

**ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE
STATE OF GEORGIA 1977**

1977 Vol. 2 -- Page: 3541

Sequential Number: 221

Short Title: CITY OF MARIETTA -- NEW CHARTER.

Law Number: No. 465

Origin: (House Bill No. 901).

Full Title: An Act to reincorporate the City of Marietta in Cobb County; to create a new charter for said city; to provide for the powers, rights and duties of said city; to repeal certain provisions of an Act creating a new charter for the City of Marietta, in the County of Cobb, approved August 15, 1904 (Ga. Laws 1904, p. 519), as amended; to provide for the corporate limits of said city; to provide for the continuation of certain terms of office; to provide for the continuation of certain ordinances, bylaws, and rules and regulations; to prohibit certain conflicts of interest; to provide for the governing authority of said city and its composition, powers, rights, and duties; to provide for compensation of members of the governing authority; to provide for ordinances of said city; to provide for elections; to provide for city officers and personnel; to provide for the powers, rights and duties of city officers and personnel; to provide for surety bonds for certain officers; to provide for a firemen and policemen civil service

Page: 3542

system; to provide for a civil service board; to prohibit certain activities by members of the fire or police department; to make certain acts in relation to the civil service system unlawful; to provide penalties for such acts; to provide for a board of lights and water; to provide for the powers, rights and duties of said board; to provide for the composition and compensation of said board; to authorize such board to borrow money, to issue revenue anticipation bonds, and to exercise the power of eminent domain; to authorize the board to fix rates and charges; to provide for payments by the board to the board of education; to provide for a municipal court; to provide for the jurisdiction, powers, rights and duties of said court; to provide for a judge of the municipal court; to provide for city finance and taxation; to provide for an annual budget; to provide for an annual independent audit; to provide for contracting procedures; to authorize the creation of certain debt; to provide for public improvements; to provide for action affecting city streets and drains; to provide for matters relative to city property; to provide for public improvement assessments and

financing; to provide for the continuation, establishment, maintenance and abolition of boards, commissions, and authorities; to provide for matters relative to the city school system; to provide for severability; to provide for penalties for violating the provisions of said charter; to provide for other matters relative to the foregoing; to provide an effective date; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

PREAMBLE

The City of Marietta, Georgia, is chartered to provide services to its citizens in order to maintain the health, protection, and safety of its citizens and their property in an efficient, prudent and effective manner without regard to a person's race, creed, color or station in life.

ARTICLE I. IN GENERAL.

Section 1.1. Incorporation; name; rights, powers and privileges generally. From and after the passage of this

Page: 3543

Act the City of Marietta, in Cobb County, Georgia, heretofore made a body politic and corporate by Acts of the General Assembly of said State, under the name of the City of Marietta, shall continue a body politic and corporate, by the corporate name of the City of Marietta. By said corporate name it may sue and be sued; have and use a corporate seal; buy, hold, exchange, encumber, sell and convey real or personal property, at public or private sale under such terms and conditions and for whatever consideration the governing authority may prescribe not in conflict with State law; trade, exchange, lease, rent and otherwise contract concerning any real or personal property owned by the city, or in which the city has an interest; make all needful and lawful contracts, and by such name transact all its business. Said corporation, through its governing authority, shall have all the powers and privileges incident to municipal corporations under the laws of this State, and all other powers that are necessary or proper to make, regulate, maintain and preserve a proper and legal government of said city.

Section 1.2. Definitions and rules of construction. (a) As used in this charter, the following meanings, respectively, shall be given to the following terms, unless otherwise specifically provided or a different meaning is apparent from the context:

- (1) "Aforesaid" means next before.
- (2) "Agency" shall mean any office, court, utility, board, commission, institution, or other organization in charge of administering any public function or municipal affair of the city.
- (3) "City" shall refer to the municipal corporation, Marietta, Georgia, or the territory embraced within the boundaries of the municipality, dependent upon the context.
- (4) "City limits" shall refer to and mean the territory embraced within the boundaries of the city.
- (5) "Company" means corporation.

Page: 3544

- (6) "Council" or "city council" shall mean the persons elected mayor and councilmen as provided in this charter.
- (7) "County" or "this county" shall mean the County of Cobb, in the State of Georgia.
- (8) "Day" means a full day of twenty-four (24) hours, commencing at midnight, Eastern time.
- (9) "Elector" means a person residing within the city who is qualified to vote therein.
- (10) "Following" means next after.
- (11) "Governing authority" shall mean the city council of this city, or any lawfully constituted legislative body hereafter provided for the city.
- (12) "In" may be the equivalent of "on."
- (13) "Is" may mean "shall be."
- (14) "May" ordinarily denotes permission and not command; where it concerns the public interest or affects the rights of third persons, it will be construed to mean "must" or "shall."
- (15) "Month" means a calendar month.
- (16) "Next" means "in the nearest time," "just after," "immediately following."
- (17) "Oath" includes affirmation.
- (18) "Officer" shall mean and include the mayor, councilmen, members of boards and commissions, and any other persons classified as public officers by the laws or judicial decisions of this State. An "officer" as herein defined shall fill an office and an employee shall fill a position of employment.

- (19) "Or" is ordinarily to be understood in the disjunctive sense, but will be construed as "and" when necessary

Page: 3545

to effectuate a legislative intent manifested by the context and surrounding circumstances.

- (20) "Ordinance" means a rule or law adopted by the council.
- (21) "Person" shall include individuals, firms, partnerships, associations, companies, corporations and all legal entities. When used with reference to the omission or commission of acts required or forbidden, it shall include persons, as above defined, participating in such omission or commission of acts, and their agents, employees and servants, acting within the scope of their authority and so participating.
- (22) "Preceding" means next before.
- (23) "Property" includes real and personal property.
- (24) "Resolution" means an expression of opinion or policy by the council.
- (25) "State" or "this State" shall mean the State of Georgia, in the United States of America.
- (26) "Streets" means street, sidewalk and public way and place used for travel, and shall include bridges thereon.
- (27) "Until" a certain day or hour includes all of such day or hour.
- (28) "While" means "pending" or "during the time."
- (29) "Writing" includes printing and numerals.
- (30) "Year" means a calendar year.

(b) Terms not defined herein, but which are defined in the laws of the State shall have the meanings given in said laws.

(c) The following rules shall govern in the construction of the provisions of this charter:

Page: 3546

- (1) Unless otherwise expressly or by necessary implication provided, the ordinary signification shall be applied to all words, except words of art or trade

or words connected with a particular subject matter, which shall have the signification attached to them by experts in such art, trade or subject matter.

- (2) The present or past tense shall include the future.
- (3) The masculine gender shall include the feminine and neuter.
- (4) The singular or plural number shall each include the other, unless expressly or by necessary implication excluded.
- (5) A joint authority given to any number of persons or officers may be executed by a majority of them, unless otherwise expressly provided.
- (6) Substantial compliance with the requirement of any provision of this charter, especially on the part of officers of the municipality, shall be deemed sufficient, unless otherwise expressly or by necessary implication provided.
- (7) When a number of days, months or years is prescribed for the exercise of any privilege or the discharge of any duty, only the first or last day shall be counted; and if the last day shall fall on Sunday, another day shall be allowed in the computation.
- (8) Grammatical errors shall not vitiate; and a transposition of words, phrases and clauses may be resorted to when a sentence, clause or phrase is without meaning as it stands.
- (9) The object of the construction of this charter shall be to ascertain the intention of the enacting authority; and to that end there shall be kept in view at all times the old law, the evil, the remedy and the surrounding circumstances.

Section 1.3. Repeal of prior Acts. This Act shall constitute the whole charter of the city, except as otherwise provided herein, repealing and replacing the charter adopted

Page: 3547

in 1904 (Ga. L. 1904, Act No. 614, page 519), as amended, as well as all prior charters and amendments, and the same are hereby repealed, with the above-mentioned exceptions.

Section 1.4. Corporate limits. The corporate limits of the city shall extend and include all that area described in the former charter of the city (Ga. L. 1904, Act No. 614, page 579), and the various Acts of the General Assembly amendatory thereof, and all ordinances, resolutions, and referenda annexing territory or excluding territory from the city; all of which enactments and actions are continued in full force and effect, and the same are incorporated and made a part of this charter as fully as if set out at length herein.

Section 1.5. Continuation in office of mayor and councilmen, and other officers. The mayor and councilmen who are serving in these offices of the city at the

time of the approval of this charter shall continue to serve in their respective offices for and during the full terms for which they were elected.

Other officers shall continue in office until removed or replaced as provided by law or ordinance.

Section 1.6. Vesting of rights, etc. All properties, titles, easements, hereditaments, privileges, related rights and powers belonging or in any way appertaining to the City of Marietta, as heretofore incorporated, are hereby vested absolutely in the City of Marietta, incorporated under this Act, in the same manner and to the same extent as they were had by said former city.

Section 1.7. Assumption of debts, etc. The City of Marietta, created by this Act, is hereby made responsible as a corporate body for all legal debts, liabilities and undertakings of said city as heretofore incorporated.

Section 1.8. Existing ordinance, etc. All ordinances, bylaws, rules and regulations, now in force in the city, not inconsistent with this charter, are hereby declared valid and of force and effect, until amended or repealed by the governing authority.

Page: 3548

Section 1.9. Conflict of interest. No elected official, appointed officer, or employee of the city or any agency or political entity to which this charter applies shall knowingly engage in any business or transaction or have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which would tend to impair his independence of judgment or action in the performance of his official duties.

ARTICLE II. GOVERNING AUTHORITY

Section 2.1. Form of government. The government of the city shall be vested in a city council, constituted and elected as provided in this charter.

Section 2.2. Composition. The governing authority of the city shall be the city council, composed of a mayor and seven (7) councilmen, in which is vested all corporate, legislative and other powers of the city, except as otherwise provided in this charter.

Section 2.3. Qualifications of mayor and councilmen. To be eligible for the office of mayor or councilman, elected or appointed, a person shall be at least twenty-one (21) years of age and shall meet the requirements of a qualified voter of the city, as prescribed by State law, shall have been a bona fide resident of the city for at least one (1) year next preceding the election, and each candidate for councilman shall be a resident of the ward at the time of qualifying as a candidate in the election, in which each offers as a candidate; and shall continue to reside therein during his term of office. No person shall be eligible to be mayor or councilman who shall have been convicted of a crime involving moral turpitude, unless he has received a full pardon and has all rights of citizenship restored.

Section 2.4. Election; terms of office. The present mayor and councilmen of the city shall continue in office during the terms for which they were elected, and on the second Wednesday in October, 1981, and every four (4) years on said day thereafter an election shall be held in said city for a mayor and seven (7) councilmen.

Page: 3549

The terms of office of such mayor and councilmen so elected shall begin after the final adjournment of the old mayor and council, on the first Monday in January following their election, and they shall hold their office for four (4) years and until their successors are elected and qualified.

No candidate shall be nominated for the office of councilman or mayor or elected to any such office in any election unless the candidate shall have received a majority of the votes cast to fill such nomination or office.

Certificates of election shall be recorded by the city clerk upon the book of minutes or other book kept for such purposes. The record aforesaid shall be evidence of the result of the said election and the authority of those elected to act.

The mayor shall be elected by the voters of the entire city and each councilman by the voters of the ward in which he offers as a candidate, and this shall apply to all general and special elections. In order to be elected as a councilman from a ward, a candidate must receive a majority of the votes either in a special election or in the regular election in such ward. In the event no candidate receives the majority of the votes, a run-off election shall be held between the two candidates receiving the highest number of votes. Such run-off election shall be held two (2) weeks from the date of the regular election or a special election as the case may be.

The mayor and all councilmen shall serve for terms of four (4) years.

Section 2.5. Holding other office, voting when personally interested. Holding other office. Except as authorized by law, neither the mayor nor any councilman shall hold any city employment for remuneration during the term for which he was elected.

Section 2.6. Mayor. The mayor shall be the chief executive officer of the city, and he shall have general supervision

Page: 3550

over all its affairs. He shall sign all deeds and contracts, preside at all meetings of the council and cast the deciding vote in case of a tie vote. It shall be his duty to see that the laws of the State and ordinances of the city are faithfully executed within the corporate limits; within the limitations prescribed in this charter, he shall see that each officer of the city discharges his duty, and cause any officer or employee to be prosecuted for neglect, or violation of duty, or immoral conduct. He shall keep the council advised from time to time of the general condition of the city, and shall recommend measures as he may deem necessary or expedient for the welfare thereof. He shall call the council together when so requested by a majority of the council or when it seems to him to be important to the welfare of the city.

In all instances where the official signature of the mayor is required, a facsimile signature of the mayor shall meet such requirement, if authorized by the mayor.

Section 2.7. Mayor pro tem; presiding officer. The mayor pro tem shall be appointed from the councilmen by the mayor at the first regular meeting of the council, who shall be clothed with all the rights, powers and duties of the mayor during the absence or disability of the latter officer. If there shall be a vacancy in the office of the mayor pro tem, the mayor may fill the same at any regular meeting of council, or in vacation. In the event of the death or resignation of the mayor, or his removal from office, the mayor pro tem shall discharge the duties of mayor until the vacancy is filled by the selection of a successor, as hereinafter provided.

Section 2.8. Organization meeting; official oath. The council shall meet for organization on the first Monday in January following their election. The meeting shall be called to order by the newly elected mayor and the oath of office shall be administered to the newly elected members as follows: "I do solemnly swear that I will well and truly perform the duties of the city and that I will support and defend the charter thereof as well as the Constitution and laws of the State of Georgia and of the United States of America."

Section 2.9. Meetings, regular and special. (a) The council shall hold regular meetings at such times and places as prescribed by ordinance, provided, until so changed, regular meetings shall be on the second Wednesday of each month. The council may recess any regular meeting and continue such meetings on any day or hour it may fix, and may transact any business at such continued meeting as may be transacted at any regular meeting.

(b) Special meetings of the council may be held on call of the mayor or four (4) members of the council as prescribed by ordinance. Only the business stated in the call may be transacted at the special meeting, except by unanimous consent of all members present. With such consent any business which may be transacted in a regular meeting may be conducted at the special meeting.

Section 2.10. Rules of procedure; minutes. The council shall adopt its rules of procedure by ordinance and order of business consistent with the provisions of this charter and shall provide for keeping official minutes of its proceedings, which shall be a public record.

Section 2.11. Quorum; voting. The mayor and four (4) councilmen, or in the absence of the mayor, the mayor pro tem and four (4) other councilmen, or in the absence of the mayor and mayor pro tem, the designated presiding officer and four (4) other councilmen, shall constitute a quorum and shall be authorized to transact business of the council. Voting on the adoption of ordinances shall be taken by show of hands and shall be recorded in the official minutes, but any member of the council shall have the right to request a roll-call vote. The affirmative vote of a majority of a quorum shall be required for the adoption of any ordinance, resolution or motion, except as otherwise provided in this charter.

Section 2.12. Salaries; reimbursement of expenses. The salaries of the mayor and each councilman shall be as prescribed by ordinance, subject to any limitations on the taking effect of same as prescribed by law.

The council may also provided [sic] by ordinance for the reimbursement of expenses incurred in the performance of their official duties as mayor and councilmen.

Until changed by ordinance, the mayor shall be paid a salary of \$4,800.00 per year, payable in equal monthly installments of \$400.00 for attending council and committee meetings, plus \$110.00 monthly, for expenses incurred for and in behalf of the city for travel within the city; until changed by ordinance, all other members of the council shall receive a salary of \$2,400.00 per year, payable in equal monthly installments of \$200.00 for attending council and committee meetings, plus \$100.00 monthly for expenses incurred for and in behalf of the city for travel within the city. All members of the council shall be entitled to reimbursement for reasonable travel expenses and reasonable official business expenditures incurred outside the limits of the city for and in behalf of the city; provided, however, that reimbursement for such expenses shall not be made until an itemized voucher for such expenses has been submitted to and approved by the city finance officer.

Section 2.13. Malfeasance in office, penalty. In case the mayor or any member of the city council, while in office, shall be guilty of any willful neglect or malfeasance in, or abuse of said office, upon conviction thereof by a court of record, he shall be removed from office.

Section 2.14. Vacancy in office on moving from city or ward; filling of vacancies. If the mayor shall remove his permanent residence from the city or if any councilman shall remove his permanent residence from the ward from which he was elected, such removal shall automatically vacate the office he holds and said vacancy shall be filled as provided for in this charter; provided, however, that if the boundaries of any ward or wards are redrawn, the councilman from such ward may serve out the remainder of his term, regardless of his place of residence so long as he resides within the city. Permanent residence shall mean the place where such person actually lives, if he has an intent to remain there indefinitely.

In the event that an office on the city council shall become vacant for any cause whatsoever, the council or those remaining thereon shall order a special election to fill the balance of the unexpired term of such office within thirty (30) calendar days after such vacancy occurs. Only those registered voters residing in the ward or wards from which such council member was elected shall be entitled to vote in such special election. Provided, however, if such vacancy occurs within six (6) months of the expiration of the term of that office, the council or those remaining thereon shall appoint a successor for the remainder of the term. In all other respects the special election shall be held and conducted in accordance with the Georgia Municipal

Election Code, Title 34A of the Code of Georgia of 1933 (Ga. L. 1968, p. 885), as now or hereafter amended.

Section 2.15. Appointment of officers. The council, at its first meeting after election or as soon thereafter as is practicable, shall proceed to appoint a city clerk and a city attorney.

Section 2.16. Powers of council enumerated; not deemed exclusive. The corporate powers of the city, to be exercised by the city council, shall include, but shall not be limited to, the following:

- (1) General. To exercise all powers and authority provided in section 1.1 of this charter, and elsewhere in this charter.
- (2) Enactment of ordinances, etc. To make, ordain and establish such bylaws, ordinances, rules and regulations as shall appear necessary for the security, welfare, convenience and interest of the city and the inhabitants thereof, and for preserving the health, peace, order and good government of the city.
- (3) Corporate limits. To fix, alter, and enlarge the corporate limits of the city, as provided by State law.
- (4) Elections. To provide the manner and time for city elections, as provided by State law.

Page: 3554

- (5) Redefinition of ward boundaries. Should the governing authority, by resolution duly adopted, determine that it is necessary or desirable to redefine any one or all of the wards, it is hereby authorized and empowered to do so subject to applicable provisions of State and federal law.
- (6) Codification of ordinances. To edit, revise and codify the general and permanent ordinances of the city and cause such ordinances to be published as the Code of Ordinances, and to provide for amending and supplementing the same.
- (7) Emergency situations. To establish procedures for determining and proclaiming that an emergency situation exists within or without the city, and to make and carry out all reasonable provisions deemed necessary to deal with or meet such an emergency for the protection, safety, health or well-being of the citizens of the city.
- (8) Contracts and agreements for service. To enter into contracts and agreements with other governmental entities and with private persons, firms,

and corporations providing for services to be furnished and payments to be made therefor.

- (9) Intergovernmental cooperation. To cooperate with any department or agency of the State or federal government, or any political subdivision of the State, in making of public improvements and doing the things which contribute to the health, morals, comfort, and general welfare of the citizens of the city, and for this purpose may expend such public funds as are necessary to effectuate said purposes.
- (10) Personnel system, insurance, retirement. To approve a personnel system, retirement systems and insurance plans for officers and employees of the city, and to provide the methods of financing such systems and plans.
- (11) Property acquisition, etc. To acquire, dispose of and hold in trust or otherwise any real, personal, or mixed property, in fee simple or lesser interest, within or outside the city.

Page: 3555

- (12) Appropriations generally, expenditures. To make appropriations for the support of the government and governmental functions of the city, and the proprietary functions thereof, to authorize the expenditure of money for any purpose for which a municipality is authorized by the laws of the State, and to provide for the payment of expenses of the city.
- (13) Appropriations and borrowing for payment of debts; issuance of bonds. To appropriate and borrow money for payment of the debts of the city, and to issue revenue and general obligation bonds for the purpose of raising revenue to carry out any project, program or venture authorized under this charter or the laws of the State.
- (14) Property tax levy and collections. To levy and to provide for the collection of taxes on all property subject to taxation; and to contract with any city, county or other governmental or political subdivision for any service in connection with the taxation process authorized by State law, including without limitation, the ministerial acts of billing and collection of city ad valorem taxes.
- (15) Exempting property from taxation. To exempt property from taxation.
- (16) Back taxes. To provide for the collection of delinquent taxes and penalties thereon.
- (17) Special assessments. To levy and provide for the collection of special assessments.

- (18) License fees and taxes. To levy and to provide for the collection of license fees and taxes on privileges, occupations, trades and professions and to provide for the manner and method of payment of such license fees and taxes.
- (19) Permits and fees. To provide for the issuance of permits and for the revocation thereof, and to prescribe fees for the issuance thereof.

Page: 3556

- (20) Purchases and sales. To prescribe regulations for purchases and sales by the city and to require competitive bidding on all major purchases, as defined by ordinance.
 - (21) Laying out etc., public ways. To lay out, open, extend, widen, narrow, establish or change the grade of, abandon, or close, construct, pave, curb, gutter, adorn with shade trees, otherwise improve, maintain, repair, clean, prevent erosion of, and light, streets, roads, alleys, sidewalks, walkways, and other public ways.
 - (22) Control of public ways. To regulate and control public streets, roads, alleys, sidewalks, walkways and other public ways; and to prevent the blocking of streets, roads, alleys, sidewalks, walkways, and other public ways, and railroad crossings.
 - (23) Public facilities and improvements. To provide for the acquisition, construction, building, operation and maintenance of public ways, parks and playgrounds, recreational facilities, cemeteries, markets and market houses, public buildings, libraries, sewers, drains, sewage treatment facilities, quarries, airports, hospitals, and charitable, cultural, educational, recreational, conservation, sport, communication, curative, corrective, detentional, penal and medical institutions, agencies and facilities and any other public improvements, within and 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, 1933, or other applicable Public Acts, as are or may be enacted.
 - (24) Schools. To provide for the appropriation of funds to the school system for the use of schools; provided, however, that the city shall not be liable for any obligation of the board of education or other such body of the school system unless expressly incurred.
 - (25) Traffic regulations. To regulate the operation of motor vehicles and other vehicles and exercise control over all traffic, including parking, upon or across the streets,
-

roads, alleys, sidewalks, walkways and other public ways of the city.

- (26) 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; and to require public liability insurance on such vehicles in amounts prescribed by ordinance.
- (27) Executions. To issue executions for the collection of any debt or claim due said city, arising by ordinance, or by contract, express or implied, by tort, or otherwise. Said executions may issue and be satisfied as provided in this charter relating to taxes or as otherwise authorized by law.
- (28) Filing claims against city. To provide for the filing of claims against the city and for the barring of such claims unless properly filed.
- (29) Condemnation. 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 of 1933, or under other applicable Public Acts, as are or may be enacted.
- (30) Ownership, etc., of utilities generally. Subject to any limitations contained in this charter, to acquire, lease, construct, operate, maintain, sell and dispose of public utilities, including but not limited to a system of waterworks and water supply, sewers and drains, sewage disposal, gas works and gas supply, electric plants and electricity supply, transportation facilities, communications facilities, public airports, and any other public utility, within and outside the city, and to fix the taxes, charges, rates, fares, fees, assessments, and regulations for same, and penalties and withdrawal of service for refusal or failure to pay for same or to abide by such regulations, and the manner in which such remedies shall be enforced.
- (31) Sewer charges. Except as otherwise provided in this charter, to levy a fee, charge a sewer tax as necessary

to assure the acquiring, constructing, equipping, operating, maintaining, and extending of a sewage disposal plant and sewer system and to levy on the users of sewers and the sewer system a sewer service charge, fee or sewer tax for the use of the sewers and to provide for the manner and method of collecting such service charges and for enforcing payment of same; and to charge, impose and collect sewer connection fees and to change the same from time to time; such fees to be levied on the users connecting with the sewer system.

- (32) Collection and disposal of garbage, refuse, recyclable materials. To provide for the collection and disposal of garbage, rubbish and refuse and to regulate the collection and disposal of garbage, rubbish and refuse and to regulate the collection of glass, tin, aluminum, cardboard, paper and other recyclable materials and to provide for the separate collection of glass, tin, aluminum, cardboard, paper and other recyclable materials and to provide for the sale of such items; to take all necessary and proper means for keeping the city free from garbage, trash and filth; to levy, fix, assess, and collect garbage, refuse and trash collection and disposal and other sanitary service charge, tax, or fee, for such services as may be necessary in the operation of the city from all individuals, firms, and corporations residing within or without the city or doing business therein benefiting from such services, to enforce the payment of such charges, taxes, or fees, and to provide for the manner and method of collecting such service charges.
- (33) CATV. Subject to any limitations contained in this charter, to acquire rights of way and easements for, purchase, construct, own, sell and dispose of, maintain, operate, extend and improve a cable television system, within and without the city, subject to the provisions of applicable State law, and to prescribe the charges, rates, fares, fees, regulations and standards and conditions of service to be provided, and to impose 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.

Page: 3559

- (34) Franchises. To grant franchises or make contracts for public utilities and public services, but not limited to those stated above, not to exceed periods of thirty (30) 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, insofar as not in conflict with laws of the State.
- (35) Health and sanitation. To prescribe standards for health and sanitation and to provide for the enforcement of such standards.
- (36) Pollution control. To regulate the emission of smoke or other exhaust which pollutes the air, and to prevent the pollution of natural streams, ponds and other bodies of water within the city, as now or hereafter provided by State law.
- (37) Zoning, planning and subdivisions. To make, adopt, promulgate and from time to time amend, extend and add to regulations restricting height, number of

stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings and other structures, and the uses, conditions of use or occupancy of land for trade, industry, residence, recreation, transportation, agriculture or other purposes; to provide for municipal land use planning; to provide for the regulation of subdivision land; and to establish setback lines for buildings and structures along the streets, lanes, avenues, and roads, including power and authority to divide the city into districts of such number, shape and area as may be deemed desirable, and within such districts to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings and structures, and the use, conditions of use or occupancy of land; and in that case to adopt official zoning regulations including a map or maps, indicating the districts, and the regulations in a district may differ from those in other districts; to create a municipal planning commission and to create a joint planning commission with the county or with other municipalities.

Page: 3560

- (38) Fire limits, fire prevention and protection. To fix and establish fire limits and from time to time extend, enlarge or restrict same, to prescribe fire safety regulations not inconsistent with general law, relating to both fire prevention and detection and to fire fighting, to prescribe penalties and punishment for violation thereof, and to create and maintain a fire department.
- (39) Building construction and repair. To establish minimum standards for and to regulate the erection and construction and repair of buildings and other structures, electrical wiring and equipment, gas installation and equipment, plumbing, and housing for the health, sanitation, cleanliness, welfare, and safety of inhabitants of the city and to provide for the enforcement of such standards; to adopt by reference building, housing, plumbing, electrical, gas mechanical, and heating and air-conditioning codes; and to regulate all housing, building, and building trades, and to license the construction and erection of buildings and all other structures.
- (40) Dangerous structures. To provide for the destruction and removal of any building or other structure which may or might become dangerous or hazardous to the public.
- (41) Adoption of published codes, etc. To adopt by reference any codes, publications or compilations of rules, regulations, specifications, standards, limitations, or requirements by any agency of the federal or State government

or by a municipality, by a trade association or other organization generally recognized as an authority in its field of activity.

- (42) Signs, etc. To prohibit or regulate and control the erection, removal and maintenance of signs, billboards, trees, shrubs, fences, buildings and any and all other structures or obstructions upon or adjacent to the rights of way of streets, roads, or other public ways, or within view thereof, within or abutting the corporate limits of the city and to prescribe penalties and punishment for violation of such ordinances.

Page: 3561

- (43) Police power. 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 the inhabitants of the city, within the city and on any property outside of the city and owned by the city; and to create and maintain a police department.
 - (44) Animals and fowl. To regulate, license, tax or prohibit, the keeping or running at large of animals and fowl and to provide for the impoundment thereof for violation of any ordinance or lawful order; also to provide for their disposition by sale, gift, or humane destruction when not redeemed as provided by ordinance; and to provide punishment for violations of ordinances enacted under this subsection.
 - (45) Nuisances. To define a nuisance in the city and to provide for its abatement, whether on public or private property.
 - (46) Alcoholic beverages. To regulate and control the manufacture, sale or transportation of alcoholic beverages, and license and tax the same.
 - (47) Loitering disorderly conduct, etc. To adopt ordinances and regulations for the prevention of loitering, disorderly conduct and disturbing the peace in the city and to prohibit the playing of lotteries therein, and to prohibit or regulate by ordinance such other conduct or activity within the city which, while not constituting an offense against the laws of this State, is deemed by the governing authority to be detrimental and offensive to the peace and good order of the city or to the welfare of citizens thereof.
 - (48) Peddlers, shows, etc. To regulate and control the conduct of peddlers and itinerant trades, theatrical performances, exhibitions, and shows, of any kind whatever by taxation or otherwise.
 - (49) Dangerous or detrimental activities or conditions.
-

To regulate or prohibit junk dealers, pawn shops, the use and sale of firearms, and to regulate the transportation, storage and use of combustible, explosive and inflammable materials, the use of lighting and heating equipment, and any other business or situation which may be dangerous or detrimental to persons or property.

- (50) Penalty for violation of ordinances, etc. To provide that upon the conviction of the violation of any ordinance, code, rule, regulation, or other, the offender may be punished within limitations prescribed by this charter and the laws of the State.
- (51) Arrest and bail. To provide for arrest and appearance bonds or bail of offenders against city ordinances or regulations; and to exercise the power of arrest through duly appointed policemen.
- (52) Working prisoners. To provide that persons given jail sentences in the municipal court shall work out such sentences in any public works, or for the commitment of such persons to any correctional institution, by agreement with the appropriate governmental officials.
- (53) Gifts. To accept or refuse gifts, donations, bequests, or grants from any source for any purpose related to the powers and duties of the city and the general welfare of its citizens, on such terms and conditions as the donor or grantor may impose.
- (54) Public housing. To provide for and operate public housing and to be or to designate an agency to be the public housing authority.
- (55) Urban redevelopment. To organize and operate an urban redevelopment program, as now or hereafter provided by State law.
- (56) Public transportation. To organize and operate such public transportation systems as are deemed beneficial, or as now or hereafter provided by State law.

- (57) Parks and recreation. To provide for the organization, construction, building, operation and maintenance of public parks, playgrounds and recreational facilities inside or outside the corporate limits of 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, 1933, or other applicable Public Acts, as are or may be enacted.
- (58) Parking facilities. To provide for the acquisition, construction, building, operation and maintenance of public parking facilities, 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, 1933, or other applicable Public Acts as are or may be enacted.

- (59) Additional powers generally. To have all powers possible for a city to have under the present or future Constitution and laws of this State as fully and completely as though they were specifically enumerated in this charter; 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 this charter is 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 municipal governments under the Constitution and other laws of the State. No enumeration of particular powers in this charter 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 municipalities under the Constitution or applicable Public Acts of the State.

Section 2.17. Liberal construction of powers. The powers of the city shall be construed liberally and in favor of the city. The specific mention or failure to mention particular powers in this charter shall not be construed as limiting in

Page: 3564

any way the general power of the city as stated in this charter. It is the intention hereof to grant the city full power and right to exercise all governmental authority necessary for effective operation and conduct of the city and all of its affairs.

Section 2.18. Hearings by council and committees. The city council and all committees of the council consisting of councilmen or councilmen and the mayor shall have the power to conduct hearings on any matters falling within the jurisdiction of said city council or any of the committees thereof, including the power to subpoena witnesses and the power of subpoena duces tecum upon reasonable notice of time and place of hearing as council may by rules and regulations prescribe.

Section 2.19. Ordinance form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. The enacting clause shall be "The Council of the City of Marietta hereby ordains...." and every ordinance shall so begin.

ARTICLE III. ELECTIONS

Section 3.1. Qualifications and registration of electors. Electors in city elections shall be qualified and registered as provided in Code Title 34A of the Code of Georgia of 1933, as now or hereafter amended.

Section 3.2. Conduct of elections generally. City elections shall be conducted as provided for by Code Title 34A of the Code of Georgia of 1933, as now or hereafter amended, and as provided for by ordinance or resolution of the council adopted pursuant to Code Title 34A of the Code of Georgia of 1933, as now or hereafter amended.

Challenges to electors shall be determined as provided in Code Title 34A of the Code of Georgia of 1933, as now or hereafter amended.

Section 3.3. Wards. The wards of the city shall be as now or hereafter defined or described by law or ordinance. A

Page: 3565

map, or maps, of the city shall be kept on file or posted in the city hall on which maps shall appear the boundary lines of the wards.

ARTICLE IV. OFFICERS-PERSONNEL

Division 1. Generally

Section 4.1. Continuation of existing organization. The administrative service of the city shall continue as presently organized, except as otherwise provided in this charter, and except as otherwise provided hereafter by ordinance.

Section 4.2. City manager -- office created, appointment, removal, compensation. (a) The office of city manager is hereby created.

(b) The city manager shall be appointed by the city council. He shall be chosen solely on the basis of his executive and administrative qualifications with special reference to his actual experience in or his knowledge of accepted practice in respect to the

duties of his office hereinafter set forth. At the time of his appointment he need not be a resident of the city or the State, but during his tenure of office he shall reside within the city.

(c) The city council may remove the city manager at any regular or special meeting of the council by a majority vote adopting a resolution to that effect, subject to the terms of his employment.

(d) The city manager shall be paid such compensation as is set by the council.

Section 4.3. Dealing with administrative service by mayor and councilmen. Except for the purpose of inquiry, the mayor and councilmen shall deal with the administrative service solely through the city manager and neither the mayor nor any councilman shall give orders to any subordinates of the city manager, either publicly or privately. No member of the council shall direct the appointment of

Page: 3566

any person to or his removal from office by the city manager or any of his subordinates.

Section 4.4. Same -- powers and duties. The city manager shall be the chief administrative officer of the city. He may head one or more departments and shall be responsible to the city council for the proper administration of all affairs of the city. To that end, he shall have power and shall be required to:

- (1) Appoint and, when necessary for the good of the service, suspend or remove any officer or employee of the city except as otherwise provided by the charter or law, and except as he may authorize the head of a department or office to appoint, suspend, or remove subordinates in such department or office. He shall not have the right to appoint, suspend or remove the officers provided in this charter to be appointed by the governing authority.
- (2) Prepare the budget annually and submit it to the city council together with a message describing the important features and be responsible for its administration after adoption and this shall be done prior to the end of the fiscal year.
- (3) Prepare and submit to the council as of the end of the fiscal year, a complete report on the finances and administrative activities of the city for the preceding year.
- (4) Keep the council advised of the financial condition and future needs of the city and make such recommendations as he may deem desirable.

- (5) Recommend to the council a standard schedule of pay for each appointive office and position in the city service, including minimum, intermediate, and maximum rates.
- (6) Recommend to the council adoption of such measures as he may deem necessary or expedient for the health, safety, or welfare of the community or for the improvement of administrative services.

Page: 3567

- (7) Attend all meetings of the council unless excused therefrom and take part in the discussion of matters coming before it. He shall be entitled to notice of all regular and special meetings of the council.
- (8) In case of accident, disaster, or other circumstances creating a public emergency, the city manager may award contracts and make purchases for the purpose of meeting said emergency; but he shall file promptly with the council a certificate showing such emergency and the necessity for such action, together with an itemized account of all expenditures.
- (9) Devote his entire time to the discharge of his official duties.
- (10) Serve as manager of the Board of Lights and Water Works.
- (11) Maintain a map or maps of the city showing all of the real property owned by the city.
- (12) Perform such other duties as may be required by the council, not inconsistent with this charter, law, or ordinances.

Section 4.5. Same -- official bond. The city manager shall furnish a surety bond to be approved by the council, said bond to be conditioned on the faithful performance of his duties. The premium of the bond shall be paid by the city. The amount of the bond shall be set by the council.

Section 4.6. Acting city manager. By letter filed with the city clerk the city manager shall designate, subject to the approval of council, a qualified city administrative officer to exercise the powers and perform the duties of city manager during his temporary absence or disability.

Section 4.7. City clerk -- appointment; general duties. The city council shall appoint a city clerk who shall serve at the pleasure of the council. The city clerk shall be responsible

Page: 3568

for keeping and preserving the city seal and all records of the council; attending meetings of the council and keeping official minutes of the 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 text of each resolution or ordinance considered; preparing and certifying copies of official records in the office, for which fees may be prescribed by ordinance; and perform such other duties as may be required by the council.

Section 4.8. City treasurer. The clerk of the city shall also serve as the city treasurer, unless changed by ordinance.

Section 4.9. Tax assessor and collector. If allowed by law, the council may create and provide for the office of city tax assessor, who shall be appointed by the council.

Section 4.10. City attorney. The city council shall appoint a city attorney, who shall serve at the pleasure of the council. The city attorney may be responsible for representing and defending the city in all litigation in which the city is a party; shall attend the meeting of the council as directed; shall advise the council, city manager, and other officers of the city, concerning legal aspects of the city's affairs, and shall perform such other duties as provided by the council.

Section 4.11. Judge of municipal court. There is created the office of judge of the municipal court who shall be the mayor or his designee, unless the council appoints another person to act as the judge of said court. He shall preside over the municipal court for the trial of offenders against the ordinances of the city. He shall have the full power and authority as provided in this charter and the laws of the State. The compensation of the judge shall be as fixed by the council.

Section 4.12. Personnel policies. The council shall adopt rules and regulations consistent with this charter concerning: (1) the method of employee selection and probationary periods of employment; (2) the administration of the position classification and pay plan, methods of promotion and

application of service ratings thereto, and transfer of employees within the classification plan; (3) hours of work, vacation, sick leave, and other leaves of absence, overtime pay, and the order and manner in which layoff shall be affected; and (4) such other personnel policies as may be necessary to provide for adequate and systematic handling of the personnel affairs of the city.

Division 2. Firemen and Policemen Civil Service

Section 4.13. Established. All officers and members of the fire and police departments of the city, including the chiefs of said departments, must and shall be under and governed by the civil service regulations, under the direction and supervision of a board of civil service hereinafter created, and all persons who may hereafter be elected or appointed as officers or members of such departments shall thereafter remain and continue in their respective employment as such municipal officers and employees during good behavior, efficiency and obedience to such reasonable rules and regulations as may from time to time be prescribed by said civil service board, as hereinafter provided; provided, however, nothing herein contained shall be construed to prevent or preclude the removal of any officer or member of said fire department or police department by said civil service board for cause, in the manner hereinafter prescribed.

Section 4.14. Definitions. The following definitions, as used herein, shall apply:

- Members of the fire department. The chief of the fire department, assistant chief of the fire department, captains, lieutenants, engineers, assistant engineers and firemen, fire inspectors, and all others who are regularly carried on the payroll of such fire department, and in addition to those specifically named hereinbefore such others as such civil service board may find and designate to properly be such members, respectively, of said fire department.
- Members of the police department. The chief of police and all officers of said department, the patrolmen, plain

Page: 3570

clothesmen, and such other persons as such civil service board may find and designate to properly be such members, respectively, of said police department.

Section 4.15. Membership, terms, etc. The council shall appoint a resident of the city as a member of the civil service board for a term of two (2) years; the members of the fire and police departments, by secret ballot, shall elect a resident of the city as a member of said civil service board for a term of three (3) years, which election shall be certified by the chiefs of the fire and police departments to the council and entered upon the minutes of said council. The two men so selected shall select a third resident of the city for a term of one (1) year, whose selection shall be in writing and signed by

them and entered upon the minutes of the council. Provided, if the two (2) persons first selected as above provided, that is the person selected by the council and the person selected by the members of the fire and police departments, shall fail within thirty (30) days after their election to agree on and designate such third member of the civil service board, both of said members shall resign and successors shall immediately be selected in the manner in which such two (2) members were selected. At the expiration of the term of each member, the election shall be thereafter by the same method and all persons shall be elected for a full period of three (3) years; the board shall consist of three (3) members at all times.

In the event of a vacancy upon said board caused by death, resignation or other cause, the vacancy shall be filled by election by either the council, the members of the fire and police departments or the two (2) members of said board, who shall elect such successor for the unexpired term, such vacancy to be filled in the same manner and by the same authority as the deceased or retired member was elected. If any member of the civil service board shall miss and fail to attend any two (2) consecutive meetings of the board duly and properly called as herein provided, the council, at any regular or special meeting, may by resolution terminate the term of such member and declare that a vacancy exists on said board, which shall be filled as above provided.

Page: 3571

No person shall be eligible to be a member of said board who holds any office of profit or trust under the city, county, or State, or who is less than twenty-five (25) years of age and who is not a bona fide resident and qualified voter of said city.

Section 4.16. Oath. Every person who shall be elected as a member of such civil service board shall, within fifteen (15) days after such election, qualify by taking oath that he is eligible for said office and will execute the duties of the same according to the best of his knowledge and ability, and such oath as may be required by the charter of the city and the laws of the State for public officials. Such oath shall be administered by any person authorized by law to administer oaths and a copy thereof filed with the clerk.

Section 4.17. Rules and regulations. The civil service board shall make rules and regulations to carry out the purpose of this division and for examinations, appointments and removals in accordance with its provisions, and the board may, from time to time, make changes in such rules. The chiefs of the fire and police departments, respectively, shall, from the membership of their departments, recommend for promotion such persons as the occasion may call for to fill any vacancies that may occur in said departments, and all such vacancies shall be filled

and promotions shall be made by the civil service board. Any person promoted shall serve a probationary period of twelve (12) months during which time he may be demoted to his former position without a trial by the chiefs of the fire and police departments, respectively.

Said board shall make rules and regulations relating to the eligibility for promotion. The chiefs of the fire and police departments shall have authority to demote any member of their respective departments by and with the consent and approval of the civil service board. Any person promoted shall serve a probationary period of twelve (12) months during which time he may be demoted to his former position without a trial by the chiefs of the fire and police departments, respectively.

Page: 3572

Said board shall make rules and regulations relating to the eligibility for promotion. The chiefs of the fire and police departments shall have authority to demote any member of their respective departments by and with the consent and approval of the civil service board; provided, however, upon written demand filed with the civil service board within five (5) days from the date of the order of demotion the person proposed to be demoted shall be given a public hearing by the civil service board before any order of demotion shall be final. The chiefs of the fire and police departments shall have the authority to suspend without pay any member of their respective departments upon cause for periods not to exceed fifteen (15) days without a hearing by the civil service board. Suspensions for periods in excess of fifteen (15) days shall be given pending hearing by the civil service board. In the event there is a reduction in the number of firemen or policemen employed by the city (such number to be fixed by the council), the men last employed shall be the first to be dropped, and so on in succession.

The civil service board shall, within ninety (90) days from the members' appointment, adopt and have printed such rules and regulations for the government of the fire and police departments, in accordance with the provisions of this division as it may deem necessary. Said board shall have the power and authority to fix the maximum and minimum age limits of applicants for examinations, and may specify the weights, heights, and other physical requirements of all applicants. All such rules, regulations, and qualifications shall be subject to approval by the council and shall only be effective on and after the date of such approval.

Section 4.18. Character of applicants, etc. No person shall be eligible to take the civil service examination or to be appointed as a member of the fire department or

police department who is not a citizen of the United States or who has ever been convicted of a felony, or who does not possess a good moral character.

Page: 3573

Section 4.19. Applications; examinations. All applicants for a place or position on the fire and police departments shall file their applications in writing with the civil service board, said applications to be on the blank forms furnished by the board. All applicants must be subject to examinations, which shall be public, competitive, and open to all citizens of the United States, within limits as to age, health, habits and moral character, to be fixed by the civil service board. Said examinations shall be both oral and written and shall be practical in their character and shall relate to those matters which will fairly test the capacity of the persons examined to intelligently discharge the duties of the position to which they aspire.

Section 4.20. Conduct of examination; notice. The board shall control all examinations, and whenever an examination is to take place, shall conduct such examination. Provided, that before any such examination is held public notice of same shall be given at least fifteen (15) days prior to same. Such public notice shall be posted in at least three (3) prominent places in the city, which shall be the city hall, post office and the county courthouse, and shall be run once a week for two (2) weeks in a newspaper of general circulation in the city and county. Upon request of the board, the city manager may designate other persons to carry out the board's clerical and administrative functions.

Section 4.21. Appointments; probationary period. The chiefs of the fire and police departments shall notify the civil service board of any vacancy in the membership of their respective departments and the board shall furnish the particular chief with the name and address of the three (3) candidates standing highest on the eligible list for such positions, and the chief shall select one of the three so certified to him to fill such vacancy. All appointments shall be on probation for a period of twelve (12) months from the date of the appointment, and at any time before the expiration date of said probationary period the chief may discharge any probationer in such department and such probationer shall not be entitled to a hearing upon such discharge. It a probationer be not discharged before the

Page: 3574

expiration of his probation, his appointment shall be deemed complete.

Section 4.22. Reemployment; eligibility; procedure; seniority. Applications for reemployment shall be restricted to fire and police personnel who have four (4) or more years accumulated service, without an entrance examination, and these applications shall be filed in writing with the civil service board. The prerequisites for consideration for re-employment are:

- (1) (a) The applicant shall not have been away from the respective department in excess of twelve (12) months.

(b) The applicant shall have left the service in good standing.

(c) The respective chief must recommend that the applicant be reemployed.

(d) The applicant shall pass a physical examination.

(e) No one convicted of a felony can be reinstated.
- (2) Upon application for reemployment, and having met the prerequisites listed above, the person shall be placed on the current eligibility list with a numerical value score equal to the third highest man on the eligibility list.
- (3) Seniority begins as of the date of reemployment.
- (4) Seniority for pension purposes may be regained in accordance with the Pension Fund Law.
- (5) Persons reemployed shall serve a probationary period of twelve (12) months and may be removed from the department during such probationary period in accordance with the civil service provisions relating to probationers.

Section 4.23. Selection of chief of department. In the event any vacancy occurs in the office of the chief of the fire

department or the office of the police department, the city manager shall appoint a temporary chief of such department who shall hold such office with all the powers appertaining thereto until the council appoints a chief of such department as hereinafter provided. The city manager shall then recommend to the council the name of a person deemed to be qualified to fill such position. The council shall appoint such person recommended by the city manager or some other person deemed qualified to hold such position at the first or second regular meeting of the council after the vacancy occurs. Such person selected by the council to fill said position shall be responsible to the city manager and council for a period of one (1) year, during which

period of time the council may remove or suspend such person then selected for any reason the council deems necessary and without notice and hearing. After the expiration of one (1) year from date a person has been so employed to serve as chief of the fire department or chief of the police department, such person shall be subject to all the rules and regulations of the civil service system of the city and shall be fully protected and governed thereby in every respect, including rules and regulations pertaining to suspension or removal from office. All civil service rights and privileges provided for in the charter or ordinances of the city and rules and regulations of the civil service board shall hereafter be construed to apply to the chief of the fire department and the chief of the police department one (1) year after such persons have been employed as herein provided.

Section 4.24. Hearings. No member of the fire department or police department shall be removed or discharged nor shall the chief of the fire department or the chief of the police department be removed, discharged, demoted, or involuntarily retired except for cause upon written charges or complaint and after an opportunity for an open public hearing in his own defense before the civil service board. Said hearing shall be held within thirty (30) calendar days after such removal, discharge, or involuntary retirement or shall be deemed waived. Such charges shall be served upon such person at least five (5) days before the date fixed for such hearing. Such charges shall be investigated by and

before the civil service board after service upon the person charged with a copy of the charges, as hereinbefore provided. The decision of the board thereon shall be given in writing to the accused and a copy thereof filed with the city clerk. In all proceedings before the civil service board the city attorney shall appear and represent the interest of the city when ordered to do so by the civil service board. The person against whom charges are preferred shall have the right to employ counsel to represent him at the hearing before said board. Said board shall have power to subpoena witnesses, both in behalf of the city and of the accused, and to require the production of any books, papers or records material to the issues in said case, by subpoena to be issued in the same manner as subpoenas are issued by the municipal court, signed by the chairman of said board, and said board shall have power to punish for contempt by a fine not exceeding ten dollars (\$10.00) or imprisonment not exceeding five (5) days any person willfully failing or refusing to obey such subpoena.

Section 4.25. Witness's oath. In the course of any investigation by said civil service board, any member thereof shall have the power to administer oaths to any witness.

Section 4.26. Records of departments, availability. The civil service board shall at all times have access to all files, records and data of the fire and police departments of the city, and on request to either the chief of the fire department, the chief of the police department or the city clerk, must be furnished with any such record information as may be approved by the council; and upon the request of the board, the chief of the fire department or the chief of the police department shall furnish to them the name of any officer or fireman or member of either department whom they may suggest for the purpose of making any investigation concerning the operation of said department or the conduct of any member of said department.

Section 4.27. Chairman, meetings, etc. Said civil service board shall elect one of its members as chairman, who shall hold office as such chairman at the pleasure of the board.

Page: 3577

Said civil service board shall hold regular meetings on the third Mondays in January, April, July and October, for the transaction of any business that may come before it and may hold special, adjourned, or called meetings at any time that the same may be called by the chairman of said board or by any two (2) members thereof. In the case of all special or called meetings of the board, called in the manner hereinbefore provided, the clerk of the said board, which clerk shall be the city clerk or his designee, shall give all members of the board five (5) days' written notice of such called or special meeting; and such a meeting cannot be legally held unless each member received such five days' written notice or waives same in writing. Provided, however, if a member absents himself from the city for more than thirty (30) continuous days, a meeting may be duly and regularly held upon giving the requisite notice to the other two (2) members of the board. At any regular, special, or called meeting any two (2) members of the board shall constitute a quorum for the transaction of business and the votes of any two (2) members of the board shall be sufficient to transact its business. All meetings of the board shall be held in the city hall, or in such place as the city council holds its meetings.

Section 4.28. Minutes. Said civil service board shall keep minutes of its meetings and records of all business transacted by it at each meeting. All such minutes and records shall be open to inspection at all times by the public and shall be on file in the office of the city clerk. The city clerk or his designee shall attend all meetings of said civil service board and shall keep the minutes and records of same.

Section 4.29. Compensation. The compensation of the members of said civil service board and the clerk of such board shall be twenty-five dollars (\$25.00) for each

member for each meeting attended. The council shall provide for the payment of the salaries of the members of said civil service board and the clerk of such board and the payment of all expenses of said board. If such expenses other than salaries are approved by the council, said expenses shall be provided

in the annual budget for the estimation and appropriation of a sufficient amount to cover same.

Section 4.30. Political activity by members of fire or police departments

prohibited. (a) No officer or employee or member of said fire department or police department shall solicit orally or by letter or otherwise or receive or be in any manner concerned in soliciting any votes or receiving any assessment or subscription or contribution for any candidate for any municipal office of the city.

(b) No member of said fire department or police department shall in any way undertake or threaten to degrade, discharge or demote, or in any manner change the official rank of pay of any officer or employee of said departments, or promise or threaten to do so, for giving or withholding or neglecting to make any contribution of money or any valuable thing for any person, party or for any political purpose whatsoever, or for the support of any candidate. No member of said fire department or police department shall receive any promotion as a reward for his support of any candidate or political party, and no member of said fire department or police department shall be reduced in rank or pay or discharged for his failure to support any candidate for political office.

Section 4.31. Effect of recommendation for employment. No recommendation made by any officer or official, whether said officer or official be a city, county, State or national officer or official, of any person being examined for membership in said departments shall be considered by the civil service board except as the same may apply to the general moral character of the applicant.

Section 4.32. Effect on present employees. Every member of the fire and police departments of the city coming within the provisions of this division who shall have been such member for a period of four (4) years in any capacity, though not consecutively, prior to the day upon which Ga. L. 1952, Act No. 586, p. 2246, and amended by Ga. L. 1959, Act No. 89, p. 2111, went into effect shall retain his position

without examination, and be subject to all the conditions and benefits of this civil service law. This provision shall apply to the chiefs of said departments, the assistant chiefs and all officers in their then present positions.

Section 4.33. Penalty for violations by member of department. (a) Any member of the fire department or police department, by appointment under the civil service rules, who shall willfully, or through culpable negligence violate any provisions of this division, or any criminal statute of this State, or such ordinance of this city, or the rules of the said civil service board or of said respective departments shall be dismissed from the services of the city, as hereinbefore provided.

(b) Any officer or employee of the city other than those holding office under the civil service rules who shall willfully, or through culpable negligence violate any of the provisions of this division shall be guilty of a misdemeanor, and on conviction thereof in the municipal court be fined a sum of not more than one hundred dollars (\$100.00) or sentenced to serve not more than fifty (50) days in jail.

Section 4.34. Penalty for violation by civil service board member. Any member of the civil service board who shall violate any of the provisions of this division shall be subject to removal by a majority vote of the council after a full hearing before same and after having been served with written notice of the charges against him five (5) days before the date set for such hearing. The finding of the council upon such a hearing shall be final and conclusive and such person so removed shall not thereafter be eligible for reelection upon said board for a period of five (5) years. If so removed, his successor shall be elected in the same manner as he was elected.

Section 4.35. Right of certiorari. In case of suspension or discharge of any member of the civil service system by the civil service board, said member shall have the right of certiorari to the superior court as provided by the laws of the State.

ARTICLE V. BOARD OF LIGHTS AND WATER

Section 5.1. Created, membership, terms, etc. The board of lights and waterworks, hereinafter referred to as "board", hereby declared and created a body corporate, with all the powers incident to and necessary to its duties and which has the right to sue

and be sued and power to make all contracts and obligations necessary to the duties that devolve upon it, and which shall consist of the mayor of the city and the chairman of the committee of water and lights from the council of the City of Marietta who shall be appointed by the mayor, and of three residents of Marietta. The clerk of the city council shall be ex officio clerk of the board of lights and waterworks, but shall not be a member of the board, and shall have such duties as said board may impose upon him, and he shall be allowed such compensation as said board of lights and waterworks may fix previous to entering upon his duties. The resident members of the board shall be elected by a majority vote of the council and shall serve for a term of four years, and at the end of said time, or sooner if there should be a vacancy in any one of said places, their successors shall be elected by the council for the term of four years from the time of said election. The members of the board shall be paid such compensation as is set by the council.

Section 5.2. Powers and duties generally; contracts. Said board shall have charge of the creation, building, operation and supply of water, electricity, cable television operations, sewer system, and other utilities as provided by law, and to have all the powers now vested in the city council for this purpose. It shall make all contracts therefor for the city, shall have power to regulate the rates in the city, and shall supply the people of the city with such services at a fair and equitable rate. It shall have power to make any contracts with any other company supplying such services to the city, and to do any and all things necessary to the carrying out of the objects of this Article. Said board shall take the proceeds of any bonds sold for the purpose of erecting systems and build and erect such systems to the best advantage of the city, and to this end, if it thinks best and proper, can

purchase and acquire any property now owned and operated by any other company.

Section 5.3. Extension of mains and lines beyond city limits. The board shall have the power and authority to extend its mains and lines beyond the limits of the city into the county at such places and to such distances as said board may determine by proper resolution, and to serve customers on said mains and lines so extended at such rates as may be fixed by the board.

Section 5.4. Erection of facilities outside city. The board shall have the right, power, and authority to build and erect plants and other facilities beyond the corporate limits of the city for the operation of its systems.

Section 5.5. Selling, etc., property generally. The board is hereby expressly authorized to sell real or personal property at public or private sale under such terms and conditions and for whatever consideration the board deems necessary. The board of lights and waterworks is further authorized to trade, exchange, lease, rent and otherwise contract concerning any real or personal property that it may now or hereafter own or have an interest in, and the board is expressly authorized to purchase real or personal property at public or private sale.

Section 5.6. Acquiring property outside city. Said board shall have the right, power and authority to acquire by purchase, gift, or contract, suitable and sufficient lands and properties outside of the city for the purpose of extending the systems beyond the corporate limits of the city and for the erection and building of plants and facilities.

Section 5.7. Cable television service. The board is hereby authorized to create, build, operate and maintain or lease cable television towers, equipment and stations for the purpose of receiving and transmitting television signals. The board is hereby authorized to make all contracts necessary and incidental to the operation of the above services, including the right to buy and sell or lease all equipment

Page: 3582

necessary and incidental to the operation of the above services, including cables, wire and any other technical and electronic devices necessary to maintain said service. The board is hereby authorized to use any of the poles, lines, equipment and personnel of the board necessary to the creation and maintenance of said service, and to contract with any persons, concerns, companies and utilities with reference to any matters necessary and incidental to the creation and operation and maintenance of such service.

The board is hereby authorized to receive and transmit television signals, and to furnish such service to any of its customers, provided, however, the same shall be on voluntary basis and no one shall be required to subscribe to the cable television service. The board shall determine the fees to be paid by those electing to subscribe to such service.

Section 5.8. Equipment. Said board shall have the right, power, and authority to purchase all equipment and machinery necessary to carry out the provisions of this Article.

Section 5.9. Purchase of water and current. Said board shall have the right, power, and authority to contract for and purchase water and electric current for the purpose of resale to and supplying its customers.

Section 5.10. Power to borrow. Said board in exercising the right, power, and authority delegated to it under the provisions of this Article relative to extending its lines, etc., the erection and building of plants and facilities, the acquiring of lands and properties therefore, and the purchase of such machinery and equipment incident to and necessary, shall have the right, power, and authority, if it should be necessary to carry out the powers delegated to said board, to borrow temporarily (and as a temporary loan) such sums of money and execute notes therefor as may be necessary to carry out the rights and powers delegated to it, provided such sums so borrowed shall not exceed the limit fixed by the Constitution and laws of this State.

Section 5.11. Combination of water, sewer and electric systems; revenue bonds. As authorized by constitutional

amendment the city and the board are authorized and empowered and granted the right, power and authority to combine the water and sewerage system and electric system now being maintained and operated by said board for the benefit of said city and to maintain, repair, and operate such combined public utility as one revenue producing undertaking and to issue from time to time interest bearing revenue anticipation obligations to be known and designated "Public Utilities Revenue Bonds" for the purpose of acquiring, constructing, adding to, extending, improving and equipping any facility of such combined public utility and to pledge for the payment of the principal of and interest on such public utilities revenue bonds all or any part of the revenues of such combined public utility and to create a lien thereon for that purpose, subject to any liens heretofore created thereon by law or contract. No election to authorize the issuance of said bonds shall be required and the pledge of revenues from the combined public utility shall not be a debt of the city within the meaning of Article IX, Section VII, Paragraph I of the Constitution. Such bonds may be issued from time to time bearing such rate or rates of interests as authorized by law and maturing within thirty (30) years from their date in the years and amounts as determined by a majority vote of the governing body of the city and by a majority vote of the members of the board, and when so authorized the procedure of the issuance and delivery including validation shall be in all respects in accordance with the Revenue Bond Law as now enacted and any amendments thereto which law was originally known as the "Revenue Certificate Law of 1937." The rights, powers and authority herein conferred upon the city and board are self-executing and no enabling

act of the General Assembly shall be necessary and are hereby made cumulative of and in addition to such other rights, powers and authority as they may have under the Constitution and laws of this State.

Section 5.12. Eminent domain. The board shall have the right of eminent domain, with the power to condemn private property by paying just compensation therefor, and for other purposes, both within and without the city.

Page: 3584

Section 5.13. Service rates; pledging proceeds. Said board shall have the right, power and authority to fix such rates and charges for water, electricity and other service to its customers as it may deem proper and just.

The board is hereby given the right, power and authority to pledge the proceeds thereof in accordance with the "Revenue Certificate Law of 1937," approved March 31, 1937 (Ga. L. 1937, p. 761), as amended.

Section 5.14. Funds to be furnished board of education. The board shall pay to the treasurer of the board of education of the city such sum as may be requested by the board of education of the said city for the benefit of the public schools of the said city not exceeding ten percent (10%) of the gross income received and collected for water, lights, and power furnished the public, if requested so to do by a resolution by the board of education of the city in which it is certified or stated that the said sum or amount is necessary for the maintenance of the public schools of the city, or in order to pay its existing indebtedness. When such request by resolution is made by the said board of education of the city the payments therein provided for shall be made monthly and shall continue in force for a period of one year and shall then cease unless the said board of education shall renew its request by similar resolution from time to time each year.

The board, subject to the terms and approval of the council and the board, shall pay to the treasurer of the board of education of the city an additional sum, as may be requested by the board of education of the said city for the benefit of the public schools of the said city, not to exceed five percent (5%) of the gross income received and collected for water, lights, and power furnished the public, if requested so to do by a resolution by the board of education of the city in which it is certified that the sum so specified is necessary for the maintenance of the public schools of the city. If the independent school system of the city shall ever merge with any other school

system or shall ever cease to exist, this section of the charter shall become null and void.

Section 5.15. Surplus funds, use authorized. The board is authorized to make appropriations from any surplus funds to the city.

ARTICLE VI. MUNICIPAL COURT.

Section 6.1. Established; presiding officer; place of holding. There is established a court known as the municipal court of said city for the trial of all offenders against the laws and ordinances of said city, to be held by a judge or an acting judge, as in this charter provided, in the council room or such other place as the council may designate.

Section 6.2. Judge. The judge of the municipal court shall be the mayor or his designee, unless another person is appointed to such position by a majority vote of the council, as provided in section 69-704.1 of the Code of Georgia. By majority vote the council may appoint a judge pro tem, who shall serve as judge of the municipal court in the absence of or upon the disqualification of the judge, and who shall have all the power, authority and jurisdiction while so presiding as judge as is given by this charter to the judge of the municipal court.

Section 6.3. Jurisdiction; powers and duties of judge. Said court shall have power and it shall be the duty of the judge:

- (1) To preserve order, compel the attendance of witnesses, resident within or without the limits of the city, to continue cases, assess bail for the appearance of the accused party, to punish for contempt by imprisonment in jail not exceeding ten (10) days or a fine of not exceeding one hundred dollars (\$100.00), one or both.
- (2) Upon conviction, to sentence any offender to labor upon the streets or other public works in said city for a period of not exceeding thirty (30) days; to impose a fine not exceeding the maximum allowed by State law or to sentence said offender to be confined in the jail or other place of imprisonment in the county not exceeding thirty (30) days, either one or more of said penalties.

- (3) To administer all oaths and perform all other acts necessary in the conduct of said court.
- (4) In cases where it is made to appear that a State law has been violated, to bind the offender over to the proper court for trial and to assess bail for his appearance at said court.
- (5) Additional jurisdiction, powers and authority as conferred by ordinance and the laws of the State.

Section 6.4. Rules of court. The judge shall have full power and authority to make reasonable rules and regulations necessary and proper to secure the efficient and successful administration of the court. The rules and regulations made or adopted by said court shall be filed with the city clerk, and shall be available for public inspection.

Section 6.5. Certiorari. When any party in any cause in the municipal court shall be dissatisfied with the decision or judgment in such cause, such party may apply for and obtain a writ of certiorari by petition to the superior court, as provided by section 19-203 et seq. of the Code of Georgia.

ARTICLE VII. FINANCE AND TAXATION.

Division 1. Generally

Section 7.1. Fiscal year. The council shall set the fiscal year by ordinance. Said fiscal year shall constitute the budget year and the year for financial accounting and reporting of each office, department or institution, agency and activity of the city government, unless otherwise provided by State or federal law.

Section 7.2. Official bonds. The officers and employees of the city, both elective and appointive, shall execute such official bonds in such amounts and upon such terms and conditions as the council may from time to time require.

Section 7.3. Annual budget, appropriation. (a) The officer responsible therefor shall prior to the last regular

Page: 3587

meeting of council in each fiscal year, at a time designated by the council, submit a budget estimate of the revenue and expenditures of the city for the ensuing year. This estimate shall be compiled from detailed estimates obtained from the several departments of the city on uniform blanks to be furnished by the city clerk. The classification of the estimates shall be as nearly uniform as possible for the main functional divisions of each department, which shall give, in parallel columns the following information:

- (1) A detailed estimate of the expenses of conducting each department, division or office, for the ensuing year;
- (2) Such other information as may be appropriate; and
- (3) Recommendation as to the amounts to be appropriated with reasons therefor in such detail as may be advisable.

(b) Prior to the first regular meeting of each fiscal year, or as soon thereafter as may be done, the appropriation ordinance for such year shall be passed.

(c) At the end of each fiscal year all unencumbered balances of appropriations in the treasury shall revert to the general fund and be subject to further appropriations.

(d) Any ordinance may be passed as may be necessary to carry out these purposes, and the council, by ordinance, may amend the budget.

Section 7.4. Independent Audit. There shall be an annual, independent audit of all city accounts, funds and financial transactions by a certified public accountant selected by the city council. The audit shall be conducted according to generally accepted accounting principles.

Section 7.5. City depositories. The city council, in its discretion, may, from time to time, name and appoint as city depositories of city funds any bank or trust company which has its deposits insured by the federal Deposit Insurance Corporation.

Page: 3588

Section 7.6. Contracting procedures. All contracts shall be made or authorized by the council, and no contracts shall bind the city unless reduced to writing and approved by the council. All contracts, and all ordinances or resolutions making contracts or authorizing the same, shall be drawn by the city attorney or shall be submitted to him before authorization by the council. All formal contracts to which the city is a party shall be executed in behalf of the city by the mayor and attested by the city clerk.

Section 7.7. "Additional debt" authorized. The city is hereby empowered and authorized to create the "additional debt" as provided for and in accordance with the terms and provisions of the Constitution of the State as set forth in Article IX, Section VII, Paragraph III with the right and authority to enact, adopt, and pass all ordinances and resolutions as may be proper and necessary to effect and carry out same.

Section 7.8. Ad valorem tax levy generally. The council shall be authorized to levy an ad valorem tax on all real and personal property within the corporate limits of the city for the purpose of raising revenues to defray the costs of operating the city government, providing governmental services, and for any other public purpose as determined by the council, and is also authorized to provide for sufficient levy to pay principal and interest on general obligations, and for support of the public schools. The city is hereby exempted from the provisions of Georgia Code sections 92-4101 through 92-4104 inclusive, providing a tax rate ceiling.

Section 7.9. Millage rate, due dates, payment methods. The council, by ordinance, shall establish a millage rate for the city property tax; a due date; and in what length of time these taxes must be paid. The council, by ordinance, may provide for the payment of these taxes by installments or in one lump sum, as well as to authorize the voluntary payment of taxes prior to the time when due.

Section 7.10. Other taxes. The city shall be empowered to levy any other tax allowed now or hereafter by State law.

Section 7.11. Assessment of property for taxes. All property subject to taxation for State or county purposes, assessed as of January first in each year, shall be subject to the property tax levied by the city.

Section 7.12. Collection of taxes by county. The council may elect to provide for collection of city taxes by the county, and shall have authority to reimburse the county for the expenses of such service, as may be required.

Section 7.13. Collection of delinquent taxes. The council may provide by ordinance for the collection of delinquent taxes by fi. fa. issued by the city clerk and executed by any person designated by ordinance under the same procedure provided by the laws governing execution of such process from the superior court, or by the use of any other available legal processes and remedies. A lien shall exist against all property upon which city property taxes are levied, as of the assessment date of each year. In cases of hardship, the council shall have discretionary authority to waive any and all penalties imposed by this charter on delinquent taxes.

Section 7.14. Failure to make returns or furnish information. Council shall provide penalties for any taxpayer refusing to return property for taxation.

Section 7.15. Authority to exempt property from taxation. The council shall have the right, power and authority to exempt any real or personal property from taxation, under such terms, restrictions and conditions as may be to the best interest of the city, and not inconsistent with the laws of the State, and shall have the right to fix the terms and conditions on which the same may be exempted and to enact such ordinances as may be necessary to accomplish such purpose.

Section 7.16. Homestead exemption from education tax. (a) The homestead of each resident of the independent school district of the city who is sixty-two (62) years of age or over and who does not have an income from all sources, including the income from all sources of all members of the family residing within said homestead, exceeding

Page: 3590

six thousand dollars (\$6,000.00) per annum, shall be exempt from all ad valorem taxation for educational purposes levied for and in behalf of such school system.

(b) No such exemption shall be granted unless an affidavit of the owner of the homestead is filed with the governing authority of the city, or with a person designated by the governing authority of the city, giving the age of the owner, the amount of income which he received for the immediately preceding calendar year, the income which the members of his family residing within the homestead received for such period, and such other additional information relative to receiving the benefits of the exemption granted by this section as will enable the governing authority of the city, or the person designated by the governing authority of the city, to make a determination as to whether such owner is entitled to said exemption. The governing authority of the city, or the person designated by the governing authority, shall provide affidavit forms for this purpose.

(c) The exemption granted to the homestead within this section shall extend to and shall apply to those properties, the legal title to which is vested in one or more title holders, if actually occupied by one or more such owners as a residence, and one or more such title holders possesses the qualifications provided for in this section. In such instances, such exemptions shall be granted to such properties, if claimed in the manner herein provided by one or more of the owners actually residing on such property. Such exemptions shall also extend to those homesteads, the title to which is vested in an administrator, executor or trustee, if one or more of the heirs or cestui que uses residing on such property shall possess the qualifications provided for herein and shall claim the exemptions granted by this section in the manner herein provided.

(d) The exemption provided for by this section shall apply to all taxable years beginning after December 31, 1972.

Section 7.17. Executions -- how issued, advertised, levied; method of sales. Execution for any taxes, fines, licenses, fees, assessments, forfeitures, or demands due to the city,

Page: 3591

or its corporate authorities, against any person or against any specific property subject thereto, shall be issued by the city clerk. The council shall provide by ordinance for advertising of, method of conducting, and all other regulations governing, the sales by the chief of police under city executions.

Division 2. Public Improvements

Section 7.18. Authority to enforce. The council shall have authority to pass such ordinances, and do such other acts as may be necessary to give full force and effective operation to the provisions of this division.

Section 7.19. Opening new streets. The city, through its proper officers, shall have the right, power and authority to open new streets whenever the council may deem it essential and necessary for the public use and convenience to do so.

Section 7.20. Changing and relocating streets. The city, through its proper officers, shall have the right, power, and authority to alter, change and relocate existing streets whenever the council shall deem such action to be necessary and essential to the best interests of the city and for the convenience of the citizens thereof.

Section 7.21. Abandonment of nonessential streets authorized. Said city, through its proper officers, shall have the right, power, and authority to close and abandon such streets as the council may deem nonessential and unnecessary for public use and public convenience, provided that notice of such intention to close and abandon any street shall be given as hereinafter provided.

Section 7.22. Notice required in event of abandonment, relocation, etc., of streets. No ordinance or resolution shall be passed relative to the closing and abandonment of any public street, or to alter, change, or relocate any existing street, until the council shall have published a notice once a week for two (2) weeks in the newspaper in said city and county in which the sheriff's advertisements are published, wherein it is stated the name of the street proposed to be

Page: 3592

closed and abandoned, and the name of the street proposed to be altered, changed and relocated, specifying the proposed changes and alterations, and fixing a time and place where all persons interested therein may appear and be heard relative thereto.

Section 7.23. Closing of drains. The city through its proper officers, shall have the right, power and authority to close and abandon such storm drain structures as the council may deem nonessential and unnecessary for public use, public necessity, and public convenience, provided that notice of such intention to close and abandon any storm drain structure shall be given as provided in the case of abandonment of a street.

Section 7.24. Relocation, etc., of drains. The city, through its proper officers, shall have the right, power, and authority to alter, change and relocate existing storm drains whenever the council shall deem such action to be necessary and essential to the best interests of the city for the convenience or health, or safety, or welfare of the citizens thereof.

Section 7.25. Authority to expend money for improvements. The council in its discretion is authorized to use and expend any monies derived from improvement bond issues, or from general funds, to improve and pave the streets and sidewalks, curbs and gutters, and storm water drains, within the city as may be required for the general welfare of the citizens of the city.

Section 7.26. Acquisition of property. The city, by and through its proper officers, shall have the right, power, and authority to acquire by purchase, gift, devise, dedication, and by condemnation proceedings, the title to such property as the council may deem proper, essential and necessary for the purposes of this division.

Section 7.27. Sale of nonessential property. The city, through its proper officers, shall have the right, power and authority to sell and convey by sufficient deed all or any portion of any public street, alley or other public way or storm drain, which may be hereafter closed and abandoned,

Page: 3593

in all cases where the legal title thereto is in said city, but not otherwise.

Section 7.28. Improvement assessments authorized. The council is hereby authorized and empowered to construct and improve any sidewalk, street, avenue, public alley, other public place, or any portion thereof, upon petition therefor as hereinafter provided, by paving, repaving, curbing, guttering and draining the same, with such form of improvements as may seem proper, and to construct and improve any storm water drain through any public or private property, and assess the cost thereof upon abutting owners thereof, and any person owning, operating or controlling a railroad tract thereon.

Section 7.29. Street improvements under bond plan. The council is authorized and empowered to make such street and sidewalk improvements, as may be necessary, under the city bond revenue act, as provided in Chapter 69, sections 401 to 434 inclusive, of the 1933 Code of Georgia; and all rights and powers therein conferred may be exercised by said governing authority, subject to the restrictions, terms, definitions and requirements as are therein set out. Said Chapter 69, section 401 through 434, together with all amendments thereto are made a part of this charter.

Section 7.30. Method of making street assessment. The cost of paving, repaving or improving any street, avenue, public alley, or other public place or portion thereof, including any storm drain, shall be assessed against the abutting property owners of each side of the street, avenue, public alley, or other public place or portion thereof so paved, repaved or improved, except that where a person has railroad tracks on said street, avenue, public alley, other public place or portion thereof so improved, the person owning, operating or controlling the same shall be assessed for the cost of paving, repaving or improving said street, avenue, public alley, other public place or portion thereof for the full distance that such tracks extend along said street or public place of such pavement, repavement or improvement, and for the full width of sixteen (16) feet where they have two tracks thereon and eleven (11) feet where they have one

Page: 3594

track thereon, and after deducting the amount of this assessment against said track owner then the abutting property owners shall pay the total assessment against the abutting property on each side of the street or public place or portion thereof so paved, repaved or improved.

Section 7.31. Rate of street assessment. The assessment against each abutting owner shall be pro rata and determined by the amount of the frontage of such owner upon the sidewalk, street, avenue, alley, or other public place, paved, repaved, improved or reimproved.

Section 7.32. Payment for manholes, drains, etc. The city through its proper officers is empowered to install and construct in or upon any public or private property, the necessary manholes, catch basins, etc., grating and lay necessary drain pipe, or culverts, whenever, in its discretion, the public necessity may require it, the cost of which, with such engineering, surveying and grading as the city may deem proper to do, in or upon any public or private properties, which it is hereby empowered to do shall be included in the assessment provided for in this division with the cost for the improvement of all street crossings assessed against the abutting owners; provided, however, the council, in its discretion, may pay a part or all the expenses for the items or matters referred to in this section, should it appear to the council, in its sole discretion, the facts warrant or require said payment by the city with regard to any project.

Section 7.33. Improvements to be authorized by ordinances. No sidewalk, street, alley or other place shall be paved, repaved or improved, until the passage of an ordinance authorizing the same, and no such ordinance shall be passed unless the council shall have first been petitioned in writing to pave, repave or otherwise improve the same by a majority of the persons subject to assessment for the imfront footage of abutting property, subject to assessment for the cost of paving, repaving, or otherwise improving the sidewalk, street, avenue, alley, public place or portion thereof proposed to be paved or repaved.

Section 7.34. Method of determining number of petitioners.

In determining the number of petitioners for any of the improvements under the division, each company or corporation shall be counted as one person and a majority in interests of owners' undivided interests shall be counted as one person; provided, in any case where the improvement is petitioned for by the owners of a majority of the

frontage of abutting property, such owners shall be counted as a majority of the persons subject to assessment for the improvement petitioned for.

Section 7.35. Requirements for ordinances authorizing and assessing cost of improvements. The ordinance authorizing the paving, repaving, improving or reimproving of any sidewalk, street, avenue, alley or other public place under the provisions of this division shall describe the general character of improvement to be made, the material to be used and such other matters as shall be necessary to enable the preparation of the proper plans and specifications for the improvement proposed to be made; and pending the consideration of such ordinance an advertisement shall be inserted at least one time in the newspaper in which the advertisement of sheriff sales in the county are published before the final passage of such ordinance, such advertisement giving notice of the introduction of such ordinance, the sidewalk, street, avenue, public alley, public place or portion thereof to be paved, repaved or improved, the estimated cost per front foot; and it shall set forth that the property owners or others interested are notified to appear at a meeting of the council to be held at a time stated in said advertisement and make any objection that they may desire to urge against the passage of such ordinance; a copy of said advertisement shall be mailed to each person whose post office address is known fifteen (15) days before said meeting for hearing objections. At the time named in said advertisement, if any property owner or other person desires to make objection to the passage of such ordinance, full opportunity shall be given at said meeting and after hearing objections, if any are made to the passage of such ordinance, said council shall have the right and power, in its discretion, to order such pavement, repavement or other improvement to be made, or it may decline to pass said ordinance. After the passage of such ordinance any person subject

to assessment for the cost of such improvement who does not, within fifteen (15) days thereafter, begin legal proceedings to prevent said assessment being made shall be conclusively presumed to have accepted the terms of said ordinance, and shall have agreed that the assessment provided for may be made. Thereupon it shall be the duty of said council to forthwith cause said improvement to be made in accordance with the plans and specifications as prepared. When completed an ordinance shall be passed, assessing the cost of said improvement as provided in this division. The assessing ordinance shall thereupon assert a lien upon each portion of the property abutting upon such paving, repaving or improvement for the amount of the assessment, against the owner thereof, to date back to the approval of the original ordinance and declare the same at the time said ordinance is passed.

Section 7.36. Assessment notice; payments. After the adoption of the ordinance assessing the cost a written statement shall be furnished by the clerk of the city to each abutting owner subject to the assessment, herein provided for, showing his pro rata part of such assessment and it shall be the duty of such person, so notified, to pay said clerk within thirty (30) days after the receipt of such statement, the entire amount of the assessment against such person; provided that any person so notified shall have the right to pay the assessment so levied in five (5) installments to be paid as follows: Twenty percent (20%) within thirty (30) days after the receipt of said notice and the remaining eighty percent (80%) in four annual installments of twenty percent (20%) each, such deferred payments to be evidenced by promissory notes bearing interest from date until paid at the rate of seven percent (7%) per annum, payable annually, and to said council or order. The benefit of the payment by installment may be taken advantage of by any such property owner by giving notes for the deferred payments as herein provided at the time of making the cash payment. In the event any property owner shall desire to pay the balance due under such assessment after exercising the option to pay installments as hereinbefore provided at any time before the maturity of such installments, such

party so wishing and offering to pay shall pay the principal and interest due up to date of payment.

The notice for assessment herein provided for shall be served personally upon each of said property owners (each agent of such company or corporation) residing within the limits of said city, and where such owner or agent is a non-resident of said city it will be sufficient service that said notice or statement be mailed to said property owner or agent at the last post office address of said owner or agent known to said clerk. In the event such owner or agent is not known it will be sufficient to serve said notice upon any person in possession of the property by reason of which such assessment is made.

Section 7.37. Execution, levy, sale. If any person shall fail or refuse to pay to the clerk his assessment, at the expiration of the thirty (30) days after the service of the statement, or in lieu thereof fully comply with the provisions relating to the payment of such assessments, said clerk will be authorized to issue execution bearing teste in the name of the mayor of said city, and specifying the improvement for which it is issued, against the owner and also the property of such owner abutting upon the sidewalk, street, avenue, alley, other public place or portion thereof, so improved, which execution will be a lien against such property from the date of the ordinance authorizing said improvement and bearing interest at the rate of seven percent (7%) per annum from the date on which it is issued. Said execution when issued, shall be

delivered to the chief of police, who shall execute the same by levying and selling the property described therein for the amount due, together with all costs that may accrue thereon. The law applicable to sale under other executions issued by said city shall apply as to the levy, notice, advertisement and sale made under said execution, and said chief shall have authority to execute deeds when the property is sold, and deliver the immediate possession thereof to the purchaser.

Section 7.38. Notice of lien. The passage of the ordinance for paving, repaving or otherwise improving a street, or part of a street, alley, or other public place in said city,

Page: 3598

together with the ordinance assessing the cost of the same, and asserting liens against property abutting thereon, shall, when properly entered on the minutes of the council, be notice of such lien from the date of the approval of such ordinance for such paving as full and complete as if the same were in the shape of an execution and entered on the docket of the clerk of the superior court under the general registration law.

Section 7.39. Same -- transfer of executions. The chief of police shall be authorized to transfer and assign an execution issued under the provisions of this division and thereby vest the purchaser or transferee with the same rights as in cases of sales or transfers under other executions issued by said city.

Section 7.40. Illegality of executions. Any defendant in such execution or owner of property against which the same is issued shall have the right to file an affidavit of illegality, upon the ground that the same has issued or is proceeding illegally, as provided by statute in cases of other executions, stating what amount, if any, is admitted to be due (which amount, so admitted, to be paid before said affidavit shall be received, and said affidavit shall be received for the balance); provided, any such defendant, who has not within fifteen (15) days after the passage of the ordinance authorizing such improvement, begun legal proceedings to prevent the assessment for the cost thereof, shall be presumed to have accepted the terms of said ordinance and agreed that the assessment be made; otherwise the law relating to illegalities shall apply as in other cases. When the chief of police shall receive said affidavit of illegality as herein provided for, he shall return the same to the clerk of the superior court where it shall be tried at the first term of the court under the law of this State that is applicable to the trial of illegalities, and subject to the penalties provided by statute where affidavits of illegality are filed for delay. Either party to such affidavit of illegality shall have the right of appeal as in cases of illegality originating from executions issued by the superior courts of this State.

Section 7.41. Street improvement certificates -- authority

Page: 3599

to issue. The council is authorized and empowered to execute paving certificates which shall be known as "Street Improvement Certificates of the City of Marietta, Georgia", certifying to all the facts necessary to the validity and guarantee of payment of promissory notes given for street improvements and executions issued on account thereof.

Section 7.42. Same -- ordinance providing for. Said council is hereby authorized to provide by ordinance for the issuing of certificates showing the authority of said city for making any street improvement and the compliance with statutory authority by abutting property owners, and every other person interested in said improvements, in making the same, to wit:

- Filing of the required petition for such improvements by the required majority;
- Introduction of the ordinance authorizing the improvement;
- Advertisement required by statute pending the consideration of the ordinance;
- Adoption of the ordinance;
- Agreement (conclusively presumed) of all persons interested in the passage of ordinances, authorizing the improvement and the assessment therefor;
- Contract for said improvement;
- Completion of said improvement;
- Adoption of the assessing ordinance;
- Statement by city clerk showing pro rata assessments;
- Promissory notes given for deferred payments;
- Executions issued against abutters and properties;

Page: 3600

- Registration of executions;
- Authority of chief of police to transfer executions issued against abutters and properties for said assessments;
- Illegality as in other cases, provided that any such defendant, who has not within fifteen (15) days after the passage of the ordinance authorizing such improvement, begun legal proceedings to prevent the assessment for the cost thereof shall be presumed to have accepted the terms of said ordinance and agreed that the assessment be made;

- All and every other authority and fact necessary or required to show the validity of any promissory note made or execution issued, on account of any street improvement, and every authority and fact showing the power and authority of said city to contract for said improvement.

Section 7.43. Same -- paving certificates, authority; terms, etc., sale or pledge of certificates; funds, separation and use. Said city is hereby authorized and empowered to issued paving certificates during the progress of street improvement work at such time and in such sums as the council may deem proper, the aggregate of which shall not exceed eighty percent (80%) of the cost of improvements that have been made at the time of the issuance of the same, which certificates shall draw interest at the rate of not exceeding seven percent (7%) per annum and be payable at such time or times as the council may fix during the year of the issuance of the same.

Authority is also hereby conferred upon the city to issue paving certificates.

After the completion of any street improvement contract, bearing interest at not exceeding seven percent (7%) per annum and payable at such time, or times, as the council may fix during the year of the issuance of the same, and in such sums as the council may deem proper the aggregate amount of which shall not exceed eighty percent (80%) of the amount payable to said city upon such assessments, less the aggregate amount of certificates outstanding, previously

Page: 3601

issued for said improvements under the provisions of this division.

The city is authorized to sell any of such certificates or borrow money thereon by pledging any of them as collateral security, for the payment of the cost of said improvements, and in either of sale or collateral pledge of such certificates, or any of them, to pledge the faith and credit of said city for the payment thereof and to guarantee the payment of the same for and in the name of said city.

All money received from the sale or pledge of said certificates, or any of them, shall be kept in a fund separate from all others, and shall be applied to the payment of the cost of making the improvements on account of which said certificates were issued, and for no other purpose.

ARTICLE VIII. BOARDS, COMMISSIONS, AUTHORITIES.

Section 8.1. Authority to establish, maintain and abolish. The city council shall have the power and authority to establish, appoint and maintain such boards, commissions, and authorities as in its judgment the needs of the city require, and to abolish the same as it may deem appropriate.

Section 8.2. Continuation in existence of existing bodies. All boards, commissions, authorities and agencies, whether the planning commission, board of adjustments, housing authority, or otherwise, established by law or ordinance, shall continue in existence until abolished according to law, and the adoption of this charter shall in no way be construed to abolish any such body.

ARTICLE IX. SCHOOLS.

Section 9.1. System continued. The city school system shall be and remain as now provided by the laws creating the same.

The adoption of this charter shall in no way be construed to repeal the Act of the General Assembly creating the city

Page: 3602

school system, or any Act amendatory thereof nor shall it affect the millage rates applicable to the said school system.

Section 9.2. Powers which may be granted to board of education as to construction and equipment. The council shall have the full right to delegate to the board of education the right and authority to supervise the construction and equipment of all school buildings and improvements incident thereto, which may be constructed with funds belonging to the city or provided through bond issue.

Section 9.3. No liability of city, etc. The council and/or the city shall not, in any way or manner, be liable for any contract or obligation which may be made by the board of education of the city, unless such liability is expressly incurred.

ARTICLE X. LEGAL PROVISIONS.

Section 10.1. Provisions of charter severable. The provisions of this charter are severable, and if any part thereof shall be held contrary to the Constitution or the laws of the State the same shall not affect the remaining parts thereof.

Section 10.2. Penalties. Violations of any provisions of this charter, for which a penalty is not specifically provided for herein, is hereby declared to be a misdemeanor and shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment not to exceed thirty (30) days or both such fine and imprisonment.

Section 10.3. Taking effect; repeal of conflicting law. The provisions of this Act shall become effective January 1, 1976.

All laws and parts of laws in conflict with this Act be and the same are hereby repealed.

Notice of Intention To Introduce Local Legislation.

Notice is hereby given that there will be introduced at the regular 1977 session of the General Assembly of Georgia, a

Page: 3603

bill to create a new charter for the City of Marietta, Georgia (Ga. L. 1904, p. 519) as heretofore amended and for other purposes.

This 28th day of Jan., 1977.

Roy E. Barnes Haskew Brantley Joe L. Thompson Senators A. L. Burruss Bill Cooper
Carl Harrison Eugent Housley Johnny Isakson Max Kaley Ken Nix Joe Mack Wilson
Representatives.

Georgia, Fulton County.

Personally appeared before me, the undersigned authority, duly authorized to administer oaths, Bill Cooper, who, on oath, deposes and says that he is Representative from the 19th District, and that the attached copy of Notice of Intention to Introduce Local Legislation was published in the Marietta Daily Journal

which is the official organ of Cobb County, on the following dates: January 28, February 4 and 11, 1977.

/s/ Bill Cooper Representative, 19th District.

Sworn to and subscribed before me, this 15th day of February, 1977.

/s/ Susan Gordon
Notary Public, Georgia State at large.
My Commission Expires Dec. 17, 1980.
(Seal).

Approval Date: Approved March 23, 1977.