

**Jim Grubiak**

**DeKalb Organizational Act**

**Comments/Suggested Revisions Sections 6 – 12 JFG**

May 11,2023

**Section 6 Vacancies**

(a) Amend subsection (a) as follows:

“Vacancies on the commission and in the office of chief executive occurring by reason or death, resignation, removal from the county or from the district from which elected or for any other reason, including temporary vacancies created by suspension of an indicted commissioner or chief executive pursuant to O.C.G.A. §45-5-6 as now or hereafter amended, shall be filled as provided in this section.”

(b) Conform subsection (b) to state law governing special elections by amending the second sentence of subsection (b) as follows:

“Such special election shall be held not less than twenty-nine (29) nor more than forty-five (45) days after the issuance of the call, and shall be held and conducted in accordance with the provisions of Chapter 2 of Title 21 of the Official Code of Georgia Annotated Code Title 34, known as the “Georgia Election Code” [O.C.G.A. § 21-2-1 et seq.], as now or hereafter amended.”

(d) Consider amending to require that the remaining BOC members fill the vacancy “within 30 days of the vacancy’s occurrence” if there are less than 180 days left in the ter. Or, consider providing that the chief judge of superior court fills the vacancy as contemplated by OCGA §36-5-21(a).

(e) Consider amending to clarify that a presiding officer serving as interim CEO continues as a member of the commission and continues to preside at commission meetings. Consider deleting language which bars an interim CEO from voting on commission matters. Or, allow the interim CEO to vote but only to break BOC ties.

**Section 7 Oath and Bond**

No changes

Commented [MOU1]: For Viviane: did the suspension of the CEO several years ago pose any legal issues that suggested the need for clarifying amendments to the Org Act? If so, would language recognizing suspensions be useful or problematic?

Commented [MOU2]: Intent would be to ensure vacancy is filled expeditiously.

**Section 8 Compensation**

Delete the current language in Section 8 and replace with the following:

“Unless otherwise provided by a local act of the General Assembly, compensation of the CEO and commissioners including salary, expenses and expenses in the nature of compensation, may be fixed by the governing authority in accordance with O.C.G.A. §36-5-24, as now or hereafter amended.”

**Section 9 Powers and Duties of the Commission**

(a) Amend the second sentence of subsection (a) as follows:

“The commission shall exercise only those powers which are necessarily and properly incident to its function as a legislative, policy-making or rulemaking body...”

(a)(10) Amend paragraph (10) by redesignating existing paragraph (10) as subparagraph (10)(i) and adding a new subparagraph (ii) to read as follows:

“(ii) Subject to confirmation by the chief executive, the commission shall appoint the planning director. If the chief executive does not confirm the person appointed by the commission within 30 days, the commission may either appoint a new person or approve the initial appointment by an

affirmative vote of five (5) commissioners. The planning director appointed pursuant to this subparagraph shall not be subject to the DeKalb Merit System but shall be an at-will employee subject to an employment agreement between the county governing authority and said employee.”

(a)(18) Revise paragraph (18) of subsection (a) to conform to state law governing business and occupation taxes or delete that language and instead refer to DeKalb’s business and occupation tax ordinance.

Commented [MOU3]: The process for setting commissioner/CEO compensation is found in state law.

Commented [MOU4]: This reflects the fact that the BOC is the legislative branch of DeKalb’s CEO form of government. Also, note that this amendment also reflects the existing language in subsection 9 (b): “...the commission may adopt all such ordinances and regulations as it may deem advisable...” Enacting an ordinance is a legislative act.

Commented [MOU5]: Since planning and zoning is the purview of the BOC, it would seem to make sense that the commissioners have a more direct say in hiring that key staff position.

(c) Amend subsection (c) to conform to O.C.G.A. §36-1-20. Delete “labor on a work gang”. Maximum jail time should be 60 days. Add reference to the Clean Water Act penalty exception: “...up to \$1000 per day.”

### **Section 10 Financial Audits**

Amend Section 10 by the third sentence of subsection (a) and by adding the following at the end of subsection (a):

“The audit committee shall screen and recommend to the commission an independent auditing firm to serve as an outside auditor of the county government to make an annual continuous general audit of all county finances and financial records. The recommended outside auditor shall be selected from the list of auditors recommended by the Audit Oversight Committee pursuant to Section 10A (n)(9) of this act.”

### **Section 10A Independent Internal Audits**

(a)(2) Delete (a)(2) in its entirety since it refers to the General Assembly’s intent in enacting the Section 10A. Then, redesignate Section (a)(1) as simply Section (a).

(d) Note: There are two subsection (d)s in Section 10A. Amend Section 10A by redesignating the first subsection (d) as paragraph (d)(1) and the second subsection (d) paragraph (d)(2).

2nd (d) Consider adding “for cause” after “removal” in the third sentence.

(j)(4) Revise time for an audited agency to respond with comments to the Auditor’s draft report from 60 days to 30 days.

(j)(5) Amend by adding the members of the DeKalb legislative delegation and the public to the distribution list as follows:

“Each audit shall result in a final report, in written or some other retrievable form. The report shall contain relevant background

Commented [MOU6]: Note: Courts can suspend jail time and substitute community service per OCGA 15-10-60.

Commented [MOU7]: The Audit Oversight Committee does the screening for the BOC’s Audit Committee. See Section 10A (n)(9).

Commented [MOU8]: To ensure independence of the Auditor, limit terminations to serious misconduct, fraud, theft, etc. by the Auditor.

Commented [MOU9]: Recommended by current Chief Internal Auditor as a best practice. He states that the “30-day timeline would encourage earlier development and implementation of corrective action plans.”

information and findings and recommendations and shall communicate results to the audit oversight committee, the audited agency, and the governing authority, and the DeKalb legislative delegation. Each such report shall be posted on the county website by the chief operating officer

within 30 days of its being submitted to the governing authority.”

(l) Amend by section (l) as follows:

“The auditor shall follow up on audit recommendations to determine if corrective action have been taken. The auditor shall request periodic status reports from audited agencies regarding actions taken to address reported deficiencies and audit recommendations. Audited agencies shall respond to such requests within 30 days of the request being submitted to the audited agency.”

(n)(9)(g) Amend subparagraph (g) as follows:

“(g) Conducting or overseeing the requests for proposal and selection process for the outside auditing firm conducting annual financial statement audits required by Section 10 of this Act, and ranking and recommending in order of preference not fewer than three (3) firms...”

(n)(9)(h) Amend subparagraph (h) as follows:

“(h) Evaluating the outside auditing firm providing annual financial statement auditing services and providing oversight of that audit,...”

(n)(11) Amend as follows:

“The audit oversight committee shall have the authority to propose the budget...”

Commented [MOU10]: This subsection currently requires the Internal Auditor to request periodic status reports from audited agencies but does not require a response from the audited agencies.

Commented [MOU11]: Makes it clear that the Audit Oversight Committee is charged with screening independent auditor candidates for the BOC’s audit committee per Section 10.

Commented [MOU12]: For clarification purposes.

### **Section 11 Presiding Officer**

(a) Move this subsection, which describes limitation on role of the CEO regarding voting at meetings, to either Section 12 (*Meetings*) or Section 13 (*Powers and Duties of the Chief Executive*).

### **Section 12 Meetings**

No changes

## **Hinkel Suggested Revisions Sections 6-12**

### **6. Suspensions and Vacancies**

Agree with Jim Grubiak 6(b) and 6(d)

(c) Suspension language:

- (1) Suspension from Office. Upon the suspension from office of the CEO or a commissioner in any manner authorized by the general laws of the State of Georgia, a successor for the duration of the suspension shall be secured in the manner described below:
- a. *For a CEO suspension, the presiding officer of the board assumes the role as Interim CEO and shall exercise the powers of the chief executive officer while continuing to serve as a member of the commission and continuing to preside at commission meetings. The Interim CEO shall not be authorized to discharge the executive assistant.*
  - b. *For a Commissioner suspension, the chief judge of the superior court shall appoint an Interim Commissioner who meets the qualifications and residency requirements for the office.*

Possible additional language to be added from the Model Charter:

- (a) Vacancy Created. The office of CEO or commissioner shall become vacant upon the occurrence of any event specified by the Constitution, Title 45 of the O.C.G.A. or other applicable general laws. Such events shall include, but not be limited to:
- (1) The lack at any time during the CEO or member's term of office of any qualifications prescribed by this Act or any other provision of general law or the Constitution to hold that office;
  - (2) The CEO or member is convicted of a felony or other crime involving moral turpitude, regardless of sentence imposed;
  - (3) The member fails to attend \_\_\_ regular meetings of the board of commissioners without being excused by the board.

### **7.Oath, Bond, and Fiduciary Capacity**

Add a second paragraph that reads:

The CEO and each commissioner are trustees and servants of the residents of the county and shall act in a fiduciary capacity for the benefit of such residents.

### **8. Compensation (and what is impact on Code Sec. 2-44 Compensation for members of the DeKalb County GA Governing Authority effective January 1, 2019?)**

The county governing authority is authorized to fix the salary, compensation, and expenses for the CEO and each member of the board of commissioners in the manner provided for in Code Section 36-5-24 of the O.C.G.A.

In addition to the annual salary provided, the CEO and the district commissioners may be reimbursed for reasonable expenses up to the monthly expense limit defined by local ordinance and as incurred in carrying out their duties. Expenses may be reimbursed only after the submission of receipts or records of said expenses to the county clerk and approval by majority vote of the board of commissioners at a regularly scheduled meeting.

**(But...Specific dollar figures should be publicly available somewhere on the county website)**

### **9. Powers and Duties of the Commission**

9(a) Add "oversight" rather than "legislate"?

#### **New Powers:**

**Control over hiring of planning director** - nominate the planning director (CEO confirms) and have the planning director hired using an employment contract so that it can be renewed, revised, extended, or canceled by the Commissioners

Add to Section 9(10) Subject to confirmation by the chief executive, the commission shall select and nominate the planning director. The commission shall seek the advice of the executive assistant and merit system director in selecting candidates. If the chief executive does not

confirm the nominee, the commission may submit another nominee or approve the appointment with five (5) affirmative votes. The planning director shall be hired using an employment contract. Every four (4) years this contract shall be reviewed by the commission and subject to evaluation, renewal, or dismissal by the commission.

**Power to adopt ordinances structuring the means to promulgate administrative procedures for the operations of county government**

The BOC may recommend/propose at any time to the CEO and Executive Assistant such measures or proposals as are deemed necessary or desirable to improve the administration of the affairs of the County.

**Power to make inquiries of department heads** for purpose of obtaining information needed in discharge of duties including responding to constituents concerns and to share information with whole commission as warranted.

**Power to compel attendance at BOC meetings & sworn testimony of CEO and any County employee by subpoena, if necessary**, subject to the policy of the BOC as established by its rules. (included in GA Model County Charter – p. 21 and 22) This is to give the commissioners a formal mechanism to check executive/administrative activities and follow-up decisions

**Power to enter into inter-governmental agreements with DeKalb municipalities** to share in provision of services where duplication of services occurs and both the county and the municipality(ies) benefit from sharing the load (example – how many roads and drainage crews are on standby at night?)

**10. Financial Audits**

Agree with Jim Grubiak's recommendations

**10(A) Independent Internal Audits**

Agree with most but not all of Jim Grubiak's recommendations; re 10(d) I say keep the 2-term max for internal auditor OR find best recommended practice

But bigger questions are:

***Why did it take over a year to hire a new Chief Audit Executive?***

***What should happen when the Administration and/or a department fails to act or implement remedies on a timely basis?*** We seem to be missing the next step of BOC oversight on the implementation of action plans arising from the independent auditor's reports. Is there a role for the BOC committees to play here in ensuring the public that timely remedies are being implemented to address any deficiencies reported? Should changes occur in 10(A) that put a time limit on when audit recommendations must be implemented by departments?

Similarly structured county in Washington (**Pierce/Tacoma**) 925,000 pop. Says that within 90 days of the completion of a performance audit, the Council holds an evening public meeting to present, review, and allow discussion of action plans developed in response to audit finding recommendations.

## **11. Presiding Officer**

(a) refers to CEO – should be moved to Section 13 (CEO Powers and Duties) or 12 (Meetings)

(d) If agreement is reached that the Presiding Officer retains his/her role with the commission while serving temporarily as CEO then: delete “or in the event of the presiding officer exercises the powers of the chief executive pursuant to subsection X of section 6 of this act...”

## **12. Meetings**

Agree with Jim – need for more evening meetings OR hearings especially on topics such as budget, capital improvement plan adoption, adoption of SPLOST projects, adoption of comprehensive development plans, and Independent Internal Auditor performance audit findings (see **Pierce County** example above).

Recommend that BOC look at its meeting procedures/rules from viewpoint of public and move of intense public interest or importance to top of agenda. At zoning meetings, is there a way to prevent sitting through a meeting only to have your item deferred?

Also can we express expectations or recommendations that every commissioner have evening or weekend town hall meetings at least quarterly and as needed?

## **ROBERT WITTENSTEIN**

### **Sec. 6. Vacancies.**

(a) Vacancies on the commission and in the office of chief executive occurring by reason of death, resignation, removal from the county or from the district from which elected or for any other reason shall be filled as provided in this section.

(b) In the event a vacancy occurs on the commission or in the office of chief executive when at least one

hundred eighty (180) days remain in the unexpired term of office, the elec\_on superintendent of DeKalb County, within fi'een (15) days a'er the vacancy occurs, shall issue the call for a special elec\_on to fill such vacancy for the unexpired term. Such special elec\_on shall be held not less than twenty-nine (29) nor more than forty-five (45) days a'er the issuance of the call, and shall be held and conducted in accordance with the provisions of Code Title 34, known as the "Georgia Elec\_on Code" [O.C.G.A. § 21-2-1 et seq.], as now or herea'er amended. If the vacancy is in the office of the chief execu\_ve, the **presiding officer of the commission execu\_ve assistant/chief opera\_ng officer** shall exercise the powers and du\_es of the chief execu\_ve., **except as provided in subsec\_on (e) of this sec\_on**, for the period beginning on the date the vacancy occurs and ending when the successor chief execu\_ve takes office for the unexpired term following the special elec\_on provided for herein.

**(c) In the event a vacancy occurs in the office of chief execu\_ve when less than one hundred eighty (180) days remain in the unexpired term of office, the presiding office of the commission shall exercise the powers and du\_es of the chief execu\_ve, except as provided in subsec\_on**

(e) of this sec\_on, for the unexpired term.

(cd) In the event a vacancy occurs on the commission when less than one hundred eighty (180) days remain in the unexpired term of office, the remaining members of the commission shall appoint a qualified person to fill such vacancy for the unexpired term. Any person appointed by the commission to fill a vacancy as provided herein shall possess the residency and other qualifica\_ons required for the office.

(e) If the presiding officer of the commission exercises the powers of chief execu\_ve pursuant to subsec\_ons (b) and (c) of this sec\_on, the person serving as the chief execu\_ve in either case shall not be authorized to discharge the execu\_ve assistant. A presiding officer serving as chief execu\_ve shall not be authorized to vote as a member of the commission during such service.

(Acts 1981, p. 4304, § 1)

**Sec. 7. Oath and bond.**

Before entering upon the discharge of their du\_es, the chief execu\_ve and members of the commission shall subscribe to an oath before the judge of the probate court of DeKalb County for the true and faithful performance of their du\_es and that they are not the holders of any public funds unaccounted for. In addi\_on the chief execu\_ve shall further give a sa\_sfactory surety bond, as



determined by the judge of the probate court of DeKalb County, and payable to the judge of the probate court of DeKalb County and filed in the office of the judge of the probate court of DeKalb County, in the sum of fifty thousand dollars (\$50,000.00), conditioned upon the faithful performance of the duties of the office. Each member of the commission shall give like bond in the sum of ten thousand dollars (\$10,000.00). The costs of said bonds shall be paid from county funds.

(Acts 1981, p. 4304, § 1)

**Sec. 8. Compensation.**

The provisions of any other law to the contrary notwithstanding:

(1) Upon election, the chief executive officer of DeKalb County shall be compensated in an amount equal to the compensation which he received in 1991 set by the Georgia state legislature provided to newly appointed Superior Court judges. Annual salary adjustments shall be in an amount equal to the Consumer Price Index (CPI) plus one (1) percent, to be paid in equal monthly installments;

(2) Each member of the commission shall receive an annual salary equal to seventy-five (75) percent (19) percent of the annual salary of the chief executive officer;

(3) In addition to the annual salary provided for by paragraph (2) of this section, each member of the

commission shall receive an expense allowance of three hundred dollars (\$300.00) per month.

(Acts 1981, p. 4304, § 1; Acts 1987, p. 5013, § 1; Acts 1989, p. 4863, § 1; Acts 1990, p. 4296, § 1; Acts 1989, p. 4863, § 1; Acts 1990, p. 4296, § 1; Acts 1991, p. 4334, § 1)

**Sec. 9. Powers and duties of the commission.**

(a) The commission shall have the power and authority to fix and establish, by appropriate resolution or ordinance entered on its minutes, policies, rules and regulations governing all matters reserved to its jurisdiction by this act. The commission shall exercise only those powers which are necessarily and properly incident to its function as a policy-making or rule-making body or which are necessary to compel enforcement of its adopted resolutions or ordinances, and any power or combination of powers vested in the commission by this act shall be subject to the limitations provided in section 23 of this act. The following powers are hereby vested in the commission:

- (1) To levy taxes.
- (2) To make appropriations.
- (3) To fix the rates of all other charges.
- (4) To authorize the incurring of indebtedness.
- (5) To authorize work to be done where the cost is to be assessed against the benefited property and to fix

the basis for such assessment.

(6) To establish, alter, or abolish public roads, private ways, bridges and ferries, according to law, but the chief execu\_ve shall have the authority to accept subdivision plats when the requirements established

by the commission for subdivisions have been met.

(7) To establish, abolish, or change elec\_on precincts and mili\_a districts according to law.

(8) To allow the insolvent lists for the county.

(9) To authorize the acceptance for the county of the provisions of any op\_onal statute where the statute

permits its acceptance by the governing authority of a county.

(10) To regulate land use by the adop\_on of a comprehensive development plan and by the adop\_on of

other planning and zoning ordinances which relate reasonably to the public health, safety, morality, and general welfare of the

county and its ci\_zens; **provided, however, that no planning or zoning**

**ordinances shall become effec\_ve unless approved, prior to considera\_on and adop\_on by the**

**governing authority, by the member or members of the commission represen\_g the district or super district in which the subject property is located.**

(11) To create and change the boundaries of special taxing districts authorized by law.

Section 10 amended – no changes recommended.

**Sec. 11. Presiding officer.**

(a) The chief executive shall have no vote at any regular or specially called meeting of the commission unless the members of the commission are equally divided. Even when the members of the commission are equally divided, the chief executive may not vote on a matter which is not subject to veto by said officer under the provisions of subsection (d) of section 15 of this Act.

(b) At the first regular meeting in January of each year, the commission shall elect from its membership a presiding officer and a deputy presiding officer. The member serving as presiding officer or deputy presiding officer shall retain all rights, powers and duties as a member of the commission.

(b ALTERNATE) The presiding officer of the county commission shall be the County Commission Chair elected countywide by the citizens of DeKalb County. At the first regular meeting in January of each year, the commission shall elect from its membership a deputy presiding officer.

(c) The presiding officer shall preside at meetings of the commission and shall have the following additional duties:

(1) To convene such special meetings of the commission as are deemed necessary, but all members shall

be notified at least three (3) days in advance of any such special meeting;

(2) To appoint the members and chairpersons of such committees of the commission as the commission,

by its rules, may establish and fill vacancies therein, but any such appointments may be rejected by a

majority vote of the total membership of the commission;

(3) To compel the attendance of members at meetings of the commission by subpoena, if necessary,

subject to the policy of the commission as established by its rules; and

(4) To exercise such other powers and duties as may be assigned to the presiding officer by ordinance or rules and regulations of the commission.

(d) In the event the office of the member serving as presiding officer becomes vacant for any reason, or in the event the presiding officer is absent for any reason, or in the event the presiding officer exercises the powers of the chief executive pursuant to subsections (b) or (c) of section 6 of this act, then the deputy presiding officer shall exercise the powers and duties of the presiding officer during the absence of the presiding officer or until a successor County Commission Chair presiding officer is elected by the commission at the first regular meeting held

during the next succeeding  
January the citizens of DeKalb  
County.

(Acts 1981, p. 4304, § 1; Acts  
1988, p. 4740, § 1; Acts 2008, p.  
3897, § 2)

**Sec. 12. Meetings.**

The commission shall hold  
regular meetings on the second  
and fourth Tuesdays of each  
month at the county  
seat, which meetings shall be  
open to the public, and may  
hold such additional meetings as  
shall be necessary  
when called by the chief  
executive, the presiding officer,  
or any four (4) by a majority of  
the members of the  
commission,  
but all  
members shall be notified at  
least three (3) days in advance  
of any such additional meeting.  
No official action shall  
be taken by the commission  
except in a meeting which is  
open to the public. A majority of  
the The presiding officer and  
any three (3)  
members of the commission, or  
any four (4) members of the  
commission exclusive of the  
presiding officer, shall  
constitute a quorum, except that  
a lesser number shall be  
sufficient to recess or adjourn  
any meeting; but no  
official action shall be taken  
except upon the affirmative vote  
of at least four (4) a majority of  
the members of the  
commission, or  
three (3) members and the  
presiding officer. The presiding  
officer shall be entitled to the  
same voting rights as the

commission members on  
ques\_ons considered by the  
commission.

(Acts 1981, p. 4304, § 1)