

*This model municipal court prosecutor ordinance is provided only for general informational purposes and to assist Georgia cities in identifying issues to address in a local municipal court prosecutor ordinance. The ordinance is not and should not be treated as legal advice. You should consult with your legal counsel before drafting or adopting any ordinance and before taking any action based on this model. This model ordinance has been developed to help comply with Senate Bill 352, passed during the 2012 legislative session. The legislation added new provisions to state law at O.C.G.A. § 15-18-90 et seq. which create certain requirements for cities that choose to create a position for a municipal court prosecutor. The law does not require cities to hire or appoint a municipal court prosecutor but does place certain requirements on cities that do choose to do so.*

## **Model Municipal Court Prosecutor Ordinance**

### **ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE BY THE MAYOR AND CITY COUNCIL FOR THE CITY OF \_\_\_\_\_ RELATING TO THE MUNICIPAL COURT; TO PROCLAIM THE EXISTENCE AND ESTABLISHMENT OF THE OFFICE OF PROSECUTING ATTORNEY OF THE MUNICIPAL COURT; TO OUTLINE THE DUTIES AND AUTHORITIES OF THE STAFF THEREIN AS EXPRESSLY ALLOWED BY THE CONSTITUTION AND LAWS OF THE STATE GEORGIA; TO PROVIDE FOR SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; AND FOR OTHER PURPOSES.

### **SECTION ONE**

Chapter \_\_\_\_\_ of the Municipal Code of the City of \_\_\_\_\_ is amended by adding a new Article, to be numbered Article \_\_\_\_\_, which shall include the following language:

Article \_\_\_\_\_

Sec. \_\_\_\_\_. Short Title.

This Article shall be known as the “\_\_\_\_\_ Office of Prosecuting Attorney of the Municipal Court Ordinance.”

Sec. \_\_\_\_\_. Findings and Intent.

This ordinance is adopted to address requirements made under Georgia law for the city to pass an ordinance or resolution creating the office of prosecuting attorney of the municipal

court should the city choose to hire or have a prosecuting attorney of the municipal court. Under state law, in order to have a municipal court prosecutor, the city must pass this ordinance or resolution and provide to the Prosecuting Attorneys' Council of the State of Georgia a copy of the same. The city is also required to submit the name of the person appointed to be the prosecuting attorney of the municipal court within thirty (30) days of such appointment in order to maintain the office of prosecuting attorney of the municipal court. It is therefore the intent of the city to comply with Georgia law, particularly Article 5, of Chapter 18, of Title 15 of the Official Code of Georgia, Annotated, and to enact this Article.

Sec. \_\_\_\_\_. Establishment of Office.

The Office of Prosecuting Attorney of the Municipal Court is hereby established for the purpose of providing representation of the City of \_\_\_\_\_ in matters pertaining to ordinance violations of the city and state offenses enforceable in the municipal court as allowed by Georgia law. The prosecuting attorney for the municipal court shall be a **(full time/part time)** position.

Sec. \_\_\_\_\_. Qualifications.

Any person appointed as the prosecuting attorney for the Municipal Court of the City of \_\_\_\_\_ shall be a member in good standing of the State Bar of Georgia and admitted to practice before the trial and appellate courts of this state. Nothing in this Article shall prevent the city from appointing the city attorney to be the prosecuting attorney for the municipal court, so long as all other requirements under the law are met.

Sec. \_\_\_\_\_. Oath.

The prosecuting attorney of the Municipal Court for the City of \_\_\_\_\_ shall take and subscribe to the following oath:

‘I swear (or affirm) that I will well, faithfully, and impartially and without fear, favor, or affection discharge my duties as prosecuting attorney of the Municipal Court for the City of \_\_\_\_\_.’

Sec. \_\_\_\_\_. Term of Office.

Unless otherwise provided by the charter for the City of \_\_\_\_\_, the prosecuting attorney for the Municipal Court shall serve a term of office of **(The governing authority has discretion in determining the term of office and so this will be different for each municipality; See O.C.G.A. § 15-18-91(c).)**

Sec. \_\_\_\_\_. Jurisdiction, Duties, and Authority.

The Office of Prosecuting Attorney of the Municipal Court for the City of \_\_\_\_\_ shall have the duty and authority to represent the city as defined by the city charter and by state law, particularly as described in Official Code of Georgia, Section 15-18-96.

Sec. \_\_\_\_\_. Assistant Prosecuting Attorney.

***(This section is completely up to the discretion of the governing authority.)***

The prosecuting attorney of the municipal court may appoint one or more assistant prosecuting attorneys whose appointment shall be ratified by the city council before becoming an assistant prosecuting attorney for the municipal court. Such assistant prosecuting attorney shall be a member in good standing of the State Bar of Georgia or satisfy the provisions of the Third Year Practice Act, found in the Official Code of Georgia, Section 15-18-22.

Sec. \_\_\_\_\_. Ratification.

This Article shall ratify all actions that have been taken by the persons acting in the positions of the Office of the Prosecuting Attorney for the Municipal Court to date as authorized by the Mayor and his Council.

## SECTION TWO

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

## SECTION THREE

If any section, clause, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

## SECTION FOUR

This ordinance shall become effective immediately upon its adoption by the City Council.

SO ORDAINED, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Mayor

City of \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of Council