

1 AN ORDINANCE TO AMEND CHAPTER 101 (GENERAL PROVISIONS AND
2 COUNTY GOVERNING AUTHORITY), ARTICLE 2 (COUNTY GOVERNING
3 AUTHORITY), DIVISION 2 (RULES OF ORDER AND PROCEDURE), SECTION 101-
4 72 (EXECUTIVE SESSION) OF THE FULTON COUNTY CODE OF ORDINANCES TO
5 FURTHER SAFEGUARD AND PREVENT THE DISCLOSURE OF CONFIDENTIAL
6 EXECUTIVE SESSION DISCUSSIONS AND TO PROVIDE PENALTIES FOR ANY
7 VIOLATION; AND FOR OTHER PURPOSES.
8

9 **WHEREAS**, it is a fundamental precept of governance in the United States that
10 governing bodies are able to conduct meetings to provide vital services to their
11 constituents; and

12 **WHEREAS**, as the governing body of Fulton County, Georgia, the Fulton County
13 Board of Commissioners is authorized to conduct at least two meetings per month
14 (Regular and Recess) under Rule 6 of its Procedural Rules and in accordance with the
15 Georgia Open Meetings Act (See, O.C.G.A. Sec. 50-14-1 *et seq.*); and

16 **WHEREAS**, Rule 2 of the Procedural Rules governing the meetings of the Board
17 of Commissioners requires that all meetings must be public at all times except those
18 permitted in "closed Executive Sessions"; and

19 **WHEREAS**, the Georgia Open Meetings Act recognizes that certain business of
20 a governing body should be discussed in a confidential arena because discussion in
21 public could be detrimental to the interests and orderly business of the local
22 government; and

23 **WHEREAS**, specifically, O.C.G.A. Section 50-14-3 of the Georgia Open
24 Meetings Act authorizes the Board of Commissioners, and other entities, to hold
25 executive session meetings regarding topics including certain legal, real estate, and
26 personnel matters; and

27 **WHEREAS**, the ability of the Board of Commissioners to enter into executive
28 sessions is also codified in Fulton County Code Section 101-72; and

29 **WHEREAS**, the members of Board of Commissioners recognize that the matters
30 discussed in executive sessions are confidential and of a sensitive nature, and that to
31 avoid a chilling effect on matters being discussed freely in executive sessions, the
32 Board must maintain trust that the confidential and sensitive matters discussed in
33 executive sessions will remain confidential and not be disclosed outside of executive
34 session; and

35 **WHEREAS**, the members of the Board of Commissioners further recognize that
36 violating their duty to maintain confidentiality regarding matters discussed during
37 executive sessions might expose Fulton County to potential financial loss and may also
38 erode trust and collegiality among the Commissioners; and

39 **WHEREAS**, to preserve the confidential nature of executive session discussions,
40 on October 7, 2009, via Agenda item 09-1043, the Board of Commissioners amended
41 Section 2-71 of the Fulton County Code of Ethics to specifically provide that “no officer
42 or employee shall disclose any information acquired during any session of the board of
43 commissioners that is closed to the public pursuant to the provisions of the Georgia
44 Open Meetings Act, unless such disclosure is specifically authorized by vote of the
45 board;” and

46 **WHEREAS**, in accordance with Section 2-82 of the Code of Ethics, violations
47 shall subject the violator to: “(1) an administrative sanction not to exceed \$1,000.00,
48 which sanction shall be deposited into the general fund of Fulton County; and (2) a
49 public reprimand;” and

50 **WHEREAS**, despite the fact that disclosing confidential information from
51 executive sessions may be found to be a violation of the Ethics Code, the Board of
52 Commissioners believes that further action is required to strengthen the policy of
53 preserving the confidential nature of executive sessions to protect the good and efficient
54 order of County business and the legal interests of the County, and to deter the
55 undermining of the very purpose of executive session by disclosing confidential
56 information to individuals who did not attend executive session; and

57 **WHEREAS**, the Board of Commissioners does not intend to deprive any person
58 of the right to freedom of expression, but deems the preservation of the confidential
59 nature of executive sessions to be of such vital importance to Fulton County that
60 additional safeguards must be established, in addition to the available avenue of
61 prosecuting violations of the Code of Ethics before the Fulton County Board of Ethics;
62 and

63 **WHEREAS**, the Fulton County Board of Commissioners finds it necessary to
64 amend Fulton County Code Section 101-72 to grant the Fulton County Board of
65 Commissioners, by a vote of at least five Commissioners, the authority to find a member
66 to have violated the confidential nature of an executive session proceeding, and to
67 render appropriate sanctions against the violating member to include, but not be limited
68 to, a public reprimand and/or imposition of an administrative sanction of not more than
69 \$1,000.00 per offense, without having to present the matter to the Fulton County Board
70 of Ethics; and

71 **WHEREAS**, the Board of Commissioners has authority, pursuant to the
72 Constitution of the State of Georgia, Article 9, Sec. 2 ¶ 1(a), to adopt reasonable

ordinances, resolutions, or regulations relating to the County's affairs for which no provision has been made by general law and which is not inconsistent with the Constitution or any local law applicable thereto; and

WHEREAS, the Board of Commissioners desires to amend the text of Section 101-72 (Executive Session) of the Fulton County Code so as to include additional safeguards to prevent the disclosure of executive session discussions and to authorize the imposition of a penalty for a violation of Section 101-72.

NOW, THEREFORE, BE IT ORDAINED, that the Fulton County Board of Commissioners hereby amends Section 101-72 of the Fulton Code of Ordinances, by deleting the current language of that Code Section in its entirety, and substituting in lieu thereof the following text so that, when amended, Section 101-72 shall read in full as follows:

"Sec. 101-72. Executive sessions.

(a) Executive sessions of the board may be held for the purpose of conducting business excepted by O.C.G.A. title 50, chapter 14 (O.C.G.A. § 50-14-1 et seq.) from the Georgia Open Meetings Act requirements. No executive session shall be held except pursuant to a majority affirmative vote of the board taken in a public meeting. The minutes of the public meeting shall reflect the names of the commissioners present, those voting for the executive session, and the reasons for the session. Only necessary staff shall be present at the executive session.

(b) No officer or employee of Fulton County, which includes elected officials and their staff, may disclose confidential information gained by reason of

discussion in executive session or a meeting closed to the public under the Open Meetings Act, nor may the officer or employee use such information for his, her, or their personal gain or benefit. For purposes of this code section, "confidential information" means anything, or any matter discussed under the scope of the executive session, is not otherwise available to the public, or information made confidential by law.

(c) In the interest of preventing the disclosure of confidential information, the board, by a vote of at least five members of the body, may find a member to have violated the confidential nature of an executive session, and decide to render appropriate sanctions against the violating member.

(d) Upon becoming aware of a potential/apparent violation of this code section, the board shall conduct a discussion during the next executive session at which the alleged violator is in attendance. The purpose of conducting the discussion in executive session is to provide for a full and thorough discussion while maintaining the confidential nature of the subject(s) of the alleged disclosure(s). This discussion shall include verbal notice of the allegations to the member alleged to have violated this code section, followed by a public vote requiring the votes of at least five members of the board to determine that a violation occurred, and if so, appropriate sanctions against the violating member, to include but not be limited to, a public reprimand and imposition of an administrative sanction of not more than \$1,000.00 per occurrence, to be immediately effective, and with such amount to be deducted from the compensation of the member found to be in violation.

(e) This code section shall not apply to communications by attorneys representing the County as necessary to effectuate the will of the board regarding matters discussed in executive session.

BE IT FINALLY ORDAINED, that this Ordinance shall become effective when passed and adopted, and that all ordinances and resolutions and parts of ordinances and resolutions in conflict with this Ordinance are hereby repealed to the extent of the conflict.

PASSED AND ADOPTED by the Board of Commissioners of Fulton County, Georgia this 4th day of January, 2023.

FULTON COUNTY BOARD OF COMMISSIONERS

Sponsored By:

Robert L. Pitts, Chairman

ATTEST:

Tonya R. Grier, Clerk to the Commission

APPROVED AS TO FORM:

Y. Soo Jo, County Attorney