

PART I - THE CHARTER

ACT NO. 597 (H.B. NO. 678)

To reincorporate the City of Clarkston in the County of ~~Dekalb~~ **DeKalb**; to create a new charter for said city; to provide for its corporate limits; to provide for the government of said city; to provide for the officials thereof, and their selection, oath, powers and duties; to provide their term of office; to provide for elections; to provide for a recorder's court in said city; to provide for its fiscal administration; to provide restrictions on actions for damages; to provide for penalties; to provide for severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA, AND IT IS HEREBY ENACTED BY AUTHORITY OF THE SAME:

Recommendation: Correct the spelling of DeKalb County

ARTICLE I. - CHARTER, CITY LIMITS AND CORPORATE POWERS

Sec. 1.01. - [Incorporation.]

This Act is a charter and shall constitute the whole charter of the City of Clarkston, Georgia, repealing and replacing the charter as provided by Georgia Laws of 1914, pages 578—615, as amended. The City of Clarkston, Georgia, in the County of ~~Dekalb~~ **DeKalb**, and the inhabitants thereof, are hereby constituted and declared a body politic and corporate by the name and style of the City of Clarkston, Georgia, and by that name shall have perpetual succession, may sue and be sued, plead and be impleaded, in all the courts of law and equity, and in all actions whatsoever, and may have and use a common seal, and change it at pleasure.

Recommendation: Correct the spelling of DeKalb County

Sec. 1.02. - City limits.

Said city shall include all territory **identified in any annexation ordinance enacted by the Georgia General Assembly and by the City of Clarkston, as well as its original boundary described** ~~within the following boundaries, which constitute the corporate limits,~~ as follows: All that tract or parcel of land lying and being in the County of ~~Dekalb~~ **DeKalb**, State of Georgia, embracing and including the territory as follows: One-half (½) mile in every direction from a marker at the center of the old depot site of the Georgia Railroad, said city and its territory being embraced in the circle thus traced by using one-half (½) mile as a radius and said marker at the center of said old depot site as a center.

Recommendation: To change the description of the city boundaries to include annexations and correct spelling.

Sec. 1.03. - Corporate powers.

The corporate powers of the city, to be exercised by the city council, may include the following:

- (a) *[Levy, etc. of property taxes:]* To levy and to provide for the assessment, valuation, reevaluation, and collection of taxes on all property subject to taxation.
- (b) *[Levy, etc. of license taxes:]* To levy and to provide for the collection of license taxes on privileges, occupations, trades, and professions.
- (c) *[Levy, etc. of registration fees on motor vehicles:]* To levy and to provide for the collection of registration fees on automobiles and trucks owned by residents of the city, and also on

automobiles and trucks owned by non-residents and operated within the city with regularity. Such registration fees on trucks or automobiles may be graduated according to their tonnage capacities, weight or horsepower.

- (d) [*Appropriations, borrowing, expenditures, bond issuance:*] To appropriate and borrow money to provide for payment of the debts of the city, and to authorize expenditure of money for any municipal purpose, or for matters of National or State interest, and to issue bonds for the purpose of raising revenue to carry out any project, program or venture authorized under this charter or the general laws of the State. Such bonding authority shall be exercised in accordance with the laws governing bond issues by municipalities in effect at the time said issue is undertaken.
- (e) [*Acquiring, etc. property:*] To acquire, dispose of, and hold in trust or otherwise, any real, personal or mixed property, inside or outside the city.
- (f) [*Condemnation of property for municipal purposes:*] To condemn property, inside or outside the city, for present or future use, and for any corporate purpose deemed necessary by the city council, under section 36-202 of the Code of Georgia, 1933 [repealed], or under other applicable public acts.
- (g) [*Acquiring, etc. public utilities:*] To acquire, construct, operate, distribute, sell, and dispose of public utilities, including but not limited to a system of waterworks and/or a natural gas system subject to the provisions of applicable general law. For water and gas furnished and for all sewerage and sanitary services rendered, said city may prescribe the rates, fares, regulations and standards and conditions of service to be provided and shall have a lien against any property of the persons served; said lien to be enforceable in the same manner and with the same remedies as a lien for city property taxes.
- (h) [*Public utility and public service franchises and contracts:*] To grant franchises or make contracts for public utilities and public services, not to exceed periods of fifty (50) years. The council may prescribe the rates, fares, regulations and standards and conditions of service applicable to the service to be provided by the franchise grantee or contractor.
- (i) [*Regulating public utilities:*] To regulate the rates and services of public utilities insofar as not in conflict with such regulation by the Georgia Public Service Commission or other similar State or Federal agency having jurisdiction in such matters.
- (j) [*Acquisition, etc. of public ways, parks, etc.:*] To provide for the acquisition, construction, building, operation and maintenance of public ways, parks, public grounds, cemeteries, markets and market houses, public buildings, libraries, sewers, drains, sewerage treatment, airports, hospitals, and charitable, educational, recreational, conservation, sport, curative, corrective, detentional, penal and medical institutions, agencies and facilities; and any other public improvements, inside or outside the city; and to regulate the use thereof, and for such purposes, property may be acquired by condemnation under section 36-202 of the Code of Georgia [repealed] or other applicable public acts.
- (k) [*Requiring correction of unsafe condition of real estate:*] To require real estate owners to repair and maintain in a safe condition, the sidewalks adjoining their lots or lands; and to enact ordinances establishing the terms and conditions under which such repairs and maintenance shall be effected, including the penalties to be imposed for failure to do so.
- (l) [*Standards of health and sanitation:*] To prescribe standards of health and sanitation and to provide for the enforcement of such standards.
- (m) [*Disposal of garbage, rubbish and refuse:*] To provide for the collection and disposal of garbage, rubbish and refuse. Charges may be imposed to cover the costs of such services which, if unpaid, shall constitute a lien against any property of persons served, which lien shall be second in priority only to liens for county and city property taxes and shall be enforceable in the same manner, and under the same remedies, as a lien for city property taxes.

- (n) [*Prohibiting detrimental acts, etc.*:] To define, regulate and prohibit any act, practice, conduct or use of property which is detrimental, or likely to be detrimental, to the health, morals, safety, security, peace, convenience, or general welfare of inhabitants of the city.
- (o) [*Nuisances*:] To define a nuisance in the City and to provide for its abatement consistent with standards and procedures established by general law.
- (p) [*Building, etc. standards*:] To establish minimum standards for, and to regulate building construction and repair, electrical wiring and equipment, gas installation and equipment, plumbing and housing for the health, sanitation, cleanliness and safety of inhabitants of the city and to provide for the enforcement of such standards. This subsection does not apply to work done by and for public utilities.
- (q) [*Weights and measures*:] To regulate and license weights and measures.
- (r) [~~Commitment and working of prisoners~~:] ~~To provide that persons given jail sentences in the city court shall work out such sentences in any public works of the city as provided by ordinance; or the council may provide for the commitment of city prisoners to any county work camp, or jail, by agreement with the appropriate county officers.~~

Recommendation: Consult with City Attorney on deletion of this item.

- (s) [*Regulating, etc. animals and fowl*:] To regulate and license, or prohibit, the keeping or running at large of animals and fowl and to provide for the impoundment of same, in violation of any ordinance or lawful order; also to provide for their disposition, by sale, gift, or humane killing, when not redeemed as provided by ordinance.
- (t) [*Regulating, etc. vehicles for hire*:] To regulate and license vehicles operated for hire in the city; to limit the number of such vehicles; to require the operators thereof to be licensed; to require public liability insurance on such vehicles in amounts prescribed by ordinance; and to regulate and rent parking spaces in public ways for the use of such vehicles.
- (u) [*Assessments for public improvements*:] To levy and provide for the collection of special assessments for public improvements.
- (v) [*Providing for punishment of violators*:] To provide that the violation of any ordinance, rule, regulation or order shall be punishable as a misdemeanor, as hereinafter provided.
- (w) [*Plenary powers, etc.*:] To exercise and enjoy all other powers, functions, rights, privileges and immunities necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, morals, and general welfare of the city and its inhabitants; and to exercise all implied powers necessary to carry into execution all powers granted in the Act as fully and completely as if such powers were fully enumerated herein; and to exercise all powers now or in the future authorized to be exercised by other municipal governments under other laws of the State of Georgia. No enumeration of particular powers in this Act shall be held to be exclusive of others, nor restrictive of general words and phrases granting powers; but shall be held to be in addition to such powers unless expressly prohibited to cities under the constitution or application public acts of the State.
- (x) [*Compelling removal, etc. of facilities of public service corporations*:] To compel any and all public service corporations operating or doing business in said city to remove and replace and readjust at their own expense all tracks, poles, conduits, wires and other appurtenances and structures used by them in the prosecution of their business functions, when ever the same may, in the discretion of the city council, be necessary to carry out any ordinance or plan of the municipal government of the City of Clarkston, or to the best interests of the city or its inhabitants.
- (y) [*Requiring railroad street crossing repair, etc.*:] To require the railroads or street railroads running through said town or a portion thereof, to make and repair such public crossings for pedestrians or vehicles over or across their several roads whenever or in such a manner as

said mayor and council shall deem necessary; to place or repair such crossings, or to open or keep open any street in said town crossing them, and the mayor and council may pass any ordinance needful for carrying out the provisions of this section. And in case any railroad or street railroad shall fail or refuse to make such crossings within fifteen (15) days or to repair the same within twenty-four (24) hours after having been notified to do so by said city, the mayor and council shall have the power to create and make the same across the railroad or street railroad, and to repair the same at the expense of said railroad or street railroad, and may issue execution therefor, and levy and collect the same as in the case of tax executions.

- (z) [*Advertising of city:*] To make appropriations and payments from the general funds of the city for the purpose of advertising said city and its advantages and resources so as to bring new capital and commercial and manufacturing and other enterprises into the city, and also for making contributions to any board of trade or chamber of commerce or like body in said city, or DeKalb County, which may have for its object any of the above stated public purposes, and also to make payment from the general revenues and funds of the city for the support of public hospitals, libraries; charities and other eleemosynary institutions in the city.

Sec. 1.04. - [Continuation in effect of] ordinances.

All ordinances, by-laws, rules and regulations, now in force in said city, not inconsistent with this Act, are hereby declared valid and of force until amended or repealed by the mayor and council of said city.

ARTICLE II. - CITY COUNCIL

Sec. 2.01. - Election of mayor and ~~councilmembers~~ **council members**.

The person serving as mayor and the ~~councilmembers~~ **council members** serving on the effective date of this section shall continue to serve for the remainder of their terms and until their successors are duly elected and qualified. On the Tuesday next following the first Monday **in November** in 2011, and quadrennially thereafter, there shall be an election to elect the successors to the three ~~councilmembers~~ **council members** whose terms expire at the end of that year. On the Tuesday next following the first Monday **in November** in 2013, and quadrennially thereafter, there shall be an election to elect the mayor and the successors to the three ~~councilmembers~~ **council members** whose terms expire at the end of that year. The candidate for mayor receiving a majority of votes cast shall be elected mayor. The candidates for ~~councilmembers~~ **council members** receiving the greatest, second greatest, and third greatest number of votes cast for ~~councilmembers~~ **council members** shall be elected. Elections shall be conducted in accordance with Chapter 2 of Title 21, the Georgia Election Code.

Recommendation: Add the specific month of elections. Standardize use of “council member” as two words and to replace other terms such as “councilperson” throughout the Charter.

Sec. 2.02. - City council.

- (a) The mayor and six (6) council members shall compose the city council, in which is vested all corporate, legislative and other powers of the city, except as otherwise provided in this Act. The council shall be the final judge of the election and qualifications of its members.
- (b) The compensation of the mayor and council members shall be as prescribed by ordinance; provided that salary changes enacted shall not become effective during the term of the council enacting such

change, consistent with state general law. The council members and mayor shall receive their actual and necessary expenses incurred in the performance of their duties of office. :

- (c) The council shall hold regular public meetings at a stated time and place, as provided by ordinances. The council shall meet in special session on written call of any two (2) council members, upon twenty-four (24) hours notice to the public pursuant to State general law and notice served on the other **council** members personally or left at their residences at least twelve (12) hours in advance of the meeting. But such notice to council members of a special meeting shall not be required if the mayor and all council members are present when the special meeting is called. The mayor may also call a special meeting, pursuant to the procedures just set forth, with the written consent of two council members. During a state of emergency or disaster declared by the governor or his/**her** designee, the mayor may call a special meeting pursuant to O.C.G.A. § 38-3-54 upon providing such notice to the council members as may be possible under the circumstances. Only the business stated in the written call may be transacted at a special meeting, except by unanimous consent of all members of the council.

Recommendation: To standardize the use of the term “council members” and to eliminate single gender reference.

- (d) The council shall exercise its powers in public meetings. A majority of the council **members, being four (4) of the six (6) council members**, shall constitute a quorum **of the city council. The mayor does not count toward a quorum.** The council may, by ordinance, adopt rules and by-laws to govern the conduct of its business; including procedures and penalties for compelling the attendance of absent members.

Recommendation: Based on input from the City Attorney, a quorum requires a majority of council members (four of the six members); the mayor does not count toward a quorum.

- (e) The council may subpoena and examine witnesses **by a majority vote of a quorum of the city council**, may order the production of books and papers, to punish for refusal to obey such an order or subpoena, or for disorderly or contemptuous behavior in the presence of the council.

Recommendation: Based on input from the City Attorney, a subpoena can only be issued by a majority vote of a quorum of the city council.

Sec. 2.03. - Mayor as presiding officer.

The mayor shall preside at meetings of the council, shall have a vote in case of a tie in any vote of the city council, and shall have veto power; the mayor shall have five days after meetings of the council in which to file with the clerk in writing his/**her** dissent, but the ~~councilmembers~~ **council members** may pass the ordinance, order, or resolution, notwithstanding the veto, by a vote of two-thirds of the ~~councilmembers~~ **council members**, to be taken by ayes and nays, and entered upon the minutes; shall be the ceremonial head of the city, shall sign ordinances and resolutions on their final passage; shall sign deeds, bonds, and contracts when authorized by the council to do so; shall be the officer to accept process against the city, and shall perform other duties imposed by this Act and by ordinances not inconsistent with this Act.

Recommendation: Eliminate single gender reference. Standardize “council member” as two words.

Sec. 2.04. - Vice-mayor.

The council at the first regular meeting, after the newly elected council ~~members~~ **members** have taken office following each annual election, shall elect from its membership a vice-mayor for a term of one year. In the event that no decision is reached at such first regular meeting; the council shall, within five (5) ballots to be taken within ten (10) days following such meeting, elect the vice-mayor; otherwise the council ~~may~~ **member** who received the highest number of votes, when he/~~she~~ **she** was last elected, shall become vice-mayor. The vice-mayor shall perform the duties of the mayor during his/~~her~~ **her** absence or inability to act, and shall fill out any unexpired term in the office of mayor, in which case a new vice-mayor shall be elected by majority vote of the council.

Recommendation: Eliminate single gender reference.

Sec. 2.05. - Vacancy in office of mayor or council ~~person~~ **member**.

(a) A vacancy shall exist if the mayor or a council ~~person~~ **member** resigns, dies, moves his or her residence from the city, has been continuously disabled for a period of six (6) months so as to prevent him or her from discharging the duties of office, shall have engaged in any activity or done any act which under the laws of this state would preclude him or her from continuing to serve as an elected official, or shall have been removed from office by the electorate as provided by law. Such vacancy shall be declared by the mayor unless it shall be the office of mayor which is vacant, and in such case by the vice-mayor. Such declaration shall be made in a regular meeting of the city council and shall be affirmed by a majority vote of the city council.

Recommendation: Standardize use of “council members.”

(b) Should a vacancy occur in the office of mayor, the vice mayor shall assume the duties of the mayor until an election is held pursuant to this subsection. If a regular municipal election will occur within one hundred eighty (180) days of the occurrence of a vacancy in the office of mayor, then a mayor shall be elected to complete the vacant mayor's term at said regular election. If no such regular election is scheduled, a special election to elect a mayor to fill out the vacant mayor's term shall be held. If required, such special election shall be held not less than sixty (60) days and not more than one hundred eighty (180) days from the date that a vacancy in the office of mayor is declared and in any event on a date provided for by O.C.G.A. § 21-2-540(c). If more than one (1) date provided for by O.C.G.A. § 21-2-540(c) meets the terms of this charter provision, then the city council shall select the date of the special election by resolution

(c) If the vacancy occurs in the office of council ~~person~~ **member** and if a regular municipal election will occur within twelve (12) months of the date of the declaration of such vacancy, then the city council may appoint a qualified person to fill such vacancy until the next regular city election. Upon declaration of a vacancy in the office of council ~~person~~ **member**, if it shall be more than twelve (12) months to the next regular municipal election, a special election shall be held to fill the vacancy. If required, such special election shall be held not less than sixty (60) days and not more than one hundred eighty (180) days from the date that a vacancy in the office of council ~~person~~ **member** is declared and in any event on a date provided for by O.C.G.A. § 21-2-540(c). If more than one (1) date provided for by O.C.G.A. § 21-2-540(c) meets the terms of this charter provision, then the city council shall select the date of the special election by resolution.

Recommendation: Standardize use of term “council members.”

Sec. 2.06. - City clerk.

The mayor and council **members, in consultation with the city manager**, shall appoint a city clerk, who shall be responsible for keeping and preserving the city seal and all records of the council; attending meetings of the council and keeping a journal of its proceedings at such meetings, including the names of members present and absent, the vote of each member on each question, each motion considered, and the title of each resolution or ordinance considered; preparing and certifying copies of official records in his/**her** office, for which fees may be prescribed by ordinance; and performing such other duties as may be required by the council or mayor. Salary of the city clerk and his/**her** term of office shall be as prescribed by the mayor and council **members, in consultation with the city manager**.

Recommendation: Include “in consultation with the city manager” to reflect council/city manager form of government. Eliminate single gender reference. Define the term “appoint”. Written procedures should be developed detailing the appointment the city clerk.

Sec. 2.07. - City legislation.

Any action of the council, having a regulatory or penal effect, or required to be done by ordinance under this Act, shall be done only by ordinance. Each resolution and ordinance shall be in written form before being introduced. The affirmative vote of a majority of those council members present and voting shall be required to pass any resolution or ordinance; provided however, that no resolution or ordinance may pass with less than three (3) affirmative votes. After adoption of ordinances, the city clerk shall number ordinances consecutively, in the order of their final adoption, and shall copy them into a permanent record book used solely for this purpose; and the city clerk shall do likewise for resolutions, using a separate series of numbers and a separate record book. The original copies of all ordinances, resolutions and motions shall be filed and preserved by the city clerk.

Sec. 2.08. - Qualifications for mayor and ~~councilman~~ **council members**.

To be eligible for the office of mayor or ~~councilman~~ **council member**, a person must meet the requirements of a qualified elector for members of the General Assembly as prescribed by state law, must have been a bona fide resident of the City of Clarkston for one (1) year next preceding the election in which he/**she** offers as a candidate, and must have no debts outstanding against him/**her** in favor of the city, county or state.

Recommendation: Eliminate single gender reference. Standardize use of “council member”.

Sec. 2.09. - Reserved.

ARTICLE III. - ORGANIZATION AND PERSONNEL

Sec. 3.01. - Organization.

~~The city government shall continue as presently organized, unless and until otherwise provided by ordinance; but no ordinance shall be adopted until after the council has received and considered the written recommendations of the mayor. The council, by such ordinances, may establish, abolish, merge or consolidate offices, positions of employment, departments, and agencies of the city.; may provide that the same person shall fill any number of offices and positions of employment, and may transfer or change the~~

~~functions and duties of offices, positions of employment, departments, and agencies of the city.~~ **The city manager shall organize the departments, agencies and staff of the city and designate the duties, responsibilities and positions of employees of the city in the manner that will provide for the most efficient and effective administration of city business.**

Recommendation: To reflect city council/city manager form of government. The city attorney provided the substitute text.

Sec. 3.02. - City manager; appointment; qualifications; compensation; removal; vacancy, powers; council interference.

- (a) ~~The city council~~ **members and the mayor** shall appoint a city manager for an indefinite term and shall fix the city manager's compensation. The city manager shall be appointed solely on the basis of that person's executive and administrative qualifications.

Recommendation: To recognize the mayor's role in the selection process for city manager. Define the term "appoint". Written procedures should be developed detailing the appointment of the city manager.

- (b) The city manager is employed and terminable pursuant to the terms of a written employment contract to be entered into between the city of **Clarkston** and the city manager.

Recommendation: For clarification.

- (c) ~~The mayor~~ **city council shall appoint an interim city manager who** shall exercise the powers and perform the duties of city manager during ~~the city manager's temporary absence or physical or mental disability~~ **such time that the city manager is unable to perform his or her duties. The interim city manager shall be appointed solely on the basis of that person's executive and administrative qualifications. The new, permanent city manager shall be appointed within 180 days from the date when the prior city manager was unable to perform his or her duties.**

Recommendation: To provide for the appointment of an interim city manager and to set a deadline for selecting a new city manager. Define the term "appoint". Written procedures should be developed detailing the appointment of an interim city manager.

- (d) The city manager shall be the chief executive and administrative officer of the city. The city manager shall be responsible to the city council for the administration of all city affairs placed in the city manager's charge by or under this charter. As the chief executive and administrative officer, the city manager shall:

- (1) Appoint and, when the city manager deems it necessary for the good of the city, suspend or remove ~~all~~ **any** city employees and administrative officers the city manager appoints, except as otherwise provided by law or personnel ordinances adopted pursuant to this charter. The city manager may authorize any administrative officer who is subject to the city manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office, or agency;

Recommendation: Define the term "appoint". Written procedures should be developed detailing the process for appointments, suspensions and dismissals made by the city manager.

- (2) Direct and supervise the administration of all departments, officers, and agencies of the city, except as otherwise provided by this charter or by law;

- (3) Attend all city council meetings, except for closed meetings held for the purposes of deliberating on the appointment, discipline, or removal of the city manager, and have the right to take part in discussion, but the city manager may not vote;
- (4) See that all laws, provisions of this charter, and acts of the city council, subject to enforcement by the city manager or by officers subject to the city manager's direction and supervision, are faithfully executed;
- (5) Prepare and submit the annual operating budget and capital budget to the city council. **The mayor and council members may submit recommendations prior to the city manager's submission of these budgets.**

Recommendation: To recognize the opportunity for input on the budget that the mayor and council members currently have.

- (6) Submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;
 - (7) Make such other reports as the city council may require concerning the operations of city departments, offices, and agencies subject to the city manager's direction and supervision;
 - (8) Keep the city council fully advised as to the financial condition and future needs of the city, and make such recommendations to the city council concerning the affairs of the city as the city manager deems desirable; and
 - (9) Perform other such duties as are specified in this charter or as may be required by the city council.
- (e) Except for the purpose of ~~inquiries and~~ **official** investigations, the mayor and members of the city council shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither **the mayor**, the city council nor its members shall give orders to any such officer or employee, either publicly or privately.

Recommendation: To clarify communication between the mayor and council members, and city officials and employees who are under direction or supervision of the city manager.

Sec. 3.03. - City attorney.

The mayor and council **members** shall appoint a city attorney, together with such assistant city attorneys as may be authorized by ordinance. The city attorney shall be responsible for representing and defending the city in all litigation in which the city is a part; may be the prosecuting officer in the ~~mayor's~~ **municipal** or recorder's court; shall attend the meetings of the council as directed; shall advise the council, mayor, and other officers and employees of the city, concerning legal aspects of the city's affairs; shall approve as to form and legality all contracts, deeds, ordinances **having the force of law**, resolutions, and motions, prescribed by the council or mayor.

Recommendation: Mayor's court no longer exists. Written procedures should be developed detailing the appointment of the city attorney and assistant city attorneys. Per the city attorney, only ordinances having the force of law need the city attorney's approval.

Note: Section 3.03 is the last portion of the city charter that was reviewed by the Charter Review Committee prior to the submission of its report.