.E. 921 (1904).

City of Macon v. Huff, 60 Ga. 221 (1878).

Montgomery v. City of Atlanta, 162 Ga. 534, 134 S.E. 152 (1926).


Letter to the Honorable Robert S. Reeves, Chairman, Emanuel County Board of Commissioners from Attorney General Michael J. Bowers (March 31, 1997).

O.C.G.A. § 45-10-1.

O.C.G.A. § 36-30-4.


O.C.G.A. § 36-60-23.

O.C.G.A. § 16-10-6.

O.C.G.A. § 16-10-6(d).

O.C.G.A. § 16-10-6(c)(3).

O.C.G.A. §§ 16-10-1, 16-10-2, 16-10-4, 16-10-5, 16-10-21.

O.C.G.A. § 16-10-2.

Ibid.

O.C.G.A. § 45-10-4.

O.C.G.A. § 45-11-5.

O.C.G.A. § 45-11-10.

O.C.G.A. § 16-10-1.

O.C.G.A. § 16-10-21.

O.C.G.A. § 36-91-21(f).

O.C.G.A. § 45-11-1.

O.C.G.A. § 45-11-4.


O.C.G.A. § 21-5-34(c)(1).

O.C.G.A. § 21-5-34(c)(2).

O.C.G.A. § 21-5-34(c)(4).

O.C.G.A. § 21-5-34.1(c).

O.C.G.A. § 21-5-34(k).

O.C.G.A. § 21-5-50(a).

O.C.G.A. § 21-5-50(f).

O.C.G.A. §§21-5-70 through 21-5-73.

O.C.G.A. § 21-5-30.2.


Ibid. at 6.

Ibid. at 9.


Ibid.


60 Ibid. at 18-19; 18 U.S.C.A. §§ 1341, 1343, 1346.
65 O.C.G.A. § 45-5-6.
66 O.C.G.A. §§ 45-5-6, 45-5-6.1.
67 O.C.G.A. § 21-4-1 et seq.
68 O.C.G.A. § 21-4-3(7).
Part Two: PUBLIC ACCESS and MEDIA RELATIONS

Open Meetings and Open Records
OPEN MEETINGS AND OPEN RECORDS

Georgia’s open meetings law and open records law are commonly referred to as the “sunshine laws.” The open meetings law requires that the public have notice and access to meetings of the city council as well as those of other governmental boards, committees, authorities, and other bodies. The open records law establishes the procedure for providing city and other governmental agency records to anyone requesting to see them. The sunshine laws give citizens and non-citizens alike the opportunity to learn about how government operates, how tax dollars are spent, and how decisions that affect their daily lives are made. This access to city government is key to fostering public trust in the actions of city governments.

OPEN MEETINGS

Who Must Comply with the Open Meetings Act?

Georgia’s open meetings law applies to meetings of the governing authority of every “agency” including every county, municipal corporation, school district, or other political subdivision of the state and any committee of an agency’s members. Thus meetings of the city council and committees established by the city on which a member of the council serves are covered meetings. The open meetings law also applies to the governing body of every city department, agency, board, bureau, commission, authority, or similar body. Meetings of the planning and zoning board, the zoning board of appeals, the personnel review board, the merit system board, the water and sewer authority, the development authority, the hospital authority, the housing authority, the recreation authority, and similar bodies must also follow the requirements of the open meetings law.

What Meetings Must Be Open?

In general, whenever a quorum of the city council or other governing body of an “agency” gathers at a designated time to conduct or discuss public or official business, it is considered to be a meeting that must be open to the public and comply with the other requirements of the open meetings law. This mandate applies to gatherings at which any public matter, official business, or policy is discussed or presented, including work sessions even if no final action is taken. A quorum of council members may attend social gatherings without violating the open meetings law so long as no city business or other public matter is discussed. Recently the Georgia Court of Appeals ruled the open meetings law was not violated when four county commissioners, the county administrator and the county attorney met and discussed a superior court ruling on a county rezoning case immediately following the judge’s ruling from the bench. The court relied upon the fact that the impromptu post-hearing conference was not held “pursuant to schedule, call or notice … at a designated time and place” and that no “official action” was taken.

The statute expressly states that a gathering of a quorum of the members of the governing body of an agency is not a meeting when the purpose of the gathering is to inspect physical facilities under the jurisdiction of the agency or when the purpose of the gathering is to meet with employees of other agencies outside the geographical jurisdiction of an agency and at which no final action will be taken.
Requirements of the Open Meetings Law

The city must provide the public with advance notice of meetings and prepare an agenda, a written summary and minutes for each meeting. Additionally, the public must be allowed access to any open meeting and to make visual or sound recordings of any open 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 city council. For any meetings that are not conducted at the regular meeting place or time, the city 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. In counties in which a legal organ is published less than four times per week, the time, place, and date of the meeting must be posted for at least 24 hours at the regular meeting location and, upon written request from broadcast or print media in the county, notice must be provided to the requesting media 24 hours in advance of the meeting. When special circumstances occur, the city may hold a meeting with less than 24 hours notice, if the city provides notice of the time, date, and location of the meeting and an agenda to the legal organ.

An agenda of all matters expected to come before the council 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. 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.

Members of the public must be allowed access to the meeting. If attendance at a meeting is larger than the meeting room can accommodate, then the council should move the meeting to a larger meeting room, if available. 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. The minutes must, at a minimum, contain the names of the council members present at the meeting, a description of each motion or other proposal made, and a record of all votes. For emergency meetings (i.e., meetings with less than 24 hours notice), the minutes must describe the notice given and the reason for the emergency.

If the governor or other authorized state official declares an emergency or disaster that renders it impossible or imprudent to hold a meeting at the regular time and place, a meeting may be held at the call of the presiding officer or any two members of the governing body. To the extent made necessary by the emergency, the council members are not required to comply with time consuming procedures and formalities prescribed by law, according to the Georgia Emergency Management Act of 1981.

Permissible Closed Meetings

Although there are numerous exceptions to the requirements of the open meetings law, there are three primary reasons why a city council would lawfully hold a closed meeting. These reasons
are: (1) to discuss pending or potential litigation with legal counsel; (2) to discuss the acquisition of real estate by the city; or (3) to discuss hiring, compensation, evaluation or disciplinary action for a specific public officer or employee.

The attorney-client privilege allows the council to meet with its attorney to discuss pending or potential lawsuits or claims against or by the city in a closed meeting. Two things must be considered before closing a meeting pursuant to the attorney-client privilege. First, the attorney representing the city in the pending or potential lawsuit must be present. Second, a lawsuit by or against the city must already be filed, or there must be a potential lawsuit. A mere threat to take legal action against the city is not enough to close a meeting to discuss a potential lawsuit. In order to determine whether a threat to sue the city is a potential lawsuit that may be discussed in an executive session, council members should ask the following questions:

1. Is there a formal demand letter or something else in writing that presents a claim against the city and indicates a sincere intent to sue?
2. Is there previous or preexisting litigation between the city and the other party or proof of ongoing litigation on similar claims?
3. Is there proof that the other party has hired an attorney and expressed an intent to sue?

Additionally, the meeting may not be closed to receive legal advice on whether a topic may be discussed in a closed meeting.

Council members may close a meeting to discuss the purchase of real estate by the city. The exception applies only when the city acquires property, not when it sells property. Additionally, it applies only when the city is purchasing real property. The exemption does not apply when the city purchases personal property, such as vehicles, equipment, or supplies. And although the Attorney General’s Office has asserted that voting is never permissible in a legally closed meeting, the Georgia Court of Appeals has acknowledged that a vote may legally be taken in a meeting properly closed for the purpose of discussing the acquisition of real estate and that voting on whether to accept or reject a settlement offer in a pending lawsuit during an executive session was appropriate under the attorney-client exception.

Council members may close the portion of the meeting during which they are deliberating on hiring, appointing, compensating, disciplining, or dismissing an employee. However, any portion of a meeting during which the council receives evidence or hears arguments involving disciplinary actions must be open. Additionally, all votes on personnel matters must be taken in public.

Because closed meetings are the exception, 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. And it does not matter what a 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. But whatever a meeting is called, it should be clear to the public whether the meeting is open or closed.

**Properly Conducting a Closed Meeting**

In creating special exemptions to the open meetings law, the General Assembly also established
certain requirements for conducting closed meetings. All executive sessions must take place within a properly advertised open meeting. The council, in a properly advertised open meeting, must vote to close the meeting and the reasons for closing the meeting and the results of the vote must be entered into the minutes of the open meeting. Only those with an actual “need to know” should attend the meeting. If a session is closed, it must be closed to everyone not necessary to consideration of the subject of the closed meeting.

Only matters that are legally exempt from the open meetings law may be discussed at the executive session. If someone attempts to bring up a nonexempt topic, the presiding officer should rule that person out of order. If the nonexempt discussion continues, the presiding officer should adjourn the meeting immediately. At the end of the closed meeting, the presiding officer must sign a notarized affidavit stating, under oath, that only legally exempt topics were discussed and providing the legal authority for the exemption. The affidavit must be included with the minutes from the open meeting.

Minutes must be prepared for the open meeting that precedes the executive session and must reflect the names of the council members present and the names of council members who voted to close the meeting as well as the specific reason for closing the meeting. Minutes of a closed meeting may be taken but are required only for land acquisitions. In the case of executive sessions held to discuss land acquisition, minutes must be taken as in an open meeting, except that the city may delay releasing the portion of the minutes that would disclose the identity of the real estate until the property has been purchased or the city decides not to purchase it.

Consequences of Noncompliance with Open Meetings Laws
In addition to the district attorney or solicitor, the Attorney General is authorized to file a criminal action against individuals who violate the open meetings law. Anyone who knowingly violates the open meetings law may be found guilty of a misdemeanor and fined up to $500. 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.

The Attorney General or any other person, firm, or corporation may bring a civil action in superior court to require the city to obey the open meetings law. Such lawsuits must be filed within 90 days of the date that the alleged violation of the open meetings law occurred. However, for zoning decisions, the action must be brought within 30 days. If challenged successfully, any resolution, ordinance, rule, regulation, or other official action made or adopted at a meeting that does not comply with the law will not be binding.

The city may be required to pay the complaining party’s attorney’s fees, unless the city can show that it acted with substantial justification in not complying with the open meetings law. Further, participation in a meeting that is held in violation of the open meetings act may be grounds for recall.

The open meetings law provides city council members with a tool that encourages public participation in city government. It is a prime opportunity for council members to show their citizens how their tax dollars are spent. For additional details on the open meetings law as well as case summaries and forms, see GMA’s publication “Government in the Sunshine.”
Open Records

Who Must Comply with the Open Records Law?

Georgia’s open records law applies to anyone who possesses records of the city, including all council minutes and records of city departments, agencies, boards, bureaus, commissions, authorities, and other similar bodies. Further, it applies to companies, individuals, and other entities that do business with or have contracts with the city to provide services for the city. Generally, the city employee or official who maintains the records is the records custodian who actually responds to requests for city records. For example, if an individual requested council meeting minutes, the city clerk would be the likely records custodian to handle the request. If an individual requested personnel records, the personnel director or his or her designee would likely be the records custodian.

Public Records Subject to Disclosure

All documents, papers, letters, maps, books, tapes, photographs, computer-based or computer-generated information, or similar material prepared and maintained or received in the course of the operation of the city are public records subject to disclosure unless they fall within one of the legal exemptions to the open records law. Handwritten notes, e-mails, calendars, etc., are also public records subject to disclosure under the open records law.

Some records are not required ever to be disclosed, while other records may be withheld from disclosure only temporarily. Most of the exemptions to the open records law merely permit the city to withhold records; in other words, although records are exempt, the city may choose to release them. However, certain records must be kept confidential and may not be released. Another section of this chapter discusses some of the exemptions most relevant to mayors and council members.

Response to an Open Records Request

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. In order to respond within three business days as required, the individual in control of the documents, or the records custodian, needs to do the following:

1. Determine whether the city has the requested documents. The city is not required to prepare any reports, summaries, or compilations that are not in existence at the time of the request. However, requests may be made for documents that do not currently exist but will exist in the future. For example, if an individual requested copies of minutes of future meetings, the city would be obliged to provide copies of the minutes as they come into existence.

2. Determine whether the requested documents are subject to an exemption to the open records law. The records custodian should give careful consideration before determining that a record is not subject to disclosure. Remember, the rule is that the record is open; the exceptions for not having to release a document are very narrow. As will be explained, failure to provide an open record is a crime. However, a records custodian will not be held liable if he or she is sued for releasing a record in error in good faith reliance that it
was subject to the open records law. 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. Upon the discovery of an error in designating an exemption, the city has only one opportunity to amend or supplement the designation. Such a correction or amendment must be made within five days of the discovery of the error or within five days of the institution of an action to enforce the act, whichever is sooner. 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.

3. Provide an estimate of any copying or administrative charges for responding to the request. The records custodian must notify the party making the request of the estimated charge prior to fulfilling the request. Where fees are specifically authorized by law, those fees shall apply. If there are no fees provided by law, then the city may collect a uniform copying fee of up to 25 cents per page. Reasonable charges for search, retrieval, and other direct administrative costs may be collected. However, the hourly charge shall not exceed the salary of the lowest-paid full-time employee with the requisite skill and knowledge to perform the request and there may be no charge for the first 15 minutes of work. For records made available through electronic means, the agency may charge the actual cost of the computer disk and for other administrative costs directly attributable to providing access, unless it is information from a geographic information system. Cities may establish license fees or other fees for providing information from the geographic information system to recover a reasonable portion of the cost to the taxpayers associated with building and maintaining the system.

4. Permit inspection and copying of the requested documents, if available. If the records or documents cannot be made available within three business days, then a written description of the records, along with a timetable for inspection and copying, must be provided within three days. When requested, records maintained by computer shall be made available when practicable by electronic means, including Internet access, subject to reasonable security restrictions. The records custodian must supervise the copying and may adopt and enforce reasonable rules governing the work. The copying must be done in the room where the records, documents, or instruments are kept by law. The records custodian must also use the most economical means available in responding to the request. When a person has requested copies and does not pay, the city is authorized to collect the charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the city, so long as an estimate for the charges was provided to the requesting party before the records custodian fulfilled the request. When requests are made by a state or federal grand jury, taxing authority, law enforcement agency or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation, the procedures and copying fees do not apply.

Penalties and Fines for Failure to Comply with the Open Records Law

In addition to the district attorney or solicitor, the Attorney General is authorized to file a criminal action against individuals who violate the open records law. Anyone who knowingly and willfully violates the open records law, either by refusing access or failing to provide documents within the requisite time, may be found guilty of a misdemeanor and may be subject
to a fine not to exceed $100. 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.

**Records That Must be Kept Confidential**

In addition to medical records, certain information that could lead to identity theft should not be released except under specific circumstances. Specifically, social security numbers, mother’s birth name, credit card, debit card, bank account information, account number, including utility account number and password used to access the account, financial data, insurance information, or medical information must be redacted from all records before they are released. If technically feasible and not cost prohibitive, month and date of birth must be redacted. However, a representative of a “news media organization” gathering information for use in connection with news reporting may obtain access to an individual’s social security number and day and month of birth by requesting such in a writing signed under oath attesting that they are a member of the media requesting such information for news gathering purposes. This, of course, leads to the yet unanswered questions of what is a “news media organization” and what qualifies as “news gathering purposes.” But even representatives of a news media organization are not entitled to access the social security number and day and month of birth for public employees, teachers and public school employees.

There are certain people, however, who may request and receive access to the personal and financial data generally exempted from access as discussed above. These are as follows:

- An individual or his or her legal representative may obtain records containing that individual’s social security numbers, mother’s birth name, credit card, debit card, bank account, financial data, insurance data, or medical information;
- A government employee may obtain records containing social security numbers, mother’s birth name, credit card, debit card, bank account, financial data, insurance data, or medical information if he or she is doing so for administrative or law enforcement purposes;
- Any individual may obtain date of birth and mother’s birth name of a deceased individual
- Consumer reporting agencies may obtain credit and payment information.

Tax matters made confidential by state law, such as certain occupation tax records, must not be released. Trade secrets and certain proprietary information protected by the Georgia Trade Secrets Act of 1990 may not be released. Records specifically required by federal statute or regulation to be kept confidential may not be released.

**Records That Are Temporarily Exempt from Disclosure**

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

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.\textsuperscript{76}

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 three finalists are selected, unless the public has had access to the application and interview process.\textsuperscript{77} Fourteen 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.\textsuperscript{78} However, the city may be required to provide information regarding the number of applicants and the race and gender of those applicants.

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.\textsuperscript{79}

Pending bids and proposals. On construction projects, the engineer’s cost estimates and competing bids and proposals may be withheld until such time as the final award of the contract is made or the project is abandoned.\textsuperscript{80}

Attorney-client privilege. Records subject to the attorney-client privilege (i.e., records pertaining to the requesting or giving of legal advice concerning pending or potential litigation, settlement, administrative proceedings, or other judicial actions in which the city is involved) may be withheld on pending litigation.\textsuperscript{81}

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.\textsuperscript{82}

**Records That May Be Withheld**

Certain records including records of confidential evaluations relating to the appointment or hiring of a public officer or employee\textsuperscript{83} may be (but are not required to be) withheld from disclosure. Records of which disclosure would be an invasion of privacy according to Georgia case law may be withheld.\textsuperscript{84} Records that would reveal the home address, telephone number, social security number, insurance, medical information, or family members of law enforcement officers, firefighters, EMTs, paramedics, judges, correctional employees, prosecutors, Georgia Bureau of Investigation forensic scientists, or employees of the Department of Revenue may be withheld.\textsuperscript{85} The difficulty or impossibility created by this exemption arises from the fact that many different types of records may be maintained on an individual such as utility records, property records, recreation files, tax records and personnel files. This exception is not limited to personnel files but would seemingly require all local governments to know all of the law enforcement officers, judges, correctional employees, GBI scientists and prosecutors living in their community and having a record of any type within their city such as a utility account.

Records that would reveal the home address, home telephone number, e-mail address, and social security numbers of public employees and of private school teachers and employees are also exempt from disclosure.\textsuperscript{86} The absence of the word “home” in front of the recent addition of “e-mail address” in this section suggests that every e-mail address of teachers, whether work related or personal, is not subject to disclosure. Note that this subsection creates the same impossible
task as the one before it as cities are not likely to know every public and private school teacher for whom they may have such information in public records.

An exemption from public disclosure is also provided for information related to neighborhood watch programs, public safety notification programs, and burglar alarm, fire alarm, or other electronic security systems. Government records that contain names, home addresses, telephone numbers, e-mail addresses, security codes or other information related to those systems may be kept private. However, initial police reports and incident reports are subject to disclosure.

Georgia Uniform Motor Vehicle Accident Reports may be withheld unless the person requesting the accident report is named in the report, represents someone named in the report, or files a statement of need. Additionally, certain other governmental agencies may acquire accident reports without filing a statement of need if they are obtaining the accident report in conjunction with an ongoing administrative, criminal, or tax investigation.

City Actions to Make Records More Accessible to the Public

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. Examples of records that some cities are posting on the Internet include meeting schedules, agendas, minutes, and city ordinances. However, thought should be given to the type of electronic access that will be offered, the type of records that will be made available electronically, and whether or not systems can be designed to ensure the security of city computer systems and records. To avoid any confusion about computer access, city officials may choose to designate by ordinance or resolution which records, if any, will be made available electronically. The open records law requires that, when it is practicable, records must be made available electronically when requested. If your city does not yet have e-mail or a website, weigh the cost to the taxpayers of providing this access against the time and money that could be saved by not having to photocopy requested records.

City officials should also emphasize to city employees the importance of good customer service. Almost all of the information contained in city records belongs to the public. Make sure that city employees understand that, regardless of the attitude of the party requesting the documents, these are public records and, as public employees, they are required to assist the requestor. The requestor should not be considered an adversary.

However, municipal employees that receive records requests should be instructed to make a written record of oral open records requests. 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. Most requestors will readily provide a written request for two reasons: it protects them 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. To simplify the process, a city could provide the requestor with a basic request form if he or she appears at city hall in person or the form could be mailed, faxed, e-mailed, or posted on the city’s website. City staff receiving the request should use a standard form for recording requests not received in writing.

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. Within three business days of a request, the requested records should be found and any relevant exemptions identified. Remember, claimed exemptions may only be amended or corrected one time. A file list or inventory will allow quicker access to records as well as complete and accurate responses to requests.

Cities should adopt a standard policy on charges for copying, administrative searches and other permitted fees and seek reimbursement of costs uniformly. Do not charge some citizens but not others for copies and administrative time unless the policy provides that no charge is imposed for minimal amounts of copying. The copying and administrative charges authorized by the open records law are not to be used to discourage frequent or unpleasant requestors. Rather, they are designed to ease the cost of providing access to public records to the taxpayers, who ultimately pay the cost of compliance beyond what is collected in fees from the requestor.

If a requested record is available at the time of the request, do not make the requestor wait three business days merely because the law allows it. The law does not require that records custodians wait the three-business-day window to respond; it merely allows the records custodian three business days to process those requests that cannot be filled immediately.

Finally, resist taking advantage of technicalities and loopholes in the law. Trying to work around the law is the surest way to guarantee that new changes will be made that will make it even tougher for city officials to comply efficiently with the open records law. When faced with a gray area or a loophole, remember that the General Assembly and the courts are available to clear up the issue. Be assured that the courts have made it clear that they will always lean toward making access easier or records more open.

1 O.C.G.A. § 50-14-1 et seq.
2 O.C.G.A. § 50-18-70 et seq.
3 O.C.G.A. § 50-14-1(a).
4 Ibid.
5 O.C.G.A. § 50-14-1(b).
7 O.C.G.A. § 50-14-1(a)(2).
8 O.C.G.A. §§ 50-14-1(d) and (e).
9 O.C.G.A. § 50-14-1(c).
10 O.C.G.A. § 50-14-1(d).
11 Ibid.
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12 O.C.G.A. § 50-14-1(e).
14 O.C.G.A. § 50-14-1(e)(2).
15 Ibid.
16 O.C.G.A. §§ 38-3-54 and -55.
17 O.C.G.A. § 50-14-2(1).
19 O.C.G.A. § 50-14-2(1).
20 O.C.G.A. § 50-14-3(4).
24 O.C.G.A. § 50-14-3(6).
25 Ibid.
26 O.C.G.A. § 50-14-4(a).
28 O.C.G.A. § 50-14-4(b).
29 Ibid.
30 O.C.G.A. § 50-14-4(a).
31 O.C.G.A. § 50-14-3(4).
33 O.C.G.A. § 50-14-6.
34 O.C.G.A. § 16-10-71.
35 O.C.G.A. § 50-14-5(a).
37 O.C.G.A. § 50-14-5(b).
38 See O.C.G.A. § 21-4-3(7); Davis v. Shavers, 263 Ga. 785, 439 S.E.2d 650 (1994).
47 O.C.G.A. § 50-18-72(g).
49 Ibid.
52 O.C.G.A. § 50-18-71(c).
55 O.C.G.A. § 50-29-2(b).
57 Ibid.
59 O.C.G.A. § 50-18-71(g).
60 O.C.G.A. § 50-18-71.2.
Open Meetings and Open Records

66 Ibid.
67 Ibid.
68 Ibid.
69 O.C.G.A. §§ 50-18-72(a)(11.3)(A) and (B)(v).
70 O.C.G.A. §§ 50-18-72(a)(11.3)(B)(ii), (iii), (viii) and (ix).
74 O.C.G.A. §§ 10-1-760 et seq. and 50-18-72(b)(1); Theragenics Corp. v. Georgia Department of Natural Resources, 545 S.E.2d 904 (2001).
78 Ibid.
90 O.C.G.A. § 50-18-70(g).
92 O.C.G.A. § 50-18-90 et seq.
Meetings Procedure, Organization, and Public Participation

During city council meetings, decisions are made that formally set municipal programs in motion, enact ordinances, adopt policy, and authorize the expenditure of city funds.¹ 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’s 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.²
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 several different types of meetings: regular meetings, work sessions, executive sessions, special meetings, and public hearings.

**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 may be held at other times established by the council. Premeeting work sessions may be used by councilmembers to prepare for upcoming regular meetings. These meetings are typically less formal and are often used for information gathering; no formal votes are taken. However, it should be noted that premeeting 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
Meetings and Public Participation

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 action 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 a 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 regular, 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.

**PREPARING FOR MEETINGS**

As an elected official, you bear a heavy burden: you will be 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 use 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, the mayor or whoever is chairing the meeting may have the unruly member 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
you can add something to it, 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. 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, adminis-
trative 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 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. A requirement that all members of the governing body 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.

11. Rules for enforcing decorum and proper conduct.

12. A procedure for appealing the decisions of the chair.

13. 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.

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. *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 actually quite simple. It systematically 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 because it provides predictability, it engenders greater public confidence.

**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. 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 ad-
ditions that introduce material members may not have had time to study should be avoided. City councils should 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 vote 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
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.
- 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.
Meetings and Public Participation

• 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.

• 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.

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 to 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 too quickly. 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, 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 policy making 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.

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. 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 one or more members 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:

- 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.

- A motion must directly relate to the question under consideration, and 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 then proceed with a vote on the main motion on the floor.

When special circumstances, 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.

• 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 often can 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.
NOTES


5. Ibid.
6. Ibid.
7. If they do not appear on the agenda, the rules for public forum should be explained each time by the chair.
Part Two: PUBLIC ACCESS and MEDIA RELATIONS
Public Relations

"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 gives 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’s 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 high-hat 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’s sometimes easy for citizen requests to “slip through the cracks” and remain unanswered for long periods of time. Don’t 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.

**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 the 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,
- 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 telephone 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.2

Since some contacts with the public will be written, *letter-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.

More cities are also using websites and electronic mail 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 proofed 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 read by the reader as sarcastic or mean. Even though emails are more informal than regular letters, the tone should remain business-like.

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 through 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’s 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 do 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 to make relations with the media beneficial, rather than frustrating, for local officials.

**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 turn-over 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. GMA produces a “Reporters’ Guide to Covering City Hall,” which offers basic information about city government. 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. Don’t, 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 can’t 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 weren’t aware 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 don’t play favorites. When there is some important news, see that all reporters are alerted. Don’t 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. It is a rare public official who has 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 don’t 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 shouldn’t 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.3

**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. (Exhibit 8-1 presents the standard format for a news release.)

A news release 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 to 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’s 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, two-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.

**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 the 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 derailing, 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 don’t 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
• keeps abreast of new technology for communications, such as telecommunications and computer databases
• maintains scrapbook of news clippings—invaluable for later research.4

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.

NOTES

3 From interview with Deborah L. Blum, former reporter for the Clearwater Times, March 1983.
4 Draws primarily from correspondence with Claire Benson, director of public information for the city of Athens, Georgia, February 1983.
Part Two: PUBLIC ACCESS and MEDIA RELATIONS

Conflict Resolution
Leaders Respond Effectively To Conflict

Given your hectic schedules and multiple demands, it is a wonder that you would take time to read this chapter. Let me reassure you, the read is worth your effort. Knowledge is power, and this chapter offers an insider’s perspective.

If you are searching for solutions to a specific situation, the chapter describes useful skills.
If you want to enhance how you and your municipality respond to conflict, I explain various procedures, how they work, and why they fit certain situations and not others.
If you are searching for “one size fits all,” feel no guilt if you skip this chapter.

Conflict surfaces in the normal course of life as incompatibility. It signals that an individual or group is:
- preventing you from accessing valued resources,
- preventing you from doing what you want to do, or
- violating a value.
Conflict can frustrate and sometimes offend; but it rarely involves pathology or evil. Even so, some people are so conflict averse that seeing the word invokes discomfort. Figure 1 depicts the two sides of conflict. This chapter describes a number of ways you can convert your sense of danger into opportunities.

We are complex creatures, so what could be more natural than to get on each other’s nerves? Conflict happens in part because we rarely divulge all of our desires, needs, and expectation to others. Yet, we depend on each other to accomplish things we can’t complete alone – like running a municipality effectively. You spend long hours with administrators, elected officials and citizens in tense meetings. Pressures push elected officials into perpetual campaigns and sound bites designed to create name recognition. Both portray the other side in less than flattering ways, and the sound bites bite. You face complex issues that impact multiple agencies and jurisdictions. Solutions defy comprehension; they are expensive; and
implementation may stretch into the future. I don’t wonder that conflict happens. Neither should you.

**A New Compass** This chapter asks you to reset your compass when it comes to conflict. Why? Because, reacting in ways that take advantage of conflict makes you a better leader, administrator, and manager.

Conflict disrupts “the normal way” of doing things, and that disruption releases human energy when people search for ways to refresh relationships. As a public official, you can harness the energy generated by conflict to create better ways of fulfilling obligations inherent to public service, specifically ways to work smarter; retain and build effective employees; create public trust; work more effectively with other political leaders; and find better solutions to complex problems.

**Reactions to Conflict** Professionals in my field will tell you that conflict is much less problematic than how you try to make it go away. Figure 2 depicts common reactions to conflict. The descriptions below note the limitations and benefits of each. Responding effectively is tricky for all of us. The quandary of responding effectively goes back at least to 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.”

**Flight** is the most common reaction to conflict. Figure 2 shows two forms: *avoidance* and *triangulation*. Neither is intrinsically bad, just overused and often substituted for more effective tools. To create good conflict outcomes you need to know when to walk away, wait, and when to act.

**Figure 2: Responses to Conflict**

Avoidance is an excellent reaction when a stranger affronts you, and the services they provide can be found anywhere. For example, I go to a retail store that carries common merchandise. I run into a nasty sales clerk or one not able to get off a cell phone. Instead of
calling the clerk up short, I walk away. The store and the clerk don’t provide me irreplaceable service, so why initiate a conflict? As you mentally survey relationships in your personal and political life, how many fit this description? Probably, not many; most of us depend on friends and colleagues to get things done.

Waiting is an option, sometimes. Avoidance works as a short-term strategy when it allows you to breathe, think, strategize, and gather information. Waiting a reasonable amount of time before acting also allows fights to mature. Acting prematurely typically falls on deaf ears because people don’t perceive a crisis. Until they do, they are reluctant to spend the time, energy, and money on a non-crisis. Now look at the other side of the coin. Unwise or protracted avoidance surfaces as denial, suppression, capitulation, or "management” tactics. I hear denial in statements like: “If it ain’t broke don’t fix it.” I suspect leaders are trying to suppress opponents when they hand off deliberations to committees; and management, another form of suppression, creates stogy, inflexible, uncaring organizations. In general, potentially toxic fights are not like fine wine; they don’t age well.

**Triangulation** represents another common flight tactic. Triangulation creates office grapevines. It occurs when someone is uncomfortable confronting the other person directly. So instead of confronting, they talk to friends and friends of friends. Triangulation helps if you talk to people who maintain confidentiality, as in hermetically sealed information; and your confidants urge you to talk directly to the offending person. Triangulation allows you to tell and explore your story, your narrative, safely. It also allows you to talk out possible solutions. But, substituting triangulation for confrontation carries the same disadvantages as avoidance.

**Fight** reactions, the other set of typical responses, assume some form of confrontation. Fighting is not intrinsically bad. Indeed, anyone who knows me knows I don’t consider confrontation to be a four-letter word. Especially if confronting means you jump in to figure out what the fight is all about, who is involved; and you use appropriate procedures to achieve great outcomes.

Certain events call for violent, in your face confrontation tactics, as when egregious injustices, like legally prohibited discrimination or physical attacks, have happened. But, these tactics use up vast amounts of money, personnel, and time while also damaging relationships. Anyone thinking about litigation or war should conduct a cool, clear analysis of long-term consequences such as burning political bridges.

To expand your options and enhance your skill, the rest of this chapter shares a professional’s understanding of and experience with non-violent confrontation.

**Basic Skills** No two conflicts are alike; so a single procedure like mediation can never transform every conflict. Effective conflict consultants know how to use several procedures and possess a complex pallet of skills. My basic pallet includes three skill sets: conflict analysis, communication and problem solving procedures.

So, come with me as I share what I know about these skills. Just remember that learning any skill requires perseverance, practice, patience with failure, and reassurance. Figure 3 depicts a normal learning curve that applies to playing a new instrument, speaking a new language, or internalizing new conflict skills. The journey takes you over hurdles to plateaus, and sometimes to “ah ha” moments. The journey is fun and never ends. After well over 40 years helping others, I still carry on internal conversations about choosing the right words at the right time. But stay with it, and these skills become your internal map for working with conflict.
Skill Set 1: Conflict Analysis A thorough conflict analysis guides you to your best intervention procedures. I begin by interviewing anyone directly involved or capable of blocking productive outcomes. Interviews uncover the shape and size of a conflict, and with that information I can suggest interventions. When the match is good, your risk of failure drops.

Conflict Components Figure 4 displays what I look for. Even initial conversations tell me if a conflict is realistic or unrealistic (see Coser, 1961, 1956). Most conflicts are realistic. When a conflict is realistic, issues are negotiable; and people are not determined to hurt each other. Data, structural, and interest conflicts involve negotiable issues. Unrealistic conflicts tap into strong emotions and sometimes threaten a person’s identity. Identity level values and highly emotional relational conflicts, two more sectors seen in Figure 4, are prone to be unrealistic. Unrealistic conflicts challenge all of us because highly emotional fights obscure any resolvable issues embedded in the conflict. Gang fights, protracted wars between the British and Northern Ireland separatist and Israeli – Palestinian conflicts are unrealistic. All are characterized by violence and poorly focused, almost obscure, resolution strategies. Emotional intensity tends to escalate when people fail to attend to a conflict, so procrastination can change move realistic conflicts toward the unrealistic side of the globe seen in Figure 4. Only a few fights between political leaders in Georgia come close to unrealistic proportions. But, gang fights are more common in Georgia whether your municipality is rural or urban.
Now, 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 negotiate. More negotiation options result in fewer impasses.

Of the dimensions indicated in Figure 4, 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 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
Leaders Respond Effectively To Conflict

buy into change. Years ago I 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 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 used when voting 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. Remember the last time Max Cleland ran for the US Senate?

**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; escalate to relational conflict; and then morph into unrealistic acerbic, verbal assaults promulgated in nasty, oft-repeated sound bites that infect local, state, and national media. Unrealistic conflicts fester in this crucible and erupt as accusations of discrimination, environmental or not-in-my-back-yard disputes, and staff versus volunteer disputes in non-profits that advocate for social services. Good outcomes are possible, but calculated vitriol leaves residual scars.

Community leaders are humans. Even though we expect rhetoric, cutting narratives hurt especially when there are fewer opportunities to discuss and listen respectfully, and little privacy to heal personal wounds. Formerly 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 working with **values conflict** distinguish between **day-to-day values** (e.g., whether someone is a rabid Braves or White Sox fan) versus those defining someone’s **personal identity** (e.g., whether someone is a literalist Christian or a devout Muslim). Working with day-to-day values is relatively easy, provided you approach a situation knowing that any value is important and not easily brushed aside. Identity values are not 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 2: Communication Ever wonder why we have two ears and one mouth? Ears allow you to take information in. Your mouth supports your need to give information, especially to assert changes important to you. Gathering information and providing information are both important, but effective communicators listen before talking.

Listening provides your best tool to analyze a conflict, but common pitfalls early in conversations may shut people down. Listening stops or information is badly distorted when: (1) you assume you “know” what is going on; about 95% of the time assumptions are incorrect. (2) listeners begin by interjecting their opinion about events. and (3) you start with direct questions, talking over someone or interrupting. Poor listening habits are ingrained and hard to break.

You may not be a therapist, but using passive and active skills to gather information is legitimate and effective. Passive skills include attending and passive prompts. Attending involves positioning your body, including your eyes, to convey respect and interest in what someone has to say. Passive prompts include little utterances like: “I see.” “Right.” “Ummm.” or “Sure.” Passive prompts reinforce a sense of your presence, but a few people hesitate to talk. Use passive prompts like: “I’m interested. Tell me.” followed by silence. As a general rule, people are uncomfortable with silence and will fill gaps in a conversation.

Skilled listeners embody genuine curiosity and demonstrate patience. This form of listening produces the information needed for a complete analysis. It also benefits the talker as they hear their own narrative unfold. Hearing then spurs someone talking to edit their story, creating more accurate accounts of events. All of this information is pure gold.

There are several forms of active listening; one is especially helpful after passive prompts and the other works well later in conversations. Once passive prompts unlock the flood gates, people seek affirmations that you heard and understood what they said. One form of active listening summarizes narratives, either as literal restatements or quick paraphrases that touch on 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 even embellish.

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 meets your needs?” “What time should that happen?” “What is your absolute deadline?” “How do you want funds transferred?” Closed-end questions shape good outcomes by making next steps explicit, even if that step is to meet again.

Closed-end questions also help you redirect conversations. Perhaps someone wanders off topic. Used 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 represents the flip side of listening. A variety of assertion techniques help you state your needs in ways that invite others to listen. Good assertions are clear, concise, specific, and include invitations to the other person to engage with you 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.

Examples of things to say and do:
- you don’t read minds. Divulge what you are thinking, don’t assume you know the other person’s intent. Say: “I’m anxious for us to reach an agreement so we can move to other lines in the budget.”
Leaders Respond Effectively To Conflict

- talk about emotions. Emotions are valid and drive conflicts forward. So say: “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 5 years?”
- use statements that affirm a working relationship: “I care that we have worked together well. I’m afraid for our party if our working relationship falls apart.”

Examples of things to avoid:
- 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.

These examples represent a tip of an iceberg; but, they convey techniques to help you shape productive conversations.

The Power of Narrative

The word narrative comes up several times in this chapter. The idea of narrative is important to you because whether consciously or not you depend on a narrative to get your message out, to attract constituent votes, and to counter messages of your opponents.

For speakers and listeners narratives create reality, and how you tell your political narrative determines success. Narratives are the stories we tell others so they know what we are experiencing or what we intend to do. For example, when someone tells you about a conflict, the story is a conflict narrative. When you hear any narrative (as in a budget deficit or a tax and spend story, as in a crime ridden city or a great place to live story, as in a terrorist plot or a lone killer story), the story shapes responses: to the facts, logic, and emotions of the story. Responses always affirm, rebut, or ignore parts of a story. The back and forth of narratives create how you think about the world. To illustrate that power, go back to Max Cleland’s defeat. Remember the media narrative about his patriotism? That narrative took over the reality of Max Cleland’s campaign, and his counter was powerless to change the narrative.

News talk shows manipulate narratives all the time. Media personalities, and PR machines, “spin” narratives so they capture and retain an audience following. Audiences understand the stories they hear as the “truth.” In political circles “spin” works exactly the same way. Research affirms the power of a narrative, but when you know the effect, you can use active listening prompts like those noted above to change or counter a narrative. This is a great tool in debates or interviews. But, when you lack awareness coupled with communication skills, you are defenseless to challenge and turn a narrative around. What is your political narrative: growth or no growth, public transportation or no public transportation, support for after school programs or no expansion in education, etc? It is the narrative you want? Are there narratives you want to correct?

Skills 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). A neighborhood protests changes in garbage fees and collection sites (structure and resources). Members of a governing authority snipe at each other during meetings or when speaking to the press (sniping probably reflects realistic conflicts over negotiable issues). Your service-delivery plan, comprehensive plan, or local option sales tax (LOST) negotiations hardly
bump along, and affected governments do not see eye-to-eye. Representatives won’t even look at each other. What is the best course of action?

Procedures you use to respond to a conflict determine, in some measure, whether or not conflicts benefit your municipality. This section takes the thread that started with conflict analysis, connected to communication skills, and now connects those skills to common procedures for working with conflicts.

**Major Procedures** Figure 5 highlights procedures used to work with conflict. Each label shown in Figure 5 alludes to a set of procedures that change somewhat in different contexts (such as litigation juvenile courts compared to superior courts) and when used for different reasons (facilitation used to explore technical problems would be different from facilitation to accomplish strategic planning).

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**Reactive Versus Proactive Responses** Before briefly describing procedures, look at the arrow at the bottom of Figure 5. The procedures relate to each other in at least two ways. First, litigation, arbitration, and mediation, conducted in a litigation context, respond to past conflicts. They react, and while possible, the shadow cast by litigation comes close to precluding proactive outcomes (say solutions calling for city planning).

Mediation conducted in contexts other than litigation, conflict coaching, dialog, and facilitation draw energy from past conflict, but solutions easily focus on future changes. 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 5 shows a heart and a ribbon around the heart. *Skills* lie at the heart of all good conflict work. *Negotiation* encompasses those skills and drives every procedure noted here. Years ago I directed the Mediator Skills Project, research documenting what mediators working with small groups do. We conducted a unique job analysis that validated 13 major and numerous minor skills. Skills are evident to researchers, but really good mediators don’t think about which skills they use moment-to-moment.

Negotiation is pictured in Figure 5 as a ribbon that binds skills and infuses all procedures. Negotiation relies on good communication between people as they go about solving problems together. Figures 6 through 9 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 6: Tables are Important**
Figure 7: Mediation and Facilitation

Figure 8: Team Mediation or Larger Facilitations
**Figure 9: Dialog**

*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 (see Herrman, 2010; 2005). 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.

Litigation and arbitration narrow the scope of a conflict. Both procedures require 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 (what you see on TV is far from accurate). 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, and they do not decide the outcome of a conflict. Their job is to help participants create and select best outcomes. Figures 6, 7 and 8 show various configurations. The procedure adapts well to relational, data, structural, and interest-based disputes, including those focusing on a legal dispute. So, both employee fights or regional water disputes are fair game.

I locate mediation in the middle of Figure 5 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 values/identity conflicts.

Conflict Coaching applies when people won’t or can’t negotiate face-to-face (see Figures 5 and 6). Coaching blends business coaching with conflict skills to guide problem solving. Coaches meet individual clients 8 or more times for about an hour. The extended time frame allows for a great deal of learning. Clients tell the narrative, and then explore alternative narratives. They explore their emotions, and learn new ways to problem solve. 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 9), and a structured format creates emotional safety. A structured format supports focused listening, heart-felt statements about feelings and world views, and perceptive questions about those world views. Escalated cycles of anger and suspicion stop when people hear others speak passionately about core values (see Goleman, 1997). 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.

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 7 and 8), 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 progress meeting departmental goals. Working with an external facilitator, departments can update strategic plans. Figure 7 shows how I use a facilitation or mediation (depending on levels of polarization) to address zoning and planning disputes. Figure 8 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 and 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. State-wide 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.

Sources

Bio
Dr. Margaret S. (Peggy) Herrman directs the Herrman Group (herrmangroup.com), a consultancy dedicated to helping people in conflict. Clients include corporations, non-profits, government agencies, universities, and individuals.

We have decades of experience working with all shapes and sizes of conflict, teaching, and training. Our work includes conflict coaching, mediation, dialog, and facilitation. Dr. Herrman founded the Mediator Skills Project, directed dispute resolution services for the Vinson Institute of Government, and founded the National Conference in Peacemaking and Conflict Resolution. Both the Georgia Sociological Association and the University of Georgia applauded the excellence of her work. She is a frequent keynote speaker with publications that include the

For more information visit Herrman Group at herrmangroup.com and look for Peggy’s blog soon. Our e-mail is info@herrmangroup.com, or we can be reached at 706.207.1490.
The costliest element in the operation of municipal government today is personnel. This cost factor, as well as federal and state requirements, makes it essential that municipal officials practice good human resource management. The first part of this chapter presents ways in which to establish and administer an effective human resource management system. The second defines federal and state laws that regulate the employer-employee relationship.

HUMAN RESOURCE MANAGEMENT

Perhaps the most important yet least attended to function of municipal government is human resource management. Human resource costs can exceed 70 percent of a city’s noncapital expenditures but often take a back seat to issues such as taxation, finance, and capital improvements. Human resource management covers a broad range of issues such as recruiting and selecting employees, establishing competitive salary rates for employees, properly training new and veteran employees, motivating employees to achieve desired objectives, and fairly and adequately evaluating employee performance.

This part of the chapter will familiarize elected officials with the basic issues involved in human resource management at the municipal government level. It also suggests appropriate sources of information for officials seeking further information or direct technical assistance. Subjects covered are employee selection, position classification, salary administration, employee benefits, employee training and development, performance appraisal, and personnel policies and procedures.
Employee Recruitment and Selection

In the past, municipal governments recruited their employees by word of mouth. Today, the increasing complexity of the work in which cities are involved, coupled with legal requirements and federal guidelines resulting from legislation such as the Civil Rights Act of 1991 and the Americans with Disabilities Act of 1990, calls for increased attention to employee recruitment and selection practices.¹

Recruitment

A broad-based recruitment program that seeks to incorporate all segments of the community is in the best interest of all concerned. Job announcements should clearly state the duties of the position, minimum and desired qualifications, salary ranges, and special licenses or certificates necessary to adequately perform the major duties of the position. Recruitment activities should be both passive (advertisements on the city’s official Web site and in local newspapers) and active (recruitment visits to schools and colleges), depending on the nature of the position to be filled. Position vacancies should be announced for at least 10 working days to allow those interested to learn of the vacancy and to have the opportunity to apply. When recruiting for positions such as department heads or city managers, a longer recruitment period is required if a city chooses to advertise regionally or nationally with organizations such as the International City/County Management Association (www.icma.org) or the American Society for Public Administration (www.publicservicecareers.org).² It is also strongly advisable to post these positions to Georgia Local Government Access Marketplace (www.glga.org). This Web site is sponsored by the Association County Commissioners of Georgia and the Georgia Municipal Association and is perhaps the best site available for local government recruitment in the state.

Selection

Since the U.S. Supreme Court case Griggs v. Duke Power Company, the selection of employees has come under increasing scrutiny and legal requirements.³ Municipalities should strive to create “selection devices” that help them choose the best-qualified applicants without adversely impacting minority and other protected groups. Selection devices include interviews, training and experience evaluations, written examinations, performance examinations, and assessment centers.

The city councilmembers’ role in employee selection is usually limited to the positions of appointed city managers or administrators and
in some cases department heads. Executive search firms are sometimes employed by cities to help them find well-qualified applicants for these high-level positions. Technical assistance is also available through the Carl Vinson Institute of Government.

**Open Meetings and Open Records Law Requirements**

There are a few special open meetings and open records laws that affect hiring municipal employees. A city council may interview applicants in closed executive sessions, but the vote must be taken in public.\(^4\) When a city is hiring certain employees such as city managers or administrators or department heads and wants to protect applicants from possible retribution from their current employers, it must observe special rules under the open records law. Records that would identify applicants for such positions may be kept confidential until three finalists have been selected. Fourteen days prior to the final decision, the city must release the names and applications of the three finalists unless an applicant withdraws from consideration for the position.\(^5\)

**Position Classification**

Position classification involves placing like positions together into groups or “classes.” For example, comparable secretarial positions could be grouped under the classification of administrative secretary, or similar equipment operation positions could be grouped under the classification of heavy equipment operator. Positions with the same position classification are assigned the same pay grade and pay range. This practice helps to ensure that a municipality is providing equitable pay.

Position classification provides the framework for an effective system of human resource management and has an impact on recruitment, selection, and performance appraisal. Job descriptions, which form the basis of the classification plan, should be up to date and specific in their listing of the major duties and responsibilities of positions. If job descriptions are timely and specific, they can be used to create announcements advertising position vacancies and to develop performance standards for use in appraising employee performance.

The city councilmembers’ role in position classification generally involves approving new classification plans or approving modifications to existing ones. For example, a councilmember might be called upon to approve a new classification and compensation plan. In this process, the council is not involved in determining individual classification decisions for employees but rather the level of market competitiveness at which the new plan will be funded.
Salary Administration

The city council’s most visible role in human resource management is salary administration. The council is called upon to approve new classification plans and to annually update the municipality’s pay plan. An effective pay plan is both internally and externally equitable. Being internally equitable means that positions with similar levels of duties and responsibilities are grouped together in the same pay grade. A pay plan is externally equitable when its pay rates are competitive with its main competitors.

City councils will find various publications and Web sites useful as they consider salary levels for employees. The Georgia Department of Community Affairs publishes an annual salary survey of the most common municipal government positions and makes the data available on the Internet (www.dca.ga.gov/dcawss/default.asp). The Georgia Department of Labor publishes an annual salary survey of the most common manufacturing jobs (www.dol.state.ga.gov). The Bureau of Labor Statistics of the U.S. Department of Labor periodically publishes proprietary salary data for the more populous regions of the state (www.bls.gov). Additionally, the International City/County Management Association publishes proprietary regional salary data concerning city managers, administrators, and department heads (www.icma.org). When relying on any survey, one should exercise care in interpreting the data contained in published salary surveys. For example, job description titles may have been misinterpreted, resulting in incorrect information being reported. City council members should also be sure that they are comparing “apples to apples” and “oranges to oranges.” In other words, are the duties and responsibilities of the municipal positions they are researching sufficiently similar to those reported in the survey? If not, no salary comparison should be made.

An effective pay plan generally has 21 to 29 salary grades. Each of these grades should have a salary range of approximately 50 percent from the minimum to the maximum rate. To make salary administration more manageable, steps can be inserted between the minimum and maximum rates. Progression through the steps can be linked to length of service and/or performance. For example, an employee performing at a competent level might be awarded a one-step increase, whereas an employee whose performance was considered outstanding might receive a two-step increase. In the past, many pay plans had steps with values of 4 percent to 5 percent. However, plans with increments of that size should be avoided because they usually require the city to spend a large
percentage amount on step raises, resulting in less funds being available for general increases that are applied to the entire salary structure. Over a period of time, the practice of granting large step increases and making small overall adjustments will result in a pay plan that may pay tenured employees well but be unable to attract new employees because of low entry rates.

After an equitable classification and pay plan has been implemented in a city, a council’s role in salary administration primarily concerns granting annual and merit increases. Annual (market or cost-of-living) increases should be applied to the entire salary scale and to every employee’s salary. The Consumer Price Index (CPI) or the Employment Cost-Index (ECI), published by the U.S. Bureau of Labor Statistics (www.bls.gov), should be used as a guide in determining the amount of across-the-board increases. A good rule of thumb is to increase your wage scale by 75 percent of the CPI and then to conduct a salary survey every four years or so to gauge the city’s placement in the labor market. Additionally, 2 to 3 percent of the personnel budget should also be set aside for step or merit raises, and merit increases should be separate from cost-of-living raises. Both should be added to base pay.

Employee Benefits

One of the fastest-growing areas of personnel-related costs is employee benefits—health-related and retirement benefits as well as benefits that help define terms of employment such as sick and annual leave. Unless a city has a risk manager or human resources director with extensive background in employee benefits, setting up municipal insurance and retirement plans will generally require the services of a benefits consulting firm. The Department of Community Affairs periodically compiles information on leave benefits. Typical municipal leave benefits are one day of sick leave per month and one to one and one-half days of annual leave per month, depending on the length of an employee’s service to the city.

Employee Training and Development

The systematic training and development of municipal employees can greatly benefit an organization. Training support can take the form of providing tuition reimbursement for attending college courses; encouraging fire, police, water, and wastewater personnel to seek additional certifications; or sponsoring in-house training courses specifically designed to increase the management and supervisory skills of city employees. The result of an effective training and development program is a more
skilled and motivated workforce, providing better service to the municipality’s citizens. The Vinson Institute of Government provides extensive training resources for local governments (www.cviog.uga.edu/services/education/statelocal.php).

**Performance Appraisal**

There is no foolproof way to appraise employee performance. However, some methods are more legally acceptable and job related than others. For many years, employee performance appraisal consisted of a manager’s annual assessment of subordinate employees based on characteristics such as dependability, personality, and appearance. However, trait-based performance appraisal devices are no longer acceptable: the courts have ruled that performance appraisals, just as employment tests, must be job related. In many cases, adhering to these standards may necessitate writing different performance standards for every job classification. The appraisal format itself can be kept simple, but it should require that the supervisor and employee define in writing what the acceptable level of performance is for each major duty that the employee performs. This exercise underscores the necessity for accurate, job-specific position descriptions.6

Successful employee performance appraisal is a continual process, not just an activity that takes place once a year. Employees who receive constant and constructive feedback concerning their work are much more likely to make desired behavior changes than are those who receive periodic or infrequent information about their performance. Performance appraisal is most successful when it is used primarily as a communication tool between the supervisor and employee. However, it is being used increasingly to link employee performance and pay. While, on the surface, a pay-for-performance system seems desirable, such a system is very difficult for a city government to implement due to the nature of city jobs. For example, while it is a fairly common practice in the private sector to base an insurance agent’s pay on the number or value of policies he or she sells, basing a police officer’s pay on the number of arrests he or she makes would be inappropriate.7

**Personnel Policies and Procedures**

An up-to-date set of personnel policies and procedures provide the ground rules for city employment. Personnel policies generally contain procedures for employee grievances and appeals, annual and military leave, and a statement of the municipality’s philosophy regarding human resource administration. Due to the changing nature of personnel-relat-
ed law, a municipality should have its personnel policies and procedures reviewed periodically by a labor attorney.

EMPLOYER AND EMPLOYEE DUTIES AND RIGHTS

Federal and state legislation and court decisions have given municipal employees a number of rights that their employers must recognize. Municipal officials must consider these rights when making personnel decisions that may adversely affect employees in some way. If they fail to do so, an employee may have a claim against the city and its elected officials for money damages that must be paid by the city and, in some cases, from the personal assets of its elected officials. In recent years, governmental entities have become a popular target for this kind of litigation. Municipalities that act incautiously in making decisions affecting employees increasingly run a risk of becoming involved in federal or state court litigation with disgruntled or terminated employees.

Constitutional Duties and Rights

Courts have said that under certain circumstances a public employee may have a property or a liberty interest in his or her job. These interests cannot be adversely affected by a personnel action (a disciplinary action or discharge) without due process of law. This section discusses what property and liberty rights exist in the public employment situation and what is needed to comply with the requirement of due process of law. Also discussed are substantive and procedural due process and First Amendment rights of public employees.

Property Rights

Under certain circumstances, the courts consider a public employee’s job to be property belonging to the employee that cannot be taken away (through discharge) or lessened in value (through disciplinary demotion, suspension of pay, reduction in pay, etc.) unless the employee receives due process of law. Whether a public employee has such a “property interest” is determined on the basis of principles of state law.8 As a general rule, in Georgia, “one in public employment has no vested right to such employment.”9 However, a number of exceptions have been created. When dealing with personnel matters, municipal officials should be aware of the following:

1. If the city adopts by ordinance, resolution, or other official act a provision that municipal employees may only be removed “for
cause,” an employee may have a property interest in his or her job. It should be noted that some courts have held that a “termination for cause” provision appearing only in an employee handbook or manual is insufficient to create an enforceable property interest, but cities should be cautious in relying on such authority, particularly if the manual or handbook is adopted by official action of the municipal governing authority.

2. If the city hires an employee for a definite period of time and the employee is discharged before the end of that time, he or she may have a property interest.

3. An employee hired for an indefinite period of time—including through a contract for permanent employment—does not have a property interest. This is called employment at will.

4. If an employee serves at the pleasure of the employer or if he or she is terminated because it is determined by a superior to be in the best interest of the city, the employee does not have a property interest.

5. When a municipality provides for an initial trial period of employment (often described as a probationary period), such an employee does not have a property interest in his or her job during the trial period. If employees are subject to being discharged at any time, it is the better practice not to designate any initial period in a job as probationary so as not to give the impression that job rights change after that period.

6. When a municipality abolishes positions for budgetary or other reasons, an employee whose position is abolished generally does not have a property interest in his or her job.

7. Always check a city’s charter to see if employees are “at will” or may have a property interest in employment. The charter overrides ordinances or policies that directly conflict with it.

**Liberty Rights**

A municipality may not deprive an employee of a protected liberty interest without due process of law. An employee’s liberty interest exists regardless of whether the employee is an “at-will” employee or has a property interest in continued employment. If an employee is demoted or discharged without due process of law (including not being renewed at the end of a contract period) and this action imposes a “stigma” or “disability” on the employee that denies him or her the freedom to take advantage of other job opportunities, the employee’s constitutional lib-
erty interest may be implicated. This type of claim usually arises when derogatory information about the employee is released in the course of the discipline or discharge process.

In order for there to be a violation of the employee’s liberty interest, the employee must show the following:

1. The action must have taken place in the context of demotion or discharge from employment.

2. The information about the employee must be false. If the information is true, the employee’s liberty interest has not been violated, even though his or her ability to obtain future employment is damaged.

3. The information must have been made public in an official or intentional manner. The mere presence of derogatory information in a city employee’s personnel files does not infringe on an employee’s liberty interests if it is not released.

4. The information about the employee must be “stigmatizing.” One federal appellate court described this requirement in the following way: “The ‘liberty interest’ is the interest an individual has in being free to move about, live, and practice his profession without the burden of an unjustified label of infamy. . . . [A] charge which infringes one’s liberty can be characterized as an accusation or label given the individual by his employer which belittles his worth and dignity as an individual and, as a consequence, is likely to have severe repercussions outside of professional life. Liberty is not infringed by a label of incompetence, the repercussions of which primarily affect professional life, and which may well force the individual down one or more notches in the professional hierarchy.”

5. The employee must have been denied a meaningful opportunity to clear his or her name.

**Procedural Due Process**

If a municipal employee’s liberty or property interest is involved, the employee is then entitled to procedural due process. If a municipal employee has a property interest in his or her job, the employee must receive both a pretermination hearing and a post-termination hearing. It is not necessary that a pretermination hearing be elaborate. Its purpose is to serve as an initial check against mistaken decisions. A more thorough review of the discharge can take place at a post-termination hearing. All that is required in the pretermination hearing is that the employee be
given notice (told why he or she is being terminated) and that he or she be given an opportunity to respond to the charges before the adverse action takes effect.27

The following procedures should be followed for an adequate post-termination hearing:

1. Prior to the hearing, the employee should be given (a) written notice of the charges against him or her that contains sufficient detail to enable him or her to show any error that may exist28 and (b) the names of all witnesses who will be called by the city, as well as an explanation of their expected testimony.29

2. The hearing must then be held within a “reasonable time.”30

3. At the hearing, the employee must be given an opportunity (a) to be heard,31 (b) to present evidence in his or her own behalf,32 and (c) to confront (cross-examine) his or her accusers.33

4. The hearing must be held before a tribunal having apparent impartiality to the charges.34

5. The employee must be allowed the right to have a lawyer present to assist him or her.35

The evidentiary portion of the hearing and the final vote of the governing authority are required by the Georgia open meetings law to be open to the public. Only the city council’s deliberations may be conducted in a closed session. Experience has shown that it is best to have post-termination hearings or “appeals” preserved for future evidentiary use and that a court reporter or a good tape-recording system should be used.

In the case of an employee’s liberty interests, the required hearing is not intended to evaluate the correctness of the adverse personnel decision. Rather, a “name-clearing hearing” is a limited procedure through which the employee is given an opportunity to clear his or her name or otherwise explain his or her conduct.36 The name-clearing hearing need not be provided prior to the effective time of the adverse action.37 However, the employee is entitled to notice of the charges against him or her and an opportunity to refute them, either by cross-examination of his or her accusers or through the presentation of independent testimony and evidence.38

Georgia law has extended to governmental entities, including cities, employer immunity for disclosure of certain information to a prospective employer. This information includes a current or former employee’s job performance, commission of an act that constitutes a violation of state
law, or the ability or lack of ability to carry out the duties of a job. An employer who discloses factual information concerning any of these matters is presumed to be acting in good faith unless there is evidence to the contrary or the information was disclosed in violation of a nondisclosure agreement or was otherwise considered confidential according to an applicable federal, state, or local statute, rule, or regulation. A municipality should maintain factual evidence for any statements made concerning an employee, including those concerning an employee’s job performance in order to prove the truth of the statements.

Georgia law gives public employees the right to petition the state superior courts for review of employment decisions under certain circumstances. A municipality’s failure to follow proper procedures therefore may subject it to suit in state court.

First Amendment Rights

All municipal employees have First Amendment rights, regardless of whether they are at-will employees or have a property interest in their jobs. Public employment has been held to be a valuable governmental benefit that cannot be denied an individual for an unconstitutional reason. A public employee may not be disciplined for reasons such as race, religion, or assertion of other constitutionally guaranteed rights. Nonrenewal of an employee’s contract for such reasons is also constitutionally impermissible.

This section discusses adverse employment action, particularly discharge, because of the assertion of protected rights, particularly the First Amendment right of freedom of speech and association.

Freedom of Speech. Although public employees cannot be required to surrender their right to free speech, a governmental employer does have an interest in regulating the speech of government employees to some extent. The interests of the public employee as a citizen in commenting on matters of public concern must be weighed against the interests of the governmental employer in promoting the efficiency of the public services performed by its employees. A public employee cannot be disciplined for making a public statement that is true, even though it is critical of his or her ultimate employer. Even if the statement is false, it is not grounds for discipline unless made either with knowledge of its falsity or with reckless disregard for whether it is true.

In order for a municipal employee to prevail on a claim based on the right of free speech, the employee must show that (1) he or she was engaged in speech on a matter of public concern, (2) his or her interest in the speech outweighs the municipal employer’s interest in providing
efficient and effective services, and (3) the speech was a substantial or motivating factor leading to discipline.47

Freedom of Association. The First Amendment right of freedom of association gives public employees the right to organize and become members of a labor organization.48 Advocating membership in a labor union49 and even expressing the belief that public employees should have the right to strike50 are both constitutionally protected. However, an employee can be discharged or otherwise punished for going on strike.51 Moreover, a disciplinary action for picketing in support of a strike probably does not violate an employee's constitutional rights.52 Furthermore, the First Amendment does not impose any affirmative obligation on a city government to listen or respond to, recognize, or bargain with a labor union.53

Political Belief and Association. Public employees cannot be disciplined for their affiliation with a political party unless they are in confidential or policy-making positions.54 Furthermore, unless they are excepted for these reasons, public employees cannot be disciplined solely because of their political beliefs.55 However, even some employees included in the exception may be protected from a disciplinary action.56

These prohibitions apply not only to actual or threatened dismissals but also to actual or threatened reassignments of duties or transfers if this action imposes on the employee a choice between continued employment and forsaking the exercise of protected beliefs and association.57 It is also impermissible to require public employees to make contributions for political purposes.58

Federal Statutory Duties and Rights

Numerous federal statutes affect the employer-employee relationship in the public sector. Most of these statutes prohibit one or more types of discrimination against employees. The following are examples of some of the federal laws that may apply to municipal employees.

Title VII

Title VII of the 1964 Civil Rights Act, amended by the Civil Rights Act of 1991,59 provides that it is an unlawful employment practice for an employer (defined as an employer of 15 or more employees)60 to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, or because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify employees or applicants for employment in any way which would
deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee” on any of the same grounds.61

**Fair Labor Standards Act**

The Fair Labor Standards Act (FLSA) was originally enacted during the Depression to encourage employers to hire more workers rather than simply requiring their existing employees to work longer hours. Important protections established by the FLSA are a minimum wage and the requirement of overtime compensation.

The normal workweek under the FLSA is a period of seven consecutive days, and overtime work is work performed in excess of 40 hours in a workweek. The FLSA sets up a minimum hourly wage and provides for payment of a premium for overtime work equivalent to one and a half times the employee’s regular rate of pay. Municipal employees may be offered compensatory paid leave (i.e., compensatory time, or “comp” time) at the rate of one and a half hours for each overtime hour worked, but compensatory time may be granted only if it is based on an agreement between the city and its employees.62

The FLSA contains a number of exemptions and exceptions. Exceptions and exemptions to coverage provisions are generally construed narrowly against those who seek to advance them in an attempt to avoid overtime pay liability.63 Courts have noted that the FLSA is remedial in nature and should be read liberally in favor of workers.64 However, the courts have ruled that public employers are free to reduce the number of hours that employees work.65

The act provides a complete overtime pay exemption for individuals employed by a public agency that has fewer than five employees in fire protection or law enforcement activities.66 In determining whether a public agency qualifies for the exemption, fire protection and law enforcement activities are considered separately. Thus, if a city employs fewer than five employees in fire protection activities but five or more employees in law enforcement activities, it may claim the exemption for fire protection but not for law enforcement.67

The FLSA provides an exception to the general requirement that overtime be computed on a weekly basis and that a premium be paid for hours in excess of a 40-hour workweek for firefighters and law enforcement personnel.68 The exemption allows cities to establish work schedules for firefighters and law enforcement personnel that differ from those of other municipal employees. The regulations base regular and overtime pay on the number of hours worked in a 28-day work period.
Because these regulations are so complex and specific, a city should not attempt to establish a work schedule and pay plan for firefighters and law enforcement employees without professional guidance. Not included in the exemption are the “civilian” employees of fire and police departments who serve as dispatchers, radio operators, repair workers, janitors, clerks, or stenographers. Rescue and ambulance service personnel qualify for the exemption as employees engaged in “fire protection activities” if they “form an integral part of the public agency’s fire protection activities” or serve as employees engaged in “law enforcement activities” if they “form an integral part of the public agency’s law enforcement activities.” Ambulance and rescue service employees may also qualify if they are employees of a public agency other than a fire department or law enforcement agency and if their services are substantially related to firefighting or law enforcement activities.

Although these firefighters and law enforcement employees may accumulate up to 480 hours of compensatory time, other nonexempt employees may accrue only 240 hours. After that maximum is reached, a covered employee must be paid overtime if he or she works more than 40 hours in a workweek. However, the city may require employees to use compensatory time. Employees must be permitted to use their compensatory time within a “reasonable period” of a request unless it would be “unduly disruptive.” Employees protected by the FLSA must be paid any unused compensatory time upon separation from employment with the municipality. Compensatory time cannot be used as a means of avoiding statutory overtime pay. An employee has the right to use earned compensatory time and must not be coerced into taking more compensatory time than a municipality can realistically expect to be able to grant within a reasonable time of the request.

In addition to firefighters and law enforcement employees, the FLSA exempts bona fide executive, administrative, and professional employees from its overtime pay requirements. Such exemptions are construed narrowly, and the burden is on the employer to prove that it is entitled to the exemption. Neither the employee’s job title nor job description is determinative of whether or not an employee is exempt from the overtime pay requirements; the exemption is based solely on actual duties and salary. As with firefighters and law enforcement personnel, the regulations governing the exemptions for executive, administrative, and professional employees are both specific and complex, and no city should seek to address such exemptions without professional guidance.
Equal Pay Act, Fair Pay Act, and Age Discrimination in Employment Act

Two other laws, the Equal Pay Act and the Age Discrimination in Employment Act, were made applicable to state and local governments by 1974 amendments to the Fair Labor Standards Act. The Equal Pay Act prohibits, with certain exceptions, differentials in pay based on sex in jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions. The Equal Pay Act was recently amended by the Lilly Ledbetter Fair Pay Act to expand the length of time an employee has to file a claim of discrimination. The Fair Pay Act amends Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act to state that an act of discrimination occurs each time wages are paid to an employee following a discriminatory pay decision. An employee who would have been barred from claiming pay discrimination based on a decision made years or decades ago can now make a claim as long as it is filed within 180 days of when the employee last received a pay check. Thus, municipalities may want to consider revising their records retention policies in order to have the necessary records to defend against pay discrimination cases filed later.

The Age Discrimination in Employment Act 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.

Americans with Disabilities Act

The 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. The ADA contains extensive and sweeping provisions preventing discrimination against persons with disabilities. Examples of conduct specifically prohibited by the ADA include:

1. segregating, limiting, or classifying on the basis of disability a qualified individual with a disability in a way that would adversely affect employment opportunities or status (for instance paying a disabled
employee an amount less than is paid to a similarly situated non-disabled employee);

2. excluding or denying equal job benefits to a qualified individual because that person has an association or relationship with a disabled person; or

3. using tests or other selection criteria that tend to screen out individuals with disabilities, unless the test is job related and consistent with business necessity.\(^{82}\)

The ADA prohibits preemployment inquiries into a person’s disability status. The only acceptable preemployment inquiries an employer may make must pertain to the ability of an applicant to perform job-related functions.\(^{83}\)

An employer may require a medical examination after tendering an offer of employment and before the applicant begins work. The employer may condition the offer on the results of the examination only if all entering employees in the same job category are subjected to such an examination.\(^{84}\)

The ADA requires an employer, including 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. This requirement applies not only to persons applying for new employment but also to existing employees who may be or become disabled. An employer must determine the essential functions of a job and examine possible modifications and adjustments to the job and/or the work environment that would allow a person with a disability to perform those functions. Examples of reasonable accommodations include restructuring a job and modifying work schedules or equipment. An employer may challenge an accommodation as being unreasonable on the basis that it constitutes an undue hardship to the employer because it is too costly or would be disruptive to the employer’s operations.\(^{85}\) Municipalities may be held liable for compensatory but not punitive damages for violations of the ADA.\(^{86}\)

**Family and Medical Leave Act**

The Family and Medical Leave Act of 1993 (FMLA) requires all public employers to have an FMLA policy for their employees and post a federally mandated notice providing employees and applicants for employment with information about the FMLA. If the public employer has 50
or more employees within a 75-mile radius, the employer must provide up to 12 weeks of unpaid leave during any 12-month period for eligible employees. Eligible employees are those employees who have worked for the city for at least one year and have provided at least 1,250 hours of service in the past 12 months. Leave may be taken for the birth or adoption of a child or placement of a foster child; to care for a spouse, child, or parent with a serious health condition; or due to the employee’s own serious health condition. An employee who takes leave under the FMLA must be returned to the same position that he or she held prior to taking such leave or to an equivalent position, and the employer must maintain group health insurance coverage for the employee during the period of leave, as if the employee had worked. The leave guaranteed by the FMLA is unpaid, although an employer may require that an employee use any available vacation, personal, family, or sick leave before the unpaid portion of the 12-week leave period begins. In addition, leave under the FMLA may be taken intermittently or on a reduced schedule when medically necessary. A city can also be liable under the FMLA if it is found to have retaliated against an employee because he or she engaged in an activity or raised a claim protected by the act.

Drug Testing

Drug testing of city employees is considered a search under the Fourth Amendment to the U.S. Constitution. Municipalities may not require employees to take a drug test without reasonable suspicion that the employee is under the influence of drugs or alcohol unless the municipality has a compelling special interest. There are two basic types of drug testing:

1. Drug testing when there is a reasonable suspicion of an employee being under the influence of drugs.
2. Random drug testing of employees in “high-risk” jobs (e.g., bus drivers, mechanics who work on buses or Rideshare vehicles), which is considered a compelling interest.

Municipalities that wish to subject their employees to drug testing must comply with the Fourth Amendment guaranteeing the right against unreasonable searches and seizures. Public employees working in high-risk jobs are subject to random drug testing pursuant to Georgia law.
State Statutory Duties and Rights

Discrimination
A state law similar to the federal Equal Pay Act expressly covers municipal employers with 10 or more employees. It prohibits differentials in pay based on sex for equal work “in jobs which require equal skill, effort, and responsibility and which are performed under similar working conditions.” The statute provides for arbitration as well as recourse to the courts, where both back pay and attorneys’ fees may be awarded. A copy of the law, provided by the state upon request, must be posted in a conspicuous place.92

Age discrimination in employment is also prohibited by a Georgia law preventing an employer from refusing “to hire, employ, or license . . . bar or discharge from employment any individual between the ages of 40 and 70 years solely upon the ground of age, when the reasonable demands of the position do not require such an age distinction . . . .” Retirement policies or systems are not affected as long as they are not designed merely to evade this law.93

When a city employee is terminated and, as a condition of a settlement agreement, the employee’s personnel file is partially or totally purged, the former employee’s personnel records, including the personnel file and any associated work history records, must be clearly designated with a specific notation. This notation must state that the records were purged as a condition of a settlement agreement and must be disclosed to any other governmental entity making an inquiry as to that former employee’s work history for the sole purpose of making a hiring decision.94

Other Duties and Rights
Each city employee must be given time off to vote in any municipal, county, state, or federal election in which he or she is qualified to vote unless the employee’s time of work begins at least two hours after the polls open or ends at least two hours before the polls close.95

Salaries of municipal officials and employees are subject to garnishment. However, an employee may not be discharged because his or her earnings have been subjected to garnishment for any one debt, even though more than one summons of garnishment is served.96

Employee Benefits
Georgia’s workers’ compensation statute applies to municipal employees.97 The law specifically encompasses “[a]ll firefighters, law enforce-
ment personnel, and personnel of emergency management . . . agencies, emergency medical services, and rescue organizations whose compensation is paid by . . . any municipality . . . regardless of the method of appointment.” In addition, certain volunteer personnel may be covered if the governing authority adopts the appropriate resolution.98

Municipalities are authorized by state law to set up deferred compensation plans for their employees,99 but such plans may not reduce any retirement, pension, or other benefit provided by law.100 Social security benefits are also available if the municipality has a plan of coverage for its employees that is approved by the Employees Retirement System of Georgia.101

NOTES
2. For further information on executive recruitment and selection, see David N. Ammons, Recruiting Local Government Executives (San Francisco: Jossey-Bass, 1989).
8. Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1972); Crowell v. City of Eastman, 859 F.2d 875 (11th Cir. 1988); Barnett v. Housing Authority, 707 F.2d 1571 (11th Cir. 1983); Ross v. Clayton County, 173 F.3d 1305 (11th Cir. 1999); (O.C.G.A.) §34-7-1.

14. Bailey v. Dobbs, 227 Ga. 838, 183 S.E.2d 461 (1971); Ventetuolo v. Burke, 596 F.2d 476 (1st Cir. 1979); see also Hagopian v. Trefrey, 639 F.2d 52 (1st Cir. 1981). See Brewer v. MARTA, 204 Ga. App. 241, 419 S.E.2d 60 (1992), in which if a plaintiff's employment is at will, the employer with or without cause and regardless of its motives may discharge the employee without liability.


16. Burnley v. Thompson, 524 F.2d 1233 (5th Cir. 1975); Thaw v. Board of Public In-stuction, 432 F.2d 98 (5th Cir. 1970); Drummond v. Fulton County Department of Family and Children Services, 547 F.2d 835 (5th Cir. 1977); Ross v. Clayton County, 173 F.3d 1305 (11th Cir. 1999), See Rankin v. McPherson, 483 U.S. 378 (1987), in which the court held that even a probationary employee who can be discharged for no reason may be entitled to be reinstated if discharged for exercising a constitutional right.


19. Paul v. Davis, 424 U.S. 693 (1976); Cotton v. Jackson, 216 F.3d 1328 (11th Cir. 2000). See Meyer v. Ledford, 170 Ga. App. 245, 316 S.E.2d 804 (1984), in which it was ruled that defamation suffered by a fireman during a department investigation was, without more, not a violation of the plaintiff's liberty interest.


21. Bishop v. Wood, 426 U.S. 341 (1976); Thomason v. McDaniel, 793 F.2d 1247 (11th Cir. 1986); Peterson v. Atlanta Housing Authority, 998 F.2d 904 (11th Cir. 1993); Sykes v. City of Atlanta, 235 Ga. App. 345, 509 S.E.2d 395 (1998); Cotton v. Jackson, 216 F.3d 1328 (11th Cir. 2000). In Butson v. City of Plant City, Florida, 871 F.2d 1037 (11th Cir. 1989), the court held that the placing of stigmatizing information in a public employee's personnel file results in the loss of a liberty interest.


23. Stretten v. Wadsworth Veterans Hospital, 537 F.2d 361 (9th Cir. 1976) at 366. The court noted that a label that would prevent an individual from practicing his or her chosen profession at all may have consequences so severe that liberty
would be infringed. Whether information about an employee is stigmatizing must be decided almost on a case-by-case basis. However, generally speaking, charges of fraud, dishonesty, mental illness, or racism are considered stigmatizing, while allegations such as incompetence, inability to deal with coworkers, neglect of duty, or sleeping on the job are not stigmatizing. As to charges of dishonesty, see Huffstutler v. Bergland, 607 F.2d 1090 (5th Cir. 1979), which held that the employee was not stigmatized by a form that rated his honesty as “unsatisfactory” because it did not accuse him of property theft but rather correlated with the narrative description on the form indicating that the evaluator considered the employee to be a person who could not be trusted to produce in the workshop or be faithful or prompt in his attendance. The mere act of disciplining and discharging an at-will employee is not actionable. Clemons v. Dougherty County, 689 F.2d 1365 (11th Cir. 1982), in which it was ruled that information about an employee might be stigmatizing even if the charges did not allege dishonesty or immorality; Brewer v. MARTA, 204 Ga. App. 241, 419 S.E.2d 60 (1992); Garmon v. Health Group of Atlanta, Inc., 183 Ga. App. 587 (1987); Hall v. Answering Service, Inc., 161 Ga. App. 874 (1982).


25. Hatcher v. Board of Public Education and Orphanage for Bibb County, 809 F.2d 1546 (11th Cir. 1987).


28. Hatcher v. Board of Public Education and Orphanage for Bibb County, 809 F.2d 1546 (11th Cir. 1987) overruled on other grounds; Levitt v. University of Texas at El Paso, 759 F.2d 1224 (5th Cir. 1985) (citing Ferguson v. Thomas, 430 F.2d 852, 856 [5th Cir. 1970]).

29. Ibid.


31. Ibid.

32. Kelly v. Smith, 764 F.2d 1412 (11th Cir. 1985) overruled on other grounds.

33. Hatcher v. Board of Public Education and Orphanage for Bibb County, 809 F.2d 1546 (11th Cir. 1987) overruled on other grounds; Levitt v. University of Texas at El Paso, 759 F.2d 1224 (5th Cir. 1985).

34. Kelly v. Smith, 764 F.2d 1412 (11th Cir. 1985) overruled on other grounds.

35. See Carter v. Western Reserve Psychiatric Habilitation Center, 767 F.2d 270 (6th Cir. 1985).

36. Campbell v. Pierce County, Georgia, 741 F.2d 1342 (11th Cir. 1984).

37. Ibid.

38. Ibid.


46. See Pickering v. Board of Education, 391 U.S. 563 (1968). However, when the statement is so without foundation as to call into question an employee's fitness to perform the duties of the job, the statement would be evidence of the employee's lack of competence but would not provide an independent basis for dismissal. Rankin v. McPherson, 483 U.S. 378 (1987).

47. See, e.g., Cook v. Gwinnett County School District, 414 F.3d 1313 (11th Cir. 2005) overruled on other grounds.


56. Branti v. Finkel, 445 U.S. 507 (1980). See Kinsey v. Salado Independent School District, 916 F.2d 273 (5th Cir. 1990), in which a school superintendent alleging that his suspension was in retaliation for supporting losing school board candidates had the right to participate in the election of school board members even though he and the school board had a “close and confidential relationship.”


58. Ibid.


60. Ibid.

62. 29 U.S.C.A. §§201 et seq., 207(o); 29 CFR §§553.20 et seq.

63. Bennan v. Sugar Cane Growers Cooperative of Florida, 486 F.2d 1006 (5th Cir. 1973); Atlanta Professional Firefighters Union Local 134 v. City of Atlanta, 920 F.2d 800 (11th Cir. 1991); Avery v. City of Talladega, Alabama, 24 F.3d 1337 (11th Cir. 1994); 29 U.S.C.A. §213 (exemptions).


67. 29 C.F.R. §§553.200.

68. 29 U.S.C.A. §207(k).

69. Ibid.; 29 CFR §553.201.

70. 29 C.F.R. §§553.210(c), 553.211(g).

71. 29 C.F.R. §§553.210(a), 553.215(a).

72. 29 C.F.R. §553.211(b). Rescue and ambulance service personnel may spend no more than 20 percent of their work time in unrelated, nonexempt activities or they will not qualify for the 7(k) exemption. Jones v. City of Columbus, 120 F.3d 248 (11th Cir. 1997); Falken v. Glynn County, Georgia, 197 F.3d 1341 (11th Cir. 1999).

73. See O’Neal v. Barrow County Board of Commissioners, 980 F.2d 674 (11th Cir. 1993), which held that a separate county EMS agency was held to qualify for a 7(k) exemption solely under 29 C.F.R. §553.215 and §553.13 limitations because of the amount of nonexempt work not applicable to exemptions under 29 C.F.R. §553.215.


76. 29 C.F.R. Part 541.

77. Evans v. McClain, 131 F.3d 957 (11th Cir. 1997).


80. 29 U.S.C.A. §621 et seq.

81. 42 U.S.C.A. §12101 et seq.

82. 42 U.S.C.A. §12112(b).


88. 29 U.S.C.A. §2615; 29 C.F.R. §§825.220. Strickland v. Water Works and Sewer Board of City of Birmingham, 239 F.3d 1199 (11th Cir. 2001); Smith v. Bell-South Telecommunications, 273 F.3d 1303 (11th Cir. 2001). See Wascura v. City of South Miami, 257 F.3d 1238 (11th Cir. 2001), in which the court ruled that the employee failed to present any evidence of a causal connection between her request for FMLA leave and her subsequent termination.

90. See Everett v. Napper, 833 F.2d 1507 (11th Cir. 1987).
92. O.C.G.A. tit. 34, ch. 5.
94. O.C.G.A. §45-1-5.
96. O.C.G.A. §§18-4-7, 18-4-21.
97. O.C.G.A. §34-9-1.
98. Ibid.
100. O.C.G.A. §45-18-34.
Part Three: MANAGEMENT of MUNICIPAL GOVERNMENT

Contracting, Purchasing, and Sale of Municipal Property
Contracting, Purchasing, and Sale of Municipal Property

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 municipalities are granted jurisdiction over a subject matter, they shall have an implied power to contract in regard to the subject matter.

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 lesson competition or to encourage a monopoly;
- contracts that, if carried out, would increase the municipality’s debt beyond constitutional debt limitations;
- contracts binding the governing authority or its successors so as to prevent free legislation regarding “governmental” functions;
- contracts in violation of “public policy” although there may be no statute prohibiting them;
- contracts promoting “self-interest”, and
- contracts which give away control over a city’s legislative or governmental powers

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. 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. 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 the mandatory provisions of the law limiting and prescribing the municipality’s powers.

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.
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.” 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;
- between a municipality and a company that was represented by the law firm of which one of the councilmen was a member; and
- between the city and the mayor even though the mayor neither voted nor attempted to influence members of the council.

In addition to being a violation of public policy and thus voidable, such contracts tainted by “personal interest” may also be criminal violations. 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. the 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.

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. Neither does it apply to sales of real property in which 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, the state law was amended in 2010 to provide that 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 face criminal charges.

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. It is of no consequence that there is only a potential conflict of interest, that there is no dishonesty or loss of public funds, or that the official is not influenced by the situation.23

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.24 A municipality may perform roadwork with its own forces or with prison labor.25 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.26

Limitations on Authority to Negotiate Contracts
Municipalities are prohibited from negotiating road contracts except those:

- involving the expenditure of less than $20,000;
- with a state agency or county 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
- otherwise expressly authorized by law.27

Bidding Requirements
Generally, municipal road contracts are let by public bid.28 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. The advertisement must include:

- a description sufficient to enable the public to know the approximate extent and character of the work to be done;
- the time allowed for performance;
- the terms and time of payment;
- where and under what conditions and costs the detailed plans and specifications and proposal forms may be obtained;
- the amount of proposal guaranty, if one is required;
- the time and place for submission and opening of bids;
- the right of the municipality to reject any one or all bids; and
- such further notice as the municipality may deem advisable to be in the public interest.

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. No bid can 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.

Public Works Construction Projects

The Georgia Local Government Public Works Construction Law establishes uniform requirements for local government public works construction projects. 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. Additional detail on the Georgia Local Government Public Works Construction Law can be found in the GMA publication, “Public Works Construction Projects” available at www.gmanet.com.

The public works construction 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. Such term does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property.”

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.

Advertising Requirements
The public works construction law establishes minimum requirements for advertising public works construction opportunities. A city must publicly advertise a contract opportunity for public works construction projects. 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 such details so as 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.36

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.37 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. Examples include past relevant experience with similar projects or required licenses. 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.38
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.39

Competitive Sealed Bids and Proposals40
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.41

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.42

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.43

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.\(^{44}\)

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.\(^ {45}\)

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.\(^ {46}\)

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.\(^ {47}\) 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.\(^ {48}\)

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.\(^ {49}\) 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.
Contracting, Purchasing, and Sale of Municipal Property

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. 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. 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. 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.

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. 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 authorized by the constitution.

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.

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;
- 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; and
- the Georgia Ports Authority for the leasing, operation, or management of real or personal property in or adjacent to any seaport.

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

A 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.\(^1\)

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.\(^2\) 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.\(^3\)

Failure to take payment bond renders the city liable for losses to subcontractors, laborers, material men, and other persons furnishing materials and labor.\(^4\)

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 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 Facilities Authority for inclusion on a pre-qualifications list.\(^5\)

Under the new law, the Georgia Environmental Facilities Authority is mandated to set a list of qualified energy service providers that have prequalified to be utilized in contracts for energy savings performance contracts.\(^6\) 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. Some of these requirements include specific requirements for payments and bonding,\(^7\) funding,\(^8\) and budgeting.\(^9\) It is unclear how energy performance contracting law interacts with public works contracting in general and how existing procedures and authority under current law and specific city charters may be affected.
Public-Private Partnerships for Water Reservoirs, Facilities, and Systems

During the 2011 legislative session the Georgia General Assembly passed new legislation which creates new methods for public works bidding involving contracts related to certain water reservoirs, facilities, and systems. The legislation was enacted with the hopes that these contracts could help alleviate Georgia’s growing problems related to water supply and consumption.

Municipalities, under this new law, 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 project. A project includes the acquisition of real property for water reservoirs, including the construction of reservoirs and land surrounding the reservoirs, and all water facilities that are useful for obtaining sources of water supply, the treatment of water, and the distribution and sale of water. 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.

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 fifty (50) years.

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.

Purchasing

A number of statutory provisions authorize municipalities to enter into purchasing agreements. For example, various general laws permit municipalities to

- 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;
- purchase various supplies and surplus property through the State Department of Administrative Services; and
- enter into joint agreements with counties, municipalities, school districts, and other governmental jurisdictions for the purchase of various items.
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. 81

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, that the lowest and best bid be accepted. 82 Most municipalities, however, merely have provisions in their charters providing that the council may by ordinance prescribe the rules and procedures for municipal purchasing. 83

**Miscellaneous Statutes Concerning Purchasing**

When making purchases, municipalities should be aware of two additional statutes that deal with purchasing. 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. 84 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. 85

**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) and to require in all bids, contracts and subcontracts for the physical performance of services within Georgia provisions agreeing to the use of E-Verify and an affidavit from the contractor and all subcontractors that they are using and will continue to use the E-Verify program. 86 Before a bid on a contract for the physical performance of services in Georgia 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.
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.87

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.88

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.89 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 10 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.90

Lease of City Property

Cities can enter into a lease for the use, operation or management of real or personal property for longer than thirty 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.91

NOTES


Contracting, Purchasing, and Sale of Municipal Property


5 Wright v. Floyd County, 1 Ga. App. 582, 58 S.E. 72 (1907); Schanck v. Town of Hepzibah, 236 Ga. 530, 224 S.E.2d 354 (1976).

6 GA. CONST. Art. III, §6, ¶5(c).

7 GA. CONST. art. IX, §5, ¶1.

8 O.C.G.A. §36-30-3; Barr v. City Council of Augusta, 206 Ga. 750, 58 S.E.2d 820 (1950); Ledbetter Bros., Inc. v. Floyd Co., 237 Ga. 22, 226 S.E.2d 730 (1976)—the determining factor is whether the contract will be completed within the term of the governing authority which makes it; 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). See also City of Atlanta v. Brinderson Corporation, 799 F.2d 1541 (11th Cir. 1986), in regard to construction contracts.


10 Hardy v. Mayor and Council of Gainesville, 121 Ga. 327, 48 S. E. 921 (1904)—a contract for a municipality’s printing work was ruled void because it had been awarded by the mayor and council to a corporation in which one of the councilmen owned stock; Cochran v. City of Thomasville, 167 Ga. 579, 146 S.E. 462 (1928)—court held that it was illegal for a councilman to participate in the execution of a contract between the municipality and a paving company that was represented by the law firm of which he was a member. See R. Perry Sentell, Studies in Local Government Law, 3d, ed. (Charlottesville, Va.: The Michie Co., 1977), pp. 623-27.


17 O.C.G.A §36-30-6.


21 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/her official action. O.C.G.A §16-10-22.

22 O.C.G.A. §16-10-6.

23 Montgomery v. City of Atlanta, 162 Ga. 543, 134 S.E. 152 (1926).

24 O.C.G.A. §32-4-91; §32-4-92.

25 O.C.G.A. §32-4-91.

26 O.C.G.A. §32-4-111.

27 O.C.G.A §32-4-113.

28 O.C.G.A. §32-4-114.

29 O.C.G.A. §32-4-115.

30 Ibid.

31 O.C.G.A. §32-4-116.

32 O.C.G.A. §32-4-117.

33 O.C.G.A. §36-91-1 et seq.

34 O.C.G.A. §36-91-2 (10).

35 O.C.G.A. §36-91-22.

36 O.C.G.A. §36-91-20(b).

37 O.C.G.A. §36-91-20(f).

38 O.C.G.A. §36-91-20(b).


40 O.C.G.A. §36-91-21.

41 O.C.G.A. §36-91-50(b)

42 O.C.G.A. § 36-91-50(c).

43 O.C.G.A. §36-91-20(c).

44 O.C.G.A. §36-91-41(a); O.C.G.A. §36-91-50; O.C.G.A. §36-91-70; O.C.G.A. §36-91-90.

45 O.C.G.A. §36-91-2(1).

46 O.C.G.A. §36-91-2(9); O.C.G.A. §36-91-70

47 O.C.G.A. §36-91-2(8).
Contracting, Purchasing, and Sale of Municipal Property

48 O.C.G.A. §36-91-91.
49 O.C.G.A. §36-91-40.
50 O.C.G.A. §36-91-21(e).
51 O.C.G.A. §36-91-21(a); O.C.G.A. §36-91-21(g).
52 O.C.G.A. §36-91-21(f).
53 O.C.G.A. §36-91-21(a).
54 GA. CONST. art. IX, §3, ¶1.
55 Ibid.
57 GA. CONST. art. IX, §2, ¶3.
58 O.C.G.A. §32-4-110.
59 O.C.G.A. §36-60-2.
60 O.C.G.A. §52-2-9(15).
61 O.C.G.A. §32-4-118.
62 O.C.G.A. §32-4-122.
63 O.C.G.A. §32-4-119.
64 O.C.G.A. §32-4-120.
71 O.C.G.A. § 12-5-471(10).
73 O.C.G.A. § 36-91-102(b).
74 O.C.G.A. § 36-91-102.
75 O.C.G.A. § 36-91-102(c)(4)(E).


79 O.C.G.A. §50-16-81.

80 GA. CONST. art. IX, §3, ¶1; see also Jerry Singer, Cooperative Purchasing, 2d ed. (Athens: Carl Vinson Institute of Government, University of Georgia, 1985), pp. 5, 6.

81 O.C.G.A. §50-5-100-50-5-103; §50-5-143.


84 O.C.G.A §50-5-61.

85 O.C.G.A. §50-5-81.


87 O.C.G.A. §36-37-6.

88 Ibid.


90 O.C.G.A. §36-37-8.

91 O.C.G.A. §36-37-6(l)(1).
Part Three: MANAGEMENT of MUNICIPAL GOVERNMENT

Planning, Land Use, and Community Design
Planning and Land Use

Overview

Elected city officials have the ability to impact the landscape of Georgia in remarkable ways. Because Georgia is a Home Rule state, all land use decisions are made at the local level. Because land use decisions impact 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 within their counties, and their decisions will have lasting impacts. How do cities, in the largest state east of the Mississippi River, plan for the use 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 act requires that each government update its comprehensive plan at least once every ten years. Throughout the 1990s, as cities and counties completed their plans, the prevailing sentiment in Georgia seemed to be “OK. Now that we’ve completed our plan, we’re done.” As with any new skill or activity, our first effort wasn’t our best. The State of Georgia needed some time and practice to learn to use the plans communities had worked so hard to create the first time.

In 2010, most cities either started the next ten-year planning process, or have recently completed it. As we move into 2011 and beyond, we are seeing the utility of following those plans, not simply completing them. 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. As Herbert Smith says, “where we go from here and whether the things that are done through planning…will make our…communities and our rural areas better places is largely up to us as citizens. Long range and comprehensive planning, not just short-run problem solving, is the general public’s greatest hope for assuring that which is best for all of us as well as the community of the future, whether it be a physical, social, economic or environmental concern.”

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 willing to do to get it?

While Georgia’s comprehensive plans provide guidance for a variety of community topics, including economic development and regional cooperation, by and large these plans can be a roadmap for the physical development of the community – how we use and shape our land. “Land use” is a term that is used, loosely, to refer to any decisions made about the land and zoning regulations. Generally, “planning and land use” makes the assumption that decisions
Planning, Land Use and Community Design

regarding a jurisdiction’s land are made in accordance with an adopted comprehensive plan. So, by 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 city. In short – what does it look like, both now and in the future?

Georgia is changing rapidly, growing in population overall, but some areas of the state are watching their communities and populations decline. Leadership with a clear vision for the future is necessary to guide our communities through these tough economic times of the early 21st century. No matter the diversities in population, land masses, natural resources or economic makeup of Georgia’s cities, sound planning and follow-up 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 Local Planning Requirements, promulgated as rules by the Department of Community Affairs, (DCA) are clear in intent for the comprehensive plan: “to 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 in the public eye. The 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 issues and opportunities to be in the community. As such, the comprehensive plan can and should act as a guide for elected officials when making decisions for the public good.

Do not be discouraged by the physical size of the comprehensive plan for your community. Although it may be several hundred pages of material, once you learn your way around it, it is easy to find the important information that can help each mayor and city council make reasonable, fair, and predictable decisions about the future of their community.

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

The Community Agenda is “The Plan.” While a community is working on updating its plan, you will hear the terms “Community Assessment” and “Public Participation Plan” frequently, and they are important steps in creating the plan. But the Community Agenda is what the city council must adopt, and is what is commonly known as “the plan,” or “the comprehensive plan.” The Local Planning Requirements state:

The Community Agenda must include three major components:

- a community vision for the future physical development of the community, expressed in the form of a map indicating unique character areas, each with its own strategy for guiding future development patterns;
- a list of issues and opportunities identified by the community for further action; and
An implementation program for achieving the community’s vision for the future and addressing the identified issues and opportunities.3

Where Are We Going to Put It? (The Future Development Map)
The foundation of the Community Agenda is the Future Development Map (often called a character area map). This map should identify the areas of the city that provide “character” in whatever form the community has deemed important. There are no “right” amounts or types of character areas. 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 twenty different character areas.

Watkinsville, Georgia, near Athens, grew rapidly in the last ten years. Its historic downtown has become a magnet for locally-owned businesses. In order to maximize the existing urban design, Watkinsville’s Future Development Map shows a series of character areas that will provide 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. To see the plan, is available for viewing here. If the Future Development Map for your city appropriately identifies the unique, individual characteristics of the community in a way that makes sense to the city council and the citizens, then it’s a “good” Future Development Map. When the city council uses that map to make decisions about land use, community facilities, or capital improvements, then the comprehensive plan is being put to its best possible use.

The Words to Go Along with the Pictures (The Defining Narrative)
The descriptions of the character areas on the Future Development Map are referred to as “defining narrative.” The Local Planning Requirements state that these descriptions should include:

- Written description, pictures, and/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 or (if appropriate for the jurisdiction) zoning categories to be allowed in the area; and
- Listing of the Quality Community Objectives that will be pursued in the area.4

Simply put, the defining narrative should describe clearly what kind of development a city expects, and will approve, in the various character areas. Athens-Clarke County outlined a variety of character areas in its most recent plan, all of which clearly state how that development should occur, and which Quality Community Objectives the area should embody. For the whole plan, follow this link.

The description for each character area is followed by the “implementation measures” which can be defined more simply as “what are you going to do about it?” The vision for the area is a best case scenario, and we all know that best cases are no accident. So the implementation measures are those means by which each community will achieve that vision. In the Athens-Clarke plan,
the community has identified a need for higher residential densities to help ensure the walkability of the community, as well as the need for mixing uses and design standards. A commitment to these adopted measures will help Athens-Clarke maintain and enhance its urban fabric over the years. Brunswick, one of Georgia’s oldest cities, has significant redevelopment opportunities. Throughout its plan, Brunswick has identified the areas most appropriate for redevelopment, as well as identified those areas with significant historic, cultural, and natural value that should be protected as such.

What Would We Like to Change? (The Issues and Opportunities)
As a community is writing its plan, you will have opportunities to hear from the citizens as to what they think are the biggest challenges facing the community, and what they see as the biggest opportunities in the future. Along with citizen opinion, the available data about your community will help shape the comprehensive plan. The data will show, among other things:

- Is this community growing in population, remaining stable, or losing population?
- What types of jobs are available in the community?
- What type of education do most citizens have in the community?
- What are the natural resources of your community, and where are they?

The issues and opportunities that are in the comprehensive plan are those that the community members and leaders felt were the most important to address over the next ten years. As such, the Local Planning Requirements state that each of these issues or opportunities must be followed-up with corresponding implementation measures in the Implementation Program.

How Will We Get It Done? (The Implementation Program)
A comprehensive plan is, most of all, a visionary document that helps answer the question, “What do we want our community to be like in twenty years?” To achieve that goal, each community will have to take smaller steps over the years that will eventually result in the vision. In a nutshell, the Short Term Work Plan (STWP) should outline those steps in five year increments. The STWP items should be action items that will improve or enhance the community over the years. The Long Term Measures and Policies are those items that may be ongoing, or are based on the core values of the community. For instance, a community that values transportation options may have a stated policy of providing walking and biking options along with all road improvements, while a community that values an agricultural lifestyle may choose a policy of maintaining very large land parcels for agricultural use.

The Quality Community Objectives
In 1999, the Board of the Department of Community Affairs 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 Local Planning Requirements state that each local government plan should determine which of these objectives are important to pursue in each character area identified on the Future Development Map.
(a) **Regional Identity Objective**: Regions should promote and preserve an “identity,” defined in terms of traditional regional architecture, common economic linkages that bind the region together, or other shared characteristics.

(b) **Growth Preparedness Objective**: Each community should identify and put in place the prerequisites for the type of growth it seeks to achieve. These may include housing and infrastructure (roads, water, sewer and telecommunications) to support new growth, appropriate training of the workforce, ordinances to direct growth as desired, or leadership capable of responding to growth opportunities.

(c) **Appropriate Businesses Objective**: The businesses and industries encouraged to develop or expand in a community should be suitable for the community in terms of job skills required, linkages to other economic activities in the community, impact on the resources of the area, and future prospects for expansion and creation of higher-skill job opportunities.

(d) **Educational Opportunities Objective**: Educational and training opportunities should be readily available in each community – to permit community residents to improve their job skills, adapt to technological advances, or to pursue entrepreneurial ambitions.

(e) **Employment Options Objective**: A range of job types should be provided in each community to meet the diverse needs of the local workforce.

(f) **Heritage Preservation Objective**: The traditional character of the community should be maintained through preserving and revitalizing historic areas of the community, encouraging new development that is compatible with the traditional features of the community, and protecting other scenic or natural features that are important to defining the community’s character.

(g) **Open Space Preservation Objective**: New development should be designed to minimize the amount of land consumed and open space should be set aside from development for use as public parks or as greenbelts/wildlife corridors.

(h) **Environmental Protection Objective**: Air quality and environmentally sensitive areas should be protected from negative impacts of development. Environmentally sensitive areas deserve special protection, particularly when they are important for maintaining traditional character or quality of life of the community or region. Whenever possible, the natural terrain, drainage, and vegetation of an area should be preserved.

(i) **Regional Cooperation Objective**: Regional cooperation should be encouraged in setting priorities, identifying shared needs, and finding collaborative solutions, particularly where it is critical to success of a venture, such as protection of shared natural resources.

(j) **Transportation Alternatives Objective**: Alternatives to transportation by automobile, including mass transit, bicycle routes and pedestrian facilities, should be made available in each community. Greater use of alternate transportation should be encouraged.
(k) **Regional Solutions Objective**: Regional solutions to needs shared by more than one local jurisdiction are preferable to separate local approaches, particularly where this will result in greater efficiency and less cost to the taxpayer.

(l) **Housing Opportunities Objective**: Quality housing and a range of housing size, cost, and density should be provided in each community, to make it possible for all who work in the community to also live in the community.

(m) **Traditional Neighborhood Objective**: Traditional neighborhood development patterns should be encouraged, including use of more human scale development, mixing of uses within easy walking distance of one another, and facilitating pedestrian activity.

(n) **Infill Development Objective**: Communities should maximize the use of existing infrastructure and minimize the conversion of undeveloped land at the urban periphery by encouraging development or redevelopment of sites closer to the downtown or traditional urban core of the community.

(o) **Sense of Place Objective**: Traditional downtown areas should be maintained as the focal point of the community or, for newer areas where this is not possible, the development of activity centers that serve as community focal points should be encouraged. These community focal points should be attractive, mixed-use, pedestrian-friendly places where people choose to live and gather for shopping, dining, socializing, and entertainment.

### 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 the Department of Community Affairs Local Planning Requirements found online at this [link](#). Below is a list of the activities leading up to a local government receiving its Qualified Local Government status:

- Plan preparer completes a Community Assessment and Community Participation Plan.
- After review of the documents, including a Public Hearing, the city council passes a Transmittal Resolution to send these documents to its regional commission (RC) for review.
- The RC and DCA review and comment on the Assessment and Participation Program.
- The city council must publicize the availability of the Assessment and Participation Program. Notification through the legal organ of the city is appropriate.
- The plan preparer(s) gather community input and create the Community Agenda.
- The city council must hold a Public Hearing prior to passing a Transmittal Resolution to send the Community Agenda to the RC for review.
• The RC and DCA review and comment on the Community Agenda
• The city council must allow the public 60 days from the Public Hearing to comment on the plan.
• Upon receiving public comments, the RC comments and DCA comments, the city council must authorize the plan preparer to make any necessary changes.
• The city council adopts the comprehensive plan by ordinance or Resolution and notifies the regional commission of the date on which the plan is adopted.
• Upon receipt of notification of adoption, DCA will extend the city’s Qualified Local Government Status.

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 Future Development Map? 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.

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 Development Map?
• Is this decision consistent with a stated policy in our comprehensive plan?
• Does this decision address an issue or opportunity stated in our comprehensive plan?
• Does this decision address an item in our Short Term Work Plan?

Land Use
The term “land use” is quite 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 we approach ten million people calling Georgia home, discussions about how we use our land have taken a more urgent tone.

In our state, all land use decisions are made by local governments, either city councils or boards of commissioners. With larger populations and the same amount of resources, these decisions become more and more 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 agreed-upon comprehensive plan can help take some of the emotion out of land use decisions and make those decisions more predictable and fair.
Many, many scholars have written many, many books about land use. For the sake of this chapter, let’s look at some of the most critical decisions a city council can make that will affect the long-term economic and environmental health of the community, as well as the state.

**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 (but are 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, and avoid those areas that cannot support development, are ensuring the long-term viability of their communities.

**Zoning and Sprawl**

Most elected officials and local government staff have an understanding of what “sprawl” means in terms of land development, even without an academic definition of it. In short, sprawl refers to the conversion of land from “greenfields” (no manmade structures or impervious surfaces) to some form of suburban function at a rate faster than the population grows. Most of us will agree that sprawl is, at the very least, unattractive, and at the most, harmful to the natural environment.

Zoning is a 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 the [Georgia Zoning Procedures Act](http://www.gpo.gov/fdsys/). 

A zoning ordinance consists of a map that divides the jurisdiction into various districts for particular classes of residential, commercial, industrial, and other uses; and a written ordinance that establishes the conditions under which land may be developed and used for particular purposes. 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, as well as setting 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 meant to separate uses. Residential uses are allowed in one area of the community, while retail and commercial uses are given another area. The original intent of zoning codes was to put space between the community and more onerous uses, like heavy industrial uses or landfills. Throughout the 20th century, most of America continued to require a separation of uses, resulting in communities that require an automobile 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 around.

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 17%.“ We can see that this type of land conversion is unsustainable, which makes the decisions made by city councils even more pressing in 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 in all residential and commercial areas

The Department of Community Affairs provides a variety of web-based resources as well as technical assistance for local governments interested in changing their zoning codes to reduce sprawl. This information is currently available [here](#). While the zoning code itself 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.

Using the stated visions that go along with the Future Development Map in the comprehensive plan can reduce the spread of sprawl. Referring to the plan to make land use decisions provides city councils with a 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 city council. 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, looking 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 the Georgia Municipal Association, 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. They may 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 requires 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 RIR in each region and recommends best practices for use in managing these important resources.

As of July 1, 2009, each regional commission must prepare 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 and cultural resources. Each regional commission will provide a resource nomination process. With regional involvement, the RC will determine a final list of RIR that forms the foundation of the Regional Resource Plan. The state’s goal is to create a green infrastructure network among these RIR to preserve and enhance those elements that Georgians deem important. “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 should 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. It should also incorporate outdoor recreation and trail networks. More information regarding RIR and the RIR rules is available at this link.

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 Agenda (the finished product) “includes the region’s vision for the future as well as the strategy for achieving this vision.” Because the Regional Agenda provides guidance for future decision-making about the region, it must be prepared with adequate input from stakeholders and the general public. The Regional Agenda must include four major components:

- A Regional Vision for the future development of the region;
- A list of Regional Issues and Opportunities identified for further action;
- An Implementation Program for achieving the regional vision and for addressing the identified Regional Issues and Opportunities. The implementation program must include:
  - Guiding Principles to be utilized by all actors in making decisions affecting the future of the region;
  - Performance Standards that establish minimum and exceptional levels of performance expected of all actors in implementing the recommendations of the plan;
  - A list of strategies that may be implemented by any actors in the region to assist with achieving the Regional Vision or addressing the Regional Issues or Opportunities;
  - A Regional Work Program listing regional commission responsibilities for implementing the plan.
- An Evaluation and Monitoring plan to ensure the regional plan is accomplishing the desired results.

For more information regarding regional planning, follow this link.

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 are designed to improve communication between affected governments and to 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 have a wide range of population and development levels, two Tiers or "population" categories (Metropolitan Areas and Non-Metropolitan Areas) have been established. The threshold varies for each of these because a development in a region with low levels of population and development 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 the 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.

For more information on Developments of Regional Impact, follow this link.

Sources of Help
Most local elected officials serve a variety of roles in the community, and most must 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. First, don’t overlook local staff resources when delving into planning matters. 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.

- **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. [http://dca.ga.gov](http://dca.ga.gov)
- **GMA** is a voluntary, non-profit organization that provides legislative advocacy, educational, employee benefit and technical consulting services to its members.
The 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. http://www.cviog.uga.edu

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 rich, customized approaches to develop skilled community leaders, create vibrant communities, and promote prosperous economies. Because every challenge is different, Fanning faculty and staff create customized approaches and bridge University resources and community needs. http://www.fanning.uga.edu

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. http://www.cqgrd.gatech.edu

The Georgia Planning Association encourages, promotes and assists physical, economic, and human resources planning within the State of Georgia. http://georgiaplanning.org/

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. http://www.georgiaconservancy.org/

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. In addition, our economy is, like every other state’s, 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, in total, create a sum of change for Georgia that will be the legacy we leave our grandchildren.

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 from that core. Because builders and developers generally develop a parcel at a time, rather than tackling an entire community at once, it’s 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 around at their declines, and planned for how to turn them around. These turnarounds were not quick or easy, but they’ve 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 into, rather than away from.

Georgia’s city council members have the opportunity to consider the overall look and feel of a community when making planning and zoning decisions. Comprehensive plans are a resource for cities as a whole, rather than one parcel of land at a time.

NOTES

3 Ibid., p. 3.
4 Georgia, Department of Community Affairs, *Rules of Georgia Department of Community Affairs Chapter 110-12-1 Standards and Procedures for Local Comprehensive Planning; “Local Planning Requirements”* (Atlanta, 2005), pp10-11.
5 Georgia, Department of Community Affairs, *Rules of Georgia Department of Community Affairs Chapter 110-12-1 Standards and Procedures for Local Comprehensive Planning; “Local Planning Requirements”* (Atlanta, 2005), p.11
6 Ibid., pp 13-15.
Part Three: MANAGEMENT of MUNICIPAL GOVERNMENT

Annexation
ANNEXATION

Growing and prosperous Georgia cities create a growing and prosperous Georgia. Although cities comprise only 6.8% of Georgia’s land area, approximately 40% 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 55% of the commercial property, 44% of the industrial property and 56% 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 acre than property in unincorporated areas. An even more remarkable statistic is that the economies of Georgia’s cities generate 84.1% of the state’s gross domestic product.

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.”

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 rural Georgia, municipalities are often able to provide municipal water service at rates that are more cost efficient for homeowners than paying to pump well water.

In addition to enhanced services, many residents wish to take advantage of the efforts that cities have made to create more livable communities. Smart growth initiatives in many cities promote active downtowns and infrastructure improvements 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 represent...
only 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 publication “Growing Cities: Growing Georgia” available on GMA’s website at [www.gmanet.com](http://www.gmanet.com).

**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.² 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 through the 100 percent method.³

**60% Method**

This method allows for petitioners representing owners of at least 60% of the property in the area to be annexed and 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.⁴

**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.⁵ Municipalities may annex contiguous areas intended to be developed for “urban purposes” or 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 percent of the total acreage consists of lots and tracts five acres or less in size and such that at least 60 percent of the total number of lots and tracts are one acre or less in size.⁶

**Island Annexation**

Municipalities with a population of 200 or more may unilaterally annex contiguous “unincorporated islands.”⁷ “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 fifty percent of an area proposed for annexation by local act is “used for residential purposes” and the number of residents to be annexed exceeds 3 percent 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.

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.

Procedural Considerations
Once property has been annexed, the city must file an identification of the annexed land with the Department of Community Affairs and the county within 30 days of the last day of the quarter during which the annexation becomes effective. 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. 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. The addition of this information to the official census map is important for a variety of purposes including redistricting.

Voting Rights Act Pre-Clearance
At present, the entire state of Georgia and all of its local governments are covered by Section 5 of the federal Voting Rights Act, which requires that all covered jurisdictions submit plans for any changes that affect voting, prerequisites to voting, and procedures affecting voting to the U.S. Department of Justice for preclearance. The US Supreme Court has determined that annexation of inhabited lands constitutes a “change” that affects voting procedures by affecting the racial makeup of the voting population; thus, any annexation of inhabited land requires preclearance.

Whether annexation of uninhabited land requires preclearance is harder to determine. The US Supreme Court has held that annexation of uninhabited land zoned for residential development requires preclearance. If the land is slated for nonresidential development (use as a public park, industrial use, etc.), then preclearance under Section 5 of the Voting Rights Act may not be required. However, should the uninhabited land intended for nonresidential use ever become residential property, the city will have to submit the annexation to the Justice Department for preclearance before persons in the area can vote in city elections. Obtaining preclearance regardless of the intended use of the land assures the city that the annexation will continue to be valid under Section 5 should anyone move onto the land. Thus, the best practice is to submit annexation plans for preclearance regardless of whether the land in question is going to be used for residential development.
Federal regulations require that the annexation be submitted as soon as possible but the Justice Department will only review an annexation after it has been adopted or enacted.\textsuperscript{18} The United States Attorney General has 60 days after receipt of the submission in which to either object to the planned annexation, pre-clear the planned annexation, or request additional information. Under Section 5 of the Act, the Attorney General judges a submitted annexation on whether it “has the purpose or will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.”\textsuperscript{19}

Georgia Code section 36-60-11 reiterates the requirement of Section 5 of the federal Voting Rights Act of 1965, requiring that cities, counties, boards of education and other similar governing authorities submit any plans for changes that could potentially affect voting demographics to the United States Department of Justice and the state Attorney General for review.


**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.\textsuperscript{20} 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.\textsuperscript{21} 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.\textsuperscript{22} 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.\textsuperscript{23}
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.\(^\text{24}\) 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.\(^\text{25}\) 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.\(^\text{26}\)

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 increases the net cost of infrastructure or significantly diminishes 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.\(^\text{27}\)

Code section 36-36-114 requires the appointment of an arbitration panel not later than 15 days after the city receives the county’s objection. The arbitration panel is comprised of 5 members. This code section sets out requirements for service as an arbitrator and the method of selecting them. The arbitration panel must render a binding decision within 60 days of appointment and must consider certain factors in rendering their decision.\(^\text{28}\) 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 10 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.\(^\text{29}\)

The decision of the arbitration panel may be appealed to superior court.\(^\text{30}\) After 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 of 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.\(^\text{31}\) 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.\(^\text{32}\)
Annexation

1. O.C.G.A. § 36-36-51(1).
2. O.C.G.A. § 36-36-20 et seq.
3. O.C.G.A. § 36-36-23(b).
5. O.C.G.A. § 36-36-54.
6. Ibid.
7. O.C.G.A. § 36-36-90 et seq.
8. O.C.G.A. § 36-36-16.
9. Ibid.
12. O.C.G.A. § 36-36-3(a)(3); O.C.G.A. § 36-36-3(g).
17. See City of Pleasant Grove, 479 U.S. at 468 n. 8.
18. 28 C.F.R. Part 51.21.
19. 28 C.F.R. § 51.52.
22. O.C.G.A. § 36-66-4(e).
25. O.C.G.A. § 36-36-113(a).
26. O.C.G.A. § 36-36-113(c).
27. O.C.G.A. § 36-36-113(d).
29. Ibid.
32. O.C.G.A. § 36-36-118.
All levels of government play a vital role in environmental management. The federal government’s role generally includes funding research and development activities; establishing minimum national standards; addressing interstate and international issues; providing technical assistance; responding to emergency situations; assuring compliance with federal requirements/enforcement; overseeing implementation of delegated federal programs; and providing funds for program implementation and other purposes. State governments are mostly responsible for day-to-day implementation of federal environmental protection programs, which includes planning; setting standards; issuing permits; monitoring resources (air, water, and other resources); enforcing state laws; providing compliance assistance and training; administering funding (grant and loan) programs; collecting and analyzing data and information; and responding to emergencies.

Local governments often find themselves in a unique situation. As providers of public services, their activities are subject to federal and state environmental requirements. However, in the exercise of their governmental functions, they assume the role of regulator. In many cases, they develop and implement building, fire, health, and safety codes in addition to carrying out delegated state programs, such as erosion and sediment control. Local governments also design, construct, operate, and maintain environmental facilities; finance infrastructure; respond to emergencies; exercise land-use planning and zoning authority; and are required to coordinate service delivery.

Georgia is a state with abundant and diverse natural resources and a temperate climate. Air, land, and water resources support a wide variety of uses, from providing a strong economy to offering recreational op-
opportunities to affording citizens a good quality of life. As a result of these resources and other factors, some areas of Georgia have experienced phenomenal population growth and industrial and commercial development over the past few decades. Georgia agriculture, the backbone of many rural economies, remains strong and continues to prosper. Many local governments look to growth and development in order to provide jobs, tax revenue, and retail business opportunities, thus allowing communities to improve the quality of life for their citizens. However, this growth and prosperity also have affected the state’s air, water, and land. In order to address these impacts, state and local leaders must take a thoughtful and comprehensive approach. It is anticipated that Georgia’s population growth and economic expansion will continue, further increasing water and energy demands, conversion of land, development of coastal areas, and waste generation. City officials will be called upon to help meet these needs and minimize adverse impacts on their communities.

Local government officials truly are on the front lines of efforts to protect public health and the environment. City councilmembers often receive calls from constituents regarding environmental concerns and nuisances, regardless of a councilmember’s authority to address a situation. As a result of city operations, cities incur some environmental liabilities. In some cases, those liabilities may remain, even if facility operations or services are contracted out to other parties. For these reasons, city officials should be aware of environmental requirements associated with governmental operations.

This chapter provides an overview of selected federal and state environmental laws and programs, with an emphasis on those aspects establishing responsibilities and/or liabilities or providing opportunities for city governments. It also summarizes basic environmental information so that commissioners will have a better understanding of the basis for environmental requirements associated with city operations. However, it is not intended to serve as a definitive statement on means and approaches for environmental compliance or to provide legal advice. The chapter recognizes that cities are unique entities with differing characteristics, service levels, and capacities to address environmental protection issues.

The chapter addresses five themes: air quality protection, water resources management, land-use management, waste management, and other relevant issues. Each section begins with a discussion of relevant federal requirements and roles, followed by information on state-specific matters and other appropriate information. Readers who would like more information on specific matters may consult the Environmental Management Handbook for Georgia Local Government Officials.1
Before discussing specific federal and state environmental laws, it is important to set forth a few general principles.\textsuperscript{2} Both federal and state governments enact environmental laws and implement environmental programs, usually dealing with activities in a single subject area (such as air pollution control, water pollution control, waste management, endangered species protection, or drinking water quality protection). Rules and regulations set forth detailed requirements that must be followed by regulated parties. Sometimes, particularly on technical matters, rules and regulations may be supplemented by more specific information in the form of guidance, procedures, and policies. Most federal environmental laws discussed in this chapter are implemented by the U.S. Environmental Protection Agency (EPA). The agency has a headquarters office in Washington, D.C., 10 regional offices, and numerous laboratories and support offices and facilities located across the country. Staff at the EPA’s Atlanta regional office (Region 4) work with state and local environmental regulatory agencies and programs in eight southeastern states, including Georgia.

In enacting federal environmental laws, Congress usually includes provisions that allow appropriate state agencies to implement day-to-day program responsibilities. In order to obtain the authority to implement federal environmental programs (commonly referred to as program delegation or authorization), states must develop a program at least as strict as and consistent with the federal program. Therefore, most state environmental laws are very similar to the corresponding federal environmental laws. Federal environmental laws typically provide minimum standards that apply nationwide (federal programs provide a “floor”). States may adopt laws regarding matters not addressed by federal law or may adopt requirements that are stricter than federal requirements. For example, the Georgia General Assembly adopted the Erosion and Sedimentation Act in 1975, before the federal Clean Water Act (CWA) had any specific provisions regarding storm water management. However, the erosion and sedimentation program had to subsequently conform to the EPA’s storm water management program in the early 2000s.

Although some Georgia environmental laws were enacted before the corresponding federal law, the General Assembly has usually amended those laws over the years in order to minimize the differences. In most instances, the Georgia Environmental Protection Division (EPD) of the Department of Natural Resources (DNR) is designated as the primary state environmental regulatory agency. The state Board of Natural Resources adopts appropriate rules and regulations for implementation of those laws.
AIR QUALITY PROTECTION

Air pollutants are substances in the air that can cause harm to human health or the environment. These substances can be gases such as carbon monoxide or chemical vapors, liquid droplets, or tiny solid particles such as dust, soot, or smoke. Air pollutants come from numerous sources, including stationary sources (such as smokestacks at factories and power plants), mobile sources (such as tailpipes from on-road vehicles [cars, light-duty trucks, and motorcycles] and nonroad vehicles and equipment [construction equipment, sweepers, and mowers]), and other sources resulting from human activity (open burning or use of solvents) as well as natural sources (dust storms, volcanic activity, and wildfires). Some pollutants, such as ground-level ozone, are not directly emitted but are created by reactions between other pollutants. Since air does not respect political boundaries, wind patterns can move air pollutants locally, across state lines, and even internationally, thereby creating unique regulatory challenges.

Both federal and state laws contain requirements for air pollution control focusing on the establishment and maintenance of healthy air quality in outdoor (also referred to as ambient) air. Federal law sets minimum requirements that must be implemented nationally; however, state agencies, and in some cases local governments, carry out the day-to-day program responsibilities. State and local governments may also adopt broader or stricter requirements or regulations.

Given the broad extent of their operations, municipal governments may be subject to certain air pollution control requirements and programs. Applicability can vary widely.

Federal Requirements

Nationally, the Clean Air Act (CAA) establishes a framework for the prevention and control of air pollution by federal, state, and local governments. Five major parts of the act are discussed in this section: ambient air quality standards, mobile source control, acid rain control, federal operating permit requirements, and stratospheric ozone protection.

National Ambient Air Quality Standards

The law requires the EPA to establish national standards for the maximum allowable levels of six common pollutants in ambient air. Since 1970, the agency has established and revised national ambient air quality standards for (1) ground-level ozone (the principal component in smog), (2) particulate matter (sometimes referred to as soot), (3) sulfur dioxide, (4) nitrogen dioxide, (5) lead, and (6) carbon monoxide. Because these
standards must be reviewed every five years, many standards have either recently changed or may soon change. In order to ensure compliance, a network of air quality monitors across the country checks the concentrations of these pollutants periodically.

When a standard is revised, the EPA, in coordination with state agencies, classifies geographic areas based on the most recent monitoring information as attainment (meeting the standard), unclassifiable, or nonattainment (not meeting the standard). Because local air quality must meet the standards for all pollutants, an area may be classified as attainment for one pollutant and nonattainment for another.

In nonattainment areas, states, and in some cases local governments, must adopt control measures and strategies (rules, regulations, policies, and programs) to attain and maintain a standard. The state air pollution control agency includes these measures and strategies as part of the state’s federally enforceable plan for complying with the CAA, commonly referred to as the state implementation plan. Among the programs included in Georgia’s plan are a permitting program for major sources of air pollution and a motor vehicle inspection and maintenance program to reduce ozone in the 13-county Atlanta metropolitan nonattainment area (Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale).

If a city is included in an area that is designated as part of a nonattainment area, it is important that local officials work with state officials to identify, develop, and implement control measures and strategies. In those areas where violations of a standard have been shown (that is, potential future nonattainment areas, since designations are made only after the revision of a standard), city officials should consider adopting reasonable voluntary control measures (such as idling reduction requirements) in order to reduce concentrations of harmful air pollutants. Early implementation of these measures may allow an area to avoid a nonattainment designation. State and federal air pollution control officials can provide assistance in identifying such voluntary control measures.

In order to help meet the ambient air quality standards, the CAA established the New Source Review program to ensure that an area’s air quality would not be degraded by the addition of a new or major modification of a stationary source. Stationary sources, including factories, industrial boilers, and power plants, emit air pollution primarily through smokestacks. The New Source Review program requires preconstruction review and permitting for new stationary sources and major modifications focusing on the new or modified source’s potential emissions in light of the existing air quality conditions.
Municipal operations may also be subject to CAA requirements for technology-based permit limits under the new source performance standards program. Municipal solid waste or sewage sludge incinerators and landfill gas recovery systems at municipal solid waste landfills may be subject to the new source performance standards nationally uniform emission technology standards. The CAA also requires the EPA to control emissions of hazardous air pollutants, also referred to as air toxics. The EPA is required to identify categories of industrial sources for 187 air toxics and take steps to reduce emissions from these sources. Particularly relevant to some local governments are the agency’s national emission standards for hazardous air pollutants for landfills and wastewater treatment units (also referred to as publicly owned treatment works).

**Climate Change and Regulation of Greenhouse Gases**

One area of substantial discussion is climate change and the EPA’s efforts to regulate the emission of greenhouse gases. Climate change involves long-term variations in temperature, precipitation patterns, and other aspects of the earth’s climate. While scientific consensus exists that climate change is occurring, particularly on a global scale, there is considerable debate regarding the extent to which human activities are contributing to this change. Human activities result in the emission of greenhouse gases, which include carbon dioxide, methane, and nitrous oxide. As the concentration of these gases in the air rises, more heat is trapped in the atmosphere. The buildup of these gases could affect agricultural and forestry production, public health (hotter days or more days with poor air quality), the availability of water resources and thus the economies of local governments.

The U.S. Supreme Court has ruled that greenhouse gases fall within the definition of air pollutant under the CAA and that the EPA may regulate their emissions from new motor vehicles. The EPA is developing regulations to control greenhouse gas emissions from new motor vehicles and other sources. Interested parties have filed lawsuits challenging many of these actions. The regulation of greenhouse gas emissions is likely to be the subject of controversy for the foreseeable future.

**Mobile Source Control Program**

A second major part of the CAA deals with mobile sources. Efforts to reduce pollution from these sources generally focus on three areas: (1) cleaner engines, (2) cleaner fuels, and (3) education and awareness. A focus on cleaner engines has resulted in tighter emission standards and use of advanced emission control technologies (catalytic converters and
particulate filters). A focus on cleaner fuels has led to the introduction and use of low-sulfur diesel fuel and reformulated gasoline as well as progress in the development of electric vehicles, biodiesel, E85 for use in flex-fueled vehicles, and conversion of gasoline-fueled vehicles to operate on compressed natural gas or propane, alcohol fuels, or electricity. In support of these efforts, the EPA has provided significant funding to local governments and others through the National Clean Diesel Campaign (more specifically, the National Clean Diesel Program and State Clean Diesel Grant Program). The focus on education and awareness emphasizes reductions based on activities such as carpooling, teleworking, idling reduction, and other steps that individuals can take.

Because of their vehicle and fleet maintenance and fueling operations, cities may participate in mobile source emission reduction programs. City councilmembers may become involved in this area while considering policies for growth management, vehicle acquisitions, idling reduction, and commuting alternatives (e.g., teleworking and carpooling/vanpooling subsidies).

**Acid Rain Control Program**

The CAA also establishes programs to reduce acid rain by requiring lower emissions of sulfur dioxide and nitrogen oxides. Typically, these programs only affect cities that operate large stationary sources such as waste combustors, sludge incinerators, and large boilers.

**Federal Operating Permit Program**

Federal and state laws require permits for new or major modifications to stationary sources, particularly larger (major) sources. These permits, which are required before beginning construction and/or operation, include allowable levels of emissions as well as monitoring, recordkeeping, and reporting requirements. The CAA sets forth federal operating permit requirements for major sources and certain smaller sources of air pollution (often referred to as the Title V program). A specific source may require a Title V permit based upon the amount and types of air pollutants emitted. The program, which is designed to streamline regulation of air pollution, allows inclusion of all air pollution control requirements for a source in a single document and contains requirements for public participation in the permitting process. Title V also requires the imposition of a fee on regulated sources to pay for program implementation. Cities that operate incinerators, certain boilers/generation units, or other large sources may be subject to Title V requirements.
**Stratospheric Ozone Protection Program**

Provisions of the CAA also protect stratospheric ozone by restricting the use of ozone-depleting chemicals. The manufacture of many of these chemicals has already been phased out. These requirements are applicable to local government operations involving repair and maintenance of vehicle or building air conditioning units. Unlike many other CAA programs that are enforced by state or local agencies, the EPA implements this program directly.

**Application of Federal Requirements in Georgia**

The Georgia Air Quality Act authorizes the adoption of air quality standards and emission limits, requires permits for stationary sources, and mandates enforcement of air quality requirements. The Board of Natural Resources has adopted a range of rules to control pollution from stationary sources, restrict open burning, and implement motor vehicle inspection and maintenance programs. The EPD administers and enforces the law and its associated regulations. The EPA has delegated most of its day-to-day federal air pollution control program implementation and enforcement responsibilities to the EPD and provides some funding to support those activities.

Across Georgia, air quality has historically met or exceeded federal standards for all pollutants; however, controlling ground-level ozone and particulate matter in urban and nearby areas has been challenging. Air pollution in the Atlanta metropolitan area has exceeded federal standards for ozone since the late 1970s. In 1991, the EPA listed the 13-county Atlanta region as a serious nonattainment area for the one-hour ozone standard. Because the area did not come into attainment by 1999, its classification was bumped up to a severe nonattainment area, which required the imposition of more pollution reduction requirements. In order to enhance pollution control efforts, the EPD designated 32 additional counties (Banks, Barrow, Bartow, Butts, Carroll, Chattooga, Clarke, Dawson, Floyd, Gordon, Hall, Haralson, Heard, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Newton, Oconee, Pickens, Pike, Polk, Putnam, Spalding, Troup, Upson, and Walton) as “contributing counties” and subjected areas in those counties to certain regulations. In 2005, the EPA redesignated Atlanta as an attainment area for the one-hour ozone standard.

Although it has met the one-hour standard, the Atlanta area continues to face challenges in meeting a new eight-hour ozone standard originally adopted in 1997. In 2004, the EPA designated 20 counties (Barrow,
Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton Counties) as the metropolitan Atlanta marginal nonattainment area. Failing to attain this standard by 2007, the Atlanta area was bumped up to the moderate classification in 2008 and was required to attain the standard before June 15, 2010. The area again failed to attain the eight-hour ozone standard, but due to significant improvement, it was granted a one-year extension. The next evaluation in 2011 will rely on air quality–monitoring data from 2008–10.

Metropolitan Atlanta has also faced challenges in meeting the fine particulate matter (PM2.5) standard. The EPA designated all or part of 22 counties in the region (Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, a portion of Heard, Henry, Newton, Paulding, a portion of Putnam, Rockdale, Spalding, and Walton Counties) as a nonattainment area in 2005. The CAA requires that designated areas achieve the standards in no more than five years but authorizes the EPA to issue a five-year extension. The agency did not designate any additional counties following the 2006 standard revision.

In recent years, other areas of Georgia have begun addressing air quality challenges. Walker and Catoosa Counties are part of the Chattanooga area, which has faced difficulties in meeting the ozone and PM2.5 standards. The Macon metropolitan area (Bibb and a portion of Monroe Counties) has also faced challenges with regard to ozone and fine particle pollution. Although the EPA designated a portion of Muscogee County as a nonattainment area for the lead standard in 1992 (redesignated as an attainment area in 1999), more recent concerns have arisen in meeting the ozone and fine particle standards. Other areas in Georgia that have faced and may continue to face air quality issues include a portion of Murray, Richmond, and Houston Counties (eight-hour ozone standard); Floyd, Harris, Dade, Madison, and Oconee Counties (PM2.5 standard); and Clarke County (ozone and PM2.5 standard). All of these counties were either proposed for a nonattainment designation or were ultimately designated as part of a nonattainment area. Counties in the Chattanooga and Macon areas took aggressive steps to reduce ozone pollution and have been redesignated as attainment areas. The agency has redesignated the portion of Murray County as an attainment area for the ozone standard and Clarke and Muscogee Counties as attainment areas for the fine particle standard.
Moving Forward

Air quality in Georgia has improved as the result of (1) operation of new pollution controls at stationary sources, particularly power plants; (2) use of cleaner fuels; (3) implementation of tighter emission standards; and (4) continued focus on reducing vehicle miles traveled through activities such as carpooling and high-occupancy vehicle lane usage. However, as some areas of Georgia continue to grow, more pollution-reducing actions will be required in order to keep pace with population increases, additional energy demands, and tightening federal standards.

The time frames for implementation of effective air pollution control programs are often lengthy. The EPA has been criticized for adopting tighter standards when programs to obtain reductions under previous standards have often just begun. The five-year standards review cycle under federal law may be too ambitious; however, the EPA will continue its best efforts to comply with the legal time frames in reviewing and revising standards if necessary.

Georgia will continue to face deadlines for meeting federal air quality requirements. As standards are revised, it is incumbent upon local governments to implement policies and programs (some at little or no cost) in order to reduce the odds of being designated a nonattainment area. While such a designation often does not produce the perceived disastrous economic consequences, as evidenced by the continued growth in the Atlanta metropolitan area, it is designed to force actions to reduce air pollution that may be better achieved voluntarily.

WATER RESOURCES MANAGEMENT

Like air, water is a life-sustaining resource that is essential to the survival of humans and all other life on earth. Water also has significant economic value to businesses and industries that use it as part of their processes. It can be used directly to generate power or as coolant, thereby allowing other technologies to produce power. Water is vital in agricultural and forestry operations, producing the food and fiber that is used daily. Water and waterways continue to play important roles in commerce and recreational uses and in supporting ecological needs, including providing an aquatic habitat for plants and animals.

Given the extensive need for water and its limited availability, competition among uses (and users) of water has increased. This competition exists not only within the state but also on an interstate basis, resulting in environmental conflicts. Intrastate competition has historically been manifested in numerous attempts to limit interbasin transfers. Current
state surface water allocation laws contain a provision limiting inter-basin transfers. In addition, the law creating the Metropolitan North Georgia Water Planning District specifically prohibits the district from including in its studies or planning any interbasin transfers of water into the district.

Interstate conflicts have been most pronounced in the Apalachicola-Chattahoochee-Flint and Alabama-Coosa-Tallapoosa river basins. Concerns have also been expressed about potential withdrawals from the Savannah River and the Tennessee River. Most interstate concerns/conflicts have focused on water use in the metropolitan Atlanta area. In addressing these concerns, Georgia officials have held conversations and negotiations with leaders from Alabama, Florida, and South Carolina. Potential disputes remain largely unresolved. However, a federal district court ruled that water supply withdrawals for metropolitan Atlanta are not among the authorized purposes for Lake Lanier. The U.S. Army Corps of Engineers must end most water supply withdrawals from the lake by July 2012 unless specific authorization for these withdrawals is given by Congress. Georgia leaders are currently working to address this situation.

Laws regarding water resource management are fragmented. Although general agreement exists among policymakers regarding the interrelatedness of water quality and quantity (supply and use) as well as the interconnection between surface water and groundwater in many areas, laws and policies have typically focused on major issues occurring at the time of their adoption and legal constraints on federal, state, and local governmental authority in water resources-related matters. Given that water resources are vital for so many reasons, it is important for city officials to be aware of local water resource conditions and be informed about opportunities and responsibilities relating to water resource management issues.

This section reviews federal and state laws related to surface water quality protection, drinking water quality protection (including policies protecting groundwater resources), and water supply and allocation. Federal requirements provide the overall framework. As with most major environmental protection programs, Georgia has enacted corresponding state statutes, thus allowing the EPD to implement the federal programs in Georgia. As is the case in many environmental management programs, city governments may find themselves to be regulated entities as well as regulators or managers. For example, cities’ drinking water and wastewater management services are regulated, but cities may be regulators of industrial wastewater pretreatment programs.
Water Quality Protection

Federal water pollution control efforts began in the 19th century with the enactment of the Rivers and Harbors Act, prohibiting obstruction of navigable waterways without a permit from the Secretary of the Army. It also prohibited the placement of materials such as solid waste or sewage sludge on the banks of those waterways if the material was likely to be washed into a river or stream. The implementation of provisions that are still applicable has been consolidated with the Army Corps of Engineers’ responsibilities under the dredge and fill permitting program of the CWA.

The CWA (formerly known as the Federal Water Pollution Control Act) sets forth the framework for protecting and restoring surface water quality.16 Programs implemented under the act seek to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. These programs involve water pollution control permitting, water quality standards development and implementation, wetlands permitting, sewage sludge management, spill prevention and reporting, nonpoint source pollution management, and provision of financial assistance for construction of wastewater treatment systems. The EPA primarily oversees implementation of these programs, while the EPD implements the federal requirements as well as other state-specific water pollution control programs under the Georgia Water Quality Control Act.17

Water Pollution Control Permitting Programs

Before discussing the specific regulatory requirements, it is important to clarify that the CWA’s regulatory provisions apply to navigable waters, which include all waters of the United States. Federal regulations define waters of the United States as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and interstate waterways; intrastate waterways that could be used in interstate or foreign commerce; tributaries of these waterways; certain coastal waters; and wetlands adjacent to any of these waters.18

The CWA prohibits the discharge of a pollutant by any person into navigable waters, unless that discharge is permitted under the act through the National Pollutant Discharge Elimination System (NPDES) program. In general, permits must be obtained by point sources, which include industrial, municipal (which includes county governments), commercial, and agricultural activities discharging through pipes or ditches. Those permits, which are issued by the EPD, contain specific conditions regarding the quality and amount of the discharge as well as monitoring,
recordkeeping, and reporting requirements. Effluent limits, which limit the concentration of pollutants in a discharge, are based on industry-specific technology standards for reducing pollutants and/or water quality–based limits that are imposed in order to address location-specific concerns. Permits must be renewed at least once every five years. City governments that operate publicly owned treatment works with a direct discharge into waters of the United States must have an NPDES permit.

Dealing with pollution from storm water discharges (runoff from rainfall events) such as combined sewer overflows, sanitary sewer overflows, and runoff from industrial and construction sites has posed unique challenges. Combined sewers (which exist mainly in older urban areas) carry both domestic sewage and runoff from storm events. In order to address pollution problems, combined sewer overflows must now be permitted under the NPDES program, and permitted local governments must take steps to minimize those overflows in the short term and eliminate them in the long term. Sanitary sewers are constructed to carry only domestic sewage. Overflows of raw sewage generally occur as a result of poor maintenance, improper operation, or inadequate capacity. These overflows constitute a violation of the CWA.

The NPDES program also requires permits for storm water discharges from industrial activities, construction sites, and municipal separate storm sewer systems. The EPD may authorize or permit storm water discharges through individual NPDES permits or coverage under a general permit (an NPDES permit that allows discharges from a category of sources within an area). During the first phase of the storm water management program, operators of large and medium-sized municipal separate storm sewer systems located in urbanized areas and construction site operators who engage in activities disturbing five acres or more of land were required to obtain permits. The programs also required permits for storm water discharges from 10 categories of industrial activities. The second phase addressed discharges from regulated small municipal separate storm sewer systems and construction sites that disturb one acre or more of land. Today, numerous local governments across the state must meet storm water management requirements. These governments, which generally engage in land-disturbing activities, must implement storm water management controls in order to meet permit conditions.

Another CWA permit program regulates indirect discharges—those made by industrial users into publicly owned treatment works—through the national pretreatment program. This program allows the establishment of effluent limits (in accordance with industry-specific, technology-based limitations or local limits) in order to protect publicly owned treat-
ment works operations and reduce undesirable chemicals in the sludge. In Georgia, the EPD issues pretreatment permits to any industrial users who release pollutants into a treatment works. Operators of publicly owned treatment works typically become regulators by enforcing permits and limitations on users of their systems.

**Establishing and Protecting Water Quality Standards**

The CWA requires states to establish water quality standards based upon a water body’s particular characteristics and use. The EPD’s standards may be numeric (e.g., a limit of 0.000064 micrograms per liter of polychlorinated biphenyls [PCBs]) or narrative (e.g., waters shall be free from oil, scum, and floating debris). States must periodically determine if the water bodies are meeting those standards. If a portion (segment) of a water body is impaired (not meeting a standard for a particular pollutant), that portion is listed, and the process of developing a total maximum daily load is begun. During the total maximum daily load process, the EPD examines all sources for that pollutant and determines how much reduction is needed in order to allow the segment to meet the standard. The reductions may be obtained through tighter requirements on NPDES permits or increased use of best management practices for runoff. While the EPA does not set water quality standards, most states follow the agency’s guidelines for those standards.

**Permitting the Discharge of Dredged or Fill Materials (Wetlands Program)**

Operations that dispose of dredged or fill materials in waters of the United States require a permit from the Army Corps of Engineers, subject to guidance issued by the EPA. In order to facilitate implementation of this program, commonly referred to as the wetlands program, the corps and the EPA have entered into an interagency agreement. As part of its evaluation of a permit application, the corps conducts a public interest review, assesses probable adverse impacts, and ensures that the applicant has taken appropriate steps to avoid, minimize, and/or mitigate those impacts. Federal regulations provide that the corps issue a permit if no practicable alternative exists to the proposed project, no significant adverse impacts on aquatic resources will result, all reasonable mitigation measures are employed, and the proposed project will not violate any other statute. However, before the corps can issue any dredge-and-fill permit in Georgia, the EPD must certify that discharges from the requested activity will not cause a violation of state water quality standards.
Managing Sewage Sludge

The CWA also requires the development of regulations for the use and disposal of sewage sludge (also referred to as biosolids). The Biosolids Rule (Section 503 Program) regulates sludge management practices. Federal requirements contain limits on toxic chemicals in the sludge based on the proposed disposal practice such as land application, surface disposal, or incineration. The requirements also require controls for pathogens (e.g., bacteria, viruses, and certain fungi) in the sludge and practices to reduce the attractiveness of the sludge to disease-carrying vectors such as flies. Publicly owned treatment works in Georgia that generate biosolids must obtain an NPDES permit, a land application system permit, or a pretreatment permit from the EPD and may have to submit a sludge management plan. Depending on the selected management method, a local government may also be required to obtain additional approvals or permits.

Spill Management

The CWA requires certain facilities that store and use oil to develop a plan for the control and prevention of spills. Spills must be reported, and the facility owner/operator must pay the cleanup costs. If local governments operate fueling facilities, they may be subject to the spill prevention, control, and countermeasures program.

Nonpoint Source Pollution Management

In addition to its regulatory provisions, the CWA contains assistance provisions. Dealing with nonpoint sources pollution (i.e., runoff from agricultural and forestry operations and mining, urban areas, or construction activities) has been and continues to be a challenge in certain areas, despite the best efforts of some operators engaged in those activities to reduce the pollution. Under the CWA's nonpoint source pollution management program (Section 319 program), states must identify water bodies that cannot meet water quality standards due to nonpoint sources pollution, identify the activities responsible for the problem, and prepare management plans specifying controls and programs to reduce pollution from those sources. The EPA also provides states with funding to implement programs and projects in order to prevent or reduce nonpoint sources pollution. County governments that have eligible projects may receive 319 funding.
Clean Water State Revolving Fund Loan Program

The most notable CWA assistance program involves the distribution of funds to local governments for the construction of wastewater treatment facilities and associated sewage collection systems. The federal government has historically provided funds for the design and construction of these facilities. The CWA originally provided for a construction grants program.

As a result of continuing federal budgetary challenges, a Clean Water State Revolving Fund loan program was created in 1987. The EPA provides states with annual capitalization grants for use in their programs, and the states in turn make low-interest loans to local governments for eligible projects. The program, administered by the Georgia Environmental Finance Authority (GEFA), makes loans for a broad range of projects, including construction of new wastewater treatment plants, expansion or upgrade of existing plants, installation of new sewage collection lines, system rehabilitation, efforts to maintain compliance, and other water security measures.

Erosion and Sediment Control Program

Many provisions of the Georgia Water Quality Control Act correspond to CWA provisions. The authority of the state to regulate water quality is similar to that of the federal government. State law and the associated rules authorize the EPD to implement a variety of water pollution control programs in Georgia. The remainder of this section briefly describes some state-specific laws.

Georgia’s Erosion and Sedimentation Act protects the state’s land and water resources from adverse impacts associated with land-disturbing activities. Under this law, areas within local jurisdictions are either covered under state requirements enforced by the EPD or local ordinances enforced by local issuing authorities. In order to be certified as a local issuing authority, a city must adopt an erosion and sediment control ordinance at least as stringent as state requirements and hire qualified inspectors. Local issuing authorities must respond to requests for permits for land-disturbing activities and enforce their ordinances. Those who want to engage in land-disturbing activities (i.e., clearing and grading a site) must prepare and submit an erosion and sediment control plan with the permit application. If permitted, those operators must use best management practices consistent with the Georgia Soil and Water Conservation Commission’s Manual for Erosion and Sedimentation Control in Georgia to reduce erosion as well as other requirements contained in the permit.
The act prohibits land-disturbing activities in certain areas (e.g., stream buffers and floodplains) and specifies activities that are exempt from its requirements. The Erosion and Sedimentation Act also has education and training certification requirements for certain individuals engaged in erosion and sediment control activities.

Georgia law authorizes the EPD to regulate the disposal of treated wastewater onto land instead of discharging it into waters of the United States (which requires an NPDES permit). Any person discharging domestic, municipal, commercial, or industrial wastewaters into a land disposal system must obtain a land disposal permit.31

**Septic System Regulation**

Publicly owned treatment works and associated sewer systems and other types of on-site sewage management systems are used primarily in more heavily populated areas. In rural areas, septic tanks are predominantly used. If these systems are not properly operated and maintained, they can be sources of surface water or groundwater pollution. State law designates the Department of Community Health as the agency responsible for regulating on-site sewage management.32 The department's requirements govern the location, design, permitting, construction, inspection, maintenance, and operation of septic systems. Local governments may adopt additional requirements for septic systems. County health department personnel conduct permitting and inspection activities.33 Any person wanting to build a structure in which a septic system will be used or install a septic system must have a permit from the appropriate county health department. State rules require the property owner to maintain and operate the septic system in a safe and sanitary manner.34 County health department personnel may be called upon to investigate and cite property owners for failure of a septic system (i.e., when seepage or discharge of sewage to the surface occurs).

**State Financial Assistance**

In addition to funds available through the Clean Water State revolving Fund, GEFA offers qualified local governments low-interest loans through the Georgia Fund Program for water and wastewater infrastructure projects. The Environmental Emergency Loan Program provides funding to address public health hazards or environmental violations resulting from an unanticipated event. In addition, GEFA offers certain small cities, counties, and water and sewer authorities the opportunity to receive a one-time grant up to $100,000 to build or expand a public sewer system.35
Environmental Management

Drinking Water Quality Protection

The federal Safe Drinking Water Act has four main purposes:

1. To establish standards and treatment requirements for public water systems
2. To control injection into underground sources of drinking water
3. To protect sources of drinking water
4. To provide financing for drinking water infrastructure

This law specifically recognizes the state’s lead role in implementation and enforcement.

Drinking Water Quality Standards

The Safe Drinking Water Act requires the EPA to adopt national health-based standards setting enforceable maximum contaminant levels (primary drinking water standards) for public water systems (defined as a system providing water to the public for human consumption through pipes, if that system serves at least 15 connections or a minimum of 25 people for at least 60 days annually). Certain public water systems in Georgia are exempt from compliance with the primary standards. Secondary standards provide nonenforceable guidelines to address substances affecting the odor, color, or aesthetics of drinking water. The Safe Drinking Water Act does not regulate the quality of water from private wells or bottled water.

Regulation of Public Water Systems

Owners and operators of public water systems in Georgia must obtain a permit from the EPD. Public water systems must monitor water quality, conduct periodic laboratory analyses, maintain records, and notify customers if there have been any violations of standards that could result in serious health effects. Most systems must also annually provide customers with a report disclosing information on water sources, contaminant testing, and any health concerns (Consumer Confidence Report). Drinking water treatment plants must be operated by certified operators. The Georgia State Board of Examiners for the Certification of Water and Wastewater Treatment Plant Operators and Laboratory Analysis certifies 13 classes of licenses. The Safe Drinking Water Act gives small water systems special consideration regarding use of treatment technologies and other resources and calls for implementation of programs to ensure these systems have the technical, financial, and managerial capacity to
comply with drinking water standards. The act also requires certain public water systems to conduct assessments of their vulnerability to terrorist acts and other intentional acts of contamination. Systems are required to have emergency response plans specifying response measures that will be taken in the event of an incident.

**Protecting Underground Sources of Water**

The act also requires the EPA to develop and implement an underground injection control program to protect underground sources of drinking water.\(^3\) This permitting program regulates the construction, operation, and closure of injection wells that are used for the storage or disposal of fluids. Wells are classified into one of five categories. Local governments that operate Class V (i.e., shallow wells injecting nonhazardous fluids) are subject to these regulations. The EPD implements the underground injection control program in Georgia.

Provisions of the Safe Drinking Water Act also seek to protect sources of drinking water. Through the wellhead protection program, activities on land around public water supply wells or well fields can be controlled in order to prevent uses that may result in contamination. States are required to submit a source water assessment plan (for both surface water and groundwater). The EPD has completed source water assessment plans for existing surface water–supplied drinking systems that use groundwater. The EPD continues to develop wellhead protection plans for proposed new drinking water systems.

The Resource Conservation and Recovery Act addresses concerns regarding water pollution, particularly groundwater pollution, resulting from leaking underground storage tanks (USTs).\(^3\) A UST system includes the tank and any underground piping to the tank that has at least 10 percent of its combined volume underground. Most USTs contain petroleum products such as gasoline. Tank owners and operators, including county governments, must comply with program requirements for the following:

- Tank system installation
- Leak detection
- Spill/overfill protection
- Corrosion protection
- Tank closure
- Reporting and record keeping

The UST provisions in the Resource Conservation and Recovery Act also require that owners and operators demonstrate their financial ability to take corrective action and compensate third parties for bodily injury and property damage. In order to meet these requirements, Georgia established the Underground Storage Tank Trust Fund. This fund receives the proceeds from a state environmental assurance fee of $0.005 on each gallon of gasoline sold in the state. If local government tank owners and operators meet certain requirements set out by the EPD, they may be partially reimbursed for costs associated with release response and corrective action as well as for compensation of third parties for bodily injury and property damage caused by an accidental release. However, the local government is liable for the first $10,000 in costs and must provide financial assurance for that amount. If a local government is not in compliance with the EPD requirements, it is liable for all costs associated with an accidental release.

**Drinking Water State Revolving Fund Loan Program**

The Drinking Water State Revolving Fund loan program helps eligible owners and operators of drinking water systems fund infrastructure and improvements. The EPA provides states with annual capitalization grants for use in their programs, and the states in turn make low-interest loans to local governments for eligible projects. Like the Clean Water State Revolving Fund loan program, the Drinking Water State Revolving Fund loan program is administered by GEFA and provides funds for a broad range of projects, including construction of new drinking water systems, expansion or upgrade of existing systems, installation of new water distribution lines, system rehabilitation, efforts to maintain compliance, and other water security measures. Georgia may also set aside and use funds for small system assistance, funding for economically disadvantaged systems, technical assistance and capacity development programs, and source water protection efforts.

**Georgia Safe Drinking Water Act**

The Georgia Safe Drinking Water Act of 1977 is the state’s counterpart to the federal Safe Drinking Water Act and provides the legal basis for the regulation of drinking water systems in Georgia.
Georgia Underground Storage Tank Act

The requirements under Georgia’s Underground Storage Tank Act are similar to those of the federal government. State law exempts the following:

- Tanks storing heating oil to be used on the premises
- Tanks on or above the floor of underground areas
- Septic tanks and systems used for collecting storm water and wastewater
- Tanks holding 100 gallons or less
- Emergency spill and overfill tanks from UST requirements

Water Well Standards Act

The EPD also administers the Water Well Standards Act, which creates a program for licensing water well contractors (i.e., well drillers and drilling contractors) in accordance with standards set by the Water Well Standards Advisory Council. The law prohibits any person from drilling a water well without a water well contractor’s license. In addition, the law sets forth standards for the siting, construction, and abandonment of individual wells (single-family residence/domestic use); nonpublic water wells (wells that provide drinking water to the public but are below the size threshold for a public water system), irrigation wells, industrial wells, and dewatering wells.

Water Supply/Allocation

Federal regulatory requirements regarding water supply and allocation are very limited. The Army Corps of Engineers has undertaken numerous water infrastructure projects and remains responsible for operating reservoirs around Georgia. The corps can also provide assistance through its continuing authorities program, which focuses on water resource–related projects that are smaller in scope and cost. Among the potentially eligible projects are those that address flood damage reduction, aquatic system restoration, and snagging and clearing of waterways for flood control.

Another federal program that arguably falls into this category is the National Flood Insurance Program. This program provides flood insurance for structures and contents in communities that adopt and enforce an ordinance outlining minimal floodplain management standards. The
three components of the National Flood Insurance Program are flood insurance, floodplain management, and flood hazard mapping. The Federal Emergency Management Agency implements this program federally, and the EPD assists local governments by providing flood maps, flood hazard data, and guidance in understanding, implementing, and maintaining program compliance.

With regard to water allocation, the CWA gives each state the authority to allocate quantities of water within the state. Nothing in the CWA may supersede the state’s authority to allocate its water resources. Further, federal agencies must to cooperate with the state and local governments to develop comprehensive solutions to prevent, reduce, and eliminate pollution while managing water resources.

Any federal role in water allocation has resulted primarily from the federal operation of reservoirs, the participation of federal representatives in interstate water compacts, and water allocation decisions issued by the U.S. Supreme Court.

Several key aspects of Georgia law relating to water withdrawal permitting, reservoirs, water conservation, flood protection, and drought management are discussed in the following sections. However, today, the most notable water resource management program involves the ongoing statewide water resources planning effort.

**Comprehensive Statewide Water Management Plan**

The Comprehensive Statewide Water Management Planning Act created a framework and process for the development of a state water management plan, with the EPD designated as the lead agency. Under the plan approved by the General Assembly and the governor, the EPD will facilitate an ongoing, substate/regional planning process consisting of four major steps:

1. Provision of water resource assessments that describe water supply and wastewater treatment capacities of regional water resources to regional water planning councils
2. Forecasting of needs for water supply and wastewater treatment capacities by regional councils based upon population and employment projections
3. Preparation of a regional water development and conservation plan that identifies management practices for meeting forecasted water supply and wastewater management needs
4. Review and adoption of the regional plan, if it is consistent with the criteria established in the statewide plan.

Once the EPD adopts a plan, the water users in the region must implement the plan. The plan will also serve as the basis for the division’s water permitting decisions.53

Water Withdrawal Permitting

In the area of water rights, Georgia has adopted a regulated riparian approach in order to allocate surface water and a regulated reasonable use approach for use of groundwater. Under both approaches, the state regulates water withdrawals and transfers to ensure that uses of large amounts of water are reasonable. The Georgia Ground-Water Use Act and water withdrawal provisions of the Georgia Water Quality Control Act both require a permit from the EPD for any water withdrawal exceeding 100,000 gallons per day.54 Applicants requesting new or additional surface water or groundwater withdrawals must submit a water conservation plan to the EPD for approval. Before granting a permit, the agency must consider the reasonableness of the withdrawal and the effect on other water resource users. Municipal (i.e., local government) and industrial water withdrawal permits contain limits on the amount of water that may be withdrawn as well as requirements pertaining to monitoring and reporting. Permit terms are usually 10 to 20 years but may extend up to 50 years.

Reservoirs

Georgia law contains several provisions that address reservoirs. Many local governments in Georgia, particularly in North Georgia, use reservoirs to store water for public water supply needs. Local governments that seek to construct a new reservoir must obtain federal authorization, including a permit for the disposal of dredged-and-fill material from the Army Corps of Engineers (for more on these requirements, see the earlier discussion on surface water quality protection), and meet applicable state requirements. In addition, local governments must obtain a water withdrawal permit55 and may be required to obtain a dam safety permit56 and special approval, if the reservoir is to be built on a designated trout stream. Local governments that own a water supply reservoir must develop and implement a reservoir management plan.

In accordance with the Georgia Water Supply Act of 2008, GEFA conducted an inventory of potential sites for multi-jurisdictional water
supply reservoirs. The final report identified 161 existing water supply reservoirs and 114 sites from previous studies. Sixteen reservoirs were deemed to have the “potential for increased water supply yield.” In addition, eight reservoirs are under development or currently in the permitting process.\(^5^7\)

If a local government wants to construct a reservoir for which more than 50 percent of the total cost is funded by a grant from a state agency or a grant of more than $250,000 from a state agency is used, that local government must prepare an environmental effects report if the construction of the reservoir might have a significant adverse effect on the natural environment.\(^5^8\) GEFA is authorized to provide loans or grants to local governments to expand or increase the capacity of existing reservoirs.\(^5^9\)

**Water Conservation**

Water conservation efforts are also very important. In order to promote greater efficiency in residential and commercial water use, Georgia law requires all residential and commercial buildings constructed after 1992 to have low-flow toilets, showerheads, and faucets installed in them.\(^6^0\) Other than for plans associated with water withdrawal permits, drought mitigation measures, and plumbing code requirements, Georgia law contains few requirements pertaining to water conservation. However, local governments have numerous opportunities to implement policies requiring water conservation measures, including the following:

- Use of conservation pricing for locally owned water utilities
- Installation of low-flush urinals for new industrial, commercial, and institutional buildings
- Use of rain sensor shutoff switches on new irrigation systems
- Requirements for subunit meters in new multifamily buildings
- Assessment and reduction of water system leakage
- Implementation of residential and commercial water audits
- Provision of low-flow retrofit kits for residential toilets
- Adoption of an e-education and public awareness plan
- Review and oversight of water conservation implementation and performance\(^6^1\)
In response to the 2009 federal district court ruling regarding continued water withdrawals from Lake Lanier, the Georgia Water Stewardship Act of 2010 was passed. Key provisions of the act include

1. requirements for certain state agencies to review policies and programs to encourage water conservation and enhance water supply;
2. mandates for some public water systems to detect water losses;
3. revisions to state minimum construction standards for new buildings, including use of high-efficiency plumbing fixtures and sub-metering for water use;
4. modification of state and local government authority to impose outdoor watering restrictions;
5. amendments to the permitting system for agricultural water withdrawals; and
6. creation of a joint legislative committee on water supply to examine opportunities for enhancing the state’s water supply.

**Drought Management Planning**

Provisions of Georgia law also provide for drought management planning. The Georgia Drought Management Plan adopted by the Board of Natural Resources includes pre-drought mitigation strategies (water conservation measures) and drought response strategies used in the phased response approach based on drought severity. Local governments may adopt mitigation or response strategies beyond those required by the state.

**Moving Forward**

Local governments in many parts of Georgia will continue to face water resource management challenges in the foreseeable future. Demands from population increases and economic expansion coupled with periods of water scarcity and water quality concerns may create difficulties in meeting water supply needs. These difficulties may be intensified by continued interstate water conflicts. Through its current water management planning process, the state is making great strides toward addressing many of these issues, and its regional approach to water resource management shows great promise in reducing intrastate water-use conflicts.

As service providers, local governments will also likely continue to struggle with drinking water and wastewater management costs. Notwithstanding the need for new service, rehabilitation and replacement of aging infrastructure remain issues. In order to address these needs,
local governments may be forced to focus more attention on water and wastewater rate structures, which are generally controversial issues. In addition, as regulatory programs continue to tighten standards on contaminants and pollutants, management costs may increase in order to meet those new requirements.

**LAND-USE MANAGEMENT**

Through the establishment of sound land management policies, local government officials can protect public health and welfare, enhance the quality of life for local citizens, and preserve the community character. The Georgia Constitution places the authority for land-use management decisions primarily at the local level. Using this authority, officials can direct growth and development, including the density and location of houses, industries, business and commercial establishments, farming operations, and other land uses, thereby separating incompatible land uses. Although the imposition of land-use controls is often controversial, many cities have discovered too late that without these measures in place, local control may not be available to prevent undesirable land uses that could create nuisance conditions associated with noise, odors, or aesthetics.

Moreover, land-use decisions can influence the amount and types of pollutants generated within a county. For example, poor land-use planning often results in sprawl, which likely increases air pollution. In addition to reducing air pollution, proper land-use planning can mitigate adverse impacts to water quality from storm water runoff, which carries oil, litter, sediment, and chemicals into local waterways.

Land-use decisions also determine the need for a city to provide public infrastructure and services as well as its revenue capacity to finance those services. This aspect of land-use management is particularly important in areas of higher population density. Thus, land used for commercial purposes actually generates more tax revenue than the city spends on services. The opposite is true of land developed for residential purposes, as levels of service exceeding the tax revenues generated are required. If overall revenues become insufficient to pay the service costs, city officials may be forced to either raise revenue (by imposing fees or taxes) or cut services.

Land-use management decisions also play a key role in preserving vital areas and community character. In many cases, development results in a change in land use—conversion of farms, forests, or other rural lands to a residential, commercial, or industrial use. Moreover, additional
property may be converted, taking the form of roads, parking lots, homes, stores, and other developments in order to support the new use.66

This section provides an overview of the roles of federal, state, and local governments with regard to land-use management, including regulatory provisions and nonregulatory programs.

**Federal Governmental Role**

The primary interest of the federal government in land-use management arises from its property ownership and management responsibilities and efforts to restrict discriminatory land-use practices. The U.S. Constitution authorizes Congress to regulate federal property67 and gives Congress preemptive power over state and local control of federal lands.68 Although that preemption is absolute in many cases, activities regarding certain federal property may be subject to local constraints.

Various federal agencies own and/or protect more than two million acres of property across Georgia. These agencies include the U.S. Forest Service, the U.S. Fish and Wildlife Service, the National Park Service, and the U.S. Department of Defense, including the Army Corps of Engineers.69 Georgia also contains nearly 57 miles of federally protected wild (40 miles), scenic (2.5 miles), and recreational (15 miles) rivers.70

Since land-use management authority lies primarily at the state and local level, there is no comprehensive federal land-use planning or federal land-use plan. Thus, federal authority over private land-use decisions is limited. Congress has continued to limit any federal land-use authority.71

**Federal Statutes That May Affect Land Use**

Despite the lack of direct land-use control authority, the federal government may indirectly control land use through several statutes. Section 404 of the CWA requires localities to obtain a permit from the Army Corps of Engineers in order to discharge dredged or fill materials into waters of the United States. In most cases, these permits are being sought in order to fill wetland areas. Federal law exempts certain activities from the permitting requirements. Permits issued by the Army Corps of Engineers often contain conditions, restrictions, and requirements for mitigating adverse impacts.

The Endangered Species Act seeks to prevent extinction of threatened and endangered species as well as provide protection for critical habitat areas on which those species rely.72 Administered by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, the Endangered Species Act provides a process for species listing and criti-
cal habitat designation and limits certain activities on land designated as critical habitat. Because critical habitat may include nonfederally owned lands, the Endangered Species Act provides for the issuance of incidental taking permits, which allow limited destruction or harm to a species, and the development of habitat conservation plans, which allow land uses not jeopardizing the listed species or its recovery. Upon approval of a plan by the U.S. Fish and Wildlife Service, the agency will issue an incidental take permit. The agency has taken other actions to reduce adverse impacts on nonfederal landowners (e.g., “no surprises” rule, safe harbor agreements, and candidate conservation agreements).

The National Environmental Policy Act establishes procedural requirements for federal agencies to follow when taking any action that significantly affects the quality of the human environment. Defined broadly, major federal actions include situations in which federal agencies provide assistance, financing, or approval of projects as well as those in which an agency conducts the action. The act’s guidelines contain exemptions and exclusions for certain projects and programs. For actions that are subject to the requirements of the National Environmental Policy Act, agencies must conduct environmental assessments. If the assessment finds no substantial effects on the environment, the agency may produce a Finding of No Significant Impact. If the assessment finds significant impacts, the agency must conduct a more detailed evaluation of those impacts and produce an Environmental Impact Statement. The act does not require an agency decision maker to select the environmentally preferred alternative or prohibit adverse environmental effects. Given the breadth of National Environmental Policy Act requirements, many local government activities may be affected, particularly those funded in part with federal assistance.

Congress enacted the federal Coastal Zone Management Act to preserve, protect, and where possible, restore or enhance the many natural and unique resources of coastal areas. Recognizing the primacy of state decision making, the law encourages coastal states to develop and implement coastal zone management plans. Once the National Oceanographic and Atmospheric Administration approves a state plan for program development, it provides funds for program implementation. State plans define the boundaries of the coastal zone, identify uses subject to state regulation, specify the mechanism(s) used in regulation, and provide guidelines on use priorities. A significant provision in the law requires that activities needing a federal license or permit or receiving federal financial assistance that have reasonably foreseeable adverse coastal effects be fully consistent with the state coastal management programs.
Federal Assistance Programs

Federal programs also provide nonregulatory means by which to assist local governments in land-use management, mostly through financial assistance programs. Some of these programs are as follows:

- **Habitat Conservation Plan Land Acquisition Grants.** Pertains to acquisition of lands associated with existing habitat conservation plans.

- **Land and Water Conservation Fund.** Pertains to the purchase of lands for new or existing parks and recreation lands.

- **Wildlife Habitat Incentives Program.** Pertains to incentives for the creation, maintenance, and protection of certain wildlife habitats, with emphasis on those for rare species.

- **The Farm and Ranch Lands Protection Program.** Pertains to support for state and local farmland protection efforts.

- **The Coastal and Estuarine Land Conservation Program.** Pertains to the purchase of land or easements to protect important coastal and estuarine lands.

Cleaning Up Contaminated Properties

Recognizing that there are many areas with abandoned or underutilized properties, particularly urban areas, that face challenges in terms of revitalization and redevelopment, Congress passed the Small Business Liability Relief and Brownfields Revitalization Act of 2002. The EPA defines brownfields as property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Because these properties are often found in commercial areas that have appropriate transportation, electrical, and water management infrastructure, they have an increased potential for reuse or redevelopment. Brownfields redevelopment is generally considered to be an urban issue. However, rural areas also have brownfields in the form of old gas stations or closed factories.

Developers are usually reluctant to redevelop brownfields out of concern for cost and liability issues. Costs associated with the actual development of brownfields are 20 percent to 60 percent higher than comparable projects at the urban fringe. Federal and state laws also impose financial liability on previous and current owners of contaminated property, regardless of fault. Moreover, brownfields owners may be
hesitant to sell out of fear that they may be liable for as yet unidentified contamination or undetermined cleanup costs.78

The EPA has implemented a brownfields revitalization program that provides technical and financial assistance to states, communities, and stakeholders. The brownfields grants program provides funds to eligible participants, including local governments, for site assessments, cleanup activities, capitalization of revolving loan funds for site cleanups, and job training. Grantees have leveraged an average of $18.68 for each federal dollar spent and an average of 7.75 jobs per $100,000 of federal funding. Other benefits include decreases in air and water pollution, increases in property values, and reduction in crime.79

**State Governmental Role**

In order to better address planning and growth-related concerns, the Georgia General Assembly passed the Georgia Planning Act in 1989. The law recognizes that there is an essential public interest in establishing minimum standards for land use in order to protect and preserve the state’s natural resources, environment, and vital areas.80 The law authorizes the DNR to develop minimum standards and procedures for the protection of these assets.

Georgia law addresses vital areas of the state—those natural resources deemed to be in the interest of the public to protect and preserve, such as wetlands, water supply watersheds, significant groundwater recharge areas, higher elevations in the mountains, and river corridors. The Board of Natural Resources has developed minimum standards and procedures for protecting vital areas, known as environmental planning criteria, which may include requirements for resource assessments, management plans, and protection ordinances.

In order to fulfill the mandate of protecting vital areas, local officials must identify such areas within their jurisdiction in the local comprehensive plan. If vital areas are present, local officials must determine whether all or a portion of the environmental planning criteria will be implemented through local protection measures. The Department of Community Affairs (DCA) reviews local comprehensive plans and protection measures to determine consistency with the requirements of the Georgia Planning Act and environmental planning criteria. Satisfying these requirements allows cities to maintain qualified local government status, which establishes eligibility for financial assistance programs.
Protecting Coastal Areas

Three state laws control development in coastal areas: the Coastal Marshlands Protection Act, the Shore Protection Act, and the Georgia Coastal Management Act. The Coastal Marshlands Protection Act authorizes the Coastal Resources Division of the DNR to require permits for erecting structures such as docks, walkways, and buildings and for dredging or filling in estuarine areas. The Shore Protection Act prohibits use of motor vehicles on dunes and beaches while authorizing the Coastal Resources Division to issue permits for limited construction activity in the sand dune areas.

The Georgia Coastal Management Act enables Georgia to reenter the federal Coastal Zone Management Program. The Coastal Resources Division must prepare a coastal zone management plan that includes locally developed policies to guide public and private uses of land and waters in the coastal area. The Georgia Coastal Management Program balances the economic development concerns and natural resource preservation issues identified by the public. This program works with local governments in the 11-county coastal zone service area to monitor water quality, implement the coastal nonpoint source pollution and shellfish sanitation programs, provide education and outreach, and review federal actions (licenses, permits, and projects as well as federally funded activities) in order to ensure consistency with the program.

The Coastal Management Program offers technical assistance to local governments on a variety of coastal issues and provides funding to eligible parties (including city governments) through the Coastal Incentives Grant Program. Under this competitive grant program, a request for proposal is issued outlining the aspects of the project that should receive priority funding. The program has also developed and submitted a Coastal and Estuarine Land Conservation Program plan to the National Oceanic and Atmospheric Administration, thus allowing potential federal funding for acquisition of lands for preservation.

Georgia Environmental Policy Act

The Georgia Environmental Policy Act requires state agency heads to consider potentially adverse environmental impacts resulting from the actions of their agencies. The law also applies to any action by a city that receives more than 50 percent of the total project cost from the state or a grant of more than $250,000 from the state. If the proposed action
may result in a significant adverse environmental impact, the responsible agency must prepare an environmental effects report that examines the nature of the impact, alternative actions, measures to avoid or minimize the impact, and other specified factors. The responsible official must publish the report, send it to the EPD, provide legal notice and an opportunity for public comment, and consider all received comments before deciding on a course of action. A public hearing may also be required. Finally, the official must provide notice of his or her final decision.

**Nonregulatory Land Conservation Initiatives**

The State of Georgia implements several nonregulatory programs to provide funding for land conservation and preservation at the local level. The Georgia Land Conservation Act created a framework for local governments, state and federal agencies, and private partners to protect the state’s natural resources. The Georgia Land Conservation Council, composed of state agency heads and gubernatorial appointees, considers and approves eligible land conservation project proposals. The DNR serves as the lead programmatic agency; however, GEFA reviews the financial aspects of project proposals and makes recommendations to the council. The Georgia Land Conservation Trust Fund provides grant funds annually to local governments that implement approved land conservation projects. In addition, the Georgia Land Conservation Revolving Loan Fund provides loans annually to local governments and state authorities for approved projects. Funds must be used for the acquisition of conservation land or conservation easements supporting the goals of the act.

Georgia has also encouraged land conservation through tax policy. The Land Conservation Tax Credit Program provides income tax credits for donations of real property for conservation purposes. Because real property tax assessments are based on property value, land committed to conservation purposes (e.g., through conservation easements) may be subject to a reduction in ad valorem taxes under the program. In addition to its other duties, the Georgia Land Conservation Program provides assistance with implementation of the Land Conservation Tax Credit Program. Since the program was created in 2005, 210 grant, loan, and tax credit applications have been approved to help preserve over 150,000 acres in Georgia.

**Local Governmental Role**

Because authority for land-use decisions rests primarily with local governments, city officials can exercise significant influence over land-use
management. Local governments have several regulatory mechanisms by which to direct and/or control local land uses.

Over the years, land-use planners have become more innovative with zoning schemes, thereby allowing public officials some flexibility. Available options include the following:

- Conventional zoning
- Incentive zoning
- Nonexclusive agricultural zoning
- Floodplain zoning
- Cluster zoning
- Performance zoning
- Overlay zoning

City governments can adopt subdivision regulations in order to establish minimum standards for subdivision development. These regulations can set requirements for storm water drainage and retention, streamside buffers, wastewater management, drinking water systems, and recreational areas. In many cases, subdivision regulations protect communities by ensuring a properly built environment. They also typically make developers responsible for the installation of basic public infrastructure before the sale of parcels.

**Nonregulatory Land Conservation Initiatives**

City governments can also play nonregulatory roles in land-use management through land-use planning, acquisition of property or an interest in property, and the creation of tradable development rights programs. Land-use planning identifies unique areas (such as environmentally sensitive areas, historical sites, and parks) that may be targeted for acquisition or preservation. While effective land-use planning can certainly serve as a strong basis for zoning ordinances or subdivision regulations, the practice itself is not regulatory.

Another land-use management tool available to local governments is conservation easements. Georgia law defines a conservation easement as a “non-possessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open-space values of real property; as-
suring its availability for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.”

Local governments may also purchase development rights. In these situations, a landowner typically sells the rights to develop a parcel to a government entity. The landowner retains all remaining property rights. Georgia law allows local governments to create Transfer of Development Rights programs. This concept allows landowners in restricted areas (sending areas) to transfer certain development rights to landowners in areas where higher-density development may be appropriate and/or supported (receiving areas). In order to create a Transfer of Development Rights program, a local government must pass an ordinance outlining the specifics of the program and may also be required to amend zoning and planning documents.

**Tree Ordinances**

A number of counties and cities in Georgia have enacted tree ordinances in their communities. Tree ordinances are developed for a variety of reasons, most often in response to rapid land development or in order to improve water quality, protect quality of life, and address natural resource issues. Tree ordinances can range in complexity from simple tree replacement standards to more comprehensive ordinances that address a vast number of natural resources and tree replacement and banking policies.

**Moving Forward**

Local government land-use controls and land-use management initiatives will remain important to protecting Georgia’s environment and natural resources. As populations increase in parts of the state, land-use controls will be needed in order to direct growth and development, thus inhibiting sprawl. In more rural parts of the state, land-use controls should be considered in order to prevent locally unwanted land uses. Throughout the state, it is essential that county governments consider implementing land conservation initiatives in order to preserve sensitive areas that contribute to the character of the state.

**WASTE MANAGEMENT**

Waste management is a topic often fraught with controversy, but it’s also an indispensible service in today’s society. Most human activities
produce waste in some form. Thousands of households, businesses, and institutions discard tons of garbage per day consisting of paper, glass, metal, and plastic products and packaging. Today’s garbage also contains materials and substances such as drain cleaners, cleaning products, paints, batteries, and pesticides (referred to collectively as household hazardous waste). In addition to garbage and other nonhazardous industrial waste, businesses and industries producing goods and providing services supporting Georgians generate waste products that require special handling (e.g., hazardous waste). Moreover, facilities such as nuclear power plants, hospitals and medical clinics, and research labs produce radioactive waste. While society depends heavily on the goods and services that contribute to the generation of waste, there is often strong public opposition to the siting of new waste management facilities as well as the rising costs of waste management.

For decades, city officials have been intimately involved in waste management issues, mostly associated with garbage disposal. In addition to providing for the management of waste generated by city operations, city governments have accepted the responsibilities of providing solid waste management services for their citizens—the collection, transportation, and disposal of garbage. Over time, cities have used several approaches to provide these services: directly providing the services using city personnel, contracting with private companies for services, and providing a framework allowing private companies to contact directly with customers.

In addition to producing garbage, municipal operations such as vehicle and equipment maintenance, laboratory operations, painting, and road building can also generate hazardous waste. These wastes may include materials contaminated with lead or other metals; waste paint, pesticides, or cleaners; and residues from spill cleanups. Proper management of these wastes can take many forms and may be costly.

Regardless of their choices for management of solid and/or hazardous wastes, municipal officials should remain aware of any liabilities associated with waste management. This section provides an overview of selected federal and state waste management laws, requirements, and programs. Because local governments typically do not generate or manage radioactive waste, requirements regarding its management are not included. Consistent with the overall format of this chapter, federal law provides the broad framework, followed by a discussion of more state-specific issues and requirements.
Nonhazardous Solid Waste Management

Federal Requirements

Before beginning a discussion of waste management requirements, it is essential to clarify the meaning of some important terms. Although these definitions can be very detailed, they are still the subject of some confusion. Waste management responsibilities and liabilities often depend on whether a particular substance meets a definition.

- Solid waste includes household garbage, refuse (scrap materials), certain sludges, industrial wastes, and other discarded materials from a variety of sources.

- Hazardous wastes are solid wastes that may possess qualities posing a significant threat of illness or death to humans or a substantial hazard to the environment. More specifically, regulated hazardous wastes are substances (1) listed by the EPA in federal regulations or (2) exhibiting one of the following specific characteristics: ignitability (capable of creating fires), corrosivity (acids or bases), reactivity (capable of causing explosions), or toxicity (containing certain chemicals or metals). Requirements for hazardous waste management will be discussed in the next subsection.

- Nonhazardous solid waste includes municipal solid waste and industrial waste not regulated as a hazardous waste. Municipal solid waste is what people commonly refer to as garbage or trash. It consists of materials discarded from households, businesses, institutions, commercial establishments, and industries. Common items include plastic bottles and packaging, jars, cans, paper products, food scraps, appliances, furniture, tires, yard trimmings, and construction and demolition waste. Municipal solid waste may also contain small quantities of hazardous substances disposed of by households and certain other facilities.

- Construction and demolition waste refers to waste building materials and debris from the construction, repair, or demolition of structures and streets. This debris typically includes wood, bricks, concrete, and wallboard.

The Solid Waste Disposal Act, as amended in 1976 by the Resource Conservation and Disposal Act (RCRA), provides federal requirements for nonhazardous waste management. While the act seeks to protect public health and the environment from dangers posed by the improper
management of waste, its goals also include the conservation of energy and natural resources and the reduction of waste. Like many other federal environmental laws, this act acknowledges the primary role of states in regulating nonhazardous solid waste management practices and facilities. However unlike those laws, RCRA does not provide the EPA any authority to issue solid waste permits.96

In accordance with the act, the EPA has adopted recommended procedures for the collection and storage of garbage and materials separated for recycling.97 Collection guidelines include information on the design and maintenance of collection vehicles, frequency of collection, and other collection practices. Storage guidelines include provisions for reduction of health and safety risks, container specifications, and building design.

In response to concerns about groundwater and surface water pollution and public health risks, the EPA adopted minimum technical standards for solid waste disposal facilities in 1979. Facilities not meeting those criteria were considered open dumps—a violation of RCRA—and were subject to closure. In 1991, the agency issued revised criteria for landfills that receive municipal solid waste. These criteria, commonly referred to as the Subtitle D standards, provide greater assurance that such facilities will not become sources of pollution or endanger public health. Provisions of the Subtitle D standards provide limitations or establish requirements in the following areas:

- Location of landfills
- Landfill operation
- Design of landfills
- Groundwater monitoring
- Corrective action
- Closure and postclosure activities
- Financial assurance for closure/postclosure activities

These revised standards applied to any municipal solid waste landfill accepting waste on or after October 9, 1993. Landfills that stopped accepting waste between October 9, 1991, and October 9, 1993, were only required to comply with the final cover requirements of the federal regulations. The regulations also contained some flexibility in application of the requirements to small landfills. Under the act, the EPA approves
state regulatory programs if they are adequate to ensure that municipal solid waste landfills will comply with the federal standards. The EPD implements an approved Subtitle D program.

**State Requirements**

The Georgia Comprehensive Solid Waste Management Act, the state counterpart to RCRA Subtitle D, establishes requirements for nonhazardous solid waste management. In addition to providing the basis for regulatory requirements, the act also requires local government solid waste planning and contains management requirements for special wastes.

The act requires all local governments to prepare or be included in a solid waste management plan. Cities and counties are encouraged to develop regional or multi-jurisdictional plans. To be included in such a multi-jurisdictional plan, each jurisdiction must adopt the plan and any updates to it. Previously, the act required all local jurisdictions to undergo annual solid waste plan review and approval by regional commissions and DCA. This review and approval requirement was lifted in 2011; however, local jurisdictions are still required to prepare and adopt solid waste management plans for each landfill they own or operate. These plans must be submitted annually to DCA and must include, at a minimum, (1) the amount of solid waste collected, processed, and disposed of at each landfill; (2) the remaining permitted capacity of each landfill, and (3) recycling and composting activities in existence at each landfill. Lastly, local jurisdictions are no longer required to complete the DCA annual Solid Waste Management and Full Cost Report.

The department also assists local governments in waste reduction efforts, including efforts to minimize waste from their operations and implementation of recycling programs. Recycling paper, glass, aluminum, plastic, and other materials decreases the amount of waste going into landfills and cuts down on energy use. These programs can reduce solid waste management costs and produce revenue through the sale of recyclable materials. To further encourage recycling efforts, DCA has implemented Recycle 4 Georgia, a program providing recycling trailers to local governments for use at special events such as fairs. The Department of Natural Resource’s Sustainability Division (formerly the Pollution Prevention Assistance Division) assists commercial, industrial, and institutional establishments in implementing waste reduction efforts.

The EPD implements the regulatory provisions of the Comprehensive Solid Waste Management Act. Permits are required for solid waste
collection, storage (transfer stations), incineration (thermal treatment), and disposal facilities (inert waste landfills and municipal solid waste landfills). Landfills and incinerators must also meet requirements for controlling air and water pollution. State law also requires municipal solid waste landfills and municipal solid waste incinerators to be operated by certified operators.\textsuperscript{100}

The EPD also permits municipal solid waste incinerators (also referred to as combustors), primarily under Clean Air Act rules. The facilities must meet requirements for siting, design (with air pollution control equipment), and operation. These facilities must have a relatively steady flow of waste that is controlled (to the extent possible) in order to prevent the inclusion of certain materials (such as wastes containing lead and cadmium). Facilities that generate energy as the result of this incineration are referred to as waste-to-energy facilities.

Local governments that operate incinerators must also dispose of the fly ash (i.e., dust removed from air pollution control devices) and bottom ash (i.e., burned residuals left in the incinerator). Both types of ash are typically mixed for disposal; however, incinerator operators must test the ash to determine if it meets the characteristics of hazardous waste. If it does meet those characteristics, the ash must be managed as hazardous waste. If not, the ash usually can be disposed of in a municipal solid waste landfill or a landfill dedicated to disposal of ash (monofill).

In Georgia, landfilling remains the most widely used solid waste disposal method. There are generally two types of landfills: municipal solid waste landfills and inert waste landfills. As previously mentioned, federal requirements apply to municipal solid waste landfills, and the EPD’s permitting program implements those requirements. Landfill permits include provisions for receiving wastes (excluding regulated amounts of hazardous waste), controlling access and vectors (flies, rodents, and birds), monitoring and managing the production of landfill gas and leachate (contaminated water produced as rainfall seeps through the waste), monitoring groundwater, maintaining records, and reporting.

Inert waste landfills accept construction and demolition waste. The volume of waste entering these facilities can be significant. The EPD regulations contain rules for the siting and operation of these facilities. Because the regulations on inert waste landfills are not as stringent as those on municipal solid waste landfills, disposal costs are usually reduced.

Georgia laws and regulations also contain specific provisions for management of the following wastes:
• **Yard trimmings.** While the law encourages the “beneficial reuse” of yard trimmings (leaves, brush, and grass clippings; shrub and tree prunings; vegetative matter from landscaping; and similar wastes), the outright ban on mixing yard trimmings with municipal solid waste was modified in 2011 to allow it in certain circumstances. The purpose of this change was to promote the use of bioenergy derived from landfills. Currently, yard trimmings may be mixed with municipal solid waste or disposed of in a lined municipal solid waste landfill only if the landfill has a permitted gas collection system in operation that uses collected gas for electrical generation, industrial use, or other beneficial uses. Otherwise, yard trimmings may be disposed of only in construction and demolition landfills or inert waste landfills or be left in the place where they were grown for purposes such as brush piles for habitat and gradual decomposition, composting, or wood chipping.

• **Scrap tires.** The scrap tire management program regulates the handling of tires from the point of generation to final disposal. Whole scrap tires may no longer be disposed of in municipal solid waste landfills. The EPD program places requirements on tire generators, carriers, and management facilities and includes criteria for processing, storage, and disposal facilities. State law also imposes a $1 per tire fee on each tire sold at retail, with the proceeds going toward the Solid Waste Trust Fund.

• **Lead acid batteries.** Georgia law regulates the handling of lead acid vehicle batteries. The law prohibits the placement of these batteries in the garbage and establishes a recycling program.

• **Roofing shingles.** State law also prohibits the disposal of roofing shingles containing asphalt, except at municipal solid waste landfills or landfills handling construction and demolition waste.

*Other Nonhazardous Waste Management Challenges*

Electronic waste (also referred to as e-waste) includes televisions, computers and computer monitors, and cell phones. This type of waste requires special handling because it can contain many toxic substances, including lead, chromium, cadmium, mercury, nickel, and zinc. If improperly managed, these wastes can pose risks to human health and the environment. As society increasingly relies on newer and better technologies, the volume of this waste stream will continue to grow. Georgia does not have any specific rules concerning the disposal or recycling of
e-waste. EPD regulations provide that local governments that collect only residential household electronics for recycling are not designated as a hazardous waste generator. Several local governments have implemented pilot programs (single-day collection events and drop-off collection programs) for electronic waste management.

As previously noted, local governments that operate landfills and incinerators must take actions to exclude regulated quantities of hazardous waste. In addition, many local governments have established household hazardous waste collection programs. These programs typically provide for the collection of leftover cleaners, solvents, paints, oils, and pesticides from residents and provide for the proper management of the materials.

Financial Assistance
GEFA provides financial assistance to qualified local governments through two programs. Under the Georgia Fund Water and Sewer Loan Program, GEFA provides local governments with low-interest loans of up to $3 million for solid waste management infrastructure (such as landfills and landfill gas collection systems). The Recycling and Waste Reduction Grant Program provides funds for recycling and composting programs, public education initiatives, and single-day collection events for e-waste or household hazardous waste.

Hazardous Waste Management
Because a variety of local government operations can generate hazardous waste, it is important for local government officials to have a fundamental understanding of hazardous waste management requirements. Subtitle C of RCRA regulates the management of hazardous waste. Unlike RCRA Subtitle D, these provisions establish strict federal regulatory guidelines that must be followed from the point of generation to the point of final disposal. The Georgia Hazardous Waste Management Act authorizes the EPD to implement a hazardous waste management program in the state. Because in most cases, the EPD has adopted the federal regulations, specific state requirements are not discussed here.

A fundamental concept of hazardous waste management is determining whether a specific type of waste meets the definition of hazardous waste under federal law (that is, whether it exhibits a specific characteristic or is listed). The EPA lists more than 500 substances as hazardous wastes. Management requirements must be followed according to the type of hazardous waste and the amount generated.
Hazardous Waste Generators

Federal and state rules establish requirements for hazardous waste generators. These requirements become stricter as monthly waste generation increases. Generators fall into the following classes:

- Large quantity generators produce more than 2,200 pounds per month of any hazardous waste or more than 2.2 pounds of any acute hazardous waste (substances categorized as “P-listed” wastes by the EPA). These generators are subject to all legal requirements for generators. They must obtain an identification number from the EPD; employ proper management practices, generally limiting on-site storage (accumulation) of waste to 90 days or less without a permit; use hazardous waste manifests when shipping wastes; prepare a hazardous waste contingency plan for emergency responses; and implement an employee training program.

- Small quantity generators produce between 220 and 2,200 pounds per month and store (accumulate) less than 13,200 pounds of hazardous waste. Generators in this class are subject to less extensive regulatory requirements but must obtain an identification number and provide proper management, generally limiting on-site accumulation of waste to 810 days or less without a permit. They must have procedures to deal with emergencies and provide some employee training.

- Conditionally exempt small quantity generators produce less than 220 pounds of hazardous waste or 2.2 pounds of acute hazardous waste per month and are exempt from most regulatory requirements. These generators may not store more than 2,200 pounds of waste on-site and must ensure that waste treatment or disposal occurs in a permitted facility (which includes a municipal solid waste landfill).

Since rates of waste generation may change, generators must comply with the requirements of a given class based on the amount they generate in a month. Generators who are uncertain about the amounts of waste they may be generating on a monthly basis may decide to “protectively” comply with the requirements of the higher generator class. By taking this proactive approach, a generator may be able to avoid violations and possible fines and penalties.

Hazardous Waste Transporters and Management Facilities

Federal and state hazardous waste management regulations contain requirements for hazardous waste transporters and extensive rules for
the treatment, storage, and disposal of hazardous waste. Because city governments typically do not engage in activities associated with treatment, storage, and disposal of hazardous waste, such requirements are not discussed here.

**Special Programs for Managing Certain Hazardous Wastes**

Certain hazardous waste management programs contain special provisions for handling some wastes that are particularly likely to be recycled.

- **Universal Waste.** The EPA created the Universal Waste Rule to allow continued recycling of certain commonly recycled materials. The rule includes management requirements for discarded batteries, pesticides, thermostats, fluorescent lamps, and mercury-containing equipment. Management requirements are specified for large quantity handlers, small quantity handlers, transporters, and destination facilities.

- **Used Oil.** In response to management concerns, the EPA created a special management program in 1992 under which recycled used oil is not subject to hazardous waste management requirements. If the used oil is sent for disposal, it must be tested to determine if it meets the characteristics of hazardous waste. If so, it must be managed as hazardous waste. Federal and state regulations place specific management requirements on generators, collection centers, transporters, transfer facilities, processors/re-refiners, burners, and marketers.

**Hazardous Substance Releases**

**Federal Program**

While RCRA regulates management of hazardous wastes from ongoing operations and processes, another federal law, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund law), addresses releases or threats of releases of hazardous substances that may pose a significant risk to public health or welfare. In many cases, CERCLA sites include areas potentially contaminated by past waste management practices, abandoned hazardous waste sites, or facilities whose owners have become bankrupt. A wide variety of local government activities, including the operation of municipal landfills, may result in pollution that creates conditions for a hazardous waste site.

Responsible parties can be required to clean up releases. If a responsible party fails to do so or cannot be determined, the act authorizes the EPA to conduct cleanup operations. CERCLA also created the Super-
fund, a federal trust fund originally financed by taxes on chemical and petroleum products and other corporate taxes in order to pay costs associated with federal cleanup activities. Federal law requires the EPA to recover its response costs from potentially responsible parties.

Under CERCLA, the agency conducts two types of responses: removal actions and remedial actions. Removal actions are short-term responses to address immediate threats or to stabilize a site. Remedial actions are actions of longer duration that seek to provide final remedy for site contamination. Sites potentially requiring remedial action must go through an extensive assessment of the nature and extent of the contamination. If a site poses a significantly substantial threat to public health and the environment, it may be added to the National Priorities List, the EPA's priority cleanup list.

CERCLA imposes strict, joint, and several liability on all parties potentially responsible for a contaminated site. Therefore, even though a potentially responsible party (including a local government) may not have been responsible for all contamination at a site, it may be held solely responsible for all cleanup costs. That party may sue other potentially responsible parties in order to recover costs. A few limited exceptions to this liability scheme exist. For example, local governments that acquire property through foreclosure are not held liable under most situations.

It is important to emphasize that local governments have been subject to enforcement actions under the Superfund law that have resulted in substantial monetary settlements. Local governments in Georgia have paid a portion of cleanup costs at a closed municipal landfill site and continue to take actions to prevent further releases.

Another significant aspect of the law involves its requirements for reporting releases of a hazardous substance exceeding a reportable quantity (a substance-specific amount established in regulations). Regulations contain criteria for reporting as well as exclusions from reporting requirements. Failure to report releases may result in serious consequences.

State Program

The Georgia Hazardous Site Response Act, the state Superfund law, addresses contaminated sites in Georgia that are not placed on the National Priorities List. If the director of the EPD believes there is or has been a release of a form of hazardous waste, hazardous constituent, or hazardous substance that poses a threat to public health or the environment, he or she can request and subsequently order responsible parties to clean up a site. If the responsible parties do not act, the law authorizes the EPD to clean up the contamination and pursue the recovery of costs through
litigation. The law limits liability in certain situations. To provide funding for the division’s responses, the act creates the Hazardous Waste Trust Fund financed through a per ton fee on solid waste and fees on hazardous waste management and hazardous substance reporting.\textsuperscript{109}

Georgia’s Hazardous Site Inventory lists sites having a known or suspected release of a regulated substance above the reportable quantity and that have not been cleaned up to state standards. These sites range from industrial sites (manufacturing facilities) to smaller businesses (dry cleaners) to unlined local landfills and typically contain soil and/or groundwater contamination. Sites certified as meeting state cleanup standards may be removed from the inventory. Each site in the inventory contains a summary providing general information, a description of the contamination, threats posed by a release, and the status of cleanup activities.

The Georgia Voluntary Remediation Program Act\textsuperscript{110} allows an eligible applicant/participant (generally a property owner) to submit a voluntary remediation plan to the EPD for the cleanup of a qualified parcel of contaminated property. If the plan is approved, the applicant must implement the cleanup plan under oversight from a registered professional (such as a geologist or engineer). Upon completion of the cleanup, the program participant must submit a compliance status report to the EPD demonstrating that the cleanup standards have been met. If the report is approved, the site may be removed from the Hazardous Site Inventory. Project participants pay the EPD’s costs under this program.

\textit{Emergency Planning and Community Right to Know}

The Emergency Planning and Community Right to Know Act,\textsuperscript{111} passed as part of the 1986 amendments to the Superfund law, improves state and local planning for chemical emergency responses and provides information to the public on chemicals stored and used at certain facilities. The act requires the establishment of a state emergency response commission to coordinate activities and establishment of local emergency planning committees in order to receive information from local facilities and ensure appropriate local response planning. Membership of local emergency planning committees usually includes local elected officials, law enforcement/firefighting/civil defense personnel, health care workers, and representatives of community groups and local industries.

The act includes four primary reporting and/or notification programs. Under Section 302, certain facilities must notify the state emergency response commission and appropriate local emergency planning committees of the presence of extremely hazardous substances (from
among a list of more than 350 substances)\textsuperscript{112} in excess of threshold planning quantities, which are established in regulation. As with the requirements under the Superfund law and the Georgia Hazardous Site Response Act, under Section 304, facility owners/operators must notify the state emergency response commission and local emergency planning committees of a release of an extremely hazardous substance/hazardous substance exceeding a reportable quantity. Sections 311 and 312 of the act also require certain facilities to submit material safety data sheets to the state emergency response commission, local emergency planning committees, and local fire departments for particular chemicals that are present on-site. Finally, under Section 313 toxic chemical release reporting requirements, specific categories of facilities must annually report releases of specified substances into the environment.

While local governments are not subject to filing Section 313 reports, they may be subject to other provisions of the act, depending on the types and quantities of chemicals used or stored.

Moving Forward

Waste management issues will likely remain controversial. Waste reduction programs across the state are continuing to make some headway in reducing the amounts of nonhazardous solid waste going to municipal solid waste landfills. Despite any decline in waste volume, the costs of landfilling municipal solid wastes remain somewhat fixed. Landfill operators may seek other opportunities (such as landfill gas-to-energy projects) to provide additional revenue.

Hazardous waste management requirements will likely continue to change as regulatory agencies seek better definitions and management strategies. Because management of this type of waste can have long-term liability implications, it is important that the qualified city employees overseeing waste management activities remain focused on those activities and keep current on regulatory changes.

Redevelopment of contaminated property will provide local governments with opportunities to improve their economic outlook. The EPA continues to provide a stable source of funding to address brownfield properties.

OTHER RELEVANT ISSUES

Provisions under two other federal environmental laws may be particularly applicable to municipal operations. The Toxic Substances Control
Act prohibits the manufacture and importation of certain chemicals.\textsuperscript{113} However, most importantly, provisions of this law deal with management of asbestos-containing material, lead exposure reduction, and the disposal of polychlorinated biphenyls (PCBs). Under the Toxic Substances Control Act and the Georgia Asbestos Safety Act,\textsuperscript{114} renovation and demolition of certain buildings and other structures are subject to requirements for handling asbestos-containing material, including use of trained/licensed personnel, employment of prescribed work practices, and notification and inspection before work begins. Similarly, regulations adopted under the Toxic Substances Control Act and the Georgia Lead Poisoning Prevention Act of 1994\textsuperscript{115} also place requirements on persons conducting renovation, repair, and painting projects in target housing and child-occupied facilities. These regulations also include requirements for notifying the division before starting a project, using licensed/certified personnel, and adhering to best management practices in conducting lead-based paint abatement projects.\textsuperscript{116}

The Federal Insecticide, Fungicide and Rodenticide Act sets requirements for pesticide labeling and use.\textsuperscript{117} Under this act, it is unlawful to use a pesticide in a way that differs from those uses authorized on the label. Georgia regulates the application of pesticides under the Georgia Pesticide Use and Application Act of 1976,\textsuperscript{118} and it requires local government employees who use “restricted” pesticides to be licensed by the state Commissioner of Agriculture. The act also exempts pesticides from local regulation by counties and cities.\textsuperscript{119}

**ENVIRONMENTAL ENFORCEMENT**

Federal and state environmental protection agencies have several approaches to enforcement: administrative enforcement, civil enforcement, and criminal enforcement. Citizen lawsuits are another means by which violators may be brought into compliance.

**Administrative Enforcement**

Administrative enforcement typically provides the most flexibility in resolving an enforcement issue. Within this process, agency staff may conduct facility inspections, investigate activities, request records and information, and issue administrative orders or consent orders. These orders may require alleged violators to take certain actions and may include monetary penalties. Within the EPA, administrative enforcement is considered part of the civil enforcement program.
Civil Enforcement

In the civil enforcement process, the agency files a lawsuit, usually seeking injunctive relief and a civil penalty. An injunction is a court order that either compels a party to take or prohibits a party from taking an action. Policies adopted under some federal environmental laws require that actions seeking a penalty amount above a certain threshold be referred to the U.S. Department of Justice for civil enforcement. The goal of civil enforcement in environmental protection laws is to return an alleged violator to compliance.

Civil and administrative penalties associated with each violation of federal and state environmental laws can be substantial. Under the CAA and the CWA, civil penalties for some violations could bring a maximum fine of $25,000 per day per violation. Since 1996, the EPA has been required by federal law to adjust federal environmental civil penalties for inflation every four years. As a result, the agency revised the $25,000 daily maximum penalty to $37,500 per day effective January 2009. It should also be noted that in this area, Georgia law is stricter than federal law. Georgia law provides a maximum civil penalty of $50,000 per day for the first violation of the Georgia Water Quality Control Act and $100,000 per day for subsequent violations within a 12-month period.  

In considering penalty amounts, environmental regulatory agencies usually take into account several factors such as whether the violation was deliberate, damages to the environment and natural resources, past performance history of the alleged violator, and any economic benefits that accrued as a result of noncompliance. Incentives (reduction in penalties) may exist if regulated organizations self-report violations they discover through environmental self-audit programs or evaluations.

Another aspect of the civil enforcement process involves the use of supplemental environmental projects to reduce the penalty amount that may be paid. As part of a settlement agreement, an alleged violator may agree to perform an environmentally beneficial project (a supplemental environmental project) that is somewhat related to the alleged violation. That project cannot be legally required in order to bring the violator back into compliance. For example, a company alleged to have violated sections of the CAA may propose funding for technical assistance to local governments on air quality issues or for retrofits of diesel-powered public equipment in order to reduce emissions. The EPA has a supplemental environmental projects policy that provides further details.
Criminal Enforcement

Criminal enforcement is usually reserved for the most serious environmental violations. Violations for which criminal sanctions are sought involve serious negligence, intentional acts, and “knowing” disregard for the law. Particular attention is paid to situations in which the violator knowingly places another person in imminent danger of death or serious bodily injury. Convictions for criminal violations of environmental laws can carry very significant fines and prison sentences. For example, criminal penalties for tampering with a public water system carry a fine and prison sentences (10 to 20 years). As expected, the goals of criminal enforcement are punishment and prevention of future crimes.

Citizen Lawsuits

Another approach to environmental enforcement involves citizen lawsuits. Many major federal environmental laws contain sections that allow “citizens” (defined in the broadest sense and including public interest environmental groups, such as the Southern Environmental Law Center or Greenlaw) to file lawsuits in federal court against regulated parties for alleged violations of environmental laws. Before filing the lawsuit, the citizen (or his or her legal counsel) must provide a 60-day notification (referred to as an intent to sue) to the alleged violator and the EPA. In addition, a continuing violation must exist at the time the lawsuit is filed. Citizen lawsuits are not allowed if a federal or state regulatory agency is diligently prosecuting the alleged violation. While citizens may recover attorney fees in successful actions, they cannot recover any monetary amounts for damages. Citizens may also sue the administrator of the EPA for failing to perform a duty mandated by federal law. The lawsuit would seek a court order requiring the administrator to perform that duty within a given time. Georgia environmental protection laws do not contain citizen lawsuit provisions.

FEDERAL ENVIRONMENTAL GRANTS AND CONTRACTS

One area that receives little mention in discussions regarding environmental management involves the use of federal grant funds. The EPA provides numerous financial assistance opportunities in many different programs, and city governments are among the eligible participants. Federal environmental grants come with many conditions involving re-
cordkeeping and reporting, procurement of goods and services (typically requiring competition in procurement of services), avoidance of conflicts of interest, and requirements for closeouts. Problems may also arise regarding contracts that use federal environmental funding.

Most local government officials are aware that violations can result in withholding of funds or demands to repay improperly spent funds. However, many officials are not aware that very serious violations may result in suspension or debarment. Suspension usually results in individuals or organizations (including local governments) being denied access to all federal grants and contracts on a temporary basis. Debarment actions usually cover a longer term and may be permanent. In order to avoid these outcomes, county personnel should remain well trained and up-to-date on federal grant/contracting requirements as well as the list of persons who are currently suspended or debarred. Staff at the EPA regional office can provide assistance.

CONCLUSION

Environmental protection efforts have resulted in progress toward better quality of life over the past few decades. Air and water quality have improved. Contaminated property has been identified and cleaned up, and waste generation has been reduced in some areas. People have generally become more aware of environmental issues. Much of this improvement has occurred while the population has increased, the economy has prospered, energy consumption has risen, and vehicle miles traveled have increased. Improvements in environmental quality have occurred as a result of not only regulatory programs but also voluntary and collaborative efforts.

Local governments have assumed more responsibilities in response to public expectations for services and actions. They have been delegated greater responsibility for environmental programs from federal and state governments and have made commitments to improve the quality of life for local citizens. As a result, local governments generally provide more services and implement more programs than at any time in the past.

Attention continues to be given to conservation of water, energy, and other resources. Municipal governments can practice conservation in their operations, thereby reducing costs and providing other benefits. As respected members of the community, city officials can encourage business owners, industry leaders, and constituents to incorporate conservation measures into their daily practices. In some cases, these measures can be taken at little or no cost. With a renewed focus on sustainability,
city governments across the country are undertaking “green” building projects and implementing other green practices in their operations. Successful implementation of conservation measures and sustainable projects reduces not only current use but also the vulnerability to increased future costs.

It is vital that individuals conducting and supervising city environmental management responsibilities maintain a working knowledge of current requirements. Environmental regulatory requirements are numerous, complex, and ever changing. Given tighter budgets and scores of other priorities, environmental regulatory issues may not always be at the top of the list. However, attention to these details can help local governments avoid future problems.

NOTES

15. O.C.G.A. §12-5-584(f).
17. O.C.G.A. §12-5-20 et seq.
23. 40 C.F.R. §230.10(a)–(d).
29. O.C.G.A. §12-7-1 et seq.
30. O.C.G.A. §12-7-8(a)(1).
32. O.C.G.A. §31-2-12.
33. O.C.G.A. §31-3-5.
36. 42 U.S.C.A. §300f et seq.
37. 42 U.S.C.A. §300g-1.
38. 42 U.S.C.A. §300h.
39. 42 U.S.C.A. §6991-1i.
42. 42 U.S.C.A. §300j-12.
44. O.C.G.A. §12-13-1 et seq.
46. O.C.G.A. §12-5-120 et seq.
47. O.C.G.A. §12-5-125.
48. O.C.G.A. §12-5-134.
51. 33 U.S.C.A. §1251(g).
52. O.C.G.A. §12-5-520 et seq.
53. Water Quality in Georgia 2006–2007 (Atlanta: Georgia Department of Natural Resources, Environmental Protection Division, 2008).
56. O.C.G.A. §12-5-370 et seq.
57. Georgia Inventory and Survey of Feasible Sites for Water Supply Reservoirs (Atlanta: Georgia Environmental Facilities Authority, October 31, 2008).
60. O.C.G.A. §8-2-3(b).


67. U.S. Const. art. IV, §3, cl. 2.

68. U.S. Const. art. VI, cl. 2.


71. 2 U.S.C.A. §7431.

72. 16 U.S.C.A. §1531 et seq.

73. 42 U.S.C.A. §4321 et seq.

74. 16 U.S.C.A. §1451 et seq.


81. O.C.G.A. §12-5-280 et seq.

82. O.C.G.A. §12-5-230 et seq.

83. O.C.G.A. §12-5-320 et seq.


85. O.C.G.A. §12-16-1 et seq.

86. O.C.G.A. §12-6A-1 et seq.

87. O.C.G.A. §48-7-29.12.

88. O.C.G.A. §48-5-7.4.

92. O.C.G.A. §44-10-2(1).
93. O.C.G.A. §36-66A-1 et seq.
94. O.C.G.A. §36-66A-2(c) et seq.
95. 42 U.S.C.A. §6901 et seq.
96. Letter from EPA Region 4 Director to Mississippi Governor Haley Barbour, March 11, 2005.
98. O.C.G.A. tit. 12, ch. 8, art. 2.
100. O.C.G.A. §12-8-24.1.
102. O.C.G.A. §12-8-40.2.
103. O.C.G.A. §12-8-40.1.
105. O.C.G.A. §12-8-40.3.
106. O.C.G.A. tit. 12, ch. 8, art. 3.
107. 42 U.S.C.A. §9601 et seq.
108. O.C.G.A. tit. 12, ch. 8, art. 3, pt. 2.
110. O.C.G.A. tit. 12, ch. 8, art. 3, pt. 3.
111. 42 U.S.C.A. §11001 et seq.
112. 42 U.S.C.A. §§11004 et seq., 9601 et seq.
113. 42 U.S.C.A. §2601 et seq.
115. GA. COMP. R. & REGS. 391-3-14-.01–391-3-14-.10.
116. GA. COMP. R. & REGS. 391-3-24-.01–391-3-24-.08.
117. 7 U.S.C.A. §121 et seq.
118. O.C.G.A. tit. 2, ch. 7, art. 3.
119. O.C.G.A. §2-7-113.1.
120. O.C.G.A. §12-5-52.
121. 42 U.S.C.A. §300i-1(a).
A geographic information system (GIS) combines database management and analysis functions with computer-aided mapping. It adds a visual and locational dimension to municipal management and decision making. Since much of the data municipalities manage is land based, a GIS can help managers and decision makers manage municipal affairs more effectively.

With the correct data, a GIS allows users to ask questions such as the following:

- What is at this location?
- Where are the underground utilities located?
- Where should new infrastructure such as fire hydrants be located?
- What is the address of this parcel?
- What is the average income in the municipality?
- What areas of the municipality are suitable/unsuitable to build on?
- What is the pattern of land-use change?
- What is the best route for service-delivery vehicles (emergency or general)?

This chapter provides an overview of GIS technology and discusses the issues involved and the potential for GIS to help municipal governments make better decisions. GIS technology is widely used in local
government, either as an in-house service or as a service provided by other public-sector organizations or private firms. GIS technology is also used by businesses, nonprofit organizations, and community groups. Whether or not a municipality uses a GIS, chances are that municipal decision makers will encounter the products of GIS technology. Implementing and managing a GIS requires a level of funding that may seem unwarranted without some knowledge of why the funding is necessary and what the benefit is to the municipality. Knowing the limitations and capabilities of GIS technology allows municipal decision makers to use it economically and effectively.

WHAT IS A GIS?

A GIS is a system of hardware, software, geographic data, and experienced personnel whose purposes is to support the capture, management, manipulation, analysis, modeling, and display of spatially referenced data for solving complex planning and management problems. In other words, it is a computer system that is used for collecting and analyzing data that can be mapped, and it displays the resulting information as a map or series of maps. “Spatially referenced” means that the data displayed on the computer screen are tied to a real-world location; that is, the latitude and longitude of a feature on the ground (such as an intersection) would be automatically reflected on the onscreen map.

Spatial Data

Types of spatially referenced data that a municipality would use include the following:

Jurisdictional boundaries

- county and city limits
- special services districts
- census divisions
- property boundaries
- electoral districts
- parks
Physical features
  • roads
  • utility lines and other features
  • buildings
  • land use (residential vs. industrial, for example)

The spatial data are linked to attribute data in a database. Attribute data refer to additional information about a feature such as the name and length of a road, the size and pressure capacity of a water line, and the owner and value of a parcel.

One way municipal information is organized in a GIS is by layers of spatial features with their attributes (Figure 1). These layers can then be presented singly or overlaid with other features, depending on what information is being sought. For example, the roads, land-use, and facilities layers can be overlaid to see where the best location for a new fire station might be. It is this ability to integrate disparate types of data and display the relationships between and among them that makes a GIS powerful.

Data that are useful to a municipality can take significant amounts of time and money to acquire. Although free digital data are available from both state and federal governments, the usefulness of such data for local governments may be limited due to lack of scale or spatial accuracy. The GIS user must be aware of differences in spatial accuracy in order to determine whether or to what degree the results of analysis should be trusted. For example, FEMA flood data that are used in conjunction with parcel data, which have a much higher degree of spatial accuracy, should be interpreted cautiously.

**Related Technologies**

A GIS can be developed as a general-purpose tool or for a narrowly defined set of functions. For example, a land information system (LIS) focuses on the mapping and analysis of land and property records. Transportation management uses a specialized set of analysis tools supplied by developers of GIS technology for transportation. Other automated mapping systems were developed for specific fields that are now incorporating GIS functions. These include

  • computer-aided drafting (CAD), widely used in industrial design and architecture;
• automated mapping/facilities mapping (AM/FM), used to manage utilities; and
• global positioning system (GPS).

The latter system, GPS, includes receivers and satellites that can pinpoint locations on the earth. It is used in the computerized navigational systems found on boats and in some automobiles. Surveyors use GPS to help them make more accurate surveys. It is one way to collect sufficiently detailed data for a municipality or to check the accuracy of data acquired in other ways.

**Figure 1.** *Map Overlay Potential of a GIS*
Remote sensing is the acquisition of data from satellites or airplanes using infrared sensors, radar, Light Detection and Ranging (LiDAR), cameras, or other sensors. Once adjusted, images can be used for interpreting land-use patterns over wide areas or for updating and checking the accuracy of other map layers, such as land cover or land use.

GPS, remote sensing, and air photography are technologies that enable municipalities to create sufficiently detailed and accurate data for the scale of a municipal-level GIS. The expense of acquiring the imagery or hiring a surveyor is part of the reason why data acquisition can be one of the more costly aspects of GIS implementation, usually second only to the salaries of GIS personnel.

**LOCAL GOVERNMENT APPLICATIONS**

The strength of a GIS lies in its ability to combine both visualization and analytical functions. The combination of maps and graphics with a relational database is a powerful tool for managing information. A GIS can integrate diverse sources of information that create patterns and relationships that might otherwise be missed. Patterns of population growth, road networks, waterways, or vegetation distribution can be compared with one another. Hypothetical scenarios, such as how the landscape would look with different levels of population growth or different land-use policies, also can be seen. An individual attribute can be viewed in multiple ways: with more or with less detail, alone or with other attributes, or in its current, past, or possible future state. For example, data can be classified or abstracted before being displayed to show an average or number of entities above or below a certain threshold.

Initially, GIS technology was predominantly used to automate manual tasks already being performed in local governments, such as mapping and information management. Current systems allow more complex analyses of data, including three-dimensional visualization of landscapes and forecasting. Researchers and practitioners are also investigating ways to incorporate GIS technology into the public participation process so that citizens and decision makers can benefit from the technology throughout all phases of planning and policy creation.

GIS technology can be applied to the following functions of a municipal government, among others:

- public works
- water works
• elections
• police
• tax assessment
• solid waste management
• planning and zoning
• natural resources
• emergency services
• management
• parks and recreation
• transportation planning

In addition, the availability of a GIS can directly affect citizen participation, particularly with regard to taxation issues:

A GIS can be used to analyze the relationship between tax revenues drawn from different neighborhoods or areas and the expenditures being made in those areas. Citizens can use the GIS to learn how taxes drawn from their neighborhood are budgeted for different functions. As recent surveys suggest, citizens are more likely to approve of needed taxations when they know that their dollars are being spent on specific services—especially services that might benefit their neighborhood or themselves individually.2

Data can be analyzed in order to reveal patterns or trends that need to be addressed or to assess the impact of a municipal policy. For example, where and when certain types of crime occurs may be associated with land use (does it occur in residential or business areas? does it occur at the same general time? is it concentrated in one area or widely dispersed?), proximity to transportation, population characteristics, and other information that law enforcement agencies can use in deciding how to focus their efforts. Such data may suggest other solutions, such as installing streetlights in dark areas or providing crime prevention education for citizens.
A GIS can be used to help decide which of a number of possible changes might be the best one(s) to implement. For example, population growth trends can be modeled in terms of land-use or zoning regulations to see how each might affect the municipality in terms of infrastructure requirements. Regulations can be changed, land-use or zoning types can be shifted, and the effects can be assessed to help evaluate whether current regulations will be viable in the future.

**BENEFITS AND COSTS OF IMPLEMENTING GIS TECHNOLOGY**

Cost savings can be very difficult to quantify. For example, cost savings were realized when local governments converted from paper-based systems to computer-based systems, but just how much was saved? The use of GIS technology in small jurisdictions has become commonplace only in the last two decades. Larger local governments, such as those in major urban areas, were early adopters of the technology and have been the focus of studies of the effectiveness and costs and benefits of using GIS technology. The results of these initial studies were based on the early use of GIS technology to automate tasks, which was considered a beneficial function. The studies indicate that there is not necessarily an immediate return on investment; jurisdictions generally began seeing cost decreases and efficiencies in three to five years.

Other benefits of GIS technology adoption include eliminating duplication (i.e., one database can serve multiple users, and therefore fewer opportunities exist for the introduction of human error) and improving data management, information processing, access to information, analysis and problem-solving capabilities, and the quality of decisions because they are backed by sufficient data. Greater efficiencies in answering citizen inquiries through GIS can result in savings for a local government. Continued software innovations, such as advancements in GPS technology and reduced costs of aerial photography, have resulted in lower data-acquisition costs. This greater access to data has made it possible for even the smallest jurisdiction to develop a GIS.

In the past decade, there has been a surge in the development of GIS Web sites, where citizens can view tax records to verify the correctness of information used in the assessment process or determine if they are being treated fairly compared with other taxpayers. Besides tax parcel information, these Web sites often host GIS data related to zoning, road networks, aerial photography, rivers and streams, and a variety of other features. They allow the general public to answer their own questions without assistance from government employees.
Aside from the fact that improvements may not be apparent for years, part of the difficulty in measuring the benefit of a GIS is that much of it is not quantifiable. It is hard to separate the effects of the system from the effects of its environment. Local governments benefit from GIS and other technology when the implementation of it is well researched and planned. The purpose of the system needs to be clear, and those responsible for managing it need to be trained in its use. The jurisdictions that have been disappointed in their return on GIS investment have generally not done enough groundwork to understand all of the costs involved, or they have not received the appropriate level of employee training to properly use and maintain their system.

Local governments, regional commissions, and local authorities are permitted to charge fees for providing information from or access to their GIS. Fees must be based on the development costs of creating or maintaining the GIS and “may include cost to the municipality . . . of time, equipment, and personnel in the creation, purchase, development, production, or update of the geographic information system.” The code also authorizes local governments to contract with private firms to provide GIS information to the public.3

The costs of adopting a GIS vary with how much is required of the system, whether new people need to be hired, and, if so, how many. Expenditures for GIS software range from applications having little or no cost to applications costing tens of thousands of dollars that run on computers ranging from inexpensive desktop PCs to massive networked servers. Other than ongoing salary costs, initial database development is usually the most costly aspect of GIS implementation both in terms of funding and time, and it varies with the amount and detail of data needed. Regular hardware, software, and database upgrades need to be considered in the long-term budget for a system. Municipalities change, as do the data about them, and the uses of the GIS will change as well.

Personnel training is often neglected when considering costs. Initial training and periodic updates are necessary in order for the system to be fully utilized. There is no point in paying for functions that the staff is not aware of or able to use properly.

Implementation

The first step in considering adoption of a GIS is to decide what kinds of analysis a municipality wants to perform and what information it wants to obtain from the analysis. The next step is to conduct a cost-benefit analysis and feasibility study. These studies should address more than just technical issues, since organizational and policy issues play a role in
implementation. Employee receptivity to technology and ability to adapt to new technology, how effectively potential users of the system communicate, and users’ conception about what is wanted and needed in the system all affect how much a GIS costs and how long it takes to implement. All potential users of the system should be consulted at this stage to make sure that all data needs or requirements are taken into account.

Once the decision to adopt a GIS is made, the municipality needs to decide how to organize it. There are a number of organizational models of GIS implementation: single department, multidepartment, or multiagency.

**Single Department Model**

In the single department approach, the GIS is developed in a single department of the government and used only for the applications of that department. This approach is common. For example, the municipal planning department may develop a GIS to manage land records information. As other departments learn about the system, they may request GIS services from that department.

**Multidepartment Model**

In this model, various departments share costs and responsibilities. Cost sharing among the departments funds database development and updating. Sometimes this model evolves from the single department model as requests for service impede the use of the system for its original purpose.

There are a couple of approaches to the multidepartment model. One department may be chosen as the lead department and be responsible for housing the GIS and providing the services to other departments. The other approach is to create a GIS department to manage the system. Both approaches have advantages and disadvantages. Having a lead department with its own priorities may affect how service is provided to other departments, and a centralized GIS department may not be able to respond to the specialized needs of individual municipal departments.

**Multiagency Model**

The multiagency model shares costs and responsibilities between several levels of local government or between a number of partners—governmental or nongovernmental. Typical agreements involve utilities such as gas, power, cable, and telephone companies that share the cost of data development with municipalities and exchange information such as underground structures data with them. If there is sufficient interest on behalf of the partners, this approach is the most economical option.
However, with this model, it generally takes much longer to get projects under way because of the need to conduct joint discussions on cost sharing and to consider different kinds of data, different levels of accuracy, and the different viewpoints and politics of the various agencies. Nevertheless, the greater variety of data provided by multiple partners yields better benefits at lower costs (Figure 2).

**Figure 2. Multiagency GIS**

Data

Once the approach to implementation has been decided, data issues need to be addressed. Data maintenance and sharing agreements among partners need to be created unless a single department is implementing the system. Database standards need to be agreed upon. Standards should include the following:

- naming and definition conventions (so that each named type of road, for instance, means only that type of road and all road names are entered in the same format)
• mapping standards (coordinate system, scale, and symbols used to represent objects, line colors and widths, etc.)

• data documentation (information about the data such as source, coordinate system, scale, extent, and date of compilation)

• access privileges (who gets to do what with the data, software, and hardware)

• liability for inaccurate data

• quality assurance (who is responsible for data updates and accuracy checks and how often they occur)

• data backup and recovery procedures

Policies created by the municipality based on database standards that have been agreed to and developed with all users of the system will streamline later steps in the implementation process.

Before data are collected, a data model and database design should be decided upon. Users’ needs and expectations should be clearly defined at this stage. Database design affects how data should be collected and what kinds of analysis can be performed. It can also affect the software and hardware used.

What kind of data are collected and how they are collected will depend on the preceding steps. As mentioned earlier, a basic set of data layers is available at no cost from state and federal sources. The Georgia GIS Data Clearinghouse makes Georgia data available over the Internet. County and municipal boundaries, roads, hydrology, elevation, and other data are provided by the U.S. Geological Survey, the U.S. Bureau of the Census, the Georgia Department of Transportation, and the Georgia Department of Natural Resources, among others. Other data will have to be acquired by manually digitizing or scanning paper maps or by using GPS data or aerial photography. The method used will depend on the types of data available, the equipment and personnel available, the accuracy required, and the cost. Different applications of GIS technology require different levels of accuracy. Engineering applications, such as utility or infrastructure management, generally require more accurate data than do planning applications.

Regardless of the approach pursued in GIS implementation, an experienced consultant is generally required because of the highly technical nature of a GIS project. In addition, a GIS manager position should be established to ensure that the system continues to meet the evolving needs of the municipality.
Available Resources

The Regional Commissions (RCs) provide GIS services to member local governments, especially for comprehensive planning.

Georgia colleges and universities provide GIS education. Some provide GIS services, including implementation planning and database development. Information Technology Outreach Services (www.cviog.uga.edu/itos) is a University of Georgia unit that assists local governments with GIS technology (i.e., data development; training on the use, maintenance, and integration of GIS data with existing databases; and system implementation).

The Urban and Regional Information Systems Association (URISA) is an organization of professionals using information technology and spatial information in planning, public works, and other governmental areas. URISA provides educational and other resources.

NOTES

1. LIDAR is a remote sensing technology. Pulses of light are emitted from a laser source, and high-speed counters record the time it takes for the light signal to bounce off a surface and return to its source location. These recorded data can be used to model changes in elevation along the earth’s surface and for a number of topography-related applications.


Handbook
for Georgia Mayors
and Councilmembers
FIFTH EDITION

Part Four: MUNICIPAL SERVICES
Telecommunications,
Cable and Video Services
Telecommunications, Cable and Video Services

In most Georgia communities, telecommunications, 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 the high cost of staying current with technology and competition from private providers.

Any city that is contemplating the possibility of providing telecommunications, cable and video services is advised to engage the services of 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 honestly the possibility of providing telecommunications or cable services to its community, certain steps should be taken to ensure success. First, and most important, 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 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. The law, found in Chapter 5 of Title 46 of the Georgia Code, 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 user customers located within the boundaries of a municipality is three percent (3%) of local recurring revenues. Existing franchise fee and occupational license tax payments greater than three percent (3%) of local recurring revenues are grandfathered until the expiration of the franchise or December 31, 2012, whichever is earlier. Payments thereafter will be at the statutory rate.

If a telephone company does not have retail, end user customers located within municipal boundaries, the payment of due compensation will be at the current rate payments are being
made as of January 1, 2008. After the expiration date of any existing agreement or December 31, 2012, whichever is earlier, payments 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, 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 Cable and Telecommunications Management Service (see [http://www.gmanet.com/Telecomm.aspx](http://www.gmanet.com/Telecomm.aspx) for more information).
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Part Four: MUNICIPAL SERVICES
Building Codes and Code Enforcement
Building Codes and Code Enforcement

Construction code 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 construction code enforcement a high priority for Georgia's cities and counties. Georgia's State Constitution and general law gives 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.

Construction 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 ...."1

Therefore, in order for a city to have a construction 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 to2

- save lives by preventing structural fires resulting from defective installation of materials or the installation of improper materials in existing and new buildings;
- 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 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;
- helping to prevent the creation of slums and thereby contribute to the maintenance of a stable tax base;
- establishing the foundation for a permit system;
- 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. 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 11 state minimum standard codes. There are 8 mandatory codes and 3 permissive construction codes that cities may adopt and enforce. Each of the 11 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 8 of these codes are "mandatory" (i.e., applicable to all construction, whether or not the codes are locally adopted or enforced) and 3 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 in order to enforce them. 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

The eight construction codes are mandatory (see Table 1), and any structure built in Georgia must comply with these codes, whether or not the local government chooses to enforce these codes locally. 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.
### 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 Residential Code

*Note: All of the mandatory codes have Georgia amendments that are applicable statewide.*

The General Assembly specifically omitted the plumbing 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.

The three 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 DCA.

### Table 2. Permissive Codes

- International Property Maintenance Code
- International Existing Building Code

### 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.

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.

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.

**Code Enforcement Agency**

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:

- All code enforcement activity should be located in one code enforcement department/agency.
- Code enforcement should be the sole function of that department/agency.
- 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 code enforcement staff should be properly trained and/or certified.

**Permits and Inspections**

Upon adoption, the building codes are enforced through a system of permits and inspections. Anyone planning construction of alterations covered by city codes must first submit a set of plans and specifications to the city building inspector. 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 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, 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 code enforcement program or enter into an intergovernmental agreement establishing a joint code enforcement system. There are several good examples of joint 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 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. A sample schedule of permit fees based on the estimated cost of construction is recommended (see Table 3).

Codes Enforcement Training
To assist local government inspection officials in their code enforcement responsibilities, DCA works closely with the International Code Council (ICC) 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 at www.dca.ga.gov. For more information or assistance, 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.
### A. Permit Fees

<table>
<thead>
<tr>
<th>Valuation</th>
<th>Fee Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,000 and less</td>
<td>No fee, unless inspection required, in which case a $15 fee for each inspection shall be charged</td>
</tr>
<tr>
<td>$1,001 to $50,000</td>
<td>$15 for the first $1,000 plus $5 for each additional thousand or fraction thereof, to and including $50,000</td>
</tr>
<tr>
<td>$50,001 to $100,000</td>
<td>$260 for the first $50,000 plus $4 for each additional thousand or fraction thereof, to and including $100,000</td>
</tr>
<tr>
<td>$100,001 to $500,000</td>
<td>$460 for the first $100,000 plus $3 for each additional thousand or fraction thereof, to and including $500,000</td>
</tr>
<tr>
<td>$500,001 and up</td>
<td>$1,660 for the first $500,000 plus $2 for each additional thousand or fraction thereof</td>
</tr>
</tbody>
</table>

### B. Moving Fee

- For the moving of any building or structure, the fee shall be $100.

### C. 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.

### D. 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.

### E. 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.\(^b\)

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\(^a\) 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 18 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.
2 Adapted from Howard Schretter and Jerry A. Singer, Institute of Government and Institute of Community and Area Development, University of Georgia, Athens, Memorandum to the Mayor and Council, Planning Commission, and Chamber of Commerce of the City of Dahlonega, Georgia, 1972.
3 O.C.G.A. tit. 8, ch. 2, art. 1, pt. 2.
5 O.C.G.A. §8-2-25(a).
6 Code editions in effect as of January 1, 2004. The standard and Council of American Building Officials (CABO) codes are the same as the international codes.
7 O.C.G.A. §8-2-25(b).
8 O.C.G.A. §8-2-26(a).
9 O.C.G.A. §8-2-25(c).
11 Ibid, 10.
PUBLIC Safety

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 70 percent of all expenditures for this purpose and employ 77 percent of all police officers. More than two-thirds of Georgia's municipalities provide police services. Georgia's municipalities have police departments ranging in size from 1 to more than 1,000 officers.

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 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, but a police department that is solid can be a considerable asset to a city.

A well-operated police department is a source of pride for a city 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 on-going dialogue with civic, church and municipal leaders and community
   members concerning public safety issues.  

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 so much time on community problems other than those that are purely crime related, a method referred to as community oriented policing (COP) has emerged. 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. COP is primarily characterized by ongoing attempts to promote greater community involvement in the police function and customized police service.

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 22-1).

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.
Table 22-1. Elements of Police Service

<table>
<thead>
<tr>
<th>Line</th>
<th>Auxiliary</th>
<th>Staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uniformed Patrol</td>
<td>Jail/detention Facilities</td>
<td>Fiscal Management</td>
</tr>
<tr>
<td>Traffic</td>
<td>Communications</td>
<td>Personnel recruitment, selection, training</td>
</tr>
<tr>
<td>Investigation</td>
<td>Crime Laboratory</td>
<td>Planning and research</td>
</tr>
<tr>
<td></td>
<td>Records and identification</td>
<td>Public Information</td>
</tr>
<tr>
<td></td>
<td>Evidence Storage</td>
<td></td>
</tr>
</tbody>
</table>

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. Certification is based upon statutorily specified preemployment standards and successful completion of a mandatory 400-hour basic law enforcement training course, which must be completed within six months of a person's appointment as a peace officer.

To fulfill preemployment 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. have an oral interview with the hiring authority or its representative to determine the applicant's appearance, background, and ability to communicate;
8. 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
9. successfully complete a job-related academy entrance examination provided for and administered by the council.

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. Officers who fail to complete this training may lose their power of arrest unless they secure a waiver of this requirement from POST.⁷ 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.⁸

ACCREDITATION OF LAW ENFORCEMENT AGENCIES

The Commission on Accreditation for Law Enforcement Agencies (CALEA)⁹ 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 445 law enforcement standards for all types and sizes of state and local agencies, including municipal departments. CALEA fosters police professionalism, which is reflected in the stated purpose of the commission:

The Commission was formed for two reasons: to develop a set of law enforcement standards; and to establish and administer an accreditation process through which law enforcement agencies could demonstrate voluntarily that they meet professionally-recognized criteria for excellence in management and service delivery.¹⁰

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.¹¹ Second, CALEA provides a nationally recognized system for improvement. Fundamental to the accreditation process is assessment, beginning with self-assessment.¹² 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 plus 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, 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.¹³

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,¹⁴ and a body of specialized case law has evolved regarding this area. 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 should complete the 80-hour jail training course offered by the Public Safety Training Center in Forsyth.¹⁵ 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.16

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. 17

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. employment and training standards,
4. ongoing training,
5. a fire prevention program,
6. knowledge of the fire-rating process, and
7. 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; and
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 booms and other items that contain or soak up chemicals and gasoline.
8. Decontamination units.
9. Communication devices for individuals and equipment.
10. Also required are 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 establishment of uniform minimum standards of employment and training and certification of those individuals who meet the standards.18

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.19

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.20

**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. The National Fire Protection Association (NFPA) reports a stabilization of the number of structure fires for the 2003 – 2010 periods. This equates to about 500,000 structure fires per year or about one a minute. Earlier decreases 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 will 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 not only are preventive mechanisms but also reduce insurance costs and the need to maintain surplus water supply for fire fighting. 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
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 than 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).

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. 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 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. 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.
6. 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 prevention and control of rabies and must appoint a county rabies control officer.25

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.26

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.

For further discussion and a model ordinance for the control and regulation of animals, see *Responsible Animal Regulation*, available from the Humane Society of the United States.
NOTES


2 Ibid.

3 American Bar Association (ABA), The Urban Police Function (New York: ABA, 1972), 8.


6 O.C.G.A. §34-8-9(a)

7 O.C.G.A. §35-8-20.

8 O.C.G.A. §35-8-20.1


13 Georgia Association of Chiefs of Police.

14 O.C.G.A. tit. 424, ch. 4, art.2.

15 See O.C.G.A. §35-8-24

16 O.C.G.A. §25-3-1.

17 O.C.G.A. §§25-3-22, 25-3-23.

18 O.C.G.A. tit. 25, ch. 4.

19 O.C.G.A. §25-4-8

20 O.C.G.A. §§25-4-9, 25-4-10.


22 O.C.G.A. §38-3-35.

23 The Georgia Emergency Management Agency (GEMA) provides emergency management planning and other types of assistance to local governments. For information, contact the Director of GEMA, 935 E. Confederate Avenue, S.E., P.O. Box 18055, Atlanta, GA 30316-0055, http://www.gema.state.ga.us.
24 O.C.G.A. §38-3-27.


The Role of Elected Officials in Community and Economic Development

Economic Development for Cities

There are 536 cities in Georgia, with 250 of those cities having less than 1,000 residents. Another 219 cities have between 1,000 and 10,000 citizens. Although these numbers may surprise some folks, the reality is city officials do not, in most cases, 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 cost 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 Georgia Academy for Economic Development 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. Every city does not need 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, you have to 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 PhD, 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 all of 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, having a strong K-12 educational system, opportunities for post secondary training and degrees and workforce training to meet the specific needs of employers are more 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 have an understanding of 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 has to 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 of 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 http://www.georgiaacademy.org/ 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.

All 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. Since 1980, in the approximately 100 Georgia Better Hometown and Main Street Cities, 9,900 net new businesses and over 47,000 net new jobs have been created in cities under 50,000 in
population, for a total public and private sector investment of over $2.6 Billion! That is reason enough for city leaders to continue to nurture the heart and soul of their city – its downtown.

**Technical Assistance for Downtown Development**
The Department of Community Affairs' Office of Downtown Development coordinates the [Georgia Main Street](#) and Better Hometown programs. These programs assist 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™. For more information on the Four-Point Approach, please see: [http://www.preservationnation.org/main-street/about-main-street/the-approach/](http://www.preservationnation.org/main-street/about-main-street/the-approach/).

Another service available through the Department of Community Affairs (DCA) Office of Downtown Development is the Urban Georgia Network. This network was created to assist larger urban areas that are not eligible for Main Street or Better Hometown designations but have similar problems and opportunities. The Urban Georgia Network provides a forum for networking and information sharing on common urban issues. The network encompasses downtown programs, authorities, business improvement districts, community improvement districts and other organizations that develop and manage the larger, urban downtown centers in Georgia.

While the Office of Downtown Development focuses its assistance primarily on designated Main Street/Better Hometown cities and members of the Urban Georgia Network, assistance is available to all of Georgia’s cities. Assistance is available for board development training and community-wide meetings to help focus your city on economic development through downtown revitalization. Facilitated sessions and statewide training on various topics including historic preservation, tax credit incentive programs and other financial assistance are also offered.

**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.

**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 Better Hometown or 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.

**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.

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 info on Downtown Development Authorities, please visit this GMA website.

Create a Staffed Downtown Development Office
Create the necessary public and private support to hire a downtown development manager with an adequate operating budget to facilitate and manage your downtown revitalization efforts. For cities under 5,000 in population, a part-time (20 hrs/wk) manager is adequate for the initial phases of the effort. For cities over 5,000 in population, a full-time manager is essential and recommended. Make certain that a public/private board or DDA oversees the downtown revitalization program and that your efforts are grounded in a comprehensive work plan and a managed approach.

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 the services offered by DCA’s Office of Downtown Development, please contact Cindy Eidson, Director, Office of Downtown Development, at (404) 679-3101.

The Georgia Cities Foundation
The Georgia Cities Foundation (GCF) is a non-profit subsidiary of the Georgia Municipal Association. The goal of the Foundation is to promote economically sustainable projects and build partnerships in order 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.

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. For application information, please access the GCF website.

**Green Communities Fund**
The Georgia Cities Foundation’s latest initiative is the Green Communities Fund. Made possible through a grant from the Georgia Environmental Facilities Authority, the Green Communities Fund provides low interest financing to business and/or property owners for energy efficient and sustainable improvements to their downtown commercial properties. As with the Foundation’s downtown loan program, the Green Communities Fund program targets downtown buildings. These low interest loans range in loan size from $10,000 to $250,000. With energy efficiency as the objective of the program, the loans may be used for energy efficient improvements to existing businesses, renovations of existing buildings, as well as for improvements to planned new construction.

In addition to the GCF Downtown Revolving Loan Fund and the Green Communities Fund, the Foundation also conducts an annual Heart & Soul Bus Tour, Basic Training for Downtown Development Authority members and directors, and conducts the annual Renaissance Award program. 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 downtown’s. Through advocacy, education and marketing, GDA works to focus the public's attention on the value of downtown. GDA has a number of 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 general public. For more info on GDA, please contact Alan Dickerson at (678) 686-6213.

**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 Facilities 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 more than $50 million 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, in 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 anytime 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. These processes 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. This information is updated periodically and these periodic updates are reflected on the DCA website. To access the most updated version of the Economic Development Finance Packet, please click here. For further information, please contact: Joanie Perry, Director, Office of Economic Development, 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 – Office of Regional Services**
DCA has staff assigned to assist communities in all regions of the state. The regional staff serves 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, three companies, Georgia Power, Georgia Electric Membership Corporation and MEAG Power, 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.
Historic Preservation

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.\(^1\) Georgia has approximately 114.\(^2\) 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).\(^3\) Since this time, 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 such as Jekyll Island, Rome, and Thomasville, among others. 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 this same time, the Vieux Carré Historic Landmark District, also known as the French Quarter in New Orleans, established similar procedures for protection of its historic resources.

In 1966, the National Historic Preservation Act was passed by the federal government. This act and later amendments created the National Register of Historic Places, which indentifies 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 in order 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. 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 works in conjunction with the Historic Preservation Division of the Georgia Department of Natural Resources. These units assist 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, and Georgia Historic Resources Survey programming.

Following the Historic Preservation Act of 1966, many communities implemented surveys in order to identify their own historic assets. Within Georgia, the Savannah National Historic Landmark District was established. Through an amendment to the Georgia State Constitution, the Savannah Historic District Board of Review was established in 1973.
Historic Preservation

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to protect the historic resources within the district. 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 1980.10 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.11 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 rehabilitation of historic properties.

A number of 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.12

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
Historic Preservation Professional Qualifications Standards\textsuperscript{13} and who are able to provide the required information in a standardized format.

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 in order 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 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 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\textsuperscript{14} as well as with other laws and authorities that regulate, protect, and promote public health, safety, morals, or general welfare. Case law has substantiated the argument that historic preservation is a legitimate governmental function.\textsuperscript{15}

The Historic Preservation Division has templates available on its Web site 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.\textsuperscript{16} 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 Commissions**

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
- 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 of that community and in turn, overall quality of life. 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 with regard to 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
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 standards and guidelines can allow for redevelopment that enriches community life and provides a system for sustainable growth.

are legally defensible. The Carl Vinson Institute of Government, working with the Historic Preservation Division, the Georgia Alliance for 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.\textsuperscript{19} The National Alliance for Preservation Commissions\textsuperscript{20} 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 standards and guidelines can allow for redevelopment that enriches community life and provides a system for sustainable growth.
Tools for Economic Redevelopment of Historic Resources

Historic preservation can be used to drive heritage tourism. However, it can also be utilized as a tool for economic redevelopment of a block, neighborhood, main street, or entire city that can result in not only the attraction of new industries seeking a specific quality of life for employees but also a distinctive setting found only in older or historic neighborhoods. Several federal programs work with state and local 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 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. 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.

Land Use and Zoning

Designation and creation of local historic districts are 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 creating 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 existing 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 is 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 storm water runoff, and limits sprawl. Occupants have access to established
Historic preservation 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 in order 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.

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. In Savannah, a majority of the new LEED projects are concentrated in old and historic districts. 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 opposition. Preservation of a neighborhood is sometimes perceived as leading to displacement of its residents or higher taxes. It can also be seen as an impediment to affordable housing and as a cause for delays in development. There are other social issues, in addition to the increased property values, that usually accompany gentrification that can lead to displacement of existing residents and businesses. However, acknowledging this trend and integrating efforts to retain the existing character of a neighborhood into the preservation and/or redevelopment plan can address many of these issues.

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 upon 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. Savannah Landmark Rehabilitation Project) are able to combine both 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 in order 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 the 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. In 1990, the Georgia Assembly enacted legislation authorizing interlocal cooperation and the creation of legal independent land bank authorities. 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 maintaining community character and 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.

NOTES

5. 16 U.S.C.A. §470a(b) et seq.
16. O.C.G.A. §44-10-22(1).
19. Carl Vinson Institute of Government (www.cviog.uga.edu); Georgia Alliance of Preservation Commissions (www.uga.edu/gapc); University of Georgia Center for Community Design and Preservation (www.ced.uga.edu/index.php/services_outreach/list/cat/outreach_programs; accessed December 21, 2010).
21. The Historic Preservation Division of the Georgia Department of Natural Resources maintains a list of funding sources for historic preservation on its Web site (www.gashpo.org).


27. 26 U.S.C.A. §47.


30. O.C.G.A. tit. 48, ch. 4, art. 4.
Part Five: FINANCING and REVENUES

Understanding City Finance
Understanding City Finance

During each year, usually monthly, city finance staff prepare 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 have seen major changes in accounting and financial reporting. 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), which sets the accounting and financial reporting rules, continues to issue 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 prepared on a monthly basis 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 usually are independently audited by a certified public accounting firm, it may take up to six months after the close of the fiscal year to entirely 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 assets) and operating statements (sometimes called statements of revenues and expenditures/expenses). Balance sheets are financial statements that present what the city owns, what it owes, and its worth (i.e., fund balance or net assets).

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 later in this chapter) tends to move some city financial reporting toward business-type 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. Very few people participate in budget hearings in most cities, 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 commercial 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. 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 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 $300,000 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 the 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. It required that the Georgia Department of Community Affairs (DCA) develop a local government uniform chart of accounts and a set of community indicators that will allow state and local policymakers to monitor the social and economic conditions of Georgia communities.
The uniform chart of accounts was approved by the state auditor and adopted by the DCA in 1998. In developing the uniform chart, the DCA solicited input and advice from local government officials around the state. Adapted from the GFOA’s "Illustrative Chart of Accounts" contained in Appendix C of the "Blue Book," the Georgia chart's primary purpose 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.

Cities adopted this uniform chart of accounts in reports to state agencies prepared for fiscal years ended in 2001. 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 then 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 eleven 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 eight generic fund types. The categories are briefly described here:

1. **Governmental fund types.** Used to account for general municipal operations (e.g., police department, public works, parks and recreation).
2. **Proprietary fund types.** Used to account for city activities that are similar to the commercial sector (e.g., a 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. 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 repay the 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 similar to those under enterprise funds 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 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 Following GASB Statement 34**

The GASB issued Statement No. 34 (GASB Statement 34) in June 1999. This statement established financial reporting requirements for state and local governments throughout the United States. Although the statement restructured much of the information that municipalities
presented in the past—thereby creating new information—day-to-day accounting operations did not change. City councilmembers GASB Statement 34 includes two levels of reporting in the annual financial report: fund-level reporting and government-wide reporting discussed here.

**Fund-level Financial Reporting**

GASB Statement 34 requires municipalities to continue to do what annual reports already do: provide information about funds. The focus of financial statements has been sharpened, however. Cities are required to report information about their most important (or "major") funds, including the city's general fund separately and their less important funds (or “nonmajor”) in the aggregate.

Fund statements also will continue to 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 continue 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 assets) 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:

‡ 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.
‡ 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. 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.

As alluded to previously, there is more than one basis of accounting. GAAP find two bases of accounting acceptable for cities: accrual and modified accrual. Others exist that are unacceptable. The most common unacceptable basis of accounting is the cash basis. On the cash basis, when the money comes in, the city records the revenue; 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 fixed 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 fixed 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) is primarily what 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 at 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 sum it up 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).
Part Five: FINANCING and REVENUES

Financial Policies
Financial Policies

City councilmembers make decisions relating to financial matters on a regular basis. However, only a limited number of cities have formalized adopted 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 financial reporting
- purchasing
- cash and investments

Questions that city councilmembers need to ask as they work to develop policies are presented in Table 1.

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 council members which follow their legacy.

Adopting Financial Policies: Considerations

There are a variety of reasons why city councilmembers should adopt financial policies:

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.
Table 1. Questions to Ask and Issues to Resolve When Establishing Financial Policies

<table>
<thead>
<tr>
<th>Operating budget and equity (fund balance) reserves</th>
<th>Which funds should be budgeted?</th>
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<tbody>
<tr>
<td></td>
<td>Is the budget balanced?</td>
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<td></td>
<td>Is a contingency budgeted?</td>
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<td></td>
<td>How much fund balance is maintained?</td>
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<td></td>
<td>Is the fund balance used in balancing the budget?</td>
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<td></td>
<td>What is the legal level of budgetary control?</td>
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<td></td>
<td>Should a more detailed level of budgetary control be established?</td>
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<td></td>
<td>Is the budget process centralized or decentralized?</td>
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<td></td>
<td>What happens to appropriations at the end of the year?</td>
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<td></td>
<td>What budgetary basis of accounting is used?</td>
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<tr>
<td></td>
<td>Is a budgetary reporting system maintained?</td>
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<tr>
<td></td>
<td>Who will perform budget adjustments/amendments during the year?</td>
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<tr>
<td>Capital improvements program (CIP)</td>
<td>How are capital projects defined?</td>
</tr>
<tr>
<td></td>
<td>What period of time does the CIP cover?</td>
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<td></td>
<td>What evaluation criteria are used to prioritize capital projects?</td>
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<td></td>
<td>How much of the CIP is funded each year from the annual operating budget?</td>
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<tr>
<td>Debt</td>
<td>When is debt issued?</td>
</tr>
<tr>
<td></td>
<td>What type of debt is issued?</td>
</tr>
<tr>
<td></td>
<td>How much debt is issued?</td>
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<tr>
<td></td>
<td>What are the maturity dates of debt issuances?</td>
</tr>
<tr>
<td></td>
<td>What are the actions undertaken to maintain positive relations with bond rating agencies?</td>
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<tr>
<td>Revenue</td>
<td>What is the goal for establishing and maintaining a diversified revenue source?</td>
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<td></td>
<td>What are the collection policies?</td>
</tr>
<tr>
<td></td>
<td>What collection methods (such as tax sales, liens, collection agencies, etc.) are used?</td>
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<tr>
<td></td>
<td>How are revenue projections developed, how often, and what period of time do they cover?</td>
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<td></td>
<td>How are property rates calculated?</td>
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<td></td>
<td>How are user fees and charges set, and how often are they updated?</td>
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<tr>
<td></td>
<td>Should a revenue manual be developed by the city?</td>
</tr>
<tr>
<td>Accounting, auditing, and financial reporting</td>
<td>How is the independent auditor selected?</td>
</tr>
<tr>
<td></td>
<td>What is the level of audit coverage?</td>
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<td></td>
<td>Who prepares financial reports for internal use, and what type of reports will be prepared?</td>
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<td></td>
<td>Does the city participate in the GFOA certificate of achievement program with the production of a comprehensive annual financial report (CAFR)?</td>
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<td></td>
<td>Does the city use audit or finance committees?</td>
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<td></td>
<td>Does the city have an internal audit staff?</td>
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<td></td>
<td>Are generally accepted accounting principles (GAAP) being followed?</td>
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<tr>
<td>Purchasing</td>
<td>Is the purchasing system centralized or decentralized?</td>
</tr>
<tr>
<td></td>
<td>Should written purchasing rules and regulations be developed?</td>
</tr>
<tr>
<td></td>
<td>Who should award bid contracts?</td>
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<tr>
<td></td>
<td>Which thresholds should be established for purchasing activity such as requiring formal bids, written quotes, telephone quotes, petty cash, etc.?</td>
</tr>
<tr>
<td></td>
<td>Should local bidder preference be authorized?</td>
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<tr>
<td></td>
<td>Should the city utilize the Georgia state contracts?</td>
</tr>
</tbody>
</table>
Financial Policies

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.

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.

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.

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 newly elected officials cannot or should not change the policies. It simply means that existing financial policies promote necessary continuity for city operations.

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

<table>
<thead>
<tr>
<th>Cash and Investments</th>
<th>Should the city spread cash among local banks, rotate banks, or pool cash and investments?</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Should the city perform a banking services bid?</td>
</tr>
<tr>
<td></td>
<td>Is competitive bidding used for investment instruments?</td>
</tr>
<tr>
<td></td>
<td>What are the investment objectives of the city?</td>
</tr>
<tr>
<td></td>
<td>What are the authorized investment instruments?</td>
</tr>
<tr>
<td></td>
<td>How are qualified institutions defined?</td>
</tr>
<tr>
<td></td>
<td>What collateralization procedures are needed by the city?</td>
</tr>
<tr>
<td></td>
<td>Should the local government investment pool (LGIP) be used?</td>
</tr>
</tbody>
</table>
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 well rewarded 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 educational for the city council but time consuming.

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 which can be used.

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.
### Table 2. Sample Financial Policies

<table>
<thead>
<tr>
<th>Area</th>
<th>Issue</th>
<th>Sample Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating budget and equity reserves</td>
<td>Fund balance amounts to maintain</td>
<td>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.</td>
</tr>
<tr>
<td>Capital improvements program</td>
<td>Capital assets thresholds</td>
<td>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.</td>
</tr>
<tr>
<td>Debt</td>
<td>When to use capital leases rather than outright purchases</td>
<td>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.</td>
</tr>
<tr>
<td>Revenue</td>
<td>Review of fees and charges</td>
<td>The city will review all fees and charges annually in order to keep pace with the cost of providing that service.</td>
</tr>
<tr>
<td>Accounting, auditing, and financial reporting</td>
<td>Auditor selection</td>
<td>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.</td>
</tr>
<tr>
<td>Purchasing</td>
<td>Centralized purchasing</td>
<td>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.</td>
</tr>
<tr>
<td>Cash and investments</td>
<td>Selection of banks for normal banking operations</td>
<td>Every three years the city will issue a request for proposal to independent banks to provide normal banking services for the city’s operations.</td>
</tr>
</tbody>
</table>
Municipal Revenue

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. In Fiscal Year 2008, Georgia municipalities derived most of their $6.84 billion in total revenue from their own sources, with intergovernmental revenue ($357.69 million) accounting for only 5.2 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 ($3.62 billion statewide, or 53 percent of total municipal revenues), if one excludes enterprise fund revenues and examines general fund revenues ($3.21 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) franchise fees. Municipal property taxes generated $873.64 million (27.2 percent) in general fund revenues, with most property tax-revenue coming from taxes on real and personal property. Sales taxes accounted for $704.05 million (21.9 percent) in general fund revenues, with municipal excise and special use taxes and franchise fees collectively generating $567.42 million (18 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 statewide. 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 once or twice a year 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. For examples of types of property that are exempt from taxation, see [https://etax.dor.ga.gov/ptd/adm/taxguide/exempt/property.aspx](https://etax.dor.ga.gov/ptd/adm/taxguide/exempt/property.aspx). 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 state, 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 who are 65 years of age or over may claim an exemption from all state ad valorem taxes on their home and up to 10 acres of land surrounding the home.
- Residents 65 years of age or over may claim a $4,000 exemption from all state
and county ad valorem taxes if the income of that person and his 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 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 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 state and county homestead exemption, except for taxes to pay interest on and to retire bonded indebtedness, that 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 state or county homestead exemption.

- Any qualifying disabled veteran may receive a homestead exemption of $50,000 for state, county, municipal, and school purposes. The value of the property in excess of this exemption remains taxable. This exemption extends to the unremarried 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 state, county, municipal and school purposes in the amount of $50,000.

- 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 Exemption**

Although the general rule is that property tax exemptions are granted state-wide, the Georgia Constitution allows municipalities and counties to determine locally whether to enact a Freeport Exemption. A 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). 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. For more information about the Freeport Exemption, see [https://etax.dor.ga.gov/ptd/adm/taxguide/exempt/freeport.aspx](https://etax.dor.ga.gov/ptd/adm/taxguide/exempt/freeport.aspx).

**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. See this link for additional information about preferential assessments: [https://etax.dor.ga.gov/ptd/adm/taxguide/gen/assessment.aspx](https://etax.dor.ga.gov/ptd/adm/taxguide/gen/assessment.aspx).

**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. Currently, motor vehicles are taxed in the following manner:

- The Georgia Department of Revenue preparers an annual Motor Vehicle Ad Valorem Assessment Manuel that contains the official assessed values of motor vehicles. These values are used to determine the amount of tax owed on a motor vehicle.
- The millage rate applied to the assessed value of a motor vehicle is the combined millage rates (municipal, county, school and state) for the previous calendar year.
- The tax is due on the date of the owner’s birthday.

For more information on taxation of motor vehicles, see [https://etax.dor.ga.gov/ptd/cds/mvman/index.aspx](https://etax.dor.ga.gov/ptd/cds/mvman/index.aspx)

**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. For more information on ad valorem taxation of mobile homes, see [https://etax.dor.ga.gov/ptd/adm/taxguide/mobile.aspx](https://etax.dor.ga.gov/ptd/adm/taxguide/mobile.aspx).

**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 Table 1 for an example of the calculation used to determine the millage rate.

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). For more information about setting the millage rate, see https://etax.dor.ga.gov/ptd/adm/taxguide/gen/rate.aspx and for more information about adopting a budget for your municipality, see GMA Publication, “A Budget Guide for Georgia’s Municipalities”, http://www.gmanet.com/Publications.aspx?CNID=19958.

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; and
- The percentage increase and total dollar increase for each year included in the report over the previous year.

Taxpayer Bill of Rights
An additional procedure that a municipal governing authority must consider when setting the millage rate is the 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

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* This calculation does not account for a homestead exemption or other exemptions or preferential treatment that may apply.
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. For additional information on the Taxpayer Bill of Rights, including guidance on computing the millage rollback rate and advertising and conducting the required public hearings, see https://etax.dor.ga.gov/ptd/cas/rollback/index.aspx.

**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. https://etax.dor.ga.gov/ptd/adm/taxguide/realtrf.aspx

**Intangible Tax**

The intangible personal property tax was repealed in 1996; however, 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. https://etax.dor.ga.gov/ptd/adm/taxguide/intrec.aspx

**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, the City of 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 is allowed to the LOST 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., City of Atlanta) is exempt from this cap; and
(5) A regional transportation sales tax does 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 2012. 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. See O.C.G.A. § 48-8-89(b) for the criteria that are required by law to be used. If the county and cities fail to renegotiate such certificates as required by law, any party may file a petition in court to have a judge decide the distribution formula to prevent the lapsing of the tax.

The LOST is used to provide municipal services and to reduce property taxes, as without the LOST, more property taxes would be needed to pay for municipal services. 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.

For more information about the LOST, please visit http://www.gmanet.com/LOST.aspx.

**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 (see O.C.G.A. § 48-8-111 for a list of project types), and must be kept in a separate account, not comingled with other municipal revenues. 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, and it may be used to fund municipal projects. 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. See GMA Publication “SPLOST: Building for the Future” for more information, http://www.gmanet.com/Publications.aspx?CNID=19957. 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.

If a city is unable to complete a SPLOST project because it is impracticable, unrealistic, or otherwise not in the best interest of the citizens it may be declared infeasible and abandoned. The city council must pass a resolution deeming the project infeasible. Any project that is
abandoned must go before the voters at the next SPLOST referendum. If the voters approve the abandoning of the SPLOST project the tax revenue collected may be used by the city to rollback property tax or reduce debt.

**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:

- **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 and can be found at 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. For more information on insurance premiums taxes and license fees, see O.C.G.A. §§ 33-8-8, 33-8-8.1 and 33-8-8.2.
**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 with no 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 the GMA Publication “Occupation Taxes and Regulatory Fees: Make Them Work for Your City”, [http://www.gmanet.com/Publications.aspx?CNID=19962](http://www.gmanet.com/Publications.aspx?CNID=19962).

**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
Municipal Revenue

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 for 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 Q&A” at http://www.gmanet.com/MDR.aspx?CNID=20763.

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 about the Excise Tax on Rental Motor Vehicles, see O.C.G.A. § 48-13-90, et. seq.

Costs Associated with Tax Collection
While the property tax involves relatively high administrative costs, nonproperty 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. And 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, nonproperty 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. For more information about franchise fees, see [http://www.gmanet.com/MDR.aspx?CNID=21440](http://www.gmanet.com/MDR.aspx?CNID=21440).

**Fines, Forfeitures, and 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, discussed earlier in this chapter, 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 the GMA Publication “Distilling the Basics of Municipal Alcoholic Beverage Regulation”, http://www.gmanet.com/Publications.aspx?CNID=19962 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.

For additional information about development impact fees, see http://www.dca.state.ga.us/development/PlanningQualityGrowth/programs/impactfees.asp.

**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. For more about CDBGs, see http://www.dca.state.ga.us/communities/CDBG/index.asp.

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. For more on

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.

**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 of the state’s 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 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; and
- The Georgia Department of Natural Resources provides grants for recreational trails and for 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 entitled, “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.
Operations Budgeting

In developing and adopting a balanced operating budget, municipalities are creating far more than a legal document. A budget serves as a planning 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 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 promote future growth, 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. Chapter 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;
- Adoption of 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); and
• 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.

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 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; however, 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.

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. During recent years as economic conditions have changed, the importance of accurate revenue estimates has increased as municipalities are 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, and to ensure the jurisdiction’s fiscal well-being, forecasts should also include an evaluation of the medium and long range.

In order to complete the various tasks associated with the development of an annual budget, a budget development action plan should be generated to efficiently outline the activities of the budget process. This action plan should be developed in conjunction with a budget calendar to include due dates, activities and responsible parties. Utilizing the budget calendar as a budget action plan should be similar to the following and have a timeline of four to six months in length:
<table>
<thead>
<tr>
<th>Due Date</th>
<th>Activity</th>
<th>Responsible Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 1</td>
<td>Mayor and Council evaluate policies and goals</td>
<td>Mayor and Council</td>
</tr>
<tr>
<td>August 15</td>
<td>Budget preparation forms prepared for distribution</td>
<td>Budget Officer</td>
</tr>
<tr>
<td>September 1</td>
<td>Kick-off meeting with staff; Distribution of budget information manual; Revenue estimates are complete</td>
<td>Administration; Budget Officer</td>
</tr>
<tr>
<td>October 1</td>
<td>Budget requests returned</td>
<td>Management Team</td>
</tr>
<tr>
<td>October 2 – 15</td>
<td>Analyze department requests</td>
<td>Administration; Budget Officer</td>
</tr>
<tr>
<td>October 16 – 30</td>
<td>Assemble budget requests, compare with revenue estimates and compile the budget document</td>
<td>Budget Officer</td>
</tr>
<tr>
<td>November 1</td>
<td>Proposed Budget to Mayor and Council</td>
<td>Budget Officer</td>
</tr>
<tr>
<td>November 15</td>
<td>Advertise for Public Hearing</td>
<td>Clerk or Budget Officer</td>
</tr>
<tr>
<td>December 1</td>
<td>Conduct Public Hearing</td>
<td>Mayor and Council</td>
</tr>
<tr>
<td>December 15</td>
<td>Final Review and Adoption</td>
<td>Mayor and Council</td>
</tr>
<tr>
<td>January 1</td>
<td>Budget is effective</td>
<td>Budget Officer</td>
</tr>
</tbody>
</table>

After the budget development action plan and 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.
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 is essential in determining the jurisdiction’s minimum expenditures for the upcoming year. Also, compiling the cost of payroll, including any changes, should be made 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. 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 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 amendments to the existing budget may be necessary. 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 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 cities have their financial statements audited on an annual basis by an independent auditor unless otherwise authorized under state law. 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).
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 and 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 its 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 decision makers 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 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 Mayor and Council, 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 budgeting focuses attention on results and activities as opposed to what a municipality buys. In a program 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.

Program 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 budget indicators are used to measure performance which is tied to expenditures. When a municipality employs performance budgeting methodology, it would allocate 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 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 must be approved rather than only incremental increases. 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 within 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 the 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 are a coat of many colors carrying names such as reserves, rainy day funds, undesignated fund balance or contingency funds. These funds provide flexibility for municipalities to address economic downturns, emergencies, 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 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 they may be used, and the minimum and maximum level of funds retained. Recently the Government Accounting Standards Board (GASB) issued a statement regarding the classification of constraints placed on stabilization funds. 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 or 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 is not classified as committed or restricted; and
- Unassigned – The residual amount for the General Fund and represents 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 would 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 flexibility to respond to changing conditions may be limited, 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 a portion of the budget which is unspent. 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 or not. 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**

The [Government Finance Officers Association (GFOA)](https://www.gfoa.org) 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 succeed in achieving that goal. 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) was established in 1984 by agreement with the Financial Accounting Foundation and 10 national associations of state and local government officials, and is recognized as the official source of generally accepted accounting principles (GAAP) for state and local governments. 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 for private company 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 has approximately 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 $300,000, or more are required to have an annual audit. If expenditures are less than $300,000 then 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
FIFTH EDITION

Part Five: FINANCING and REVENUES

Capital Improvements Planning
Capital Improvements Planning

I. 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 future 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 and forecast 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.

II. 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. 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.

III. 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. CIP’s 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 will typically become capital projects and receive actual budgets. 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 and the capital budget actually funds the specific projects during its year(s) of implementation.

IV. 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.

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.

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 and ability of implementing the goals and visions contained within the plans.

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.

V. 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 CIP’s 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 then to actually produce the document.

B. Worthy Projects Can Be Stymied
While CIP’s 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; 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 not only appropriate, but also necessary, to review projects and revenues regularly and decide whether projects should be abandoned based on the newest information available.

VI. 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.

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 $1,000 is a suitable amount for inclusion whereas larger jurisdictions may establish financial thresholds of $25,000 or even more.

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<thead>
<tr>
<th>City</th>
<th>2000 Population</th>
<th>Minimum Value</th>
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<tbody>
<tr>
<td>Hillsborough, NC</td>
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<td>$10,000</td>
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<td>Conyers, GA</td>
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<td>$5,000</td>
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<td>Mauldin, SC</td>
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<td>Gainesville, GA</td>
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<td>Largo, FL</td>
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<td>Athens-Clark Co., GA</td>
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<td>Glendale, AZ</td>
<td>218,812</td>
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<tr>
<td>Greensboro, NC</td>
<td>223,891</td>
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</table>
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 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.

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 communities’ goals and plans.
- It assists with the implementation of departmental goals and policies.
- It provides cultural, aesthetic, and/or recreational value.

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 making up the review team(s). And finally, there also can 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.

**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 are established and a schedule is created, 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 usually occurs only after a longer list of potential projects is developed, analyzed, and culled.

**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 costs 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**

![Sample Project Description](Source: City of Suwanee 2010 CIP)

Some communities also solicit potential projects from citizens. This may be done formally or informally. This 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.

**Review and Prioritize Projects**

Once a list of potential projects is developed, the submitted projects should be evaluated against the adopted scoring matrices. 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.

![Sample Scoring Matrix](source: City of Suwanee 2010 CIP)

**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 typically is a list of potential projects with costs 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**
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 made the list and didn’t 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](source: City of Suwanee FY10 Budget)

**VII. 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” 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.”

C. Use Round Financial Figures
As much as practical, 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, consider using inflationary figures to help manage cost increases.

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.

VIII. 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 customs and procedures.
Part Five: FINANCING and REVENUES

Municipal Indebtedness
Municipal Indebtedness

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. In this chapter general information about municipal debt is provided, however individual transactions can be complex and require that elected officials understand not only the economic risks associated with borrowing funds to finance municipal projects but 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, however, 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.1

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 municipality issuing them 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). Concerning the type of issuer, bonds issued by a municipality are considered municipal
bonds. Bonds issued by an authority (housing authority, hospital authority, etc.) are classified as authority 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 percent of the assessed value of all taxable property located within a municipality. 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. Exceptions to the 10 percent 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;
- temporary loans; and
- funds to pay for damages caused by the city's breach of a contract.

Counties and school districts have their own 10 percent limitation. 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. Contracts that are authorized by the intergovernmental contracts clause and require a municipality to pay an amount sufficient to pay the debt services on an authority's debt do not create new municipal debt.

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 payoff the principal and interest of the debt incurred on behalf of the special district.
Temporary Loans

The constitution 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 percent 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.12

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.13 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.14 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.15

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.16 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; 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 this law.17

Multiyear Installment Purchases and Leases

Another method of financing involves the use of multiyear installment purchases or leases. 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 year in which it was executed and at the close of each succeeding calendar 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 year of execution and further state the total obligation that will be incurred in each calendar year of the renewal term, if renewed; and
- 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.18

- 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 percent 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 percent of the governmental fund revenues of the municipality for the preceding calendar year plus any available special county 1 percent sales and use tax proceeds.

In addition to the above, such contracts may contain

1. 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;
2. any other provision reasonably necessary to protect the interest of the municipality; or
3. a provision for the payment by the municipality of interest or the allocation of a portion of the contract payment to interest.19

Such contracts are deemed not to create a debt of the city for the payment of any sum beyond the calendar year of execution or, in the event of a renewal, beyond the calendar year of the renewal. Nothing in this law restricts cities from executing contracts arising out of their proprietary functions.20
Utilizing this law, the Georgia Municipal Association (GMA) 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 person is providing 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. Reviewing information on the Government Finance Officers Association (GFOA) website and publications is a resource to begin learning more about these legal requirements. The U.S. Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB) contain information as well.
- 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 Code section 36-82-252 which requires the municipality to have an interest rate management plan in place prior to entering into such agreement.
NOTES


2 GA CONST. art. IX, §5, ¶1. It should be noted that under past constitutions (The 1983 constitution prohibits local amendments), a number of local 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.

3 GA. CONST.art. IX, §5, ¶1. Regarding such elections, see OFFICIAL CODE OF GEORGIA ANNOTATED (O.C.G.A.) §§36-80-10-36-80-15 (election for authorization of unbonded debt) and ch. 36-82 (bonds).

4 GA CONST. art. IX, §5, ¶4.

5 Ibid.

6 GA CONST.art. IX, §5, ¶5.


9 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). Compare Nations et al. v. Downtown Development Authority of the City of Atlanta, 255 Ga. 324, 338 S.E.2d 240 (1985) in which the city was held to have improperly taken on debt when the city guaranteed, via its taxing power, to make up 90 percent of the shortfall in the revenue (from rents) to pay bondholders.


11 GA. CONST. art. IX, §5, ¶2. See also GA.CONST. art. IX, §2, ¶6, which provides for the creation of special districts.

12 GA. CONST.art. IX, §5, ¶5.

13 GA. CONST. art. IX, §6, ¶1. See Also “Georgia Revenue Bond Law,” O.C.G.A. §§36-82-60-36-82-85.

14 GA. CONST. art. IX, §6, ¶1; O.C.G.A. §36-82-66.

15 O.C.G.A. §36-82-64.


20 Ibid.
Service Delivery Strategy

History and Purpose

The Georgia Service Delivery Strategy Act, adopted 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.”1 The Act attempted to embody the recommendations of the Georgia Future Communities Commission, which had been created by the General Assembly in 1995. The Commission, comprised of state legislators, city and county officials, and business leaders, concluded that “Amendment 19”2 to the Georgia Constitution, which authorized counties to provide municipal services, had led to “fruitless competition and duplication” between cities and counties.

Components

Service Delivery Strategies are intergovernmental agreements that ideally should involve participation by all the local governments in each county. Each service delivery strategy must identify all of the services currently provided or primarily funded by each local government or authority within the county along with a description of the geographic area in which the identified services are and will be provided by each jurisdiction. It must also include an identification of the funding source for each service identified and the mechanisms used to facilitate the service provision and funding sources.

Criteria

Although service delivery agreements are intended to remedy the problems of duplication of services and double taxation of city residents, it is important to note that higher levels of service offered by municipalities are not considered duplication.

Another key element of service delivery agreements is that they must ensure that the cost of any service offered primarily for the benefit of the unincorporated area of a county be borne by the unincorporated area taxpayers. This must be accomplished through the use of special tax districts in which property taxes, assessments, or user fees are levied. An example of how this works to prevent double taxation follows:

There are three cities in Safe County, Serve, Protect, and Defend. Both Serve and Protect have a municipal police department, as does the county. Defend does not have a police department and relies on the county for law enforcement services instead. Rather than pay for the county police department out of general tax revenues, the service delivery agreement calls for the county to create a special tax district that includes all of the unincorporated area and all of the City of Defend, but excludes the cities of Protect and Serve. The county charges 3 mills...
of property tax within the special tax district to fund the county police department. The residents of Protect and Defend do not pay the special district millage since they are not in the special tax district, and instead pay a millage to their city governments to fund their municipal police departments.

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”. The ostensible reason given for this amendment at the time was that the constitutional officers are elected countywide and provide services on a countywide 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. It is worthy of note that 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”

Thus, it remains unclear what the actual impact this amendment has on service delivery agreements.

Water and Sewer Rates

The service delivery act strategy requires that water and sewer rates charged to users outside of the geographic boundary of a service provider not be arbitrary. The law also provides that a governing authority may challenge such a rate differential imposed within its jurisdiction by another government by holding a public hearing to review the rate differential. After having a qualified engineer prepare a rate study and after attempting some form of alternative dispute resolution, a governing authority may challenge the rate differential in court.

Renegotiation

The original act required service delivery agreements to be in place in every county by July, 1999. However, changes in revenue distribution, service provision, and comprehensive plans, 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.

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 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. As one might expect from such a formula, not every city stands on equal footing and thus every city official should be aware of whether their city’s approval is required. The service delivery statute appears to bind cities to service delivery agreements even if they have no say in approval of the agreement. Consideration of the following hypothetical example in which some cities could be bound by service delivery agreements in which they have no say suggests that it behooves cities in such circumstances to build relationships with other local governments.
There are five cities in Tree County: Maple, Oak, Elm, Poplar, and Pine. Maple is the only city in Tree County that is in two counties; and under the last census it has a population of 499 in the portion located in Tree County. Oak has a population of 10,000 under the last census. Elm is the county site and has a population of 5,000 under the last census. Poplar and Pine both have populations of 8,000 under the last census.

Under this example, a service delivery strategy for Tree County could be adopted without the consent of Maple and without the consent of either Poplar or Pine. Thus, the consent of two of the five cities in the county are not needed for an agreement that dictates what areas within the entire county (both in the unincorporated and incorporated areas) may be served by each of the six relevant local governments. Imagine if Maple provides water and sewer service in its city and can do so more efficiently than any other government in Tree County. Under the Service Delivery Strategy Act, other local governments could decide that Maple cannot provide water and sewer service in the portion of the City of Maple that is in Tree County. City officials should be aware that the Service Delivery Strategy Act allows just such scenarios to unfold. It is thus in the interest of cities negotiating agreements to form alliances with other local governments that must be a party to the agreement.

Sanctions and the Role of DCA

Counties are required to file the service delivery strategy agreement with the Georgia Department of Community Affairs (DCA). 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.

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.

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. This means that 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. 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.
NOTES

1 O.C.G.A. § 36-70-20.
3 *“Amendment 19” is jargon used to refer to what is often also called the “Supplementary Powers Provision” of the Georgia Constitution. This provision, now located at Article IX, Section II, Paragraph III of the current Constitution, which allows counties to provide municipal services, was ratified in 1972 and was the 19th question on the statewide ballot that year.
4 O.C.G.A. § 36-70-23.
5 O.C.G.A. § 36-70-24(1);
7 O.C.G.A. § 36-70-24(3)(B).
8 O.C.G.A. § 36-70-2(5.2).
9 O.C.G.A. § 36-70-23(2).
11 The Georgia Department of Community Affairs concluded in March 2010 that only a full comprehensive plan update by a county necessarily triggers a mandatory renegotiation of the service delivery strategy.
13 Id.
14 See O.C.G.A. § 36-70-25.
17 O.C.G.A. § 36-70-27.
18 O.C.G.A. § 36-70-25.1
19 O.C.G.A. § 36-70-25.1(c).
Part Six: Intergovernmental Relations

Georgia’s Intergovernmental Relations Network
“Intergovernmental relations” refers to the complex interactions between governmental entities whether they are between your city and home county, other cities and counties, school districts, special districts, authorities or state and federal government. Maintaining an open and cooperative relationship with your home county is particularly important but so is maintaining and nurturing effective relations with all types and levels of governments and the officials that represent them.

As an elected official, you are challenged with helping determine the direction of your city. You will be required to make some important decisions regarding a broad range of issues, including service provision (water, sewer, recreation, and public safety to name just a few), land use, annexation, taxation, housing and community, economic development, downtown revitalization and capital improvements. These issues can be difficult enough to address with only one body of government involved in the decision-making process. Cities are interwoven with other governing bodies of all shapes, sizes and functions. Therefore, city officials must be able to work with representatives of these different, and sometimes competing, levels of government.

Relations with City and County Governments

Many aspects of local governance involve negotiation and coordination with other forms of government. For example, cities and counties that have a local option sales tax (LOST) in place must negotiate a distribution of sales tax revenues at least once every 10 years (following the decennial census) and file a new distribution certificate with the Department of Revenue. Cities must also develop, adopt and implement a comprehensive plan consistent with minimum planning standards. Cities must also keep current a complex service delivery strategy. Having a good working relationship with the other governmental entities in your county, as well as a clear understanding of responsibilities, helps make these negotiations easier to navigate.

Role of Advocacy

In a perfect world, local government relationships would be cooperative and without controversy. Since cities, counties and school boards effectively serve much of the same constituency, it would stand to reason that these entities would have similar goals. In many instances cities and counties get along well, but state laws and service provision requirements inevitably cause tension and create rifts at the local level. These issues normally fall into three primary subject areas: service provision, revenue and land use, with one over-arching issue - personal politics.

Counties were created by the Georgia Constitution to serve as administrative arms of the state. As a result, counties are constitutionally responsible for state functions such as courts, jail, the sheriff’s office and health care. Over the years, counties (particularly urban counties) have become increasingly involved in providing traditional municipal services, such as water and
sewer, parks and recreation, transportation, police and fire and garbage collection services. While the Georgia Constitution states that a county may not provide these services inside an incorporated area without a contract with the municipality, and that a municipality may not provide these services outside of its jurisdiction without a contract with the county or other cities affected, the reality is cities and counties have been forced into competition by a key provision of the State Constitution called the supplementary powers provision.

**Service Delivery Agreements**

Georgia law requires cities and counties to negotiate and enter into service delivery agreements. Each county and the cities within that county must determine which local government will provide what services in designated geographic areas. The agreement reached must be reduced to writing and be submitted to the Department of Community Affairs for verification that the agreement conforms with the statute. This issue is covered extensively in the Handbook chapter on Service Delivery Strategy. Most service delivery disputes relate to three critical issues:

- Which entity provides the service;
- How that service is financed; and
- Double taxation.

Obviously, service provision is or should be linked to tax revenue. Counties should adjust their property tax rate for municipal residents in accordance with the service the county provides to those residents. For example, if a county has a county police department and the city or cities have their own police department within the municipal limits, county property taxes paid by municipal residents should be adjusted to ensure that the city residents are not paying twice for a service their city already provides.

Not only does service delivery negotiation require cities to work with counties, cities must negotiate with the other cities in their county as well. As the old saying goes, there is strength in numbers. Therefore, cities benefit from sticking together in service delivery negotiations. In many counties, cities have formed county municipal associations to facilitate stronger relationships year-round.

**Revenue Agreements**

One major revenue source typically related to service delivery is the Local Option Sales Tax (LOST). The decennial census triggers a requirement in state law for counties and cities to re-negotiate their sales tax distribution arrangement. Revenues derived from LOST are used to offset property taxes and pay for governmental services and considering these agreement typically last for 10 years, the negotiations can be contentious as a limited pot of money is reallocated among the parties. It is very important that all cities in a county work together to negotiate for the most equitable municipal share of the LOST proceeds for all parties involved. The greater the municipal share, the greater the portion allocated to each municipality. A recent change in state law has put in place a “baseball arbitration” provision to prevent the unilateral lapsing of LOST should the parties reach a stalemate. This is a last resort where the courts would decide which parties’ proposal (city(s) or county) makes the most sense.
The same can be said for negotiating with the county for a fair share of the Special Purpose Local Option Sales Tax (SPLOST). Changes to SPLOST in the 2004 legislative session gave cities a meaningful seat at the table in how the SPLOST would be structured and funds distributed. Absent a major constitutional project such as a new courthouse or jail, cities are guaranteed at least their population share of SPLOST. While the tax technically is called a “special district tax” the county is still the party responsible for calling the referendum and organizing negotiations with cities. While not a perfect law, it does provide cities with access to dollars for their own capital needs. Since the passage of the 2004 amendments, cities have tended to fare much better in SPLOST negotiations, especially when all of the cities in a county work together towards achieving a common goal.

**Land Use**

Over the years, land use issues have been a constant point of irritation between city and county officials. While Georgia’s annexation laws are some of the most restrictive in the country, numerous changes have been made to further restrict Georgia’s annexations laws over the past 20 or so years. The latest annexations changes occurred in the 2008 legislative session. Now a county can “object” to an annexation based on land use or service delivery reasons and if a compromise cannot be reached, the issue is presented to a randomly selected arbitration panel of city and county officials and a representative with planning experience. The decision of the panel is then binding on the city and county. To date, most of the annexations that have gone to arbitration have been ruled in favor of the city.

**Personal Politics**

Personal politics can certainly make negotiation and cooperation a trying process. It is impossible to legislate against bad faith or bad actors. However onerous your personal politics may be, the important thing is to advocate for the best interests of your city and the people you serve. While this advocacy can be exhausting and uncomfortable at times, your purpose as an elected official is to serve your city and your constituents. In the end, building bridges whenever possible with fellow local officials will be beneficial to you and your constituents.

**Alternative Methods of Interaction**

Several methods of addressing intergovernmental challenges are available to Georgia cities. Each municipality should thoroughly review its particular situation and determine which method provides the most logical and appropriate conditions for providing the type of government desired by its citizens.

- **Informal cooperation** refers to simple cooperative actions or agreements that are voluntary and require no structural change in the participating governmental unit. An example of informal cooperation is the simple exchange of information between city and county managers and clerks.

- **Mutual aid agreements** are when two or more units of government agree to provide supplemental services such as police, fire emergency management and riot control situations. The Georgia Mutual Aid Act offers assistance with these agreements as it authorizes local law enforcement agencies, fire departments, and emergency medical
services to cooperate with and provide assistance to other local governments or agencies when they request help in a local emergency.

Formal agreements, as a general rule, are accomplished through joint service agreements or contracts for services. Any agreement relating to service provision or revenue distribution should be reduced to writing to ensure legal enforceability. Such agreements, often referred to as intergovernmental agreements, are authorized by of the Georgia Constitution.

- In a joint service agreement, two or more local governments mutually perform a particular function or service. In a joint service agreement, participating local governments share ownership and control. Examples of joint services include a joint water authority or a jointly owned industrial park.
- Contracts for services, while similar to joint service agreements, are distinguishable in that one party is the seller and the other is the buyer. The terms of the contract must be acceptable to each party but the supplier or seller is usually in control of administering the service. Typical contracts for services include animal control, road maintenance, police protection and fire protection. Other functions and services may be wholly or partially adaptable to contractual agreements.

Dependent and independent authorities are separate, quasi-local governments that are authorized by or created by the legislature. Examples include housing, hospital, water and sewer, downtown development, recreation, solid waste, parking and buildings, industrial development and airport authorities. Local government authorities are popular for three reasons:

- They often provide a service or initiate a project that might be difficult for a city to directly provide or manage;
- They allow for separate boards to oversee the day-to-day operations and to concentrate on a focused mission; and
- Any bonds or other debt issued to carry out the project or services are obligations of the authority or special district, not the city.

Whether they are classified as dependent or independent authorities depends on several key tests.

- The degree of fiscal, contractual and administrative independence an authority has from the local government is a determining factor.
  - Dependent authorities generally relay on city staff for management and funding; must report periodically to city council; and cannot enter into any contractual arrangements without the consent of the city.
  - Independent authorities generally have their own staff, revenue stream and can enter into contractual agreements and debt without the city’s approval.

State law requires that all local government authorities annually register with the Department of Community Affairs. Failure to register prevents the authority from entering into any kind of debt relationship or receiving any kind of state assistance.
In 2010, 939 local government authorities have registered with the Department of Community Affairs.

While having a separate local government authority that is concerned with providing only one service can be advantageous, it can also present difficulties.
- Citizens are often confused with respect to the governing body providing the service.
- A separate authority may result in coordination and responsiveness problems for elected officials.
- Generally speaking, the more fiscal independence a local government authority achieves, the greater the chance for conflict between the city and the authority.
- For this reason, it is important for city officials to remain aware of decisions made by authorities, and to contribute and participate as best as they can in the decision making process.

**Merger of Governmental Functions**

In a merger arrangement, one governmental unit is made responsible for furnishing one or more services for a certain service area. The merged service is usually under the primary control of the government charged with providing the service. Sometimes, a county and one or more cities will agree to an exchange of merged services. For example, a city might provide water and sewer service for the entire county, while the county provides countywide fire protection. These merged functions are then memorialized in an intergovernmental agreement.

Some cities and counties have merged tax collection, building inspection and planning and zoning functions. Merging these functions prevents duplication of staff, records, equipment and office space. In so doing, the local governments can promote a more efficient performance of services and make access to those services more convenient to the public. Typically when a county and a city or cities merge a service or services, the governments involved in the merger prorate the costs of providing each service.

**Consolidation of Governments**

The most comprehensive approach to addressing city-county service provision challenges is consolidation of city and county governments. Under this arrangement, the governments are legally consolidated/unified into one newly empowered and defined governmental entity. That government assumes all the powers, functions, assets, liabilities and responsibilities of both the old municipal and county government.

**State and Federal Advocacy**

It is also important for municipal officials to develop and maintain good relationships with state and federal officials. To help facilitate these relationships, cities are represented at the state level by the Georgia Municipal Association (GMA) and at the federal level by the National League of Cities. Nonetheless, as a constituent and a political voice within their districts, your personal and professional relationship with your state and federal representatives is extremely influential. As part of the Municipal Training Institute, GMA offers a class entitled **Lobbying 101 – Building a Hometown Connection** that is a great primer for involvement in GMA’s legislative advocacy efforts.
Georgia Municipal Association
Created in 1934, the Georgia Municipal Association (GMA) is the only state organization that represents municipal governments in Georgia. Based in Atlanta, GMA is a voluntary, non-profit organization that provides legislative advocacy, educational, employee benefit and technical consulting services to its members.

GMA's membership currently totals 512 municipal governments, accounting for more than 99% of the state's municipal population. A 64-member Board of Directors, composed of city officials, governs GMA. Program implementation is charged to the Executive Director and staff of 87 full-time employees, including the joint ACCG-GMA Local Government Risk Management Services.

GMA’s strength lies in its membership. Through its year-round policy development process, GMA provides city officials an opportunity to help shape the legislative agenda of the association through district meetings and membership on up to two of its six standing policy committees. These committees are dedicated to the issues of community development, environment and natural resources, public safety, municipal government, revenue and finance and transportation. The GMA Legislative Policy Council was created in 2003 to serve as the year-round steward of GMA’s legislative agenda.

At the GMA Annual Convention, the policies recommended by the policy committees and adopted by the Legislative Policy Council are presented to the entire GMA membership for approval. It is important to note that each GMA member city has one vote. Only after a majority of the membership approves the policy agenda items do they become a part of GMA’s official legislative policy agenda.

GMA has put in place an aggressive grassroots outreach program that assigns a GMA staff person to each of GMA’s 12 districts. Each district staff member is expected to visit every one of the member cities at least once a year and to provide opportunities for every city to participate in the activities of the association through conveniently scheduled and located district meetings. Please note that the voices that are heard the loudest are those that call and participate. The voices that are most influential at the state capitol are those that are informed on the issues.

National League of Cities
At the federal level, the National League of Cities (NLC) represents cities across the country concerning federal issues. Membership in NLC is voluntary.

The National League of Cities is the oldest and largest national organization representing municipal governments throughout the United States. Its mission is to strengthen and promote cities as centers of opportunity, leadership, and governance. Working in partnership with 49 state municipal leagues (Hawaii does not have a city), NLC serves as a national resource to and an advocate for the more than 18,000 cities, villages, and towns it represents. NLC was founded in December 1924 by 10 state municipal leagues. It was initially an organization of state municipal leagues. In the 1960s and 1970s, membership was gradually opened to cities of all sizes giving local elected leaders a more direct opportunity to shape the priorities, policies, and advocacy positions of the organization.
Today, the unique partnership among NLC, the 49 state municipal leagues and their 18,000 member cities, provides a powerful network for information sharing and advocacy on behalf of America's cities in Washington, D.C.

Relations with State Government

The Legislative Branch

The Georgia General Assembly is comprised of 180 members of the House of Representatives and 56 members of the Senate. It convenes annually on the second Monday in January for its 40 nonconsecutive day legislative session. The purposes of the legislative session are to adopt the state budget (the only legislation they have to pass) and consider new legislation or resolutions. State legislators are elected to two-year terms of office. Legislative matters introduced during the first year of a legislator’s term (odd numbered years) may be carried over and addressed during the second year of the term. Any business still pending at the end of the second year must be reintroduced during the next legislative cycle in order to be considered again. Should an important matter need to be addressed in between sessions, the Governor may convene a Special Session, for which the General Assembly will address only those issues called by the Governor such as reapportionment or budget matters.

Legislation introduced in the General Assembly is presented in the form of a bill or a resolution. A bill is simply proposed legislation and must go through many steps and iterations before it becomes law. A resolution is similar to a bill but may not have the force of law. Constitutional amendments are introduced in the form of resolutions and require a 2/3 vote in both houses to pass the General Assembly, by-pass the governor, and go straight to the voters in the general election. A bill becomes a law once it has passed both the House of Representatives and the Senate in identical form and is signed by the governor, becomes law without the Governor’s signature, or is passed despite the Governor’s veto. In the latter case, the General Assembly would need to take affirmative action to “override” the governor’s veto by a 2/3 vote in each body.

Unless otherwise stated, the typical date on which a bill becomes law is the following July 1. Nonetheless, some general bills will become effective upon approval of the governor or upon becoming law without such approval.

During each session, the General Assembly also addresses many issues that only affect one jurisdiction. These are done through “local legislation.” Local legislation applies only to the city, county or special district named in the legislation. Such legislation is typically used to incorporate new cities, change city boundaries, amend city charters, alter forms of government, create local authorities or special districts, or make other changes that apply only to the political subdivision named in the legislation. The Georgia Municipal Association tracks local legislation in its on-line legislative tracking system but does not lobby for or against local legislation. House and Senate rules allow local legislative delegations (legislators who represent all or part of a county) to determine the rules they will use to consider local legislation. Some delegations require a simple majority of the delegation before a bill can be introduced while others have substantially different delegation rules.
While the legislature can only be in session for 40 days, recent years have seen sessions run as late as the end of April. In fact, the 2010 legislative session was the longest in modern history.

**The State Budget and Its Impact on Cities**

Unlike city governments in other states around the country, cities in Georgia do not receive funding from the state for general operational support. While this may seem like a disadvantage, it can actually be viewed in a positive manner. Local governments in Georgia have access to a broad range of locally controlled revenue sources, including property, sales, and excise taxes in addition to other revenue sources and do not have to rely on the annual appropriations process for their operations. Cities have a certain degree of flexibility to design a revenue structure based on the desires and demands of their constituents.

Even though direct state funding to cities is not an issue in Georgia, many actions the governor and General Assembly take regarding the budget does have both a direct and indirect impact on municipal governments and municipal residents. Appropriations to the Georgia Environmental Finance Authority (GEFA) for its low interest water and sewer loan program effects local water and sewer rates. Cutbacks in the Department of Public Safety budget (state patrol) directly impacts local law enforcement, requiring more local patrols of state and federal highways. Trust funds established by state law for grants to local governments for scrap tire clean up or recycling activities have been redirected to help balance the state budget, effecting local efforts around the state. And funding problems at the Department of Transportation has required local efforts and funding to keep state highway medians and rights-of-way mowed. These are just a few examples. The long-term prognosis for the state budget is not positive which will no doubt push even more traditionally state responsibilities down to the local level.

**Effective Lobbying at the State Level**

The governmental relations staff of the Georgia Municipal Association is your day-to-day representative at the State Capitol. They meet daily with legislators to articulate the position of the Association and to brief them on pending bills that GMA supports or opposes. However, the most effective voice is the local official. Here are 10 tips to effective lobbying:

1. **Stay in touch year-round.**

   Any relationship, whether personal or professional, needs to be sincere and requires constant nurturing. If the first time your legislator sees or hears from you is during the hustle and bustle of the legislative session, your effectiveness will be negligible. To be effective, develop a year-round relationship. Legislators will appreciate the opportunity to visit your city, learn about your issues and will have more time to listen.

2. **Know how to reach your legislator(s).**

   Be sure to get your legislators' telephone and fax numbers, address and e-mail address. Even if you have this information, it wouldn't hurt to double-check in early January since legislators are sometimes assigned new offices after the election.
3. **Find out the best time to reach them.**

Ask them when they're most likely to be in their office. As a rule, early morning and late afternoons are the best times to catch a legislator in his or her office. But also keep in mind that their schedules are less predictable in the final weeks of the session.

4. **Remember calls or faxes are better than letters.**

The legislative process is very fast paced. Legislation can be introduced and voted on in committee within 24 hours. If you want your legislators to know how you feel about a bill, don't assume you have time to write a letter. Call, email or send a fax immediately.

5. **Be specific.**

Always provide the bill number, author of the bill and a “brief” summary of what the bill is about when you contact them. Don’t assume they know. In addition, let them know your position and how the legislation will impact your city.

6. **Be concise.**

Remember, legislators are inundated with letters, faxes emails and phone calls from lobbyists and constituents. Your message, whether it's communicated orally or in writing, should be brief and to the point. Try to keep anything you write to no more than one page.

7. **Don't expect them to be an expert on every bill.**

It's impossible. Each session, more than 1,000 bills and resolutions are introduced. If your legislator's not familiar with the bill you're talking about, don't be surprised or offended. It may be the first time they've heard about it.

8. **Don't burn your bridges.**

It's natural to be disappointed if your legislator doesn't vote the way you ask him or her to. But don't let one vote destroy your relationship. Remember, you're going to need their support on many other issues and sometimes it is the next vote that very day.

9. **Avoid personal attacks in the newspaper.**

Calling a legislator's character into question serves no purpose, other than to create controversy and sell newspapers. If you feel it's necessary to air your grievances publicly, stick to the issues. You'll accomplish more in the long run.

10. **Don't forget to say "thank you."**

Legislators, like mayors and council members, appreciate positive feedback, so look for opportunities to give them a pat on the back, especially publicly.
**The Executive Branch**
Communications with a broad range of state agencies, which are part of the executive branch, are critical to city officials and their staff. It is essential to understand how these agencies and their boards operate. Since these boards typically meet monthly to create policies, promulgate rules and take action that can affect cities, it is crucial for city officials and city staff to know and communicate with appropriate state agency personnel and board members.

Administrative and regulatory agencies exist to address specific issues and areas, such as the environment, transportation, planning and community and economic development. Their charge is to implement laws passed by the legislature. The legislature many times delegates rule-making power to agencies that have the same effect as the laws they define.

State agencies, such as the Department of Transportation (DOT), the Department of Natural Resources (DNR), the Department of Community Affairs (DCA) and the Georgia Environmental Finance Authority (GEFA) take regulatory actions that have the force of law and that significantly affect local government. Each agency’s board of directors oversees this process. Most agency board members are political appointees who do not answer directly to a voting constituency. They are, however, still responsive to input from interested parties. Thus municipal officials and staff should consistently provide input to state agency board members regarding issues that may impact municipalities. Most state boards have at least one representative from each of the state’s congressional districts.

**Relations with the Federal Government**

With the federal government actively involved in the passage of legislation that affects local governments and with the ability of local governments to seek annual federal appropriations assistance, it is important for local officials to communicate with your congressional representatives. Although it is more difficult to maintain the same level of communication with Congress and the federal executive branch than it is with state government officials, maintaining contact at the federal level is important. Utilizing the advocacy service of NLC is one method of staying current on the issues under consideration by Congress. GMA also has staff dedicated to federal issues and periodically sends out information to member cities and encourages cities to make contact about pending legislation or budgetary matters. The GMA web site has contact information, searchable by city, for both state legislature and congressional members.

As previously mentioned, NLC serves as GMA’s eyes and ears in Washington, DC on the day-to-day issues that impact cities in Georgia and across the country. Through interaction with other state municipal leagues around the nation, GMA staff are also able to keep on top of trends and practices that may benefit Georgia’s cities. In addition to working with NLC, GMA federal relations staff also stay in close contact with offices of Georgia’s senators and congressmen to make them aware of cities’ stance on various issues.
Conclusion

Maintaining strong relationships with other local, state and federal officials is important to the success of your city and to you as an elected city official. Whether seeking local cooperation with respect to service provision or to foster economic development, or seeking state or federal legislative remedies, regulatory relief, financial assistance or some other resolve, city officials must always strive to work with other elected officials and local governments. In fact, the more a city works with other local governments, including counties and school boards, for a common purpose, the easier it will be for all to achieve their objectives and better serve their constituents.

The Georgia Municipal Association at the state level and NLC at the federal level are available to assist you in forming and maintaining these relationships as well as in advocating for your city’s needs. Remember that you are your city’s most influential local advocate and becoming and active and informed city official will make you city better and help cities all across the state.