

1 AN ORDINANCE AMENDING PART I, SUBPART B, CHAPTER 102 –
2 ADMINISTRATION, ARTICLE V, PURCHASES AND CONTRACTS, OF THE CODE OF
3 LAWS OF FULTON COUNTY BY ADDING A NEW DIVISION 14 TO THE
4 PURCHASING CODE OF FULTON COUNTY, GEORGIA RELATING TO
5 CONSTITUTIONAL OFFICERS' USE OF THE PURCHASING DEPARTMENT AND
6 THE PURCHASING CODE; AND FOR OTHER PURPOSES.

7
8 **WHEREAS**, Fulton County, Georgia, (the "County") is a political subdivision of the
9 State of Georgia, existing as such under and by the Constitution, statutes, and laws of
10 the State; and

11 **WHEREAS**, the Fulton County Board of Commissioners is the governing authority
12 of the County, elected by the qualified electors of Fulton County and vested with fiscal
13 and legislative responsibilities necessary to manage the affairs of the County government
14 and its services to the public; and

15 **WHEREAS**, pursuant to Fulton County Code ("FCC") § 1-117, as permitted by
16 O.C.G.A. § 36-5-22.1, the Board of Commissioners is vested with "exclusive jurisdiction
17 and control over . . . directing and controlling all the property of the county, as they may
18 deem expedient, according to law; . . . examining and auditing all claims or accounts of
19 officers, having the care, management, keeping, collecting, or disbursement, of money
20 belonging to the county, or appropriated for its use and benefit, and bring them to a
21 settlement . . . and to exercise such other powers as are granted by law, or are
22 indispensable to their jurisdiction over county matters and county finances"; and

23 **WHEREAS**, county purchasing departments, and the Department of Purchasing
24 & Contract Compliance (the "Purchasing Department") in Fulton County, are creations of
25 state law, pursuant to 1941 Ga. Laws (Act No. 426), page 408, § 1; and

26 **WHEREAS**, the Purchasing Department is the department within the County that
27 is responsible for the timely purchase of quality goods and services at the most favorable

1 cost to the County through competition designed to maximize, to the fullest extent
2 practicable, the value of County funds, and to provide safeguards for maintaining the
3 transparency, fairness, quality, and integrity of the procurement process; and

4 **WHEREAS**, the County's Purchasing Department has been recognized by the
5 National Institute of Governmental Purchasing and the National Purchasing Institute in
6 the areas of procurement, professionalism, innovation, and customer service; and

7 **WHEREAS**, the Board of Commissioners enacted the procurement laws found in
8 the Fulton County Code of Laws, FCC § 102-351 *et seq.* as the same may be amended
9 from time to time ("Purchasing Code"), and the Purchasing Department has developed
10 and implemented Standard Operating Procedures ("SOPs"), rules, and other processes,
11 that ensure that the County complies with its state, federal, and other legal purchasing
12 and contractual obligations; and

13 **WHEREAS**, pursuant to Fulton County Code § 102-364 the Purchasing
14 Department is under the direction of the County's chief purchasing agent ("Purchasing
15 Agent"), who is also the Director of the Purchasing Department, and who is responsible
16 for ensuring compliance with the Purchasing Code; procuring or supervising the
17 procurement of all supplies, services, and construction needed by the County;
18 establishing and maintaining programs for the inspection, testing and acceptance of
19 supplies, services, and construction; keeping a record of all purchases the Purchasing
20 Agent makes as well as emergency purchases made by agencies that the Purchasing
21 Agent has authorized; and signing purchase orders after receipt of a fully executed
22 contract or signed accepted quote and requisition; and

1 **WHEREAS**, FCC § 102-364(d) (Authority of purchasing agent) provides, in part,
2 that the Purchasing Code “shall govern the purchase of all supplies, materials, or
3 equipment, and contracts for all work or labor to be done, required by any department,
4 office, officer, board, commission, or other agency of the county, payment for which is to
5 be made from the county treasury, except the departments under the jurisdiction of the
6 county board of education, the county board of public welfare, and public works contracts
7 procured pursuant to O.C.G.A. § 36-10-1 et seq”; and

8 **WHEREAS**, FCC § 102-366 (Centralization of Purchasing Authority), provides, in
9 part, that “[a]ll supplies, materials and equipment shall be purchased or procured by the
10 county purchasing agent, except those for the use of the departments under the
11 jurisdiction of the county board of education and county board of public welfare . . .”; and

12 **WHEREAS**, pursuant to Georgia Constitution, Art. IX, § 1, ¶ 3(a), the Clerk of
13 Superior Court of Fulton County, the Judge of the Probate Court of Fulton County, the
14 Sheriff of Fulton County, and the Tax Commissioner of Fulton County are constitutional
15 officers in the State of Georgia; and

16 **WHEREAS**, constitutional officers do not include other local County elected
17 officials; and

18 **WHEREAS**, the constitutional officers are not employees of the Fulton County
19 Board of Commissioners and are afforded certain independence in the performance of
20 their duties; and

21 **WHEREAS**, under Georgia law a board of commissioners is charged with creating
22 a budget and once that budget is created and funds are allocated to a constitutional

1 officer, the constitutional officer has broad discretion in how to utilize that budget in the
2 discharge of the officer's duties; and

3 **WHEREAS**, the Purchasing Code contains procedural rules relating to how
4 contracts are procured and how purchases are processed and paid for; and

5 **WHEREAS**, the Purchasing Code does not seek to control what types of goods
6 and services a constitutional officer chooses to procure; and

7 **WHEREAS**, following the Purchasing Code will not infringe on a constitutional
8 officer's ability to perform their statutorily assigned duties and its application would not
9 require any more of them than it requires of the County's other departments, offices, and
10 officials regarding financial safeguards and protocols; and

11 **WHEREAS**, constitutional officers have often solicited and/or procured goods and
12 services in the past through the use of Fulton County's Purchasing Department, but on
13 some occasions they have not, and those occasions have sometimes resulted in
14 confusion, additional funding having to be allocated to the constitutional officers by the
15 Board of Commissioners, and potential legal exposure to the County and the
16 constitutional officers and public funds; and

17 **WHEREAS**, the Board of Commissioners believes that the ongoing confusion,
18 additional funding having to be allocated to the constitutional officers by the Board of
19 Commissioners, and potential legal exposure created by constitutional officers not
20 uniformly making use of the Purchasing Department or complying with the Purchasing
21 Code is unsustainable and requires resolution; and

WHEREAS, the Board of Commissioners finds that it is in the best interest of the County that each constitutional officer utilize the Purchasing Department and the Purchasing Code for the acquisition of all goods and services; and,

WHEREAS, the Board of Commissioners has determined to adopt and enact amendments to the Purchasing Code clarifying the constitutional officers' duties under the Fulton County Purchasing Code when procuring goods and services that will be paid using public funds.

NOW, THEREFORE, BE IT ORDAINED, by the Fulton County Board of Commissioners that Part I, Subpart B, Chapter 102 - Administration, Article V, Purchases and Contracts of the Code of Fulton County is hereby amended to add Division 14 clarifying the duties of constitutional officers in Fulton County, Georgia under the Fulton County Purchasing Code for the procurement of goods and services, as set forth in "Exhibit A," which is attached hereto.

PASSED AND ADOPTED by the Board of Commissioners of Fulton County, this
10th day of July, 2024.



FULTON COUNTY BOARD OF COMMISSIONERS

SPONSORED BY:

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Robert L. Pitts (At-Large)
Chairman

ATTEST:

John R. Davis

Tonya R. Grier
Clerk to the Commission

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APPROVED AS TO FORM:



Y. Soo Jo
County Attorney

ITEM # 34-0487 FRM 7 / 10 / 24
FIRST REGULAR MEETING

Division 14. Constitutional Officers' Procurement Duties

Sec. 102-485- Definitions.

Constitutional officers – as specified herein, means the Sheriff, Superior Court Clerk, Tax Commissioner and Probate Court Judge. (Ga. Const. Art. IX, § 1, ¶ 3(a)).

Code – all sections of the Fulton County Purchasing Code.

Sec. 102-486 - Purpose.

Although constitutional officers are afforded certain independence in the performance of their respective duties, the Board of Commissioners is charged with controlling the budget of Fulton County and has authority to review, approve, or modify constitutional officers' budgets. Further, the Code requires that all supplies, materials and equipment purchased using County funds shall be purchased or procured according to the Purchasing Code. Despite these provisions, constitutional officers in Fulton County have sometimes elected to solicit and/or procure goods and services without utilizing the Purchasing Agent and the Fulton County Department of Purchasing and Contract Compliance. This selective use of the Department of Purchasing and Contract Compliance and the Code has resulted in confusion, additional funds needing to be allocated by the Board of Commissioners to the constitutional officers' budgets, difficulty complying with reporting and auditing requirements, challenges to the efficient processing and reconciliation of payments and accounts, and has exposed the County to legal liability. Accordingly, this Division details constitutional officers' duties with regard to their use of the services of the Purchasing Agent and compliance with the Code.

Sec. 102-487 – Compliance by constitutional officers with Code.

- (a) Constitutional officers shall utilize the Purchasing Agent and the Department of Purchasing and Contract Compliance's procurement processes and procedures as outlined in the Code, except as otherwise provided in this Division; and
- (b) Constitutional officers shall only enter into contracts and agreements supported by funding in their budget as follows:
 - (1) Constitutional officers shall utilize the Purchasing Agent and Department of Purchasing and Contract Compliance, which uses a competitive solicitation process and procedure as outlined in Division III of this Code.
 - (2) Constitutional officers shall comply with the requirement and makeup of the Evaluation Committee composed pursuant to FCC § 102-380, when applicable, except that they shall be permitted to select all the voting members from their staff provided that the staff have the expertise and knowledge required by FCC § 102-380. Constitutional officers shall also be permitted to participate as voting members of the Evaluation Committee.

- (3) After utilizing the Purchasing Agent and Department of Purchasing and Contract Compliance, constitutional officers may execute contracts without having the contracts or agreements go to the Board of Commissioners for approval and without being spread on the minutes of the Board of Commissioners pursuant to O.C.G.A. § 36-10-1.
- (c) Constitutional officers shall work with and assist the Purchasing Agent and Department of Purchasing and Contract Compliance to ensure the maintenance of the records and inventory for each procurement and payment invoicing related to the same.
- (d) After the establishment of the yearly budget for constitutional officers, should a constitutional officer enter into a contract without utilizing the Purchasing Agent and Department of Purchasing and Contract Compliance as described above, no additional funding will be allocated to the constitutional officer without a showing of compliance with this Division absent a showing of extraordinary need.

Secs. 102-488—102-490. - Reserved.