

2

James F. Grubiak and Kelly J. L. Pridgen

Counties: Sources and Limits of Power

The State of Georgia is subdivided into 159 counties. Georgia counties derive their powers from the Georgia Constitution, federal and state statutes, local legislation, county ordinances, and resolutions. Conversely, counties' powers are limited by these same sources, as well as by the U.S. Constitution.¹

A county is a political subdivision of the State of Georgia and exists, in large measure, to administer locally the general powers and policies of the state.² A county acts by and through its local county governing authority. The county governing authority is the elected board of commissioners, sole commissioner, chief executive officer (CEO) and commissioners, or mayor/chairperson and council/commissioners of a consolidated government.³ The local governing authority may only take those actions and exercise those powers that are expressly stated in law⁴ (i.e., express powers) or those powers that are necessarily implied from these express powers⁵ (implied powers). Stated in another way, county commissioners may not take any action, enter into any contract, or incur any liability unless it is expressly authorized by law.⁶

GEORGIA CONSTITUTION AND STATE STATUTES

The highest level of state law governing counties is the Georgia Constitution of 1983 and subsequent amendments. It is supreme to all general and local acts of the General Assembly, as well as to county ordinances and resolutions. Any state law that is inconsistent with the constitution is void.⁷

The next level of laws governing counties includes general statutes and local legislation enacted by the General Assembly. General statutes

are codified in the Official Code of Georgia Annotated (O.C.G.A.) and generally apply to counties on a statewide basis. A category of general statutes, known as population acts, applies to counties falling within certain population categories—oftentimes, only one county is affected due to a narrow gap between the upper and lower populations specified. While numerous population acts are currently in effect, enactment of new population acts has been effectively eliminated by the 1983 Constitution and subsequent legislation.⁸ The practical effect has been that the General Assembly now passes new population acts for only one purpose: to adjust the population categories of existing population acts after each decennial census in order to allow for the statutes to continue to affect the same county or counties they were originally intended to affect.⁹

In addition to general state statutes and local legislation (described in more detail later), county officials need to be aware of any local constitutional amendments that apply to their county. Local constitutional amendments can no longer be enacted under the current constitution. As with population acts, many local constitutional amendments are still in effect. Existing constitutional amendments can be repealed, but they cannot be amended.¹⁰

Local constitutional amendments and population acts were enacted to authorize or require certain counties to do something that counties were not generally allowed or empowered to do. County officials should periodically review any local constitutional amendments and population acts pertinent to their county to ensure that they are in compliance with these special laws and ensure that these special laws are still appropriate or necessary—particularly after each census.

LOCAL LEGISLATION

Local legislation is generally adopted by the General Assembly for individual counties. Local legislation is often referred to as enabling legislation when it dictates the organizational structure or form of government of the county governing authority (e.g., whether it has a sole commissioner, full-time or part-time chairperson) and much of what it may and may not do.¹¹ All county commissioners, managers, and attorneys should be familiar with their county's local legislation in order to determine the limits of their power and authority as well as be aware of certain actions that they are required by law to take. For all practical purposes, local legislation passes the General Assembly by "local courtesy," which means that as long as the county's legislative delegation (i.e., the state senators and state representatives who represent the county)

agrees to the local legislation, the rest of the members of the General Assembly will vote to approve the local legislation without debate.

Form of Government

A county's local legislation establishes the form or structure of the county governing authority. For example, local legislation typically establishes the governing authority as a traditional commission, sole commissioner, elected executive, commission-administrator, commission-manager or consolidated county structure.¹² See Chapter 1 for descriptions of the alternative forms of government. The local act also designates the number of commissioners, establishes the geographical boundaries of each commissioner's district, sets the length of terms of office, specifies whether the commissioners serve staggered or concurrent terms, and states whether the chairperson serves full time or part time. In addition, the local act specifies whether the chairperson is elected by the citizens or the members of the board or whether the position rotates among board members. Local legislation also specifies whether commissioners run in single-member, at-large districts, or a combination of the two.

Compensation

Although local legislation may address compensation and expense reimbursement for county commissioners, commissioners also have home rule authority to establish their own salaries and expense reimbursement policies.¹³ See Chapter 3 for details.

Other Matters

Local legislation may list the powers and duties of the chairperson as well as other county officials and employees such as the county attorney, manager, clerk, or finance officer. It may also include requirements regarding commission meetings such as dates and locations or specify use of certain meetings procedures such as *Robert's Rules of Order*. A local act may also include thresholds and procedures for purchasing. In some counties, the commissioners have been given power regarding the compensation of other county officers and their employees through local legislation. While local legislation to change the form of government is often made subject to a referendum, a referendum is not required by the constitution.

Codification

A county's local legislation must be codified and included with the rest of its ordinances.¹⁴

HOME RULE AUTHORITY

The Georgia Constitution gives counties “home rule” authority to manage the county rather than merely executing decisions made at the state level. County commissioners have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to the property and affairs of the county in cases for which no other provision has been made by general law, so long as these actions are not inconsistent with the constitution or any applicable local or general law.¹⁵

Pursuant to the county’s home rule authority, commissioners may also amend local legislation enacted by the General Assembly applicable to the county except regarding certain matters that are preempted by general law or reserved to the General Assembly.¹⁶ For example, county commissioners may change the timing or frequency of their regular meetings through a home rule amendment to their local legislation.

In order for a county to amend its local legislation through home rule, the commissioners must adopt a resolution or ordinance at two consecutive regular meetings that are no less than 7 or more than 60 days apart. A notice of the amendment must be published once per week for three weeks within the 60 days prior to the final adoption of the amendment. The notice must specify that a copy of the amendment is available in the superior court clerk’s office. The amendment, with an affidavit from the newspaper stating the notice publication dates, must be filed with the secretary of state before the amendment may be effective.¹⁷ The General Assembly may not repeal, modify, or supersede a home rule amendment lawfully enacted by a county commission under its home rule powers.¹⁸

However, home rule power does not extend to subjects that are within the exclusive control of the General Assembly.¹⁹ Commissioners may not amend their local legislation or adopt ordinances in order to do the following:

- Change the composition or form of the county governing authority (i.e., commissioners cannot change the number of commissioners or the structure of the local governing authority)²⁰
- Change the procedure for the election or fill a vacancy on the local governing authority²¹
- Change the compensation of the county officers (i.e., sheriff, tax commissioner, superior court clerk, and probate judge)²² or of the courts²³ or their employees²⁴
- Define any new criminal offense or provide for criminal punishment.²⁵ However, the General Assembly has provided a pro-

cedure for the prosecution of and maximum punishment for county ordinance violations.²⁶

- Create any new forms of taxation beyond those taxes authorized by statute or the Georgia Constitution²⁷
- Regulate businesses that are regulated by the Public Service Commission unless otherwise authorized by local legislation adopted by the General Assembly, general law, or the Georgia Constitution²⁸
- Change the way that property is condemned.²⁹ However, a county commission may use condemnation procedures established by general statute.³⁰
- Affect any public school system³¹

In other words, while the General Assembly may authorize a county to act in the these matters, the commissioners may not use their home rule powers to do so in the absence of a legislative enactment by the General Assembly.

ORDINANCES

In order to perform its various functions, a county governing authority enacts its own legislation, usually in the form of an ordinance. An ordinance is a permanent rule of conduct.³² It is more formal than a resolution. It is a law or legislative act of the commissioners.

As has been discussed, commissioners may adopt clearly reasonable ordinances, resolutions, or regulations relating to county property, affairs, and government.³³ Counties may adopt ordinances to protect and preserve the public health, safety, and welfare in the unincorporated areas of the county so long as they are not “preempted” by the state.³⁴ Counties are preempted when the statute expressly states that they may not act on a particular matter or in an implied manner when the state provides regulation and does not also provide for local regulation. For example, where the state regulates the application of sludge to land, the county cannot adopt and enforce an ordinance that also regulates the application of sludge.³⁵

Some areas in which counties have been expressly given the authority to regulate through ordinance include zoning;³⁶ historic preservation;³⁷ building codes;³⁸ signs;³⁹ adult bookstores and movie houses;⁴⁰ dangerous dogs;⁴¹ rabies, by licensing of animals;⁴² shore protection;⁴³ drainage basins;⁴⁴ soil erosion and sedimentation control;⁴⁵ solid waste handling and disposal;⁴⁶ repairing, closing, and demolishing unfit buildings;⁴⁷ litter;⁴⁸ removal of junk vehicles;⁴⁹ cable television;⁵⁰ alcoholic

beverages;⁵¹ fortune-telling;⁵² auctioneering;⁵³ billiard rooms;⁵⁴ precious metal and gem dealers;⁵⁵ used vehicle and used vehicle parts sales;⁵⁶ traffic regulation;⁵⁷ off-road vehicles;⁵⁸ public indecency;⁵⁹ loitering;⁶⁰ disorderly conduct;⁶¹ public drunkenness;⁶² smoking in public places;⁶³ sale of model glue to minors;⁶⁴ street gangs,⁶⁵ and inspection of meats, poultry, and dairy products.⁶⁶

Format

There is no required format for a county ordinance, but there are some basic elements to a well-drafted ordinance that may allow a county to avoid challenges to its validity and meaning:

- *Identifying Number:* In order to codify and make ordinances easier to find, they should be given a number. For instance, some counties use the year of the ordinance followed by a hyphen, the initials “ORD,” and a three-digit identifying number (e.g., 2010-ORD-001, 2010-ORD-002).
- *Title:* In order to make it easier to identify ordinances, they should have an identifying name at the top of the ordinance (e.g., ORDINANCE REGULATING THE PURCHASE OF GOODS AND SERVICES BY _____ COUNTY).
- *Preamble:* A preamble is used to briefly explain the purpose of the ordinance and the objectives to be accomplished by it.
- *Enactment Clause:* This clause formally declares the passing or adoption of an ordinance and identifies the enacting legislative body (e.g., the _____ County Board of Commissioners hereby ordains that . . .).
- *Definition Section:* Any words or phrases that have special meaning in the ordinance should be identified and defined in this section.
- *Body:* The body is the basic act itself, organized and divided into identifiable numbered sections.
- *Severability Clause:* This clause stipulates that if any portion of the ordinance is held invalid, the remaining provisions continue in full force and effect.
- *Repealer Clause:* This clause abolishes previous ordinances that the county 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 much confusion concerning which resolutions or ordinances or parts thereof have been repealed.

- *Violation and Enforcement Clause:* This portion of the ordinance identifies the county officer authorized to enforce the ordinance and explains the consequences of a violation of the ordinance.
- *Effective Date:* The ordinance should specify the date on which it becomes effective.

The ordinance should be authenticated or certified by the signature of the chairperson (or the entire board) and attested by the county clerk.

Codification

Counties are required to codify their current ordinances and resolutions that have the effect of law into one code.⁶⁷ Amendments to existing ordinances and newly adopted ordinances must be incorporated into the code at least once every year.⁶⁸ A copy of the code must be posted on the Internet and submitted to the county’s law library, if it has one.⁶⁹ Additionally, the code and updates must be available for sale to the public at a reasonable price.⁷⁰

County commissioners should be familiar with their code of ordinances. They should also ensure that other county officials and employees have access to the code and are familiar with its requirements.

Commissioners have the discretion to use law library fees to pay for the costs of codification. The fees are collected by the trustees of the county law library on all civil and criminal cases filed in the superior, state, probate, or magistrate court.⁷¹ If a county does not have a county law library, the commissioners have the discretionary power to cause the levy of a fee on filings for codification purposes.⁷²

Ordinance Violations

In general, violations of county ordinances are under the jurisdiction of the magistrate court and punishable by a fine of up to \$1,000 and/or 60 days in jail.⁷³ However, violations of ordinances imposing the uniform rules of the road⁷⁴ must be heard in state court, if there is one, or probate court.⁷⁵ The commissioners may designate the county attorney or some other attorney to prosecute violations of county ordinances in magistrate court.⁷⁶

Code Enforcement Boards

A county may also establish one or more code enforcement boards to bring properties into compliance with ordinances such as zoning, subdivision, litter control, junk vehicles, and other ordinances regulating the development of property.⁷⁷ Code enforcement boards have civil rather than criminal enforcement powers. Unlike the magistrate court, code enforcement boards may order a property owner to bring his or her property into compliance.⁷⁸ Failure to comply with an order of a code enforcement board may be punishable by an administrative fine.⁷⁹

Federal Limitations

Federal law imposes limits on a county's power to implement or enforce some ordinances. All county officials should be aware of the possible application of federal law to proposed and existing legislation and to county practices. For instance, the First Amendment prohibits counties from implementing ordinances that unconstitutionally regulate expression (e.g., ordinances regulating adult entertainment facilities, signs).⁸⁰ The Cable Act of 1992 and subsequent regulation by the Federal Communications Commission limit how counties regulate cable television provider's rates and customer service.⁸¹ Individuals may argue that zoning ordinances, subdivision regulations, shore protection ordinances, drainage basin ordinances, and other regulatory ordinances may be a "taking" of private property for governmental use for which the county may be liable⁸² or may unreasonably infringe on use of land for religious purposes.⁸³ In order to prevent a Fourteenth Amendment to the U.S. Constitution due process claim, counties revoking an alcoholic beverage license must provide notice and a meaningful opportunity to respond.⁸⁴ Additionally, ordinances that are vague or overly broad may be struck down.⁸⁵

RESOLUTIONS

Although some people use the terms "resolution" and "ordinance" interchangeably, a resolution is typically a formal written motion expressing the sense, will, opinion, or action of the governing body, while an ordinance is a law enacted by the county. A resolution is generally temporary in nature and is made in a ministerial or administrative capacity, for a special purpose, or for the disposition of a particular item of the administrative business of the county.⁸⁶ For example, while some counties may approve a contract or take some other action on a motion approved by the governing authority entered on the minutes, other counties use a resolution to do so.

There is no required format for a resolution, but there are some basic elements to a well-drafted resolution.

- *Identifying Number:* Some counties use the year of the resolution, a hyphen, the initials “RES,” another hyphen, and a three-digit identifying number in sequential order (e.g., 2010-RES-001, 2010-RES-002) in order to make it easier to keep track of resolutions.
- *Title:* As with ordinances, providing a name for the resolution makes it easier to identify (e.g., RESOLUTION OF THE _____ COUNTY BOARD OF COMMISSIONERS COMMENDING”).
- *Purpose and Authority:* This element consists of an unnumbered introductory statement or statements establishing the purpose or authority of the resolution, each beginning with “WHEREAS”
- *Body:* The action or will of the commission is contained in the body of the resolution. It is usually introduced by a phrase such as “NOW THEREFORE BE IT RESOLVED by the _____ County Board of Commissioners that . . . ,” followed by the provisions of the resolution.
- *Effective Date:* This specifies the date on which the resolution becomes effective.

The resolution should be authenticated or certified by the signature of the chairperson (or the entire board) and attested by the county clerk.

CLAIMS AND LAWSUITS AGAINST THE COUNTY

Unless otherwise provided by law, the county commission must audit all claims for money or damages against the county.⁸⁷ The commissioners have not only the right but also the duty to examine, audit, and approve such claims when the evidence shows that the county is responsible for payment to avoid unnecessary litigation.⁸⁸ This duty cannot be delegated.⁸⁹

All claims against the county must be in writing.⁹⁰ In general, claims must be presented to the county commission within 12 months after they accrue or become payable. If the claim is not made to the commissioners within this 12-month period, any lawsuit filed against the county on the claim should be dismissed, as the claim is barred.⁹¹

Defending and Insuring the County

As the fiscal authority, a county commission may purchase insurance, hire attorneys, purchase bonds, and otherwise protect the taxpayers from judgments against the county. However, the commission is required to insure all volumes of public laws and appellate court decisions furnished to the probate judge and the clerk of the superior court.⁹²

Bonding County Officials

State law requires the sheriff, sheriff's deputies, jailers, clerk of superior court, deputy clerk, probate judge, tax commissioner, magistrate, coroner, child support receiver and employees, clerk of state court, county administrator for the probate court, board of trustees of the county law library, county library board, county police officers, county surveyor, county treasurer, jailers, and the warden of a county correctional institution to be bonded.⁹³ These bonds protect the county and its taxpayers in case these officials fail to faithfully perform their duties. In general, the amount of the bond is set by state statute and may only be increased by local legislation. The premium of the bonds must be paid by the county governing authority out of county funds. Rather than purchase several individual bonds, the county may purchase a "blanket bond" to cover all of its officials.⁹⁴

Insuring County Officials, Employees, and Property

County commissioners are authorized but not required to purchase liability insurance for the elected and appointed officials as well as the employees of the county in case they are sued in their official capacity. The commissioners may also purchase insurance against damages involving county property. The amount of the coverage, if purchased, is also at the discretion of the commissioners.⁹⁵ The commissioners may also purchase general liability coverage from an interlocal risk management agency composed of county members rather than from a commercial insurer.⁹⁶ There is no statutory authority empowering a county officer or employee to procure liability insurance with county funds independent of the county commission. Like other employers, counties must provide workers compensation benefits to cover county employees injured on the job.⁹⁷ As with general liability insurance, the commissioners may purchase commercial insurance to cover the county's liability or may purchase coverage from a workers' compensation group self insurance fund composed of county members.⁹⁸

Defending County Officials

Similarly, it is up to each county commission to hire an attorney to represent the county or any county official or employee.⁹⁹ Except as outlined later in this chapter, it is in the discretion of the commissioners to provide a legal “defense” for civil, criminal (other than theft, embezzlement, etc., of county property),¹⁰⁰ or quasi-criminal actions brought against any county official or employee.¹⁰¹ There is one situation in which a “county officer” (i.e., sheriff, probate judge, clerk of superior court, tax commissioner, tax collector, or tax receiver) may retain the services of an outside attorney at the expense of the county.¹⁰² If the county officer is involved in a civil case in which the county attorney has a conflict of interest preventing him or her from representing both the county and the county officer, the county officer must first make a written request to the county commission to use outside counsel. If the commission denies the request or fails to respond to the request, then the chief judge of the superior court determines whether the county attorney has a conflict of interest ethically preventing him or her from representing both the county and the county officer.¹⁰³ If the chief judge determines that such a conflict exists, then the county is obligated to pay the county officer’s attorney “reasonable fees” that may not be any more than the rate paid to the county attorney or more than a schedule of rates for outside counsel adopted by the commissioners. Such fees are subject to approval by the chief judge. In addition, the Georgia Supreme Court has determined that if a county officer sues the county, that constitutes a conflict for the county attorney, and the commissioners will be obligated to pay the county officer’s attorney fees whether or not the county officer prevails in court.

COUNTY TAXATION AND SPENDING

Power to Tax

The taxing power belongs to the state and not the county.¹⁰⁵ Unless prohibited by the constitution, the General Assembly may authorize or require a county to levy taxes for local purposes.¹⁰⁶ The county may exercise the power of taxation only as authorized by the constitution or by general law.¹⁰⁷ Authorization for a county to tax must be clear. Any doubt as to this power is resolved against the county (i.e., the court will strike down the tax).¹⁰⁸ These general principles cannot be overcome by a county’s constitutional home rule authority.¹⁰⁹

Purposes of Taxation

County taxes (including those taxes levied for the school board) may be levied and collected for the following specific purposes:

1. To pay the expenses of administration of the county government
2. To cover the cost of the collection and preservation of records of vital statistics
3. To pay the principal and interest of any debt of the county
4. To provide a sinking fund for any debt of the county
5. To provide reasonable reserves for public improvements as may be fixed by law
6. To pay for litigation
7. To pay the expenses of courts
8. To pay for the maintenance and support of inmates
9. To pay sheriffs and coroners
10. To pay county police
11. To provide for fire protection of forest lands
12. To provide for the conservation of natural resources
13. To build and repair public buildings
14. To build and maintain a system of county roads
15. To build and repair bridges
16. To acquire, improve, and maintain airports
17. To acquire, improve, and maintain public parks
18. To provide ambulance services within the county
19. To provide for public health purposes in the county
20. To provide sanitation, water pollution control projects, sewage treatment facilities, and storm and sanitary sewer and water supply facilities
21. To provide hospitalization and medical or other care for the indigent sick people of the county
22. To support indigent individuals
23. To provide for the payment of assistance to aged persons in need, to the needy blind, and to dependent children
24. To pay for other welfare benefits
25. To pay county agricultural and home demonstration agents
26. To provide financial assistance to county or joint county and municipal development authorities to develop trade, commerce, industry, and employment opportunities, provided, however, the tax does not exceed one mill per dollar upon the assessed value of the taxable property in the county

27. To provide for workers' compensation and retirement or pension funds for officers and employees
28. To pay pensions and other benefits and costs under a teacher retirement system or systems
29. To pay for school lunch programs on property located outside of independent school systems
30. To pay for educational purposes upon property located outside the areas of independent school systems
31. To provide for financial assistance to county children and youth commissions providing children and youth services to study the needs, issues, and problems relating to children and youth
32. To pay for the dissemination of information relating to issues of children and youth¹¹⁰

General Tax Levies

As a general rule, taxes are levied to meet the needs of the county for the year in which the levy is made.¹¹¹ In levying taxes, county commissioners have broad discretion. The courts do not interfere with the commissioners' decision unless that discretion is abused.¹¹² According to the Georgia Supreme Court, "it [is] beyond the province of the trial court to require the county authorities to justify the wisdom (as opposed to the legality) of proposed county expenditures."¹¹³

Tax Assessment and Collection

The assessment and collection of taxes, including determination of exemptions and property subject to taxation, are primarily the functions of county tax assessing and collecting officers, discussed in Chapter 4. County commissioners do, however, have certain powers in this area. For example, a commissioner may, by resolution or ordinance, provide for the collection and payment of ad valorem taxes on tangible property (other than motor vehicles) in two installments.¹¹⁴

Tax Refunds

When a taxpayer claims for any reason that taxes should be refunded, the commissioners may hear and determine if the taxpayer was, in fact, overtaxed and authorize a refund or credit, and under certain circumstances, penalties may also be waived.¹¹⁵ The commissioners can also refund to a taxpayer all taxes and license fees that may have been erroneously or illegally assessed and collected.¹¹⁶

Spending Tax Funds

An expenditure of public money must be authorized by law; otherwise, the payment is prohibited.¹¹⁷ Funds may be expended for any public service or function. No levy of taxes need state the particular purpose for which the levy is made unless required by the court or by law.¹¹⁸ However, the surplus of a fund raised for a specific purpose, after all demands and indebtedness chargeable against it have been paid, becomes part of the general fund and may be used for payment of any other liability against the county.¹¹⁹

Spending Nontax Funds

If not required to be spent for a particular purpose, funds derived from sources other than taxation (i.e., fees) may be applied to any purpose for which the county has authority to spend public funds.¹²⁰

Gratuities

The Georgia Constitution limits the power of counties to make contributions of public funds or property. A county may not donate money or property or lend its credit to any private person or nonpublic entity unless it is a purely charitable organization and the General Assembly has authorized it.¹²¹ A county cannot make a gift that gives 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 the Georgia Constitution.¹²² However, a county may pay money or provide property to a private party pursuant to a contract for services. It is not considered a gratuity or donation when the county receives substantial benefits in return for the private use of its property.¹²³ Counties with a population over 400,000 are expressly authorized by general law to donate county funds or property to purely charitable purposes pursuant to a contract for services, so long as the charitable activities occur within that county.¹²⁴ In sum, counties may not make contributions even to nonprofit organizations unless they qualify as a charity and the contribution has been expressly authorized by an act of the General Assembly.¹²⁵ Examples may be donations to support a symphony orchestra or arts or welfare organizations.

SERVICES

The Georgia Constitution expressly gives counties what are known as “supplementary powers.” The General Assembly may regulate or restrict how a county provides services through the county’s supplementary

powers, but it may not totally withdraw these powers from the county.¹²⁶ Additionally, unless otherwise provided by general or local law, the county may provide these services only in the unincorporated area of the county, unless it has a contract with the city.¹²⁷ The supplementary powers include the following:

- Police protection.¹²⁸ Counties may establish a police department to service only the unincorporated area of the county, if approved by the voters in a referendum.¹²⁹ In contrast, the sheriff has the power to provide law enforcement services inside incorporated areas, just as he or she does in the unincorporated areas,¹³⁰ although counties may contract with the city to provide additional law enforcement¹³¹ and with the city or other counties to provide mutual aid.¹³²
- Fire protection.¹³³ In addition to providing fire protection services to cities through contract, counties may enter into mutual aid agreements with cities and other counties.¹³⁴
- Garbage and solid waste collection and disposal¹³⁵
- Public health facilities and services.¹³⁶ This includes hospitals,¹³⁷ ambulance,¹³⁸ emergency rescue services, and animal control.¹³⁹
- Road construction and maintenance.¹⁴⁰ The Georgia Department of Transportation promulgates uniform regulations for the erection and maintenance of signs, signals, markings, and other traffic control devices to regulate, warn, and guide traffic for all public roads.¹⁴¹ Even though a county road extends into a municipality, it remains a county road, unless it is removed from the county road system.¹⁴² The county may contract with the city to maintain the county's roads that extend into the city.¹⁴³ However, the city regulates and controls the use of those portions of the county road that are located within the city (e.g., traffic signals, parking meters).¹⁴⁴ When a city annexes portions of the county, the city may be liable for maintaining those roads.¹⁴⁵ Counties may only regulate the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, cables, wires, poles, towers, and traffic and other signals on the portion of the county road right-of-way in the unincorporated area.¹⁴⁶ Although counties have the right to control their right-of-way, federal law requires that they do so with regard to telecommunications companies on a competitively neutral and nondiscriminatory basis.¹⁴⁷
- Parks, recreational areas, programs, and facilities¹⁴⁸
- Storm water collection and disposal systems¹⁴⁹

- Sewage collection and disposal systems¹⁵⁰
- Water treatment and distribution¹⁵¹
- Public housing¹⁵²
- Public transportation¹⁵³
- Libraries¹⁵⁴
- Archives¹⁵⁵
- Arts and sciences programs and facilities¹⁵⁶
- Terminal, dock, and parking facilities¹⁵⁷
- Building, housing, plumbing, and electrical codes¹⁵⁸
- Air quality control¹⁵⁹

Regardless of the source of the authority to provide a service, federal law requires that all services and programs provided by a county must be accessible and may not discriminate against disabled people.¹⁶⁰ Counties must provide an equal opportunity for disabled individuals to participate in the programs, services, and activities in the most integrated setting appropriate.¹⁶¹

PLANNING AND ZONING

The Georgia Constitution reserves to counties (as well as municipalities) the authority to adopt plans and exercise the power of zoning. The constitution does, however, allow the General Assembly to enact general laws establishing procedures for the exercise of that power, which it has done (see Chapter 9).¹⁶² It also expressly authorizes the General Assembly to impose restrictions upon land use in order to protect and preserve the natural resources, environment, and vital areas of this state.¹⁶³

State law also requires counties to prepare comprehensive plans¹⁶⁴ and further provides that counties and cities are to develop nonconflicting or single countywide land-use plans as part of a service delivery strategy agreement.¹⁶⁵ In addition, the Service Delivery Strategies Act says that the provision of water and sewer services by a city or a county outside its boundaries must be consistent with the land-use plan of the adjoining local government.¹⁶⁶ Furthermore, where a county has a bona fide land-use objection to an annexation proposed by a city, the objection is to be resolved through a dispute resolution process spelled out in general law.¹⁶⁷

Federal law restricts counties from making zoning decisions that discriminate against any religious assembly or institution on the basis of religion; that place unreasonable limits on religious assemblies,

institutions, or structures; or that completely exclude religious assemblies from a jurisdiction.¹⁶⁸ Additionally, any land-use regulation of a religious institution must be in furtherance of a compelling governmental interest and must be the least restrictive means of furthering that compelling governmental interest.¹⁶⁹

Federal law also prohibits counties from enacting regulations that prohibit (or have the effect of prohibiting) the ability of a telecommunications company from providing service.¹⁷⁰ Although counties may not regulate the placement of telecommunications facilities (i.e., cell towers) based on environmental effects of radio frequency emissions,¹⁷¹ counties retain their zoning authority regarding such placement, so long as the regulations do not unreasonably discriminate among telecommunication providers and do not prohibit the provision of personal wireless services.¹⁷² Any decision denying a request to locate a facility must be in writing.¹⁷³

There are special requirements in the case of collocation or modifications to existing equipment or towers. Companies are not required to go through an entire rezoning or to acquire an additional special land-use permit so long as the collocation neither increases the height or width of the tower or the footprint of the accessory equipment nor exceeds applicable weight limits of the tower. Wireless companies still have to comply with any applicable site plan and building permit requirements for the existing tower and would have to comply with zoning and land-use requirements generally, including any conditions placed on the use when initially approved and any subsequently adopted amendments to such conditions of approval. Decisions must be made within 90 days. The county must determine whether an application is complete within the first 30 days of its receipt. If it is not complete, the 90-day “shot clock” stops until all enumerated documentation is submitted to the county.¹⁷⁴

SPECIAL SERVICE DISTRICTS

The Georgia Constitution also authorizes counties to create special districts for the provision of county services. The services offered through a special district may be paid for in whole or in part by special fees, assessments, or additional mills levied only within the district.¹⁷⁵ For instance, counties that do not provide fire services throughout the county may create special tax districts to do so for a smaller geographical area in which the service is provided. A service district may consist of the entire unincorporated area of a county or a portion of the county. Property

owners within a special district pay additional fees or taxes to fund the service beyond what they would pay in general county taxes. In sum, special service districts provide a means by which some citizens of a county may be provided and charged for a service above and beyond what citizens of the county generally receive. Conversely, citizens outside a special district who are not receiving the service otherwise provided through a special service district would not be taxed to pay for that service since they are not getting the benefit of the service being offered. Special districts may be created by general law or by adoption of an ordinance or resolution of the commissioners. Although special districts generally include less than the entire county, a countywide service district for the provision of hospital services has been approved by the courts while such a district has not been approved for a sheriff.¹⁷⁶ Counties have used special districts to provide street lighting, road paving, and waste collection among other county services. The creation by the county of a special district may be made contingent upon approval of the referendum, but a referendum is not required by the constitution or by general law.

NOTES

1. See U.S. CONST. art. VI, cl. 2.
2. *Hines v. Etheridge*, 173 Ga. 870 (1931); *Troup County Electric Membership Corporation v. Georgia Power Company*, 229 Ga. 348 (1972); *Thomas v. Ragsdale*, 188 Ga. 238 (1939); *Barton v. Harden*, 204 Ga. 108 (1948).
3. OFFICIAL CODE OF GEORGIA ANNOTATED (O.C.G.A.) §1-3-3(7).
4. *Forsyth County v. White*, 272 Ga. 619 (2000); *Twiggs County v. Atlanta Gas Light Company*, 262 Ga. 276 (1992); *Stephenson v. Board of Commissioners of Cobb County*, 261 Ga. 399 (1991); *DeKalb County v. Atlanta Gas Light Company*, 228 Ga. 512 (1972); *Forsyth County v. Childers*, 240 Ga. App. 819 (1999).
5. *DeKalb County v. Atlanta Gas Light Company*, 228 Ga. 512 (1972); *Decatur County v. Roberts*, 159 Ga. 528 (1924); *Bowers v. Hanks*, 152 Ga. 659 (1922).
6. *Twiggs County v. Atlanta Gas Light Company*, 262 Ga. 276 (1992); *Mobley v. Polk County*, 242 Ga. 798 (1979); *Brock v. Chappell*, 196 Ga. 567 (1943); *McCrorry Company of Georgia v. Board of Commissioners of Fulton County*, 177 Ga. 242 (1933); *Decatur County v. Roberts*, 159 Ga. 528 (1924); *Bowers v. Hanks*, 152 Ga. 659 (1922); *Forsyth County v. Childers*, 240 Ga. App. 819 (1999).
7. *Jones v. McCaskell*, 112 Ga. 453 (1900); *Christian v. Moreland*, 203 Ga. 20 (1947); *Commissioner of Roads and Revenues of Fulton County v. Davis*, 213 Ga. 792 (1958). However, see *Building Authority of Fulton County v. State of Georgia*, 253 Ga. 242 (1984).
8. GA. CONST. art. III, §6, ¶4(b).
9. O.C.G.A. §28-1-15.

10. GA. CONST. art. XI, §1, ¶4(a), (b), (c).
11. An index of current local legislation for a particular county may be found in Vol. 42 of O.G.G.A. The actual text may be found in Georgia Laws, which is published after each session of the General Assembly.
12. However, a county may create the office of county manager without local legislation pursuant to O.C.G.A. §36-5-22.
13. O.C.G.A. §36-5-24. The decision to increase compensation of the governing authority must be made before the qualifying date of the general election. Notice of any proposed salary increase must be posted in the legal organ of the county once a week for three consecutive weeks prior to any action on a salary increase. The notice must specify the fiscal impact of the compensation increase. Any increase in compensation may not take effect until January 1 following the next general election.
14. O.C.G.A. § 36-80-19(b)(1).
15. GA. CONST. art. IX, §2, ¶1(a).
16. GA. CONST. art. IX, §2, ¶1(b). See *Forbes v. Lovett*, 227 Ga. 772 (1971).
17. GA. CONST. art. IX, §2, ¶1(b)(1).
18. GA. CONST. art. IX, §2, ¶1(a).
19. GA. CONST. art. IX, §2, ¶1(c).
20. GA. CONST. art. IX, §2, ¶1(c)(2).
21. *Ibid.*
22. GA. CONST. art. IX, §1, ¶3.
23. GA. CONST. art. IX, §2, ¶1(c)(7).
24. GA. CONST. art. IX, §2, ¶1(c)(1), (7); *Boswell v. Bramlett*, 274 Ga. 50 (2001) and *Warren v. Walton*, 231 Ga. 495 (1973).
25. GA. CONST. art. IX, §2, ¶1(c)(3); *Richmond County v. Richmond County Business Association, Inc.*, 225 Ga. 568 (1969).
26. See O.C.G.A. §15-10-60 et seq.
27. GA. CONST. art. IX, §2, ¶1(c)(4); *Richmond County v. Richmond County Business Association, Inc.*, 224 Ga. 854 (1968); *Cotton States Mutual Insurance Company v. DeKalb County*, 251 Ga. 309 (1983). See also *DeKalb County v. Brown Builders Company, Inc.*, 227 Ga. 777 (1971).
28. GA. CONST. art. IX, §2, ¶1(c)(5).
29. GA. CONST. art. IX, §2, ¶1(c)(6).
30. See O.C.G.A. §§22-1-2 et seq., 32-3-1 et seq.
31. GA. CONST. art. IX, §2, ¶1(c)(8).
32. *Allen v. Wise*, 204 Ga. 415 (1948). See also *City of Ludowici v. Brown*, 249 Ga. 857 (1982); *Campbell v. City of Columbus*, 224 Ga. 279 (1968).
33. GA. CONST. art. IX, §2, ¶1(a).
34. O.C.G.A. §36-1-20(a).
35. *Franklin County v. Fieldale Farms Corporation*, 270 Ga. 272 (1998).
36. GA. CONST. art. IX, §2, ¶4; O.C.G.A. §36-66-1 et seq.
37. O.C.G.A. §44-10-20 et seq.
38. GA. CONST. art. IX, §2, ¶3(a)(12); O.C.G.A. §§8-2-25, 36-13-1 et seq.

39. O.C.G.A. §36-13-6.
40. O.C.G.A. §36-60-3.
41. See O.C.G.A. §4-8-29. See also GA. CONST. art. IX, §2, ¶3(a)(3).
42. O.C.G.A. §31-19-3. See also GA. CONST. art. IX, §2, ¶3(a)(3).
43. O.C.G.A. §12-5-243.
44. O.C.G.A. §12-5-453.
45. O.C.G.A. §12-7-1 et seq.
46. See O.C.G.A. §12-8-30.9.
47. O.C.G.A. §41-2-7 et seq.
48. O.C.G.A. §§36-1-20(a), 16-7-48.
49. O.C.G.A. §36-60-4.
50. O.C.G.A. §36-18-1 et seq. For restrictions on a county providing cable service, see O.C.G.A. §36-90-1 et seq.
51. See O.C.G.A. §§3-3-2, 3-4-49, 3-4-90, 3-5-40 et seq., 3-6-40, 3-7-40.
52. O.C.G.A. §36-1-15.
53. O.C.G.A. §43-6-25.1.
54. O.C.G.A. §43-8-2.
55. See O.C.G.A. §43-37-5.
56. O.C.G.A. §43-47-13.
57. O.C.G.A. §§36-1-20(a), 40-6-371, 40-6-372, 40-6-374.
58. O.C.G.A. §40-7-5.
59. See O.C.G.A. §16-6-8(e).
60. See O.C.G.A. §16-11-36(d).
61. See O.C.G.A. §16-11-39(c).
62. See O.C.G.A. §16-11-41(b).
63. See O.C.G.A. §16-12-2.
64. See O.C.G.A. §16-13-95.
65. See O.C.G.A. §16-15-6.
66. O.C.G.A. §26-2-212.
67. O.C.G.A. §36-80-19.
68. O.C.G.A. §36-80-19(b)(1).
69. O.C.G.A. §36-80-19(d).
70. O.C.G.A. §36-80-19(b)(3).
71. O.C.G.A. §§36-15-7, 36-15-9.
72. O.C.G.A. §36-15-9(g).
73. O.C.G.A. §§36-1-20, 15-10-60 et seq.
74. See O.C.G.A. §40-6-372.
75. See O.C.G.A. §§40-13-21, 40-13-29.
76. O.C.G.A. §§15-10-62, 15-10-63.
77. O.C.G.A. §36-74-1 et seq.

78. O.C.G.A. §§36-74-25, 36-74-45.
79. O.C.G.A. §§36-74-26, 36-74-46.
80. *City of Erie v. Pap's A.M.*, 529 U.S. 446 (2000); *Hill v. Colorado*, 530 U.S. 703 (2000); *Flanigan's Enterprises, Inc. of Georgia v. Fulton County*, 242 F.3d 976 (2001), cert. denied, 122 S.Ct. 2356 (2002); *David Vincent, Inc. v. Broward County*, 200 F.3d 1325 (11th Cir. 2000); *Wise Enterprises, Inc. v. Unified Government of Athens-Clarke County*, 217 F.3d 1360 (2000); *International Eateries of America, Inc. v. Broward County, Florida*, 941 F.2d 1157 (11th Cir. 1991). See also *Chambers v. Peach County*, 268 Ga. 672 (1997), *Quetgles v. City of Columbus*, 268 Ga. 619 (1997); *Goldrush II v. City of Marietta*, 267 Ga. 683 (1997); *Chambers v. Peach County*, 266 Ga. 318 (1996); *Harris v. Entertainment Systems, Inc.*, 259 Ga. 701 (1989); *Paramount Pictures Corporation v. Busbee*, 250 Ga. 252 (1989).
81. 47 UNITED STATES CODE ANNOTATED (U.S.C.A.) §541 et seq. See 47 C.F.R. §§76.309, 76.910, 76.922, 76.933, 76.1602, 76.1603.
82. Fifth and Fourteenth Amendments to the U.S. Constitution; *Palazzolo v. Rhode Island*, 533 U.S. 606, 121 S.Ct. 2448 (2001); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 119 S.Ct. 1624 (1999); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Penn Central Transportation Company v. New York City*, 438 U.S. 104 (1978); *Agins v. Tiburon*, 447 U.S. 255 (1980).
83. Religious Land Use and Institutionalized Persons Act, 42 U.S.C.A. §2000cc et seq.
84. See O.C.G.A. §3-3-2(b).
85. See *City of Chicago v. Morales*, 523, 527 U.S. 41 (1999).
86. *Allen v. Wise*, 204 Ga. 415 (1948). See also *Wayne County v. Herrin*, 210 Ga. App. 747 (1993); *City of Ludowici v. Brown*, 249 Ga. 857 (1982); *Campbell v. City of Columbus*, 224 Ga. 279 (1968).
87. O.C.G.A. §36-11-2.
88. *Armistead v. MacNeill*, 203 Ga. 204, 45 S.E.2d 652 (1947).
89. *McGinty v. Pickering*, 180 Ga. 447, 179 S.E. 358 (1935).
90. O.C.G.A. §36-11-1; *Powell v. The County of Muscogee*, 71 Ga. 587 (1883); *Williams v. Lowndes County*, 120 Ga. App. 429 (1969); *Meadows v. Houston County*, 295 Ga. App. 183 (2008).
91. O.C.G.A. §36-11-1; *Griffin Realty and Construction Company v. Chatham County*, 47 Ga. App. 545, 171 S.E. 237 (1933); *Doyal v. Department of Transportation*, 142 Ga. App. 79, 234 S.E.2d 858 (1977); *Christensen v. Floyd County*, 158 Ga. App. 274, 279 S.E.2d 723 (1981); *Puckett v. Gwinnett County*, 200 Ga. App. 53, 406 S.E.2d 561 (1991); *Burton v. DeKalb County*, 202 Ga. App. 676, 415 S.E.2d 647 (1992).
92. O.C.G.A. §36-9-4.
93. O.C.G.A. §§15-6-59, 15-10-20(h), 15-9-7, 15-15-3, 15-16-5, 15-16-23, 20-5-50, 36-6-4, 36-7-5, 36-8-3, 36-15-3, 42-4-2, 42-5-32, 45-16-4, 48-5-122(b), 53-6-41.
94. O.C.G.A. §45-4-11.
95. O.C.G.A. §45-9-20.
96. O.C.G.A. §36-83-1 et seq.

97. O.C.G.A. §34-9-1 et seq.
98. O.C.G.A. §34-9-150 et seq.
99. *Stephenson v. Board of Commissioners of Cobb County*, 261 Ga. 399 (1991).
100. O.C.G.A. §45-9-21(b).
101. O.C.G.A. §45-9-21(a).
102. O.C.G.A. §45-9-21(e).
103. See *Haralson County v. Kimball*, 243 Ga. App. 559 (2000).
104. *Gwinnett County v. Yates*, 265 Ga. 504 (1995); *Board of Commissioners of Dougherty County v. Saba*, 278 Ga. 176 (2004).
105. *Albany Bottling Company v. Watson*, 103 Ga. 503, 30 S.E. 270 (1898).
106. *Wright v. Fulton County*, 169 Ga. 354, 150 S.E. 262 (1929); *Blackman v. Golia*, 231 Ga. 381, 202 S.E.2d 186 (1973); *Chanin v. Bibb County*, 234 Ga. 282, 216 S.E.2d 250 (1975).
107. GA. CONST. art. IX, §4, ¶1.
108. *Richmond County Business Association Inc. v. Richmond County*, 224 Ga. 854, 165 S.E.2d 293 (1968); *Chanin v. Bibb County*, 234 Ga. 282, 216 S.E.2d 250 (1975).
109. *Ibid.*
110. O.C.G.A. §48-5-220.
111. *Spain v. Hall County*, 175 Ga. 600, 165 S.E. 612 (1932).
112. *McMillan v. Tucker*, 154 Ga. 154, 113 S.E. 391 (1922).
113. *Board of Commissioners of Fulton County v. 1991 Tax Digest of Fulton County*, 261 Ga. 702, 410 S.E.2d 721 (1991).
114. O.C.G.A. §48-5-23.
115. O.C.G.A. §§48-5-241, 48-5-242.
116. O.C.G.A. §48-5-380.
117. *Nelson v. Wainwright*, 224 Ga. 693, 164 S.E.2d 147 (1968); *Humber v. Dixon*, Ga. 480, 94 S.E. 565 (1917).
118. GA. CONST. art. IX, §4, ¶2, 3.
119. *Butts County v. Jackson Banking Company*, 136 Ga. 719, 71 S.E. 1065 (1911); *Spain v. Hall County*, 175 Ga. 600, 165 S.E. 612 (1932).
120. *Stewart v. Davis*, 175 Ga. 545, 165 S.E. 598 (1932); *Harrison v. May*, 228 Ga. 684, 187 S.E.2d 673 (1972).
121. GA. CONST. art. III, §6, ¶6; art. IX, §2, ¶8; *Grand Lodge of Georgia. I.O.O.F. v. City of Thomasville*, 226 Ga. 4 (1970). See 1983 Op. Att’y Gen. No. U83-7, regarding development authority.
122. *Grand Lodge of Georgia. I.O.O.F. v. City of Thomasville*, 226 Ga. 4 (1970).
123. *Smith v. Board of Commissioners of Hall County*, 244 Ga. 133 (1979).
124. GA. CONST. art. IX, §2, ¶8; O.C.G.A. §36-1-19.1.
125. GA. CONST. art. IX, §2, ¶8.
126. GA. CONST. art. IX, §2, ¶3(c).
127. GA. CONST. art. IX, §2, ¶3(b).

128. GA. CONST. art. IX, §2, ¶3(a)(1).
129. O.C.G.A. §36-8-1 et seq.
130. O.C.G.A. §15-16-10(a)(9).
131. O.C.G.A. §15-16-13.
132. O.C.G.A. §36-69-1 et seq.
133. GA. CONST. art. IX, §2, ¶3(a)(1); O.C.G.A. §25-3-1 et seq.
134. O.C.G.A. §§25-6-1 et seq., 36-69-1 et seq.
135. GA. CONST. art. IX, §2, ¶3(a)(2). See also O.C.G.A. §12-8-20 et seq.
136. GA. CONST. art. IX, §2, ¶3(a)(3). However, most public health services are provided by county boards of health (see O.C.G.A. §31-3-1 et seq.), which receive funding from the county and the state.
137. However, hospital services are typically provided at the county level by hospital authorities pursuant to O.C.G.A. §31-7-70 et seq.
138. See O.C.G.A. §31-11-1 et seq.
139. See O.C.G.A. §§4-8-29, 31-19-3.
140. GA. CONST. art. IX, §2, ¶3(a)(4). See O.C.G.A. §32-4-40 et seq.
141. O.C.G.A. §32-6-50.
142. See O.C.G.A. §32-4-1(2).
143. O.C.G.A. §32-4-41(1).
144. O.C.G.A. §§32-4-92(a)(7), 32-6-2.
145. See O.C.G.A. §36-36-7(c); *Bush v. City of Gainesville*, 105 Ga. App. 381 (1962); 1976 Op. Att’y Gen. U76-21.
146. O.C.G.A. §§32-4-42(6), 32-4-92(a)(10).
147. 47 U.S.C.A. §253(c).
148. GA. CONST. art. IX, §2, ¶3(a)(5). See O.C.G.A. §36-64-1 et seq.
149. GA. CONST. art. IX, §2, ¶3(a)(6).
150. *Ibid.*
151. GA. CONST. art. IX, §2, ¶3(a)(7). See also O.C.G.A. §§36-60-2, 36-60-15.1.
152. GA. CONST. art. IX, §2, ¶3(a)(8). However, public housing services are typically provided at the county level by local authorities pursuant to O.C.G.A. §8-3-1 et seq.
153. GA. CONST. art. IX, §2, ¶3(a)(9). See also O.C.G.A. §32-9-1 et seq.
154. GA. CONST. art. IX, §2, ¶3(a)(10). See O.C.G.A. §20-5-40 et seq.
155. *Ibid.*
156. *Ibid.*
157. GA. CONST. art. IX, §2, ¶3(a)(11).
158. GA. CONST. art. IX, §2, ¶3(a)(12); O.C.G.A. §36-13-1 et seq.
159. GA. CONST. art. IX, §2, ¶3(a)(13).
160. 42 U.S.C.A. §12131 et seq.; 28 C.F.R. §35.102.
161. 28 C.F.R. §35.130.
162. GA. CONST. art. IX, §2, ¶4; O.C.G.A. §§36-66-1 et seq., 36-67A-1 et seq.
163. GA. CONST. art. III, §6, ¶2(a)(1).

- 164. O.C.G.A. §36-70-1 et seq.
- 165. O.C.G.A. §36-70-24(4)(A).
- 166. O.C.G.A. §36-70-24(4)(B).
- 167. O.C.G.A. §36-36-11.
- 168. 42 U.S.C.A. §2000cc(b).
- 169. 42 U.S.C.A. §2000cc(a)(1).
- 170. 47 U.S.C.A. §253(a).
- 171. 47 U.S.C.A. §332(c)(7)(A),(B)(iv).
- 172. 47 U.S.C.A. §332(c)(7)(B)(i).
- 173. 47 U.S.C.A. §332(c)(7)(B)(iii).
- 174. O.C.G.A. §36-66B-1 et seq.
- 175. GA. CONST. art. IX, §2, ¶6.
- 176. *Higdon v. Greene County Board of Commissioners*, 277 Ga. App. 350 (2006);
Houston v. Channell, 2010 Ga. Lexis 559 (July 12, 2010).