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An Administrative Order
Office of the Mayor
City of Atlanta

Administrative Order No. 2021-0406
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AN ADMINISTRATIVE ORDER DIRECTING ALL MEMBERS OF THE EXECUTIVE BRANCH OF THE CITY OF ATLANTA AND ALL DEPARTMENTS THEREUNDER TO TAKE NO ACTION TO ENFORCE, EFFECTUATE, IMPLEMENT, OR IN ANY WAY FURTHER THE AIMS OR PURPOSES OF ORDINANCE 21-O-0056; AND DIRECTING THE CHIEF OPERATING OFFICER TO TAKE ALL APPROPRIATE ACTION TO ENFORCE THIS ADMINISTRATIVE ORDER TO ENSURE THAT NO ACTION SHALL BE TAKEN TO ENFORCE, EFFECTUATE, IMPLEMENT, OR IN ANY WAY FURTHER THE AIMS OR PURPOSES OF ORDINANCE 21-O-0056.

WHEREAS, pursuant to Section 3-104 of the City of Atlanta Charter, the Mayor shall be the Chief Executive Officer of the City of Atlanta (the City), and the Mayor shall have the power and it shall be the duty of the Mayor to exercise supervision over all the administration of all Departments of the City; and

WHEREAS, pursuant to Section 2-182 of the City of Atlanta Code of Ordinances, the Mayor shall have the power to promulgate reasonable rules and regulations governing the conduct of the internal operation of the Executive Branch and any Department thereunder and may delegate duties to the Chief Operating Officer, the Chief of Staff, and heads of Departments by administrative order; and

WHEREAS, as Mayor I have sworn to be governed by the public good and the interests of the City, and to support and defend the Constitutions of the State of Georgia and the United States of America; and

WHEREAS, accordingly, I have a duty to ensure that my conduct and that of the members of the Executive Branch of the City of Atlanta and any Department thereunder shall not violate the law of the state of Georgia and shall not violate the Constitution of the State of Georgia; and

WHEREAS, where a legislative action of the Atlanta City Council is void and unenforceable, for the reason that it is ultra vires, the governing authorities of the City do not have authority to attempt to take any action in furtherance thereof¹; and

WHEREAS, for a legislative action to be considered ultra vires, "it must be beyond the 'power or authority of the City of Atlanta to perform under any circumstances'²; and

WHEREAS, the Atlanta City Council is limited in the exercise of legislative power for the adoption of ordinances to the powers conferred on it by law³; and

¹ O'Quinn v. Mayor & Council of Homerville, 42 Ga. App. 628, 157 S.E. 109, 110 (1931).

² Grove v. Sugar Hill Inv. Assocs., Inc., 219 Ga. App. 781, 784, 466 S.E.2d 901, 905 (1995); City of Atlanta v. North by Northwest Civic Assn., 262 Ga. 531, 539(7)(a), 422 S.E.2d 651 (1992).

³ See Orr v. Hapeville Realty Investments, 211 Ga. 235, 240, 85 S.E.2d 20, 24 (1954)

WHEREAS, the law has not conferred on the Atlanta City Council the exercise of legislative power for the adoption of ordinances that are in conflict with state law and the Constitution of the State of Georgia and, therefore, any such actions are ultra vires and void; and

WHEREAS, any action taken by me, as Mayor, by members of the Executive Branch of the City and any Department thereunder in furtherance of any void act of the Atlanta City Council would also be ultra vires and void; and

WHEREAS, Ordinance 21-O-0056 was adopted by the Atlanta City Council on February 1, 2021 and was approved following the Atlanta City Council's veto override vote on February 15, 2021, purports to authorize the abandonment and transfer of the portion of Mitchell Street in downtown Atlanta immediately south of the State Capitol to the State of Georgia without compensation in violation of state law and of the Gratuities Clause of the Georgia Constitution and is therefore ultra vires and void; and

WHEREAS, Ordinance 21-O-0056 violates state law regarding the abandonment and disposal of municipal roads and is therefore ultra vires and void; and

WHEREAS, OCGA § 32-4-92 specifies that Chapter 7 of Title 32 – 32-7-1 et seq – governs disposal of the City's interests in public roads⁴ and at OCGA § 32-4-92(c) requires:

- (a) a formal determination that the section of the public road has “ceased to be used by the public to the extent that no substantial public purpose is served by it or that its removal from the municipal street system is otherwise in the best public interest”;
- (b) a certification of that finding in the minutes of the city council proceeding;
- (c) a “plat or sketch” accompanying the ordinance;
- (d) “notice to property owners located thereon” before a section of the municipal street system may be abandoned; and

WHEREAS, only after that process is completed may the City dispose of its interest in a public road, however prior to the adoption of Ordinance 21-O-0056, there was no formal certification of a lack of public use/purpose or other overriding public interest, nor was a plat or sketch attached to the Ordinance; and

WHEREAS, additionally, the City is prohibited from giving away its valuable interest in its public roads by the state law governing the abandonment and disposal of public roads; and

WHEREAS, the state law governing the abandonment and disposal of public roads only permits the disposal of municipal roads either through the use of a competitive procurement process during which the City is prohibited from accepting any offers for its interest in the public road lower than 15 percent under the appraised value⁵, or through entering into an agreement with the state of Georgia where the property or interest to be acquired in exchange for the public road is

⁴ OCGA § 32-4-92(a)(3) (“A municipality may acquire, manage, and dispose of real property or any interests therein for public roads on its municipal street system under the procedures provided in Article 1 of Chapter 3 of this title and in Chapter 7 of this title.”).

⁵ See OCGA § 32-7-4(b)(1-3) (permitting disposal by sealed bids, listing with a relator, or a live auction, respectively).

appraised as being of equal value to, or of greater value than, the public road or the interest therein⁶; and

WHEREAS, prior to the adoption of Ordinance 21-O-0056, no competitive procurement process was utilized in order to dispose of the subject portion of Mitchell Street, nor was any appraisal of the subject portion of Mitchell Street performed; and

WHEREAS, Ordinance 21-O-0056 purports to avoid the requirements of the state law governing the disposal of the City's interest in public roads, through the waiver of certain portions of the City of Atlanta Code of Ordinances and in accordance with a separate, wholly inapplicable state law; and

WHEREAS, while an ordinance may waive portions of the City Code that are inconsistent with what it seeks to do, no municipal ordinance may waive requirements of state law – nor may it waive the Code's requirements which are required by state law; and

WHEREAS, though Ordinance 21-O-0056 references OCGA § 36-37-6 as providing legal authority in state law to dispose of the subject portion of Mitchell Street without compensation (or satisfying any other procedural requirement), OCGA § 36-37-6 governs the sale and disposal of municipal property generally, and is inapplicable to the abandonment and disposal of the City's interest in its public roads; and

WHEREAS, accordingly, Ordinance 21-O-0056 violates state law regarding the abandonment and disposal of municipal roads and is therefore ultra vires and void; and

WHEREAS, additionally, the City is prohibited from giving away its valuable interest in its public roads by the Gratuities Clause of the State Constitution; and

WHEREAS, because Ordinance 21-O-0056 attempts to transfer the subject portion of Mitchell Street without compensation it violates the Gratuities Clause of the State Constitution and is therefore ultra vires and void; and

WHEREAS, Gratuities Clause of the Georgia Constitution provides that

Except as otherwise provided in the Constitution, (1) the General Assembly shall not have the power to grant any donation or gratuity or to forgive any debt or obligation owing to the public, and (2) the General Assembly shall not grant or authorize extra compensation to any public officer, agent, or contractor after the service has been rendered or the contract entered into.

GA. CONST. Art. III, Sec. VI, Par. VI(a); and

WHEREAS, while the clause expressly references the General Assembly, it also prohibits gratuities by cities and counties⁷; and

WHEREAS, the Supreme Court of Georgia has held that the Gratuities Clause is not violated by the disposal of public land where the government receives “substantial benefits in exchange for use of the public property⁸”; and

⁶ OCGA § 32-3-3(b).

⁷ *City of Lithia Springs v. Turley*, 241 Ga. App. 472, 475 (1999).

⁸ *Garden Club of Georgia v. Shackelford*, 266 Ga. 24, 24 (1995).

WHEREAS, nothing in Ordinance 21-O-0056 provides clear evidence of any “substantial benefit” to which the City will be entitled as a result of its abandonment and surrender of the subject portion of Mitchell Street; and

WHEREAS, specifically, nothing in Ordinance 21-O-0056 places explicit conditions on the abandonment of Mitchell Street, but instead appears to condition the abandonment and transfer of the City’s road way “upon completion of the substantial improvements to Donald Lee Hollowell Parkway” (“Hollowell”) which is a state road; and

WHEREAS, because Hollowell is a state road, and is under the control and responsibility of the State, the City of Atlanta has no ability to prohibit the State from making any improvements to Hollowell, and the State needs no permission or cooperation from the City of Atlanta to proceed with its plans in regards thereto; and

WHEREAS, Ordinance 21-O-0056 does not contain any language describing what those improvements are,⁹ nor does it appear from the language of Ordinance 21-O-0056 that any such improvements are an actual bargained for exchange that will result in the City receiving the constitutionally-required substantial benefits; and

WHEREAS, the Ordinance does not put any clear and defined obligations on the State in order to receive this portion of the City’s road way, which suggests the State is not undertaking a legal detriment sufficient to constitute consideration, let alone the “substantial benefits” required by the Constitution; and

WHEREAS, contrary to any assertion that the undescribed improvements to Hollowell were bargained for in exchange for the abandonment and transfer of the subject portion of Mitchell Street, the Georgia Department of Transportation has publicly confirmed that the project to improve safety on Hollowell was already underway and has informed my office “that any safety upgrades related to Hollowell are unrelated to the city handing over this portion of Mitchell Street”; and

WHEREAS, accordingly, any improvements to Hollowell cannot supply the consideration or “substantial benefits” necessary to prevent the Ordinance from being an unconstitutional gratuity; and

WHEREAS, because Ordinance 21-O-0056 attempts to transfer the subject portion of Mitchell Street without compensation it violates the Gratuities Clause of the State Constitution and is therefore ultra vires and void; and

WHEREAS, accordingly, it is my duty to ensure that neither myself nor any members of the Executive Branch and any Department thereunder shall take any ultra vires and void action in furtherance of Ordinance 21-O-0056; and

WHEREAS, therefore all members of the Executive Branch of the City of Atlanta and all Departments thereunder are hereby ordered to take no action to enforce, effectuate, implement, or in any way further the aims or purposes of Ordinance 21-O-0056; and

⁹ The whereas clauses also mention “negotiations” about possible improvements to Metropolitan Parkway and Mitchell Street, but neither of those are referenced in the substantive provisions.

WHEREAS, I am also hereby directing the Chief Operating Officer to take all appropriate action to enforce this Administrative Order to ensure that no action shall be taken to enforce, effectuate, implement, or in any way further the aims or purposes of Ordinance 21-O-0056.

NOW, THEREFORE, BY THE POWER VESTED IN ME AS MAYOR OF THE CITY OF ATLANTA, pursuant to Section 3-104 of the City of Atlanta Charter and Section 2-182(4) of the City of Atlanta Code of Ordinances, it is hereby ordered that:

SECTION 1: All members of the Executive Branch of the City of Atlanta and all Departments thereunder shall take no action to enforce, effectuate, implement, or in any way further the aims or purposes of Ordinance 21-O-0056; and

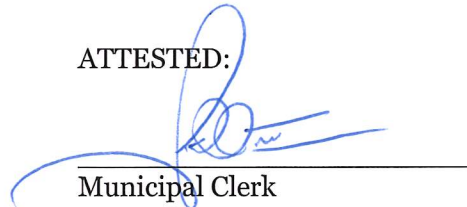
SECTION 2: The Chief Operating Officer shall take all appropriate action to enforce this Administrative Order to ensure that no action shall be taken to enforce, effectuate, implement, or in any way further the aims or purposes of Ordinance 21-O-0056.

SO ORDERED this 19th day of February, 2021.



Keisha Lance Bottoms
Mayor

ATTESTED:



Municipal Clerk

Received/Filed.

This 19 day of Feb 2021.