

House Bill 1134 (AS PASSED HOUSE AND SENATE)

By: Representatives Weldon of the 3rd, Deffenbaugh of the 1st, and Tarvin of the 2nd

A BILL TO BE ENTITLED
AN ACT

1 To amend an Act to provide a new charter for the City of Fort Oglethorpe, approved April 1,
2 1996 (Ga. L. 1996, p. 3892), as amended, so as to provide for the use of certain lands; to
3 provide for the powers and duties of the mayor; to provide for conflicts of interest, disclosure
4 of conflicts, proper use of public property, ethical prohibitions, disqualifications, complaints,
5 ethics commission, and appeals; to provide for the filling of vacancies; to provide for related
6 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 An Act to provide a new charter for the City of Fort Oglethorpe, approved April 1, 1996
10 (Ga. L. 1996, p. 3892), as amended, is amended by adding a new section to read as follows:

11 "SECTION 1.15.
12 Polo Grounds.

13 The area known as the Polo Grounds, which is surrounded by Barnhardt Circle, shall be
14 preserved in its present condition for the use and benefit of the general public, and no
15 future permanent construction or obstruction shall be allowed in such area except as
16 approved by the city council. Those structures now existing, including ball parks, may be
17 improved within their present boundaries, except that nothing in this section shall affect the
18 rights of the Catoosa County Board of Education regarding those areas previously
19 conveyed to the Catoosa County Board of Education."

20 **SECTION 2.**

21 Said Act is further amended by revising Section 2.12 as follows:

22 "SECTION 2.12.

23 Vacancy; filling of vacancies.

24 (a) The office of mayor or councilmember shall become vacant upon the incumbent's
 25 death, resignation, forfeiture of office, lack of qualifications, incompetence, neglect of
 26 duty, gross misconduct in reference to his or her duties, violation of the Code of Ethics, or
 27 occurrence of any event specified by the Constitution of the State of Georgia, Title 45 of
 28 the O.C.G.A., or such other applicable laws as are or may be hereafter enacted. A vacancy
 29 may be permanent or temporary as circumstances dictate.

30 (b) A vacancy in the office of mayor or councilmember shall be filled within 60 days from
 31 the date of the vacancy for the remainder of the unexpired term if less than one year
 32 remains on the term by appointment of a majority vote of the city councilmembers or upon
 33 filling the office by special election if more than one year remains on the term.

34 (c) Subsection (b) of this section shall also apply to a temporary vacancy created by the
 35 suspension from office of the mayor or any councilmember and will be effective for the
 36 duration of the temporary vacancy as circumstances dictate. Should the suspension from
 37 office be appealed and reversed by court decision, the mayor or councilmember shall be
 38 restored to office on the effective date of such court decision, and the temporary
 39 assignment will no longer be effective.

40 (d) The mayor or any councilmember shall forfeit his or her office if he or she lacks at any
 41 time during his or her term of office any qualifications of the office as prescribed by this
 42 charter or the laws of the State of Georgia; willfully and knowingly violates any express
 43 prohibition of this charter; or is convicted of a crime involving moral turpitude."

44 **SECTION 3.**

45 Said Act is further amended by revising Section 2.14 as follows:

46 "SECTION 2.14.

47 Conflicts of interest; holding other offices.

48 (a) Elected and appointed officers of the city are trustees and servants of the residents and
 49 taxpayers of the city and shall act in a fiduciary capacity for the benefit of such residents
 50 and taxpayers. No elected official, appointed officer, or employee of the city or any city
 51 agency shall knowingly:

52 (1) Engage in any business or transaction or have a financial or other personal interest,
 53 direct or indirect, which is incompatible with the proper discharge of his or her official

- 54 duties or which would tend to impair his or her independence of judgment or action in the
55 performance of his or her official duties;
- 56 (2) Engage in or accept private employment or render services for private interests when
57 such employment or service is incompatible with the proper discharge of his or her
58 official duties or would tend to impair his or her independence of his or her judgment or
59 action in the performance of his or her official duties;
- 60 (3) Disclose confidential information concerning the property, government, or affairs of
61 the governmental body by which he or she is employed or appointed without proper legal
62 authorization, or use such information to advance the financial or other private interest
63 of himself or herself or others;
- 64 (4) Accept any valuable gift, whether in the form of a service, loan, thing, or promise,
65 from any person, firm, or corporation which, to his or her knowledge, is being offered to
66 influence decision in business dealings with the governmental body by which he or she
67 is employed or appointed; however, an elected official who is a candidate for public
68 office may accept campaign contributions and services in connection with any such
69 campaign;
- 70 (5) Represent private interests in any action or proceeding against the council by which
71 he or she is employed; or
- 72 (6) Vote or otherwise participate in the negotiation or the making of any contract with
73 any business or entity in which he or she has a financial interest.
- 74 (b) Any elected official, appointed officer, or employee of the city who has any private
75 financial interest, directly or indirectly, in any contract or matter pending before or within
76 any department of the city shall disclose such private interest to the council.
- 77 (c) The mayor or any councilmember who has a private interest in any matter pending
78 before the council shall disclose such private interest, and such disclosure shall be entered
79 on the records of the council, and he or she shall disqualify himself or herself from
80 participating in any decision or vote relating thereto.
- 81 (d) Any elected official, appointed officer, or employee of any city agency or political
82 entity who has any private financial interest, directly or indirectly, in any contract or matter
83 pending before or within such agency or entity shall disclose such private interest to the
84 governing body of such agency or entity.
- 85 (e) An appointed member of the governing authority who has an interest that he or she has
86 reason to believe may be affected by his or her official acts or actions or by the official acts
87 or actions of the governing authority shall disclose the precise nature of such interest prior
88 to the governing authority's taking official action on a matter affecting such interest and
89 abstain from discussion and voting. Such disclosure shall be recorded into the minutes of
90 the meeting and thus become part of the public record.

- 91 (f) Any violation of this section which occurs with the knowledge, express or implied, of
92 another party to a contract or sale shall render the contract or sale voidable as to that party,
93 at the option of the council.
- 94 (g) No elected official, appointed officer, or employee of the city or any city agency or
95 entity shall use property owned by such governmental body for personal benefit,
96 convenience, or profit, except in accordance with policies promulgated by the council or
97 the governing body of such agency or entity.
- 98 (h) Any city officer or employee who willfully conceals a financial interest or willfully
99 violates any of the requirements of this section shall, upon conviction, be guilty of
100 malfeasance in office or position and may be removed from his or her office or position.
- 101 (i)(1) No member of the governing authority shall:
- 102 (A) By conduct, give a reasonable basis for the impression that any person can
103 improperly influence him or her or unduly enjoy his or her favor in the performance of
104 official acts;
- 105 (B) Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor,
106 promise, or thing of value for himself or herself or another person if it could reasonably
107 be considered to influence the member in the discharge of official duties;
- 108 (C) Disclose or otherwise use confidential information acquired by virtue of his or her
109 official position for his or her or another person's private gain;
- 110 (D) Use his or her official position to attempt to secure privileges that are not available
111 to the general public;
- 112 (E) Engage in, accept employment with, or render services for any private business or
113 professional activity when such employment or rendering of services is adverse to and
114 incompatible with the proper discharge of official duties;
- 115 (F) Engage in any activity or transaction that is prohibited by law now existing or
116 hereafter enacted which is applicable to him or her by virtue of being a member of the
117 governing authority;
- 118 (G) Use his or her position to request or require an employee to:
- 119 (i) Do clerical work on behalf of the member's family, business, social, church, or
120 fraternal interest when such work is not furthering a city interest;
- 121 (ii) Perform any work outside the employee's normal course of municipal
122 employment;
- 123 (iii) Purchase goods or services to be used for personal, business, or political
124 purposes; or
- 125 (iv) Work for the member personally without paying the employee just
126 compensation;

- 127 (H) Use government property of any kind for other than officially approved activities,
 128 nor shall he or she direct employees to use such property for any purposes other than
 129 those officially approved; or
- 130 (I) Use his or her position in any way to coerce, or give the appearance of coercing,
 131 another person to provide any financial benefit to himself or herself or persons having
 132 an interest.
- 133 (2) The prohibition of this subsection shall not apply in the case of:
- 134 (A) An occasional nonpecuniary gift of insignificant value;
- 135 (B) An award publicly presented in recognition of public service;
- 136 (C) A commercially reasonable loan or other financial transaction made in the ordinary
 137 course of business by an institution or individual authorized by the laws of this state to
 138 engage in the making of such a loan or financial transaction;
- 139 (D) Campaign contributions made and reported in accordance with state law;
- 140 (E) An occasional meal or event provided as appreciation or recognition; and
- 141 (F) Meals or events provided or offered in the ordinary course of business.
- 142 (j) A member of the governing authority shall disqualify himself or herself from
 143 participating in any official act or action of the city which results in a pecuniary benefit to
 144 the member or a business or activity in which he or she has an interest, when such benefit
 145 is not available to the public at large.
- 146 (k) The city shall not enter into any contracts involving services or property with a
 147 member of the governing authority or with a business in which a member of the governing
 148 authority has an interest. This subsection shall not apply in the case of the designation of
 149 a bank or trust company as a depository for city funds or in cases of emergencies.
- 150 (l)(1) Any person having a complaint against any member of the governing authority for
 151 an alleged ethics violation shall file in writing a verified complaint setting forth the
 152 particular facts and circumstances which constitute the alleged violation. The complaint
 153 shall be filed with the city manager or city attorney. Upon receipt of a complaint, the city
 154 manager or city attorney shall randomly draw the names of three members from the board
 155 of ethics pool. The three members, along with the city attorney as legal counsel, shall
 156 constitute an investigating committee to determine whether the complaint sets forth
 157 significant facts and circumstances so as to warrant a hearing before the board of ethics.
 158 The investigating committee shall have the right to request supporting documentation
 159 from the complaining party if the committee deems it reasonable to avoid the pursuit of
 160 frivolous complaints. If the complaint does not set forth sufficient facts to constitute an
 161 alleged violation and is found unjustified, frivolous, or patently unfounded, it shall be
 162 dismissed, and the complainant notified immediately. If the complaint is found to state

163 sufficient facts to warrant a hearing before the board of ethics, the board shall be
164 appointed as provided in paragraph (2) of this subsection.

165 (2) The board of ethics of the city shall be composed of seven registered voters of the
166 city to be appointed as provided in this paragraph. Each member of the board of ethics
167 shall have been a resident of the city for at least one year immediately preceding the date
168 of taking office and shall remain a resident of the city while serving as a member of the
169 board of ethics. No person shall serve as a member of the board of ethics if the person
170 has, or has had within the preceding one-year period, any interest in any contract,
171 transaction, or official action of the city. The mayor and council shall each appoint three
172 qualified registered voters of the city to provide a pool of 18 individuals who have
173 consented to serve as a member of such board of ethics and who will be available for a
174 period of the term of their appointer to be called upon to serve in the event a board of
175 ethics is appointed. The city attorney shall maintain a listing of these 18 qualified
176 registered voters of the city. Should the investigating committee determine a complaint
177 warrants a hearing before the board of ethics, the mayor and council, at the first public
178 meeting after such determination, shall draw names randomly from the listing of qualified
179 citizens until the specified seven members of the board of ethics have been appointed.
180 Such board shall elect one of its members to serve as chairperson. The governing
181 authority of the city shall provide a meeting space for the board of ethics. Subject to
182 budgetary procedures and requirements of the city, the city shall provide the board of
183 ethics with such supplies and equipment as may be reasonably necessary for it to perform
184 its duties and responsibilities.

185 (3) Duties and powers. The constituted board of ethics shall have the following duties
186 and powers:

187 (A) Establish procedures, rules, and regulations governing its internal organization and
188 conduct of its affairs;

189 (B) Hold a hearing within 60 days after the receipt of a complaint;

190 (C) Prescribe forms, approved by the city attorney, for the disclosure required in this
191 section and to make available to the public information disclosed as provided in this
192 subsection;

193 (D) Receive and hear complaints of violations of the standards required by this section;

194 (E) Make such investigation and response to a complaint as it deems necessary to
195 determine whether any person has violated any provisions of this section;

196 (F) Hold such hearings and make such inquiries as deemed necessary to investigate and
197 rule upon complaints; and

198 (G) Report its findings to the governing authority for such action as the governing
199 authority deems appropriate.

200 (m)(1) In the event the investigating committee determines a complaint warrants a
 201 hearing, the board of ethics, as appointed in this section, shall cause the complaint to be
 202 served on the member of the governing authority charged as soon as practicable. Service
 203 may be by personal service or by certified mail, return receipt requested. A hearing shall
 204 be held within 60 days after filing of the complaint. The board of ethics shall conduct the
 205 hearing in accordance with the procedures and regulations it establishes, but in all
 206 circumstances, the hearing shall include the taking of testimony and the
 207 cross-examination of witnesses. The decision of the board of ethics shall be rendered to
 208 the mayor and council within five days after completion of the hearing.

209 (2) Any member of the governing authority who knowingly violates any provision of this
 210 section shall be subject to public reprimand, censure, or removal from office or a fine not
 211 to exceed \$1,000.00, or both, by the governing authority of the city.

212 (3) At any hearing held by the board of ethics, the member of the governing authority
 213 who is the subject of inquiry shall have the right to written notice of the allegations at
 214 least ten business days before a hearing, to be represented by counsel, to hear and
 215 examine the evidence and witnesses, and to present evidence and witnesses in opposition
 216 or in extenuation.

217 (n)(1) Any member of the governing authority or the complainant adversely affected by
 218 these findings of the board of ethics may obtain judicial review of such decision as
 219 provided in this subsection.

220 (2) An action for judicial review may be commenced by filing an application for a writ
 221 of certiorari in the superior court of the county within 30 days after the decision of the
 222 mayor and council. The filing of such application shall act as supersedes."

223 **SECTION 4.**

224 Said Act is further amended by revising Section 2.32 as follows:

225 "SECTION 2.32.

226 Powers and duties of mayor.

227 The mayor shall:

228 (1) Preside at all meetings of the city council and shall have the right to take part in
 229 deliberations but shall not vote on any issue, ordinance, or legislation, except in case of
 230 a tie;

231 (2) Be the head of the city for the purpose of service of process and for ceremonial
 232 purposes and be a spokesperson for the city and an advocate of policy;

233 (3) Have power to administer oaths and to take affidavits;

234 (4) Sign as a matter of course on behalf of the city all written and approved contracts,
235 ordinances, and other instruments executed by the city which by law are required to be
236 in writing;

237 (5) Make any appointments or nominations when authorized by law or otherwise,
238 provided that such appointments shall be subject to approval or ratification by the
239 council; and

240 (6) Have power to call or cancel a meeting with the approval of three councilmembers."

241 **SECTION 5.**

242 This Act shall become effective upon its approval by the Governor or upon its becoming law
243 without such approval.

244 **SECTION 6.**

245 All laws and parts of laws in conflict with this Act are repealed.