

**INTERGOVERNMENTAL AGREEMENT FOR THE
PROVISION OF ELECTION SERVICES BETWEEN
FULTON COUNTY, GEORGIA and
CITY OF FAIRBURN, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into this 20 day of July, 2022, between Fulton County, Georgia ("County"), a political subdivision of the State of Georgia, and the City of Fairburn, Georgia ("City"), a municipal corporation lying wholly or partially within the County.

WHEREAS, the parties to this Agreement are both governmental units; and

WHEREAS, the County and the City desire to maintain a mutually beneficial, efficient, and cooperative relationship that will promote the interests of the citizens of both jurisdictions; and

WHEREAS, the City desires to contract with the County to conduct this election for the citizens of the City pursuant to the applicable laws of the State of Georgia; and

WHEREAS, the City and the County are authorized by Art. IX, Sec. III, Par. I of the Constitution of the State of Georgia to contract for any period not exceeding fifty (50) years for the provision of facilities or services which they are authorized by law to provide, including an agreement for the conduct of the City elections; and

WHEREAS, O.C.G.A. § 21-2-45(c) authorizes the governing authority of any municipality to contract with the county within which that municipality wholly or partially lies to conduct any or all elections; and

WHEREAS, pursuant to O.C.G.A. § 21-2-45(c), a municipality may by ordinance authorize a county to conduct such election(s), and the City has adopted such an ordinance; and

WHEREAS, the Fulton County Board of Registration and Elections ("BRE") has jurisdiction over the conduct of primaries and elections and the registration of electors in the County; and

WHEREAS, the BRE, among other things, is responsible for the selection and appointment of the elections Superintendent, who selects, appoints, and trains poll workers for elections.

NOW THEREFORE, in consideration of the following mutual obligations, the County and City agree as follows:

ARTICLE 1 CONDUCT OF ELECTIONS

1.1 This Agreement will govern the conduct of any and all elections which the City requests the County to conduct, including any and all runoffs which may be necessary. It is the intent of the parties that City elections be conducted in compliance with all applicable federal, state, and local legal requirements.

1.2 For each City election, City, at its sole option, shall submit to County a request in the form attached hereto as Exhibit A. Requests must be made in conformance with O.C.G.A. § 21-2540, now and as it may be amended hereafter, to the address specified in the Notice Section below. If a timely request is not made, the County shall have no obligation to conduct the City election which was the subject of the request.

1.3 In the event any special City election becomes necessary, the City and the County shall confer and determine a mutually convenient date as allowed by law to conduct any such election.

ARTICLE 2 TERM OF AGREEMENT

This Agreement shall commence on the date that it is executed by or on behalf of the governing authority of Fulton County, Georgia and will terminate on December 31, 2022, unless otherwise terminated as set forth herein.

ARTICLE 3 DUTIES AND RESPONSIBILITIES

Pursuant to this Agreement, each party shall provide the following enumerated services for the election to be held November 8, 2022:

3.1 Upon receipt of request to perform a City election, and the agreement to conduct a City election, the County through the Superintendent or their designee(s) shall be responsible for:

- a) Designating early and advance voting sites and hours;
- b) Placing the City's candidate(s) on the electronic and printed ballots for City elections after qualifying;
- c) Placing the City's referendum question(s) on the ballot for a City election after timely written notice from the City is received by the County (which such notice shall include all necessary details and information);
- d) Hiring, training, supervising, and paying poll officers and absentee ballot clerks;
- e) Preparing and submitting to the City Clerk, as required by state law O.C.G.A. § 21-2-224(e), now and as it may be amended hereafter, a list of electors.

- g) Performing filing officer duties as required by the Georgia Government Transparency and Campaign Finance Commission for any and all state reports filed by the candidates or committees in conjunction with City elections to ensure compliance with Title 21, Chapter 5 of the Official Code of Georgia;
- h) If the City desires to review and verify the accuracy of the voter list(s) for City residents, it must do so not less than 30 days prior to Election Day;
- i) Providing the County with an electronic copy of referendums that must be placed on a ballot;
- j) Reviewing ballot proofs and notifying County of corrections or approval within twenty-four (24) hours of receiving proofs for candidate listings; and
- k) Otherwise cooperating with the County in the performance of this Agreement and providing the County such documentation and information as it may reasonably request to facilitate the performance of its duties under this Agreement.

ARTICLE 4 COMPENSATION AND CONSIDERATION

4.1 For City elections that are to be conducted contemporaneously with a countywide General Election, pursuant to this Agreement and to action of the Board of Commissioners on August 7, 2019, the City will not be charged for the cost of said election.

ARTICLE 5 LEGAL RESPONSIBILITIES

5.1 The City shall be solely responsible for any liability resulting from any claims or litigation arising from or pertaining to any City election, except claims or litigation regarding the acts of agents or employees of the County, the County Board of Registration and Elections, and the County Election Superintendent in connection with any City Election held pursuant to this Agreement. The City agrees to reimburse the County for all costs, including, but not limited to, court costs and attorney fees for the County Attorney or outside counsel, incurred by the County as a result of any such claim or litigation. The City shall make payment of such reimbursements to the County within thirty (30) days of receipt of any invoice for reimbursement from the County.

5.2 In the event that a City election is contested, the City shall be solely responsible for any liability resulting from any claims or litigation arising from or pertaining to any contested City election, except claims or litigation regarding the acts of agents or employees of the County, the County Board of Registrations and Elections, and the County Election Superintendent in connection with any City Election held pursuant to this Agreement. The City agrees to reimburse the County for all costs incurred in responding to the election challenge, including, but not limited to, attorney's fees for the County Attorney or outside counsel and all expenses associated with the election challenge and any appeals thereafter. The City shall make payment of such reimbursements to the

County within thirty (30) days of receipt of any invoice for reimbursement from the County. If a second election is required, such election will constitute a City Election under this Agreement and shall be conducted in accordance with the terms of this Agreement.

5.3 To the extent allowed by law, the City agrees to defend and hold harmless the County with respect to any claim, demand, action, damages, judgment, cost and/or expenses (including, without limitation, reasonable attorney's fees and legal expenses) to which the County may be subjected as a consequence of or as a result of any error, omission, tort, intentional tort, willful misconduct, or any other negligence on the part of the City and/or its employees.

5.4 To the extent allowed by law, the County agrees to defend and hold harmless the City with respect to any claim, demand, action, damages, judgment, cost and/or expenses (including, without limitation, reasonable attorney's fees and legal expenses) to which the City may be subjected as a consequence of or as a result of any error, omission, tort, intentional tort, willful misconduct, or any other negligence on the part of the County and/or its employees.

5.5 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law.

5.6 Should it be necessary to comply with legal requirements that any of the County's personnel shall be sworn in as a temporary officer or employee of the City, such formality shall be observed without limitation.

ARTICLE 6 EMPLOYMENT STATUS

6.1 All County personnel assigned under this Agreement are and will continue to be employees of the County for all purposes, including, but not limited to: duties and responsibilities, employee benefits, grievance, payroll, pension, promotion, annual or sick leave, standards of performance, training, workers compensation and disciplinary functions.

6.2 All County personnel assigned under this Agreement are and will continue to be part of the Fulton County Department of Registration and Elections and under the supervision of the Superintendent.

6.3 All City personnel assigned under this Agreement are and will continue to be employees of the City.

ARTICLE 7 RECORDKEEPING AND REPORTING

7.1 The County Registration and Elections Department is the central repository for all departmental records and makes available public records as defined and required by the Georgia Open Records Act, O.C.G.A. § 50-18-70, *et seq.*, O.C.G.A. § 21-2-51 and O.C.G.A. § 21-2-72, now and as they may be amended hereafter. During the term of this Agreement, the County will continue to comply with the applicable provisions of the Georgia Open Records Act and the Georgia Election Code.

7.2 Except as limited by any provision of state or federal law, the City may request, review and access data and County records at a mutually agreed upon time to ensure compliance with this Agreement.

ARTICLE 8 E-VERIFY AND TITLE VI

Each party agrees that it will comply with all E-Verify and Title VI requirements and execute any documents reasonably required related to such compliance. Further, each party agrees that any contracts let for work completed pursuant to this Agreement shall contain all required E-verify and Title VI requirements under applicable law.

ARTICLE 9 AUTHORIZATION

Each of the individuals executing this Agreement on behalf of his or her respective party agrees and represents to the other party that he or she is authorized to do so and further agrees and represents that this Agreement has been duly passed upon by the required governmental agency or council in accordance with all applicable laws and spread upon the minutes thereof. The parties hereto agree that this Agreement is an intergovernmental contract and is entered into pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia 1983.

Further, the Fulton County Board of Registration and Elections has reviewed and approved this Agreement and has authorized its Chairman and its Chief Administrative Officer to execute any ancillary documents required to complete the November 8, 2022 Special Election, including but not limited to the Notice of the Call of the Special Election and the Notice of the Special Election.

ARTICLE 10 TERMINATION AND REMEDIES

Either party may unilaterally terminate this Agreement, in whole or in part, for any reason whatsoever or no reason at all, by notice in writing to the other party delivered at least thirty (30) days prior to the effective date of the termination.

ARTICLE 11 NOTICES

All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non binding duplicate facsimile notice. Future changes in address shall be effective upon written notice being given by the City to the County Elections Superintendent or by the County to the City Clerk via certified first-class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County: Fulton County Board of Registration and Elections
Attn: Director
130 Peachtree St SW, Suite 2186
Atlanta, Georgia 30303
Facsimile: 404.730.7024

With a copy to: Fulton County Office of the County Attorney
Attn: County Attorney
141 Pryor Street SW, Suite 4038
Atlanta, Georgia 30303
Facsimile: 404.730.6540

If to the City: City Clerk
Brenda B. James
56 Malone St. SW
Fairburn, GA. 30213

With a copy to: City Attorney
Rory K. Starkey
561 Thornton Rd. Suite G
Lithia Springs, GA. 30122

ARTICLE 12 NON-ASSIGNABILITY

Neither party shall assign any of the obligations or benefits of this Agreement.

IN WITNESS WHEREOF, the City and County have executed this Agreement through their duly authorized officers on the day and year first above written.

FULTON COUNTY, GEORGIA

APPROVED AS TO SUBSTANCE:

(Seal)

Chair, Board of Commissioners



Attest:

Clerk to Commission

Date:

8/23/2022

ATTEST:

APPROVED AS TO FORM:

Fulton County Attorney's Office

APPROVED AS TO SUBSTANCE:

Nadine Williams

Interim Director, Fulton County Department
of Registration and Elections

ARTICLE 13 ENTIRE AGREEMENT

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

ARTICLE 14 SEVERABILITY, VENUE AND ENFORCEABILITY

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed, and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of Fulton County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

ARTICLE 15 EBINDING EFFECT

This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

ARTICLE 16 COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

CITY OF FAIRBURN, GEORGIA

Mark B. King (SEAL)

Mayor

Date: 7-20-22

APPROVED AS TO FORM:

Scott Brull

Dep. City Attorney

Brenda B. James

City Clerk

(SEAL)



APPROVED AS TO SUBSTANCE

Brenda B. James

City Clerk

EXHIBIT A

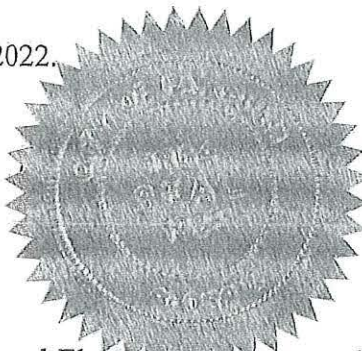
As per the Agreement executed on July 20, 2022, the City of Fairburn, hereby requests that Fulton County conduct its Special Election on November 8, 2022 within the boundary of Fulton County.

The last day to register to vote in this election is October 10, 2022.

The list of early voting locations will be forthcoming.

This 20 day of July, 2022.

Drenda B James
City Clerk



The Fulton County Board of Registrations and Elections agrees to conduct the City of Fairburn Special Election on November 8, 2022, within the boundary of Fulton County.

This _____ day of _____, 2022.

W. Woodard (SEAL)
Elections Superintendent
Fulton County Board of Registration and
Elections

1 STATE OF GEORGIA
2 COUNTY OF FULTON
3

ORDINANCE NO: 2022-246

4 **AN ORDINANCE AUTHORIZING THE SALE OF DISTILLED SPIRITS AND**
5 **ALCOHOLIC BEVERAGES ON SUNDAYS; TO REGULATE AND TO PROVIDE FOR**
6 **THE CALLING OF A SPECIAL ELECTION AND TO CALL A SPECIAL ELECTION**
7 **THEREON; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN**
8 **EFFECTIVE DATE; AND FOR OTHER RELATED PURPOSES.**
9

10 **WHEREAS**, the City of Fairburn is authorized to regulate package sales of distilled spirits and
11 alcoholic beverages in the City, and currently, such sales are not authorized on Sundays; and
12

13 **WHEREAS**, the General Assembly authorized package sales of malt beverages, wine and distilled
14 spirits on Sundays in any local government jurisdiction that desires to allow such sales after a vote
15 on a referendum placed on the general election ballot, if the referendum receives approval of a
16 majority of the voters; and
17

18 **WHEREAS**, in order to place the question on a referendum, a local governing authority must pass
19 legislation permitting sales of alcohol on Sundays between the hours of 12:30 PM and 11:30 PM,
20 and forward a certified copy of the same to the Elections Superintendent for placing on the ballot;
21 and
22

23 **WHEREAS**, the City desires to amend the Code of Ordinances to authorize Sunday package sales
24 in accordance with State law, subject to and effective only upon the passage of a referendum
25 authorizing such sales.
26

27 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE**
28 **CITY OF FAIRBURN**, as follows:
29

30 **Section 1.** That Chapter 8, Article III of the City Code be amended by adding the following new
31 *Section 8-83. Times for package sales:*

32 **Section 8-83. Times for package sales.** Notwithstanding any other ordinance to
33 the contrary, licensed retailers of packaged distilled spirits and alcoholic beverages
34 shall be permitted to sell packaged distilled spirits and alcoholic beverages on
35 Sundays between the hours of 12:30 p.m. and 11:30 p.m., in addition to other times
36 authorized for the sale under this Chapter.

37 **Section 2.** That there shall be a called and there is hereby called a special election to be held in all
38 precincts in the City, on the 8th day of November 2022, for submitting to the voters of the City of
39 Fairburn the question of authorizing Sunday sales of packaged distilled spirits and alcoholic
40 beverages by licensed retailers between the hours of 12:30 p.m. and 11:30 p.m.

41 **Section 3.** That the Municipal Clerk shall call said referendum by publishing notice of the
42 referendum in a newspaper of appropriate general circulation no less than ten (10) nor more than
43 sixty (60) days after approval of this Ordinance.

44 **Section 4.** That the ballot submitting the question of Sunday sales of distilled spirits and alcoholic
45 beverages by licensed retailers between the hours of 12:30 p.m. and 11:30 p.m. shall have printed

46 thereon the following question in order that each voter may vote in either the affirmative or the
47 negative:
48

() YES	Shall the governing authority of CITY OF FAIRBURN, GEORGIA, be
() NO	authorized to permit and regulate Sunday sales of distilled spirits and alcoholic beverages by licensed retailers within the CITY OF FAIRBURN, GEORGIA from 12:30 P.M. to 11:30. P.M.?

49 **Section 5.** That the special election shall be held at the regular and established voting precincts of
50 the election districts of the City of Fairburn. The polls in each of the precincts within the City of
51 Fairburn shall be open from 7:00 a.m. until 7:00 p.m. on the date fixed for the election. The election
52 shall be held in accordance with the Constitution and laws of the United States and the State of
53 Georgia.

54 **Section 6.** In the event any section, subsection, sentence, clause, or phrase of this Ordinance shall
55 be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect
56 the previously existing provisions of the other sections, subsections, sentences, clauses or phrases
57 of this Ordinance, which shall remain in full force and effect as if the section, subsection, sentence,
58 clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part
59 thereof. The City Council declares that it would have passed the remaining parts of this Ordinance
60 or retained the previously existing Ordinance if it had known that such part or parts hereof would
61 be declared or adjudicated invalid or unconstitutional.

62 **Section 7.** This ordinance shall become effective immediately upon signature by the Mayor.

63 **Section 8.** All Ordinances and parts of Ordinances in conflict with this Ordinance are repealed to
64 the extent of the conflict.
65

66

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67 Adopted this 20 day of July, 2022.

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74 ATTEST:

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77

78

Brenda James
Brenda James, City Clerk

M. B. Avery

Mario B. Avery, Mayor

APPROVED AS TO FORM:

Rory K. Starkey
Rory K. Starkey, City Attorney

NOTICE OF CALL FOR SPECIAL ELECTION
TO THE QUALIFIED VOTERS OF CITY OF FAIRBURN, GEORGIA:

NOTICE IS HEREBY GIVEN that on the ____ day of _____, 2022, a Special Election will be held in conjunction with the General Election at the regular polling places in all the election districts of CITY OF FAIRBURN, GEORGIA (the "City"), at which time there will be submitted to the qualified voters of the City for their determination a question regarding whether there shall be the sale of alcohol on Sundays by licensed retailers within the City. The Mayor and Council of the City of Fairburn, as the governing authority, adopted an ordinance permitting the sale of alcohol on Sundays for licensed retail establishments to begin at 12:30P.M. and to continue through 11:30 P.M. The Ordinance is conditioned upon the approval of the electors of CITY OF FAIRBURN, GEORGIA in this special election.

The ballots to be used at said special election shall have written or printed thereon substantially the following:

☐ YES	Shall the governing authority of CITY OF FAIRBURN, GEORGIA, be authorized to permit and regulate Sunday sales of distilled spirits and alcoholic beverages by licensed retailers within the City from 12:30 P.M. to 11:30. P.M.?
☐ NO	

The special election shall be held at the regular and established voting precincts of the election districts of the City of Fairburn. The polls will be open from 7:00 a.m. to 7:00 p.m. on the date fixed for the election.

Those qualified to vote in said election shall be the qualified electors registered to vote as determined in accordance with the Georgia Election Code, O.C.G.A. §21-2-1, *et seq.* and those who desire to register to vote in the special election may register to vote through the close of business (5:00 p.m.) on October 11, 2022. The Polls for said election will be open from 7:00 a.m. to 7:00 p.m., Eastern Standard Time, on the day fixed for said election. Early voting by mail will be offered October 11, 2022, through October 28, 2022, and early voting in-person will be offered October 17, 2022, through November 4, 2022.

This notice is given pursuant to the Mayor and Council of the City of Fairburn.

Brenda B. James, City Clerk

**SPECIAL ELECTION
CITY OF FAIRBURN**

**City of Fairburn
Sunday Sales of
Distilled Spirits and
Alcoholic Beverages
Referendum
(Vote for One)**

"Shall the governing authority of the City of Fairburn, Georgia, be authorized to permit and regulate Sunday sales of distilled spirits and alcoholic beverages by licensed retailers with the City of Fairburn, Georgia from 12:30 P.M. – 11:30 P.M.?"

☐ **Yes**

☐ **No**



Fulton County

Legislation Details

File #: 22-0534 **Version:** 1 **Name:**
Type: CM Action Item - Open & Responsible Government **Status:** Passed
File created: 7/12/2022 **In control:** Board of Commissioners
On agenda: 8/17/2022 **Final action:** 8/3/2022
Title: Request approval of an Intergovernmental Agreement to conduct Special Elections for the City of Fairburn in conjunction with the General Election on November 8, 2022 and Runoff Election on December 6, 2022. (APPROVED)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Exhibit 1: Intergovernmental Agreement City of Fairburn, 2. Exhibit 2: Resolution Establishing a Policy between Municipalities, 3. Exhibit 3: City of Fairburn - Ordinance

Date	Ver.	Action By	Action	Result
8/3/2022	1	Board of Commissioners	approve	Pass

