

Duluth



Nancy Harris, Mayor
Jamin Harkness, Post 1
Marline Thomas, Post 2

Lamar Doss, Post 3
Manfred Graeder, Post 4
Greg Whitlock, Post 5

**WORK AGENDA
MAYOR AND COUNCIL
CITY OF DULUTH, GA
3167 MAIN ST
DULUTH, GA 30096**

FEBRUARY 14, 2022 CITY HALL COUNCIL CHAMBERS 6:00 pm

*The leaders and staff of the City of Duluth are dedicated to ensuring that Duluth is:
an Attractive Destination, a Quality Community, a World Class Government,
and promotes a Sustainable Economic Environment.*

5:30 P.M. – AGENDA REVIEW Main St. Conference Room

6:00 P.M. - CALL TO ORDER Mayor Harris or Mayor Pro tem Whitlock

INVOCATION OR MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

I. ANNOUNCEMENTS

1. AGENDA CHANGES (IF NECESSARY)
2. UPCOMING EVENTS – www.duluthga.net/events

II. CEREMONIAL MATTERS

1. PROCLAMATION – KELVIN “KELLY” KELKENBERG DAY

Mayor Harris to present a proclamation to Kim Kelkenberg commemorating February 14, 2022 as Kelvin “Kelly” Kelkenberg Day in the City of Duluth.

PLEASE NOTE: This and other City meetings may be audio and/or videotaped for broadcast, transcription and/or archival purposes. As set forth in the Americans with Disabilities act (ADA) of 1990, the City of Duluth government does not discriminate on the basis of disability in the admission or access to or treatment of employment in its programs or activities, and complies with the requirements contained in section 35.107 of the Department of Justice regulations. All agenda packets may be converted to WCAG 2.0 compatibility format by emailing agenda@duluthga.net. In addition, any requests for reasonable accommodations required by individuals to fully participate in any open meeting, program, or activity of the City of Duluth government should be made seven days prior to the event. Direct inquiries to the ADA Coordinator in the City Clerk office, located at 3167 Main Street, Duluth, GA. 30096, or by telephone at 770.476.3434.

III. MATTERS FROM CITIZENS

Maximum of five (5) minutes per person. Sign-up sheet available.

IV. CONSENT AGENDA

1. APPROVAL OF JANUARY 10 & 24 MINUTES

2. ORDINANCE TO APPOINT URBAN REDEVELOPMENT MEMBER

Approval of this item approves ordinance O2022-05 appointing Councilmember Marline Thomas to the Urban Redevelopment Agency (URA), term ending March 31, 2025 and fulfilling the unexpired term of former member Kelly Kelkenberg.

3. ORDINANCE TO APPOINT EMPLOYEE BENEFIT REVIEW

Approval of this item approves ordinance O2022-06 appointing Councilmember Jamin Harkness to the Employee Benefit and Audit Review Committee (EBARC), term ending March 31, 2026.

4. ORDINANCE TO AMEND DULUTH CODE – CHAPTER 7 BILLIARDS

Staff's review of the City's current Billiards ordinance led to a discussion regarding the current requirement for applicants applying for an Occupational Tax Certificate to operate a Billiard Room to submit to a Federal background check which involves fingerprinting of each owner and manager. Staff worked with the Chief of Police, Deputy Chief and City Attorney and concluded there is no need to have this requirement in the Occupational Tax process. Background checks would still be required if the owner applies for an alcohol license. Approval of this item approves ordinance O2022-07 amending Duluth Code Chapter 7, Article III - Billiards Room removing the language requiring background checks when applying for an Occupational Tax Certificate.

5. ORDINANCE TO AMEND BUDGET - \$4,025 – VEHICLES

The Police Department recently sold a vehicle at auction and after commission and fees, received \$4,025. To continue maintaining a vehicle fleet that is low maintenance and dependable, the Police Department has requested that \$4,025 and associated transfer be added to the Police Vehicle - Consolidated Vehicle Maintenance - Vehicle line item. Approval of this item authorizes ordinance BA-FY22-29 to amend the FY22 budget as presented.

6. BID AWARD– ROGERS BRIDGE TRAILHEAD – PHASE 1

On November 5, 2021, the City advertised for prospective contractors for the Rogers Bridge Park Trailhead - Phase I project. On December 14, 2021, three proposal packages were received. Proposals were scored based on cost (65%), written approach (25%), and

resumes/references (10%). Three independent evaluators averaged their scores together to rank the three proposals as follows:

- Astra Group - total score of 94.3 (bid amount of \$1,730,000)
- Diversified Construction - total score of 90.7 (bid amount of \$1,615,192)
- Magnum Construction - total score of 71.7 (bid amount of \$1,980,068)

Approval of this item accepts Staff's recommendation to award the bid to Astra in the amount of \$1,730,000, and further authorize the City Manager execute the contract.

7. ORDINANCE TO AMEND BUDGET- \$921,026.50 –TRAILHEAD

Based on council awarding a bid to Astra Group for the Rogers Bridge Park Trailhead - Phase I Project, staff requests approval of a budget amendment to fund the construction project. Funding for the project will come from currently budgeted SPLOST funds, unallocated SPLOST funds and General Funds. Staff is requesting to add the following funding sources to the project: 1) \$203,012 in unallocated 2017 SPLOST interest, 2) \$3,547.50 in unallocated 2009 SPLOST, 3) \$8,710.75 in unallocated 2014 SPLOST, 4) \$310,716.25 in unallocated 2017 SPLOST and 5) \$395,040 in General Funds. With approval of the funds requested here and previous approved funding for this project, the overall budget for the construction of the trailhead is \$2,000,000. Approval of this item approves ordinance BA-FY22-30 to add \$513,728.25 in unallocated 2017 SPLOST Park funds, \$3,547.50 in unallocated 2009 SPLOST Park funds, \$8,710.75 in unallocated 2014 SPLOST Park funds, and \$395,040 in General Funds to Rogers Bridge Park - Park Areas - Restroom - Buildings line item and associated transfers.

8. ORDINANCE TO AMEND BUDGET - \$309,213 – STORMWATER

Each year after the audit is complete, staff presents a budget amendment for the Stormwater Utility Fund to allocate funds to the current year's budget in excess of the 25% required fund balance reserve. The Mayor and Council to consider an ordinance to amend the budget (BA-FY22-31). On June 30, 2021, the Stormwater Utility Fund had an Unrestricted Fund Balance Reserve of \$660,450. Due to the majority of the fund's revenue coming from a single billing, and the potential need for funding of emergency repairs, policy requires a minimum unrestricted fund balance be maintained equal to 25% of the annual billing or \$351,237 at the end of FY 2021. Considering this requirement, \$309,213 is available for allocation to the current year's budget. Approval of this item approves ordinance (BA-FY22-31) to add \$309,213 to the Stormwater Utility - Stormwater Collection & Disposal - Repairs & Maintenance/Drainage line item.

9. ORDINANCE TO AMEND BUDGET- \$16,058 – FED/STATE DRUG FUNDS

The City of Duluth Police Department manages two drug funds. A Federal Drug Fund and a State Drug Fund. Revenue to the funds comes mainly from the seizure of property that is forfeited by the court based on civil asset forfeiture laws. By law these forfeited funds are required to be used for law enforcement purposes. Both the federal and state drug funds have received revenue in excess of the amount budgeted and staff is requesting the budgets for each fund be amended to allow for the expenditure of these funds. Increase in Federal Drug Fund of \$13,817 and State Drug Fund of \$2,241. Approval of this item approves ordinance BA-FY22-32 to add \$13,817 to the Police Federal Drug Fund - Police Administration

- Police Equipment line item and to add \$2,241 to the Police State Drug Fund - Police Administration - Police Equipment line item.

V. OATHS OF OFFICE

1. URBAN REDEVELOPMENT AGENCY & EMPLOYEE BENEFITS AND AUDIT COMMITTEE

Prior to entering the duties of office, newly elected board members shall take an oath before an officer duly authorized to administer oaths that he or she will truly, honestly, and faithfully discharge the duties of his or her office.

VI. NEW BUSINESS

1. AUTHORIZATION FOR AGREEMENT - OPIOID SETTLEMENT

The Mayor and Council to consider authorizing the City's participation in two settlement proceedings. The State of Georgia has elected to Join two settlements with respect to a national opioid settlement agreement. The agreement allows for cities to join the settlement if they so desire. These settlements are in the amount of \$22.7 billion to be distributed to states, cities, and counties. Based on the provided distribution formula, Duluth would receive approximately \$20,493.00. The City Attorney has reviewed and confirmed the legitimacy of the settlements.

2. APPROVAL FOR CONTRACTS – ON-CALL STORMWATER

With the escalation of materials and labor, it has become increasingly difficult to get contractors to perform maintenance and repair work under our current contract unit rates. To fairly compensate them and have a list of reliable contractors available for our stormwater program needs, the City solicited proposals from qualified contractor in the following areas:

1. Hydrovac and CCTV (cleaning and videotaping the inside of pipe systems for accurate condition assessment by staff)
2. Repair and Maintenance (of all facets of the system)
3. Trenchless Pipe Repair (lining the inside of a pipe from beginning to end without cutting into the pavement)

The above contracts are intended to apply to projects (task orders) with a value less than \$100,000. All projects assumed to be greater than \$100,000 will be advertised through the legal process using the state procurement registry and the City's legal organ.

The request for proposals was advertised on December 20, 2021 with bids due on January 31, 2022. Contractors were permitted to bid on one or more of the three areas listed above. Seventeen proposals were received from eight contractors. Staff reviewed and evaluated the proposals, checked references, and compared unit costs, and has the following recommendations:

HYDROVAC/CCTV

- Southern Premier Contractors, Inc.
- Vortex Services, LLC

REPAIR & MAINTENANCE

- Southern Premier Contractors, Inc.
- Precise Development Group, Inc.
- Vortex Services, LLC
- The Dickerson Group, Inc.

TRENCHLESS PIPE REPAIR

- Southeast Pipe Survey, Inc.
- Southern Premier Contractors, Inc.
- Vortex Services, LLC
- The Dickerson Group, Inc.

Staff requests Council approve award of City-Attorney approved contracts as listed above and authorize the City Manager to execute them. If approved by Council, staff anticipates a contract start date of March 1, 2022. Contracts are for one year, with terms renewable for two additional one-year terms.

VII. MATTERS FROM DEPT HEADS/CITY ATTORNEY

1. ORDINANCE TO AMEND THE DULUTH CODE – SECTION 3-111

The Mayor and Council to consider approval of ordinance O2022-08 amending Section 3-111(a) of the Duluth Municipal Code to provide clarification regarding measuring distances separating businesses licensed to sell alcohol and various land-uses.

2. 2022 FIREWORKS DISPLAY

The fireworks production company expressed concern at a recent planning meeting about new construction in the downtown fall out zone. A meeting was arranged with Fire Marshal Matthew Phillips, Pyro Shows East Coast Production Manager Rick Lambright and event staff for January 26. At this meeting Fire Marshal Phillips stated he would not approve the fall out zone with the addition of the newest building as it was directly in the line of fire with a TPO roof. This effectively ends fireworks launches in downtown Duluth. The high school could be a launching point, but this would rule out parking and visibility from downtown would be impacted. Event team will present its findings and recommendations and seeks input from council related to the July 3rd event.

VIII. MATTERS FROM COUNCIL

IX. MATTERS FROM CITY MANAGER

X. EXECUTIVE SESSION

It may be necessary to hold an executive session on Real Estate, Pending/Potential Litigation, or Personnel, which is properly excluded from the Georgia Open and Public Meeting Law (O.C.G.A. 50-14).

XI. ADJOURNMENT

*The next scheduled meeting of the Mayor and Council is a work session for
February 28, 2022 at 5:30 p.m.*

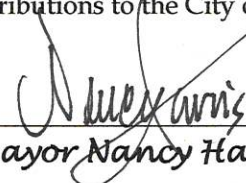
PROCLAMATION



Kelvin "Kelly" Kelkenberg Day

- WHEREAS,** Kelvin "Kelly" Kelkenberg served on the Zoning Board of Appeals from 2005-2009 as well as the Planning Commission from 2009-2010. He also participated in and graduated from the Duluth L.E.A.D. program in 2008; and
- WHEREAS,** Kelly was elected to and wholeheartedly served on the Duluth City Council from 2011-2021; and
- WHEREAS,** Kelly was elected to the executive Board of the Gwinnett Municipal Association (GwMA) in 2018, serving as Vice President in 2019 and President in 2020, and from whom he received the Leadership and Service Award for exceptional service; and
- WHEREAS,** Kelly was appointed to the Gwinnett County Transit Review and Recommendation Committee where, in 2018 and 2019, he helped lead the development of a plan to bring to the citizens for a vote; and
- WHEREAS,** Kelly was appointed to the Urban Redevelopment Agency in 2021 to help guide the use of TAD related Bond funds for further enhancement of Duluth's remarkable downtown; and
- WHEREAS,** on numerous occasions, Kelly was called upon for his unique expertise for matters such as helping the City to avoid becoming a victim of cyber-attacks, assisting with the preparation for Tropical Storm Irma and dealing with the complex issues associated with the Covid-19 pandemic; and
- WHEREAS,** Kelly regularly participated the in Georgia Municipal Association meetings and activities, including being a member of the Federal Policy Committee and earning a Certificate of Dedication for his training hours; and
- WHEREAS,** Kelly was heavily involved in numerous local organizations, giving his time and talent generously; and
- WHEREAS,** council members that served with Kelly appreciated his unrelenting commitment to the community; and
- WHEREAS,** Kelly was a loving, devoted husband, father, son, grandfather, brother, and friend.

NOW THEREFORE, I, NANCY HARRIS, MAYOR OF DULUTH, on behalf of the council, citizens and staff of Duluth do hereby recognize February 14, 2022, as *Kelvin "Kelly" Kelkenberg Day* in the City of Duluth. We celebrate Kelly's life and his numerous contributions to the City of Duluth.



Mayor Nancy Harris

ATTEST: 
Teresa Lynn, City Clerk





**DRAFT MINUTES OF THE
MAYOR AND COUNCIL
CITY OF DULUTH, GA
JANUARY 10, 2022**

PRESENT: Mayor Harris, Council members Harkness, Thomas, Doss, Graeder, and Whitlock, City Manager, Department Directors, City Attorney

A work session was held prior to the regular scheduled meeting to allow the elected officials to discuss this evening's agenda items. No other items were discussed, and no action was taken.

Mayor Harris called the meeting to order at 6:00pm

MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE led by Mayor Harris and Scout Ben Harkness, Scout Troop 648

I. ANNOUNCEMENTS

1. AGENDA CHANGES (none)
2. UPCOMING EVENTS – www.duluthga.net/events

II. CEREMONIAL MATTER

1. OATHS OF OFFICE

Before entering the duties of office, the newly elected councilmembers shall take an oath before an officer duly authorized to administer oaths that he or she will truly, honestly, and faithfully discharge the duties of his or her office. Honorable Judge Charles Barrett administered the Councilmember oaths to Post 1 Councilmember Charles Jamin Harkness, Post 2 Councilmember Marline Thomas, and Post 3 Councilmember Kenneth Lamar Doss.

III. MATTERS FROM CITIZENS

1. SIDEWALK REQUEST – HOWELL FERRY ROAD

Ms. Suzanne Gavett of 4086 Howell Ferry Road came forward requesting Council consider the placement of sidewalks on Howell Ferry Road. Ms. Gavett presented a petition signed by several of the residents supporting the request.

IV. CONSENT AGENDA

1. APPROVAL OF DECEMBER 4 & 13 MINUTES

2. RESOLUTION – 2022 MEETING DATES & TIMES {A}

Approval of this item approves resolution R2022-01 to set and publicize regularly scheduled Mayor and Council meetings for 2022 in accordance with Georgia law.

3. ORDINANCE SETTING 2022 MILEAGE REIMBURSEMENT RATES {B}

The IRS announced that the business standard mileage rate for transportation expenses paid or incurred beginning January 1, 2022 will be 58.5 cents per mile. In addition, the 2022 standard rate for miles driven for medical or moving purposes will be 18 cents per mile. Approval of this item adopts ordinance O2022-01 setting the reimbursement rates, effective January 1, 2022.

4. ORDINANCE TO APPOINT CITY SOLICITOR {C}

Pursuant to the Duluth City Code, Section 2-208, the Mayor and Council are authorized to appoint a solicitor of the municipal court of the City. The solicitor shall be appointed by the Mayor and Council and shall serve at the pleasure of the Mayor and Council. The compensation of the solicitor shall be on an hourly basis and the rate shall be fixed by the Mayor and Council on an annual basis during the regular budget process. Before entering on the duties of office, the solicitor shall take an oath before an officer duly authorized to administer oaths that he or she will truly, honestly, and faithfully discharge the duties of his or her office. Approval of ordinance O2022-02 appoints Mr. Richard Armond as Solicitor of the Duluth Municipal Court as recommended by staff.

5. RESOLUTION TO APPOINT LEGAL ORGAN {D}

Approval of this item approves resolution R2022-02 naming the "Gwinnett Daily Post" as the City's Legal Organ for 2022. This resolution shall not be construed to prevent the City from utilizing a newspaper of general circulation within the City of Duluth or Gwinnett County when authorized to do so by state or local law.

6. RESOLUTION – AUTHORIZING DEPOSITORIES & CHECK SIGNING {E}

Approval of this item approves resolution R2022-03 regarding check signing authority and depositories as per the Financial Policy.

7. ORDINANCE TO AMEND DULUTH CODE – CHAPTER 3 ALCOHOL {F}

As previously reported, HB 879 signed by the Governor required the Department of Revenue to develop and implement a state-wide, centralized application process for retail alcohol licensing. This new process ensures the applications, both for new businesses as well as renewals are sent simultaneously to the State and the Local Licensing Authority. This comprehensive approach to licensing will be managed through the Department of Revenue's

streamlined portal, the Georgia Tax Center (GTC). The centralized alcohol licensing will be implemented in two phases, the first being initial licensing (new applications) which becomes effective January 12. The second phase for "renewal licensing" is being developed and will become effective later this year. Currently the change will not affect any of our fee structures. For the City to comply with HB 879, the City Attorney met with staff and conducted a review of the alcohol ordinance. Due to time constraints, staff notified the Alcohol Review Board of the necessity of bringing an amendment before the Council to be compliant with HB 879 by January 12. Several housekeeping items were also noted during the review with the City Attorney which are also part of this amendment, such as deletions of those sections the city no longer regulates (such as wine tastings in grocery stores, wine tasting rooms, etc). Approval of this item approves ordinance O2022-04 as presented.

8. ORDINANCE TO AMEND BUDGET - \$766,271–MULTI-CORRIDOR LANDSCAPE {G}

At the December 13 meeting of the Mayor and Council, approval was given to award the contract for landscaping along the shoulder of Pleasant Hill Road from the Chattahoochee River to McClure Bridge Road as well as the medians of Peachtree Industrial Boulevard from SR 120 to Sugarloaf Parkway in the amount of \$766,270.40 to Tri-Scapes, Incorporated. As part of the bid award, staff requested approval of a budget amendment to add \$766,271 in unallocated 2017 SPLOST Transportation funds to this project. Approval of this item approves ordinance BA-FY22-24 to add \$766,271 in unallocated 2017 SPLOST Transportation funds to CD-77 Landscape Medians - Paved Streets - Infrastructure line item including associated transfers.

9. ORDINANCE TO AMEND BUDGET - \$2,475 – DAMAGE REIMBURSEMENT {H}

In September, a tractor trailer driver was caught on video making a sharp turn into the parking lot behind Pure Taqueria which resulted in extensive damage to a pedestrian railing next to the entrance. Upon reviewing the video, the Duluth Police Department was able to contact the driver's employer, Sungor Transportation, Inc., who assisted the police in locating the driver prior to leaving Duluth. The trucking company contacted staff to request the claim be settled without going through insurance. Staff submitted an invoice for the damage to the company and received reimbursement of \$2,475 for the damage. The damaged railing has been repaired and the repair company paid. Staff is requesting \$2,475 be added back to the budget line item where the repairs was paid from. Approval of this item approves ordinance (BA-FY22-25) to add \$2,475 to City Manager - City Manager's Office - General Emergency Repairs line item.

10. ORDINANCE TO AMEND BUDGET - \$650,000 – WORKERS' COMPENSATION {I}

In August 2021, Duluth Police Officer Rickey Porter was seriously injured in an auto accident while on duty. Recently, the City received the first of what is expected to be many medical bills related to this incident. The first bill totaled almost \$300,000, of what is expected to be a very costly overall claim. The City is covered by an Excess Workers' Compensation and Liability Policy and has a maximum exposure of \$650,000. Based on the serious injuries Officer Porter sustained in the accident, staff expects this claim will reach the maximum exposure. Council is asked to consider amending the Workers Compensation Fund budget for \$650,000. Approval of this item approves ordinance BA-FY22-26 to add Workers

Compensation prior year reserves of \$650,000 to the Workers' Compensation - Risk Management - Claims Police Uniform line item.

11. ORDINANCE TO AMEND BUDGET - \$5,100 – PINE NEEDLE TAP GRANT {J}

In June 2021, staff requested and received \$50,000 in SPLOST funding to apply for a Transportation Alternative Projects (TAP) grant, based on a May project presentation to Council for pedestrian enhancement to Pine Needle Drive. The request was based on staff's best estimate of the time necessary to complete the application process. However, the estimate was slightly off and an additional \$5,100 in SPLOST funding is needed. It should be noted that staff has completed the application process and is awaiting a response to the grant request. Staff is requesting an additional \$5,100 in 2014 SPLOST funds be allocated to this project. Approval of this item approves ordinance BA-FY22-27 to add \$5,100 in 2014 SPLOST funds to Pine Needle Drive Pedestrian - Sidewalk & Crosswalks - Professional Services line item.

12. ORDINANCE TO AMEND BUDGET - \$16,190 – HALL CIRCLE SEWER LINE {K}

In August 2021, the City received a performance bond from DR Horton for \$56,675 regarding the installation of a sewer line from Gardendale through Hall Circle. Planning staff later determined DR Horton did not meet its obligations associated with the install and hired a third-party contractor, Southern Premier Contractors, Inc., to complete the installation. The cost to complete the installation was \$16,190.00. To recoup this cost, the City is entitled to reimbursement through the performance bond. The remaining funds will be returned to DR Horton. For this reason, staff is requesting approval of a budget amendment in the Stormwater Utility Fund, who contracted with the third party, to recognize revenue and expenditure of \$16,190. Approval of this item authorizes ordinance BA-FY22-28 to add \$16,190 to the Stormwater Utility Funds - Miscellaneous Revenue and a like amount to Stormwater Collection & Disposal - Repairs & Maintenance - Drainage line items.

Being no further discussion, Mayor Harris called for a motion.

A motion was made by Councilmember Thomas, seconded by Councilmember Whitlock, to approve the Consent Agenda as presented.

**Voted For: Council members Harkness, Thomas, Doss, Graeder, and Whitlock
Motion carried.**

V. PUBLIC HEARINGS

1. ORDINANCE OF REZONING– CASE Z2021-003 SOUTHVINE MODIFICATION {L}

Mayor Harris opened the public hearing.

Planning Director Bill Aiken came forward to present. He summarized application for Case Z2021-003 from Southvine Homes LLC, on behalf of the property owner, Riversong Land Investments LLC, to modify rezoning of a +/- 11.08-acre tract of land located in Land Lot 243

of the 7th District, Gwinnett County, consisting of tax parcel R7243-003. Said property is currently zoned PUD (Planned Unit Development District).

The applicant is requesting the modified rezoning to relocate the location of the entrance drive along a County owned section of Rogers Bridge Road. The proposed modification will result in amendments to the Master Concept Plan and associated conditions of approval for the development and construction of a Single-Family Attached Dwelling residential development consisting of 51 townhouses and associated amenity areas.

Mr. Aiken outlined the conditions of subject property. The parcel slopes down from Rogers Bridge Road to the stream and is surrounded by a mixture of uses. To the north, across Peachtree Industrial Boulevard, is Windsor Court, a single-family neighborhood zoned PUD. To the east and south is Riverbrooke, a single-family neighborhood zoned PUD. To the west is a medical office and a multi-tenant commercial building containing restaurants, retail uses, and a gas station zoned C-2.

Mr. Aiken pointed out that the most significant modification to the Master Concept Plan is the proposed location of the entrance and the intersection that it creates with Rogers Bridge Road. The City regulates separation and spacing of driveways located within the City Limits. Section 909.07 of the codes requires that whenever possible, proposed driveways along one side of a street shall coincide with existing or proposed driveways on the opposite side of the street. When the parcel was originally rezoned for residential development, the intent was to align the new residential entrance drive with the existing residential Towne Village Drive across Rogers Bridge Road. However, the driveway was found to not meet sight distance minimums due to a curve on Rogers Bridge Road south of the subject property. Being a County Road, Gwinnett County DOT has reduced the speed limit along this stretch from 40 mph to 25 mph and provided a statement of support for the proposed location of the entrance drive.

The Master Concept Plan still proposes 51 front loaded single family attached dwellings units. The driveways are proposed to be at least twenty-two (22) in length measured from the back edge of the sidewalk. Driveways with no sidewalks bisecting them shall have a twenty-two (22) foot minimum driveway distance measure from the back edge of curb to the garage face which allows for a larger truck or SUV to park in the driveway without blocking the sidewalk, The proposed relocation results in slightly different site layout of the homes. Much of the area toward the eastern side of the property will remain undisturbed due to the slope of the property and the required stream buffer.

The Duluth Planning Commission recommended approval of application Z2021-003 with conditions as presented by staff at the December 6, 2021 public hearing. Staff recommends approval of application Z2021-003 with conditions.

Mayor Harris called for discussion from Council.

Councilmember Whitlock asked if there was a requirement to have parking areas more spread out throughout the plan, to prevent more on-street parking.

Mr. Aiken replied that staff worked with the applicant to determine the safest places to park. There were no spaces on the main roadway due to the steep slope, and they did meet the minimum ratio requirements were met with those around the pool area. They added some in this version of the plan but it wasn't required at the time of last approval.

Councilmember Thomas asked if there was a right only exit. She was also concerned with the sight distance and curve, and worried about stacking since it is a gated entry.

Mr. Aiken said there would be full access. Gwinnett County determined that the turning vehicles would enter their respective travel lanes immediately since there is no center lane. He noted that there is a deceleration lane to accommodate lines at the gate, and said that Gwinnett County performed an extensive safety review prior to their approval.

Councilmember Graeder asked if the newer residential townhome classification (RTH) would be more fitting.

Mr. Aiken replied that RTH would require significantly different lot lines and different minimum lot sizes, and the applicant expressed concerns with changing plans and the cost of making any changes when all they needed to do is move a driveway.

Councilmember Graeder asked about the fencing condition limited to along Peachtree Industrial and Rogers Bridge.

Mr. Aiken said there was no requirement along the Riverbrooke side due to the stream and natural buffers providing much more than the required distance, that the intent is to separate the property from non-residential uses, not to prevent people from using the recreational area.

Mayor Harris called the applicant forward.

Mitch Peavy of 4525 S. Lee Street, Buford Georgia came forward to state that the design plans had been completed and noted that slight changes have been made, but the topography of the site is very limiting.

Mayor Harris called for questions from Council. Being none, Mayor Harris called for questions/comments from the public. Being none, Mayor Harris closed the public hearing and call for a motion.

A motion was made by Councilmember Whitlock, seconded by Councilmember Harkness, to approve ordinance O2022-03 for Case Z2021-003 as presented.

**Voted For: Council members Harkness, Thomas, Doss, Graeder, and Whitlock
Motion carried.**

VI. NEW BUSINESS

1. APPOINTMENT OF MAYOR PRO TEMPORE

The Charter of the City of Duluth states the Mayor Pro tempore will be selected by a majority vote at the first regular meeting of the Mayor and Council in each year. The Council shall elect a council member to serve as the Mayor Pro tempore, who shall assume the duties and powers of the Mayor during the Mayor's absence. Mayor Harris recommended the appointment of Councilmember Greg Whitlock as the 2022 Mayor Pro tempore.

A motion was made by Councilmember Thomas, seconded by Councilmember Doss to appoint Councilmember Whitlock as Mayor Pro tem for 2022.

**Voted for: Council members Harkness, Thomas, Doss, Graeder and Whitlock
Motion carried.**

2. OATH OF OFFICE – SOLICITOR RICHARD ARMOND

Before entering the duties of office, the newly appointed solicitor shall take an oath before an officer duly authorized to administer oaths that he or she will truly, honestly, and faithfully discharge the duties of his or her office. Judge Barrett administered the Oath to Office to Richard Armond as Solicitor for the City of Duluth.

VII. ADJOURNMENT

Being no further business, Mayor Harris called for a motion to adjourn.

A motion was made by Councilmember Whitlock, seconded by Councilmember Thomas, to adjourn at 6:32 pm.

**Voting for: Council members Harkness, Thomas, Doss, Graeder, and Whitlock
Motion carried.**

*The next scheduled meeting of the Mayor and Council is a work session for
January 24, 2022 at 5:30 p.m.*



**WORK SESSION NOTES
MAYOR AND COUNCIL
CITY OF DULUTH, GA
JANUARY 24, 2022**

PRESENT: Mayor Harris, Council members Harkness, Thomas, Doss, Graeder and Whitlock, City Manager, Department Directors, City Attorney

Mayor Harris called the January 24th regular work session to order at 5:30pm.

I. PUBLIC COMMENTS

None.

II. DISCUSSION ITEMS/PRESENTATIONS/UPDATES

1. URA & EBAC APPOINTMENTS

City Manager James Riker explained that the City of Duluth Urban Redevelopment Agency (URA) has been operating with two members since the passing of Councilmember Kelkenberg. Additionally, the Employee Benefits and Audit Committee (EBAC) calls for two members of the elected body. In March of 2021 Council members Thomas and Jones were appointed. Staff requested direction on filling the term held by former council member Billy Jones.

Staff was directed to prepare ordinances of appointment for Councilmember Marline Thomas to the URA, and Councilmember Jamin Harkness to the EBAC to fill the Council vacancy. These will be placed on the February agenda.

2. CAPITAL IMPROVEMENT PROJECT UPDATE

{A}

City Engineer Margie Pozin discussed the evolution of Capital Improvement Project (CIP) ideas and outlined the purpose of them, various stages and requirements they may go through depending on type of project, and discussed funding sources.

Assistant City Manager/Finance Director Ken Sakmar further detailed SPLOST funding and explained the accounting process behind the City receiving this monthly amount. City Manager James Riker noted that the timeframe for some of the lengthier projects or changes in scope

could be reasons why portions of the older SPLOST funding have yet to be spent. Mr. Sakmar broke down the eligible categories and gave the current balances of each issue.

Ms. Pozin then gave an update on current capital projects, including status of scopes, schedules, and budgets. She gave brief histories and status of Pine Needle Drive (cul-de-sac/sidewalk), the Main St. Enhanced Sidewalk project (connecting Brock Rd. to Greysolon project/West Gwinnett Bikeway), Rogers Bridge replacement and Trailhead. She also covered the Multi-Corridor Landscaping, Davenport Road extension and related Quiet Zone for the downtown railroad crossings. She concluded the city CIPs by summarizing the Living Honorarium move, and the sewer projects associated with the American Rescue Plan Act (ARPA) funding (for Pinecrest and Hill Community). For the benefit of new council members, she also reported on the status of two Gwinnett County projects (Western Gwinnett Bikeway, Pleasant Hill widening) and Georgia Dept. of Transportation projects (SR120 widening).

3. DULUTH PUBLIC ART COMMISSION (DPAC) PRESENTATION/PAAF FUNDING

Councilmember Whitlock and DPAC Chair Sanjay Parekh outlined the purpose and mission of the Duluth Art Master Plan, the roles, responsibilities of the Council and DPAC. They explained the importance of encouraging awareness of and participation in the arts among the citizens, businesses and institutions concerned with the arts in Duluth.

Mr. Whitlock explained that funding for DPAC has been accomplished by private donations until now. A process exists where developers of commercial and residential projects exceeding \$100,000 in value are referred to DPAC for the purpose of educating the applicant on opportunities for contribution to the arts as articulated in the city public art master plan as well as educate them on the impact art has on the community and the economy. Developers and builders are encouraged by designated members of DPAC to voluntarily contribute an art project or amount of money equal to the value to one (1) percent of the new, non-city initiated, construction or renovation projects, excluding projects that have their own master art plan. Since inception in 2013, DPAC has received a total of \$264,427.57. Mr. Whitlock pointed out some of the temporary project, permanent art projects as well as highlighted several pending art projects.

A discussion was held on the possibility of adding funding to the City's Capital Projects as well as additional funding in the General Fund.

Following discussion, a consensus was reached to direct staff to implement funding for art in each capital project into the FY23 budget as well as add a line item for funding in the General fund budget for consideration during the FY23 budget discussions.

III. MATTERS FROM COUNCIL

Councilmember Graeder reported his recent involvement with a Korean community group called 316 United Nations of Gwinnett and discussed their monthly meetings. The next one will be held in Duluth on Feb 15th at 5pm. He was also concerned with the number of temporary signs along the roadways. Planning Director Aiken responded that enforcement with fine options was extremely problematic since staff collects thousands of signs per year, but by picking them up as

soon as possible the advertisers are quickly discouraged from wasting their advertising funds along Duluth roads.

Councilmember Thomas questioned tracking rental properties. Mr. Riker and Mr. Aiken responded that state law prohibits registry, but that staff is in contact with GMA to monitor any changes and continue to monitor what cities are permitted to do.

Mayor Harris announced the next "Connect Duluth" show via Facebook on Wednesday January 26 at 7:00pm.

IV. ADJOURNMENT

Meeting adjourned at 8:00pm.

The next regularly scheduled meeting of the Mayor and Council is February 14, 2022 at 5:30pm in the City Hall Council Chambers.

Those councilmembers voting in opposition: _____

ATTEST: _____

Teresa S. Lynn, Asst. City Manager/City Clerk

**ORDINANCE
CITY OF DULUTH
EMPLOYEES BENEFITS AND AUDIT COMMITTEE**

WHEREAS, Pursuant to Section 2-96 of the Duluth Code of Ordinances establish that the Employees Benefits and Audit Committee be comprised of up to eight (8) members, and shall consist of two (2) members of the governing body, one (1) to four (4) city residents with investment experience, may consists of up to two (2) business owners with a current city occupational tax certificate and two (2) city residents, one designated as an alternate.

WHEREAS, Section 2-49 Term Limits for Boards and Commissions (established 2012) Service on each and every board, authority, commission or committee of the City of Duluth shall be limited to three consecutive full four-year terms. Four-year terms to begin at the time of term expiration after 2012. In no event shall a member serve over fourteen (14) consecutive years.

NOW THEREFORE, the City Council of the City of Duluth hereby ordains that the following members to be appointed to the Employees Benefits and Audit Committee and are authorized to serve in said position unless a majority vote of Council removes such member.

Appoint:

Jamin Harkness (Governing body) Expires 3/31/26 Term begin: 2012

Current members:

Marline Thomas (Governing body) Expires 3/31/22 Term begin: 2021
Susan Porteous Expires 3/31/22 Term begin: 2008
Brandon Odum Expires 3/31/25 Term begin: 2017
John Howard Expires 3/31/22 Term begin: 2013

Permanent positions:

Asst. City Manager/Finance
HR Manager

2 Vacancies

IT IS SO ORDAINED this 14th day of February 2022.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, Asst. City Manager/City Clerk

ORDINANCE

WHEREAS, the Mayor and Council of the City of Duluth desire to amend the ordinances of the City of Duluth regarding the regulation of Billiard Rooms and to make administrative changes to update the ordinances.

NOW THEREFORE, the Council of the City of Duluth hereby ordains that Division 2 of Article III of Chapter 7 of the Duluth Code of Ordinances is hereby deleted in its entirety and replaced with the foregoing amended Division 2 of Article III of Chapter 7:

DIVISION 2. - LICENSE

Sec. 7-53. - General operating provisions.

(a) No gambling or other games of chance shall be permitted in any business or premises in which a billiard room is operated or located.

(b) All establishments which have three (3) or more pool tables shall have a manager, or designated employee on duty during operating hours whose responsibility is the operation of the billiard tables.

(c) No billiard room licensed under this ordinance shall be kept open, nor shall the playing of billiards at the licensed location be permitted between the hours of 12:00 midnight thru 6:00 a.m.

(d) No person shall sell, give, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept any alcoholic beverage on the premises of any billiard room or establishment within which a billiard room is operated licensed pursuant to this article unless the billiard room or the establishment in which the billiard room is operated meets the following requirements:

(1) The establishment within which a billiard room is operating and which is licensed to sell alcoholic beverages by the drink shall meet either the definition of a "restaurant" or the definition of an "indoor recreation establishment" as such terms are defined in [chapter 3](#) of this Code.

~~(2) At the end of the establishment's third and fourth quarters after obtaining a billiard license pursuant to the provisions of this article, each such establishment having a license shall provide the city with an audited statement of gross revenues designating what percentage of revenues were derived from the sale of alcoholic beverages, what percentage of revenues were derived from the sale of prepared food, and what percentage of revenues were derived from the sale of products and services other than~~

~~alcoholic beverages and prepared meals or food. This audited statement shall be provided to the city by the fifteenth day of the month following the end of the quarter. Should the audited statement provided to the city following the fourth quarter of operation demonstrate that in the case of licensees licensed as an "indoor recreation establishment" the establishment has failed to derive at least seventy (70) percent of its revenue from the sale of products or services other than alcoholic beverages for that quarter or in the case of licensees licensed as a "restaurant, the establishment has failed to derive at least fifty (50) percent of its revenue from the sale of prepared meals or food for that quarter, this fact shall be grounds for revocation or nonrenewal of the billiard license issued pursuant to this article. Thereafter all establishments issued a billiard license under the provisions of this article shall provide with its application for renewal of its billiard license an audited statement for the prior four (4) quarters of operation. Failure of that audited statement to demonstrate that the requirements of subsection (d)(1) have been satisfied by the establishment during the prior four (4) quarters shall be grounds for nonrenewal of the billiard license.~~

~~(e) This article in no way relieves any person from complying with the licensing requirements and other regulations contained in the alcoholic beverage ordinance nor should this article be read to amend such ordinance.~~

Sec. 7-66. - Required; application.

(a) It shall be unlawful for any person to operate a billiard room without a valid license issued by the city in accordance with the provisions of this article.

(b) All persons desiring to operate a billiard room shall make application for an occupational tax certificate business license on a form prescribed by the city clerk and shall be required to pay applicable occupational taxes.

(c) The application shall include the name and address of the owner-applicant; the address of the licensed establishment; if the owner-applicant is a corporation, the names of the officers; the name and address of the agent for service of process; the name of the manager; and the name of all shareholders holding more than ten (10) percent of any class of corporate stock outstanding, or other entity having a financial interest in each entity which is to own or operate the licensed establishment. If the manager changes, the owner-applicant must furnish the clerk and the police department with the name and address of the new manager and other information as may be requested within ten (10) days of such change.

(d) All applicants shall furnish ~~data~~, information and records as required by the clerk in order to ensure compliance with the provisions of this article. Failure to furnish data shall automatically serve to dismiss the application with prejudice.

(e) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths in the state.

(f) In all instances in which an application is denied under the provisions of this article, the applicant may not reapply for a license for at least one (1) year from the date of denial.

(g) All licenses herein shall be a mere grant of privilege to carry on the business during the term of the license subject to all terms and conditions imposed by the ordinances of the city and the laws of the state.

(h) All licenses issued hereunder shall have printed on the front the words clearly ~~"THIS LICENSE IS A MERE PRIVILEGE SUBJECT TO BEING REVOKED AND CANCELLED, AND IS SUBJECT TO FUTURE ORDINANCES WHICH MAY BE ENACTED."~~"THE BUSINESS ACTIVITY AUTHORIZED BY THIS CERTIFICATE IS SUBJECT TO ADHERANCE WITH STATE AND LOCAL LAWS, ORDINANCES AND REGUALTION."

Sec. 7-67. - Qualifications.

(a) Where the owner-applicant is a partnership or corporation, the provisions of this section shall apply to all its partners, officers, managers and majority stockholders (those holding ten (10) percent or more of the outstanding stock issued by such corporation). In the case of a corporation, the license shall be issued jointly to the corporation and to the majority stockholder, if an individual. Where the majority stockholder is not an individual, the license shall be issued jointly to the corporation and its agent registered under the provisions of this section. In the case of a partnership, the license will be issued to and in the name of one (1) of the partners.

(b) Where the owner-applicant is a partnership or corporation, the provisions of this section shall apply to all its partners, officers, managers and majority stockholders (those holding ten (10) percent or more of the outstanding stock issued by such corporation). In the case of a corporation, the license shall be issued jointly to the corporation and to the majority stockholder, if an individual. Where the majority stockholder is not an individual, the license shall be issued jointly to the corporation and its agent registered under the provisions of this section. In the case of a partnership, the license will be issued to and in the name of one of the partners.

(c) ~~No license shall be granted to any person who has been~~No person shall be eligible for a license under this section unless they have sworn under penalty of perjury that they have not been convicted under any federal, state or local law of any misdemeanor involving moral turpitude within ten (10) years prior to the filing of the application for such license.

(d) ~~No license shall be granted to any person~~No person shall be eligible for a license under this section unless they have sworn under penalty of perjury that they have not been convicted under any federal, state or local law of any felony within ten (10) years prior to the filing of application for such license.

(e) All licensed establishments must have and continuously maintain in the county a registered agent upon whom any process, notice or demand required or permitted by law or under this article to be served upon licensee or owner may be served. This person shall be a resident of the county. The licensee shall file the name of such individual along with the written consent of such individual to serve as the registered agent, with the clerk in such form as may be prescribed by the clerk.

(f) All licensed establishments must have and continuously maintain in the county a registered agent upon whom any process, notice or demand required or permitted by law or under this article to be served upon licensee or owner may be served. This person shall be a resident of the county. The licensee shall file the name of such individual along with the written consent of such individual to serve as the registered agent, with the clerk in such form as he may prescribe.

Sec. 7-69. - Expiration, renewal, transfer.

(a) All licenses granted under the provisions of this article shall expire on January 30th of each year.

(b) Licensees who desire to renew their license shall file application, with all applicable fees, with the clerk on the form provided for renewal of the license. Application for renewal must be filed before January 1st of each year. After December 31st, applications for renewal licenses shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held. No renewal license may be granted after January 30th.

~~(c) Applications for licenses made after October 1st shall include a prorated license fee at the rate of one-half (1/2) the regular fee. License fees are not refundable.~~

(d) No license shall be transferred without prior approval of the clerk

IT IS SO ORDAINED THIS ___ DAY OF _____, 2022

Mayor Nancy Harris

Those voting for:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those voting against:

Council Member

Council Member

Council Member

Council Member

Council Member

ATTEST: _____
Teresa S. Lynn, Asst. City Manager/City Clerk

**ORDINANCE
TO AMEND THE CITY OF DULUTH
2022 FISCAL YEAR BUDGET**

AN ORDINANCE TO AMEND THE 2022 ANNUAL BUDGET FOR THE CITY OF DULUTH, GEORGIA, IN COMPLIANCE WITH THE LAWS OF THE STATE OF GEORGIA.

THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS, the City of Duluth, Georgia, has previously adopted a budget for the 2022 fiscal year as follows:

Total Revenues:	<u>73,157,731</u>
Operations Expenditures:	<u>32,113,562</u>
Capital Improvement Expenditures:	<u>41,044,169</u>
Total Expenditures:	<u>73,157,731</u>

For a balanced budget in compliance with the laws of the State of Georgia.

WHEREAS the City of Duluth Police Department sold a vehicle at auction and after commission and fees, received \$4,025; and

WHEREAS to maintain a vehicle fleet that is low maintenance and dependable, the Police Department has requested the \$4,025 be added to the Police Vehicle Fund; and

WHEREAS it is requested \$4,025 in General Funds be added to the Police Vehicle – Consolidated Vehicle Maintenance – Vehicle line item; and

NOW THEREFORE, the City of Duluth 2022 Fiscal Year Budget is amended as follows:

Total Revenues & Prior Yr Reserves	<u>73,161,756</u>
Operations Expenditures:	<u>32,113,562</u>
Capital Improvement Expenditures:	<u>41,048,194</u>
Total Expenditures:	<u>73,161,756</u>

IT IS SO ORDAINED this _____ day of _____, **2022**.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, City Clerk

**ORDINANCE
TO AMEND THE CITY OF DULUTH
2022 FISCAL YEAR BUDGET**

AN ORDINANCE TO AMEND THE 2022 ANNUAL BUDGET FOR THE CITY OF DULUTH, GEORGIA, IN COMPLIANCE WITH THE LAWS OF THE STATE OF GEORGIA.

THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS, the City of Duluth, Georgia, has previously adopted a budget for the 2022 fiscal year as follows:

Total Revenues:	<u>73,161,756</u>
Operations Expenditures:	<u>32,113,562</u>
Capital Improvement Expenditures:	<u>41,048,194</u>
Total Expenditures:	<u>73,161,756</u>

For a balanced budget in compliance with the laws of the State of Georgia.

WHEREAS the City of Duluth has awarded a construction bid to Astra Group for the Rogers Bridge Park Trailhead Phase I project; and

WHEREAS funding for the project will come for \$203,012 in 2017 SPLOST Interest, \$3,547.50 in 2009 SPLOST funds, \$8,710.75 in 2014 SPLOST, \$310,716.25 in 2017 SPLOST funds and \$395,040 in General Funds; and

WHEREAS it is requested \$513,728.25 in 2017 SPLOST funds, 3,547.50 in 2009 SPLOST funds, \$8,710.75 in 2014 SPLOST funds and \$395,040 in General Funds be added to Rogers Bridge Park – Park Areas – Restroom – Buildings line item and transfers; and

NOW THEREFORE, the City of Duluth 2022 Fiscal Year Budget is amended as follows:

Total Revenues & Prior Yr Reserves	<u>74,082,783</u>
Operations Expenditures:	<u>32,113,562</u>
Capital Improvement Expenditures:	<u>41,969,221</u>
Total Expenditures:	<u>74,082,783</u>

IT IS SO ORDAINED this _____ day of _____, 2022.

BA-FY22-30

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, City Clerk

**ORDINANCE
TO AMEND THE CITY OF DULUTH
2022 FISCAL YEAR BUDGET**

AN ORDINANCE TO AMEND THE 2022 ANNUAL BUDGET FOR THE CITY OF DULUTH, GEORGIA, IN COMPLIANCE WITH THE LAWS OF THE STATE OF GEORGIA.

THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS, the City of Duluth, Georgia, has previously adopted a budget for the 2022 fiscal year as follows:

Total Revenues:	<u>74,082,783</u>
Operations Expenditures:	<u>32,113,562</u>
Capital Improvement Expenditures:	<u>41,969,221</u>
Total Expenditures:	<u>74,082,783</u>

For a balanced budget in compliance with the laws of the State of Georgia.

WHEREAS the City of Duluth's Stormwater Utility Fund after allowing for a policy required 25% unrestricted fund balance, had an additional fund balance of \$309,213 at June 30, 2021; and

WHEREAS it is requested that \$309,213 be carried forward to the current year's budget and be added to the Stormwater Utility – Stormwater Collection & Disposal – Repairs & Maintenance line item; and

NOW THEREFORE, the City of Duluth 2022 Fiscal Year Budget is amended as follows:

Total Revenues & Prior Yr Reserves	<u>74,391,996</u>
Operations Expenditures:	<u>32,422,775</u>
Capital Improvement Expenditures:	<u>41,969,221</u>
Total Expenditures:	<u>74,391,996</u>

IT IS SO ORDAINED this _____ day of _____, **2022**.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, City Clerk

**ORDINANCE
TO AMEND THE CITY OF DULUTH
2022 FISCAL YEAR BUDGET**

AN ORDINANCE TO AMEND THE 2022 ANNUAL BUDGET FOR THE CITY OF DULUTH, GEORGIA, IN COMPLIANCE WITH THE LAWS OF THE STATE OF GEORGIA.

THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS, the City of Duluth, Georgia, has previously adopted a budget for the 2022 fiscal year as follows:

Total Revenues:	<u>74,391,996</u>
Operations Expenditures:	<u>32,422,775</u>
Capital Improvement Expenditures:	<u>41,969,221</u>
Total Expenditures:	<u>74,391,996</u>

For a balanced budget in compliance with the laws of the State of Georgia.

WHEREAS the City of Duluth Police Department manages both a Federal Drug Fund and a State Drug fund which primarily receive revenue from the seizure of property that is forfeited by the court base on civil asset forfeiture laws; and

WHEREAS the Federal Drug Fund received \$13,817 in additional revenue and the State Drug Fund \$2,241 which staff is requesting be added to expenditures; and

WHEREAS it is requested that \$13,817 be added to Police Federal Drug Fund – Police Administration – Police Equipment and \$2,241 be added to Police State Drug Fund – Police Administration – Police Equipment line items; and

NOW THEREFORE, the City of Duluth 2022 Fiscal Year Budget is amended as follows:

Total Revenues & Prior Yr Reserves	<u>74,408,054</u>
Operations Expenditures:	<u>32,438,833</u>
Capital Improvement Expenditures:	<u>41,969,221</u>
Total Expenditures:	<u>74,408,054</u>

IT IS SO ORDAINED this _____ day of _____, 2022.

BA-FY22-32

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, City Clerk

Thank you for registering your subdivision on the national settlement website and for considering participating in the proposed Settlement Agreement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (collectively “Settling Distributors”). This virtual envelope contains a Participation Form for the settlement including a release of claims and a separate Signature Page for Georgia’s State and Local Governments: Memorandum of Understanding Concerning National Distributor and Johnson & Johnson Settlements (A copy of the Memorandum is also attached). Both documents in this envelope must be executed, without alteration, and submitted in order for your subdivision to be considered potentially “participating.”

The sign-on period for Georgia subdivisions ends on March 31, 2022. Prior to that date, on or after January 26, 2022, based on national participation as of January 26, 2022, the states (in consultation with the subdivisions) and the Settling Distributors will determine whether the subdivision participation rate is sufficient for the settlement to move forward. If the deal moves forward and you elect to participate, your release will become effective. If it does not, it will not.

As a reminder, if you have not already started your review of the settlement documentation, detailed information about the Settlements may be found at: <https://nationalopioidsettlement.com/>. This national settlement website also includes links to information about how the Settlements are being implemented in your state and how settlement funds will be allocated within your state, including information about, and links to, any applicable allocation agreement or legislation. This website will be supplemented as additional documents are created. Georgia has also created a state-specific website which may be accessed here: consumer.georgia.gov/opioidsettlement.

Settlement Participation Form

Governmental Entity: Duluth city	State: GA
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“Governmental Entity”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated July 21, 2021 (“Distributor Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Distributor Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Distributor Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Distributor Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed.
3. The Governmental Entity agrees to the terms of the Distributor Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Distributor Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Distributor Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity’s state where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Distributor Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the Distributor Settlement.
7. The Governmental Entity has the right to enforce the Distributor Settlement as provided therein.



8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Distributor Settlement, including but not limited to all provisions of Part XI, and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Distributor Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Distributor Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Distributor Settlement.
10. In connection with the releases provided for in the Distributor Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Distributor Settlement.
11. Nothing herein is intended to modify in any way the terms of the Distributor Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Distributor Settlement in any respect, the Distributor Settlement controls.



I swear under penalty of perjury that I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



Settlement Document

State of Georgia and Local Governments: Memorandum of Understanding Concerning National Distributor and Johnson & Johnson Opioid Settlements

Foreword

This Memorandum of Understanding between the State of Georgia *ex. Rel* Chris Carr, Attorney General and certain Georgia Local Government (“LGs”) entities concerns the harms visited upon Georgia’s citizens and the State itself by certain manufacturers and distributors (“Opioid Defendants”) of prescription opioids.

To address these harms, the State and certain of its local government entities separately initiated litigation meant to hold the Opioid Defendants accountable.

Some Distributor Opioid Defendants, namely McKesson Corporation, AmerisourceBergen Corporation, and Cardinal Health, Inc. (each a “Settling Distributor”) and Janssen (“J&J”)¹ have separately reached settlement frameworks (referenced as “National Distributor Settlement” and “J&J Settlement”) with certain states and local government entities that the State of Georgia and LGs have the option to join.

This Memorandum aims to memorialize an agreement between the State and certain LGs that would enable the State and certain LGs to join the National Distributor and J&J Settlements and maximize the monetary help that the State and its LGs receive.

I. Definitions

- a. “Approved Purposes” shall mean those uses identified in the List of Opioid Remediation Uses, attached as Exhibit E to the National Distributor Settlement, and those uses identified as “Approved Opioid Abatement Uses” in Schedules A and B to Exhibit G to the Notice of Filing of Eighth Plan Supplement Pursuant to the Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors, In re: Purdue Pharma L.P., et al., Case No. 19-23649-RDD, Dkt. 3121 (Bankr. S.D. N.Y. July 8, 2021).
- b. “Government Participation Mechanism” means the mechanism formed to make recommendations regarding the allocation of State Opioid

¹ “Janssen” means Johnson & Johnson, Janssen Pharmaceuticals, Inc., OrthoMcNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceuticals, Inc.

Settlement Document

Funds consistent with the Findings of Facts, Conclusions of Law, and Order Confirming the Twelfth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors, In re: Purdue Pharma L.P. et al., Case No. 19-23649-RDD (Bankr. S.D. N.Y. Sept. 17, 2021), ECF No. 3787.. “Local Government Opioid Funds” means the funds allocated to local governments pursuant to Section III of this Memorandum.

- c. “Local Government Opioid Funds” means the funds allocated to local governments pursuant to Section III of this Memorandum.
- d. “Opioid Funds” means monetary amounts obtained through an Opioid Settlement as defined in this Memorandum of Understanding.
- e. “Opioid Settlement” means the National Distributor Settlement and the J&J Settlement, both dated July 21, 2021.
- f. “Parties” shall mean the State and the Participating Local Governments.
- g. “Participating Local Governments” shall mean:
 - (i) all litigating subdivisions listed on Exhibit C to the National Distributor Settlement and/or Exhibit C to the J&J Settlement and in the signature block to this Memorandum prepared by the LGs and
 - (ii) nonlitigating subdivisions listed on Exhibit G to the National Distributor Settlement or Exhibit G to the J&J settlement

that choose to sign on to the National Distributor Settlement and J&J Settlement during the notice or sign-on period.

- h. “Region” – Region shall mean each of the Regions described Section III.a of this Memorandum.
- i. “Released Entities” means the entities defined in definition HHH of the National Distributor Settlement and definition 61 of the J&J Settlement
- j. “State Opioid Funds” means the funds allocated to the State pursuant to Section III of this Memorandum.

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- k. “Trustee” shall be the Commissioner of an agency of the Executive Branch of the State, or his or her designee or other designee of the Executive Branch of the State, to oversee the implementation of the settlement, make decisions regarding expenditures of State Opioid funds after consulting with the Government Participation Mechanism, ensure compliance with the reporting requirements set forth in Section V and in any Opioid Settlement, and who is responsible for the ministerial task of releasing Opioid Funds that are in trust as authorized herein and accounting for all payments into or out of the trust.

II. Creation of a Qualified Settlement Trust for State Opioid Funds; Government Participation Mechanism.

- a. The Parties shall file a Petition in the Superior Court of Gwinnett County, Georgia, seeking to establish a Qualified Settlement Fund within the meaning of 26 C.F.R. § 1.468B-1, titled the “Georgia Opioid Crisis Abatement Trust”
 - i. The Georgia Opioid Crisis Abatement Trust shall receive (1) the State Opioid Funds set forth under this Memorandum of Understanding; (2) funds from public or private sources, including gifts, grants, donations, rebates, or other settlements received by the State and designated to the Trust; and (3) any interest earned by these amounts.
- b. The Commissioner of an agency of the Executive Branch of the State,² or his or her designee or other designee of the Executive Branch of the State, shall act as Trustee.
- c. The Parties shall work to establish a Government Participation Mechanism as described in the Notice of Filing of Eighth Plan Supplement Pursuant to the Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors, In re: Purdue Pharma L.P., et al., Case No. 19-23649-RDD, Dkt. 3121 (Bankr. S.D. N.Y. July 8, 2021), Exhibit G at 11.

² The agency or department shall be selected by the Governor, after consultation with the Attorney General.

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- d. The Trustee shall make disbursements of State Opioid Funds for (1) Approved Purposes, after consultation with the Government Participation Mechanism; (2) for administrative expenses as described in Section V of this Memorandum; and (3) for attorneys' fees and costs as identified in Section VII of this Memorandum. The Trustee shall retain final decision-making authority over expenditures of State Opioid Funds for Approved Purposes.
- e. Appointees to the Government Participation Mechanism shall have a background in opioid use disorder, addiction treatment or policy, public health policy, mental health treatment or policy, or opioid-related law enforcement. Members shall serve for three years and shall be paid the per diem of a Member of the General Assembly for their service. Any member who is appointed shall be subject to removal by the appointing authority. The Government Participation Mechanism shall have at least 1 member who is appointed by the Georgia Association of Community Service Boards. The Government Participation Mechanism shall meet at least quarterly and make recommendations, upon a majority vote, regarding allocation of State Opioid Funds. The Trustee shall retain final authority over allocation of State Opioid Funds.

III. Allocation between State and Local Governments

- a. The Participating Local Governments shall collectively receive 25% of the National Distributor and J&J Settlements as their full allocation of Local Government Opioid Funds, for all claims past and future of the Participating Local Governments. Local Government Opioid Funds shall be paid to the national Settlement Administrator(s) as that term is defined in the National Distributor and J&J Settlements and distributed pursuant to Section V.D.4.C of the National Distributor Settlement and Section VI of the J&J Settlement, with the following additional conditions:
 - i. If a county who is a Participating Local Government under this Memorandum has a sheriff who is a Litigating Subdivision listed in Exhibit C of the National Distributor Settlement, at least 9.45% of the Opioid Funds paid to that county shall be allocated to that county's sheriff to be used for Approved Purposes; and

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- ii. If a county who is a Participating Local Government under this Memorandum has a hospital which is a Litigating Subdivision listed in Exhibit C of the National Distributor Settlement, at least 2% of the Opioid Funds paid to that county shall be allocated to the hospital to be used for Approved Purposes.
 - iii. If a county who is a Participating Local Government under this Memorandum has a school district which is a Litigating Subdivision listed in Exhibit C of the National Distributor Settlement, at least 1% of the Opioid Funds paid to that county shall be allocated to the school district to be used for Approved Purposes.
- b. The State shall receive 75% of the National Distributor and J&J Settlements as its full allocation of State Opioid Funds.
- c. Of the State's 75% share, the State shall expend at least 40% of those funds on a regional basis ("Regional Distribution"). Expenditures related to (1) "Core Strategies" identified in Schedule A or (2) strategies identified in Schedule B, Subsection A of Exhibit E to the National Distributor Settlement are expressly recognized as a non-exhaustive list of expenditures that shall be considered as Regional Distributions.
 - i. The State of Georgia shall be divided into Regions to be determined by the State in consultation with LGs at a future date. Each county with a population of at least 400,000 persons ("Qualifying Block Grantee") shall be counted as a separate Region.
 - ii. Each Qualifying Block Grantee shall receive State Regional expenditures via a direct block grant so long as it certifies that it has sufficient infrastructure to provide Opioid Abatement services.
 - iii. Where a municipality located wholly within a Qualifying Block Grantee or wholly within abutting Qualifying Block Grantees would independently qualify as a block grant recipient (an "Independently Qualifying Municipality"), the Independently Qualifying Municipality will receive a Block Grant directly

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payable to the Independently Qualifying Municipality according to the percentages in the allocation model available at www.opioidnegotiationclass.info implemented in In re: National Prescription Opiates Litigation, MDL No. 2804 (N.D. Ohio) (the “Negotiation Class Allocation Model”).

- iv. The State shall assign initial regional allocation percentages to the Regions based on the allocation model available at www.opioidnegotiationclass.info implemented in In re: National Prescription Opiates Litigation, MDL No. 2804 (N.D. Ohio) (the “Negotiation Class Allocation Model”). Every three years, the Trustee shall recalculate the regional allocation percentages to the Regions based upon the following severity metrics: (1) the number of fatal opioid overdoses within the Region; (2) non-addiction treatment morphine milligram equivalents (MME) shipped into the Region; and (3) addiction treatment MME shipped into the Region.
- v. For each Region comprised of multiple Participating Local Governments, Participating Local Governments shall form a Regional Advisory Council of three to seven members, not all of whom may reside in the same County. The Advisory Council shall include at least 1 member of a county board of health from one of the Participating Local Governments in the Region, 1 member of the executive team of a Community Service Board located in the Region, and 1 sheriff (or representative designated by the sheriff) located in the Region.
- vi. The Regional Advisory Councils shall be available to consult with the Government Participation Mechanism and with Participating Local Governments to best determine how funds will be spent for opioid remediation within the established Regions. In every instance the Trustee shall retain final authority over disbursement of the State Opioid Funds.

IV. Funds to be used for Approved Purposes; Clawback and Recoupment

- a. With the exception of administrative expenses identified in Section V.b, funds set aside for attorneys’ fees and costs for State of Georgia outside counsel, and funds set aside for attorneys’ fees for Local

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Government outside counsel pursuant to Section VII of this Memorandum, State Opioid Funds and Local Government Opioid Funds shall be used for Approved Purposes.

- b. Funds are to primarily (no less than 70 percent) be used for future abatement purposes. Funds used to reimburse the parties for past abatement expenses may not be used to reimburse past Medicaid expenses or any other expense that would be subject to a federal clawback, recoupment, or similar mechanism.
- c. The State and Local Governments shall work cooperatively to ensure the funds are spent within the spirit of this Agreement and the Settlements reached with the Distributors and J&J, and shall further work cooperatively to actively defend the funds from federal clawback and/or recoupment, including, but not limited to, actively participating in any administrative procedure or other case or process related to defense of the funds from federal clawback and/or recoupment. In the event the federal government initiates and successfully claws back any Opioid Funds related to the Settlements, such amounts shall first be deducted from the total disbursements to be made to both the State and Local Governments in the calendar year the clawback claim is successfully made and shall thereafter be deducted from the total disbursements to be made in any subsequent calendar year if necessary. After such deduction, the allocation between the State and Local Governments described in Section IV of this Memorandum shall be applied to the remaining funds for the current calendar year or any subsequent calendar year if applicable. Deduction of amounts from the total disbursements shall include reimbursement of any amounts paid by the State or withheld from amounts due to the State as the result of a clawback and/or recoupment.

V. Compliance and Reporting

- a. The Trustee shall provide an up-to-date accounting of payments into or out of the trust and/or its subaccounts upon written request of the State or a Participating Local Government. The State, through the Trustee, shall provide an annual report detailing: (1) the amounts received by the Trust; (2) the allocation of any awards approved, listing the

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recipient, amount awarded, programs funded, and disbursement terms; and (3) the amounts actually disbursed. The Trustee shall also include an assessment of how well resources have been used by the State and the Local Governments and Regions to abate opioid addiction, overdose deaths, and the other consequences of the Opioid Crisis. The State shall publish its annual report and all Regional Advisory Council annual reports on its website.

- b. Expenses of the Trustee shall be deducted first from interest earned on funds held by the Georgia Opioid Crisis Abatement Trust, and then, if necessary, may be deducted from the corpus of State Opioid Funds.
- c. The State shall endeavor to keep such Trustee expenses reasonable in order to maximize the funding available for Opioid Abatement.
- d. Each Regional Advisory Council shall provide a report annually to the Trustee and Government Participation Mechanism detailing: (1) the amount received by each local government within the Region; (2) the allocation of any awards approved, listing the recipient, amount awarded, programs funded, and disbursement terms; and (3) the amounts actually disbursed and approved allocations. Each Participating Local Government within each Region shall provide any information necessary to facilitate such reporting to a single Regional Delegate selected by the Region to provide its annual report.
- e. If the State believes that any Participating Local Government has used funds for a non-approved purpose, it may request in writing the documentation underlying such alleged improper use of funds. If any ten (10) Participating Local Governments believe the State has used funds for a non-approved purpose, they may request jointly in writing the documentation underlying such alleged improper use of funds.
- f. The State and Participating Local Governments may object in writing to the Trustee to an allocation or expenditure on the basis that the allocation or expenditure is inconsistent with Section IV of this Memorandum or violates Section V.c of this Memorandum regarding reasonable expenses of the Trustee.

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- g. Any party to this Memorandum who receives a written request sent pursuant to V.f or V.e shall have 21 days to respond to such request, which may be extended by mutual consent.
- h. A party who makes a written request pursuant to V.f may file an action in the Superior Court of Gwinnett County within one year of its objection seeking a determination as to the validity of the objection.
- i. If, after a written objection made pursuant to V.e, it appears to the State that a Participating Local Government has spent funds on non-approved purposes, the State may seek and obtain an injunction in the Superior Court of Gwinnett County prohibiting the Participating Local Government from spending further funds on non-approved purposes, and to return the monies spent on non-approved purposes. So long as any such action is pending, distribution of any funds to the relevant Participating Local Government shall be suspended and held in trust by the Trustee or national Settlement Administrator and shall only resume after the action is resolved. Once the action is resolved, suspended payments to the Participating Local Government shall resume, less any amounts ordered returned that have not yet been returned as of the date of the resumption of suspended payments.
- j. Attorney's fees and costs are not recoverable in actions brought under this Section.

VI. Litigation Bar

- a. This Memorandum of Understanding is designed to maximize the funds that the State and LGs receive to address an extraordinary crisis. It is the expectation of the Parties that once this Memorandum is executed and the Opioid Settlements are finalized, the Parties will proceed to execute releases of existing claims against the Released Entities. In the event the State of Georgia and the Participating Local Governments proceed forward, execute said releases, and release the Released Parties from all future liability, their entitlement to funds under the terms of the Opioid Settlements could be significantly delayed or subject to suspension or offsets if a currently litigating or later-litigating local government maintains or asserts claims against the Released Entities. This would be detrimental to the State of Georgia's and the LG's opioid

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abatement efforts, and delay or reduce the help provided to Georgia's citizens.

- b. Therefore, it is understood between the parties to this agreement that upon execution of the Settlements with the Released Entities, that legislative action will be necessary, as it constitutes the most efficient and effective means to ensure the maximum amount of funds are made available to abate the opioid epidemic in Georgia without unnecessary delay.
- c. The Parties shall, as soon as practicable, submit draft legislation to the General Assembly that shall impose a Litigation Bar. A Litigation Bar is a law that either (1) imposes a direct bar preventing Subdivisions from maintaining Released Claims against Released entities or (2) gives the State the exclusive authority to bring, maintain and resolve Released Claims (as defined in Section I.GGG of the Distributors Settlement Agreement or Section I.60 of the Janssen Settlement Agreement) against Released Entities (as that term is defined by Section I.HHH of the Distributors Settlement Agreement or Section I.61 of the Janssen Settlement Agreement) on behalf of any Subdivision and which has the effect of barring all Released Claims by such Subdivision. The Litigation Bar shall include a requirement that any Released Claims brought by such Subdivision are dismissed by the court in which the claims(s) was (were) brought. The term "Subdivision" shall be defined so as to meet the requirements of the term "Bar" as it is defined both in Definition I of the National Distributor Settlement and Definition 9 of the J&J Agreement.
- d. Participating Local Governments shall make active efforts to pass a Litigation Bar. To that end, within 30 days of this Memorandum, Participating Local Governments shall form a Legislative Advocacy Committee consisting of 8 total members. The committee shall be comprised of:
 - i. Four members appointed by the Georgia Municipal Association, two of whom shall be members of the Republican Party and two of whom shall be members of the Democratic Party;

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- ii. Four members appointed by the Association of County Commissioners of Georgia, two of whom shall be members of the Republican Party and two of whom shall be members of the Democratic Party.
- iii. Members of the Legislative Advocacy Committee shall have the skills, time, expertise, and willingness to affirmatively plan, support and participate in all manner of advocacy in support of passage of a Litigation Bar.
- iv. “Active efforts to pass a Litigation Bar” shall at a minimum include attending committee hearings on proposed Litigation Bar legislation; testifying in favor of such legislation at any hearings; engaging in press appearances in favor of Litigation Bar; attending biweekly meetings of the Legislative Advocacy Committee during each month for which the General Assembly is in session (special or regular); and lobbying members of the General Assembly and of local government entities or organizations to encourage passage of the Litigation Bar.
- e. The LGs specifically agree to comply with and support all reasonable requests directed toward obtaining passage of the Litigation Bar from the Attorney General or any other party.
- f. This Memorandum is specifically conditioned on the passage of a Litigation Bar by the General Assembly and its approval by the Governor.
- g. The Litigation Bar shall be both retroactive and prospective, and shall cut off all current and future litigation against the Released Entities. The Litigation Bar shall only apply to Released Entities and Released Claims, and shall not apply in any way to claims or entities not otherwise released in the Opioid Settlements. For the avoidance of doubt, the Litigation Bar shall not apply to any remaining claims or causes of action pending in *In re Opiate Litigation* MDL 2804 against non-settling Defendants, or to any remaining claims or causes of action

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pending in State of Georgia v. Teva Pharmaceutical Industries, LTD, et al., Case No. 19-A-00060-2 against non-settling Defendants.

- h. The Parties shall jointly endeavor to take all other steps necessary to release all outstanding Released Claims against the Released Parties and to obtain the Litigation Bar described in Section VI above and Exhibit 2 below concerning the parties to the National Distributor and J&J Settlements so long as this Memorandum of Understanding is in effect.
- i. The Parties shall endeavor and use their best affirmative efforts to obtain passage of the Litigation Bar in the next chronological session of the General Assembly, whether a special session or general session, and shall continue to endeavor and use their best affirmative efforts to obtain passage of the Litigation Bar until the General Assembly passes the same and it is approved by the Governor. In the event a Litigation Bar is not enacted into law by July 15, 2023, this Memorandum is null and void.
- j. It is understood by the parties to this Memorandum that the use of a Litigation Bar as contemplated in this section should not be deemed as precedent setting for future settlements in this litigation or in future litigations.
- k. Within 14 days of sign on by LG Counsel, the State shall provide proposed language for a Litigation Bar to the LGs, including language to implement the terms outlined herein and to otherwise satisfy the legislative requirements under the Georgia Constitution. The LGs shall have 15 days thereafter to provide a unified response to the State's proposed language, and the State may respond thereto. The Parties shall then work to attempt to reach final proposed language for a Litigation Bar. If such agreement is reached, it shall be incorporated herein to this Memorandum as Exhibit 2. In the event the LGs do not provide a response to the State's proposed language as provided, then the proposed language of the State shall become the language of the Litigation Bar and shall be incorporated herein to this Memorandum as Exhibit 2. In the event the parties do not reach agreement as to final language for a Litigation Bar by November 4, 2021, this Memorandum becomes null and void. The Parties' obligations under this

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Memorandum concerning a Litigation Bar, including but not limited to their obligations to make active efforts to pass the Litigation Bar, shall attach to any language incorporated herein to this Memorandum as Exhibit 2.

VII. Attorney's Fees; Costs and Expenses

- a. Consistent with Exhibit R, section I(R) of the Distributor Settlement Agreement, a Local Government Cost and Fee Fund ("LGCFE") will be created to resolve Local Government attorney fee and litigation expense obligations with contingency fee counsel who filed opioid lawsuits by September 1, 2020 and who:
 - i. Represent Participating Local Governments who are eligible for direct payments under Section III.a. of this Memorandum; or
 - ii. by agreement amongst Participating General Purpose Governments (as that term is defined in the Distributor Settlement) are determined to be eligible for reimbursement of fees and costs. Any such agreements under this Section shall be documented between counsel for Participating General Purpose Governments and the counsel who are determined to be eligible.
- b. Any contingency-fee counsel retained by Participating Local Governments who are eligible for direct payments under Section III.a. of this Memorandum must seek recovery from the Contingency Fee Fund established in the National Settlement.
- c. The amount of the LGCFE shall be equal to 15% of Participating Local Governments' 25% share under this Memorandum. No portion of the State's share shall be used for the LGCFE or in any other way to fund any Participating Local Government's attorney's fees and costs.
- d. Under no circumstances may counsel collect more for its work on behalf of a Participating Local Government than it would under its contingency agreement with that Participating Local Government.
- e. The amount and timing for the payments to counsel under this Memorandum shall be consistent with the percentages and timing set

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forth in Exhibit R § (II) (A) (1) of the Distributor Settlement Agreement and Exhibit R § (II) (A) (1) of the Janssen Settlement Agreement.

- f. Any funds remaining in the LGCFF beyond what is required to pay contingency counsels' fees and expenses for Local Governments who are eligible for direct payments under Section III.a. of this Memorandum shall revert to the Participating Local Government fund to be used for Approved Purposes as set forth in this agreement.
- g. State outside counsel shall be compensated pursuant to separate agreement between the State and its outside counsel.

VIII. Future Agreements and Negotiations

- a. Nothing in this Memorandum of Understanding shall bind the parties concerning any future Opioid Settlements other than the ones expressly contemplated in (1) this Agreement or (2) any amendments to this Agreement made pursuant to Section IX.B. Other than those Released Entities who are parties to the above-referenced Settlement Agreements, the parties are free to engage in settlement negotiations with any Opioid Defendants without prior consent or participation of any other party to this agreement.
- b. The Parties shall endeavor, insofar as is reasonably practicable, to keep each other apprised of future negotiations concerning future Opioid Settlements. Nothing in this provision shall require the parties to violate any duty, obligation, or promise of confidentiality, non-disclosure agreement, common interest agreement, court order concerning non-disclosure, or similar non-disclosure obligation concerning negotiations regarding future Opioid Settlements. For the avoidance of doubt, LGs shall not be required to disclose, among other things, any information relating to negotiations between groups of local governments and Opioid Defendants, and the State shall not be required to disclose, among other things, any information relating to negotiations between States or groups of States and Opioid Defendants.

IX. Miscellaneous

- a. This Memorandum of Understanding shall be governed by Georgia law.

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- b. The parties may make amendments to this agreement as necessary. Amendments shall be in writing and shall require the written consent of all parties to this Memorandum of Understanding.
- c. Jurisdiction and venue regarding any disputes between or among the parties to this Memorandum of Understanding concerning this agreement or the interpretation thereof shall lie in the Superior Court of Gwinnett County, Georgia.
- d. This Memorandum of Understanding terminates with respect to the National Distributor or J&J Settlements, or both, in the event the State elects not to join such Settlements.
- e. This Memorandum of Understanding terminates automatically with respect to National Distributor or J&J Settlements, or both, in the event such Settlement(s) is / are terminated by the parties to them.
- f. By entering into this Memorandum, a local government agrees to participate in both the National Distributor and J&J Settlements.
- g. If any Local Government identified in the attached list of clients elects not to enter into in this Memorandum, or not to participate in the National Distributor Settlement and J&J Settlements, this Memorandum is voidable by the State.

* * * * *

ATTACHED EXHIBITS:

- EXHIBIT 1: ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND TO MEMORANDUM OF UNDERSTANDING
- EXHIBIT 2: AGREED LITIGATION BAR LANGUAGE
- EXHIBIT 3: OUTSIDE COUNSEL RECOMMENDATION
- EXHIBIT 4: DISTRIBUTOR PARTICIPATION AGREEMENT

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EXHIBIT 5: J&J PARTICIPATION AGREEMENT

EXHIBIT 1

**ACKNOWLEDGEMENT AND AGREEMENT
TO BE BOUND BY MEMORANDUM OF UNDERSTANDING**

WHEREFORE, the undersigned, as a duly-appointed representative of the below-referenced entity, acknowledges the following:

- _____ [NAME OF ENTITY] has received the State of Georgia and Local Governments: Memorandum of Understanding Concerning National Distributor and Johnson & Johnson Opioid Settlements.
- The undersigned is a duly-appointed representative of _____ [NAME OF ENTITY], and has the authority to execute this document and bind _____ [NAME OF ENTITY] to the Memorandum of Understanding.
- _____ [NAME OF ENTITY] is either represented by legal counsel, or has the ability to obtain advice from legal counsel,

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concerning the contents and implication of the Memorandum of Understanding.

- The undersigned, on behalf of _____ [NAME OF ENTITY], understands and acknowledges the terms of the Memorandum of Understanding, and _____ [NAME OF ENTITY] agrees to be bound by its terms.
- No party is under duress or undue influence.

/s/ _____

Name _____

Title _____

Date _____

Entity _____

EXHIBIT 2

AGREED LITIGATION BAR LANGUAGE

A BILL TO BE ENTITLED

AN ACT

To authorize, under certain circumstances, a litigation bar of certain Statewide Opioid Litigation or claims for damages as a result of the Opioid Crisis on behalf of the State of Georgia, its Departments, Agencies, and Instrumentalities, any political subdivision of the State, municipal corporations, authorities, sheriffs, county and municipal officers, or any other governmental or municipal entity which has or may make a claim for damages as a result of the Opioid Crisis; and for other purposes.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 13 of Title 10 of the Official Code of Georgia Annotated is amended by creating a new Code Chapter which shall read as follows:

CHAPTER 13B

STATEWIDE OPIOID SETTLEMENT

SECTION 2.

§ 10-13B-1 Legislative findings and purpose

The General Assembly finds as follows:

- (1) There is an opioid epidemic occurring in the United States, and Georgia has been greatly impacted;
- (2) Statewide coordination surrounding and managing opioid addiction and related disorders is critical to the health and safety of all Georgians;
- (3) Funding is needed in Georgia for, among other things, prevention and treatment of opioid addiction and related disorders; providing resources to law enforcement agencies to address the opioid crisis; increasing the number of professionals who provide treatment for opioid addiction; educating medical professionals regarding the safe and effective prescribing of, and then tapering off of, opioids; and treatment and prevention of opioid use disorder in incarcerated populations;
- (4) It is imperative Georgia receive the full amount of any opioid settlement, and in order to do so the State of Georgia must be able to release claims for all public bodies and instrumentalities in the State of Georgia;
- (5) While local governments generally have the authority to pursue and litigate claims against business and individuals to protect their own interests, in certain limited circumstances involving particular industries, the interests of the State as a whole are best served by having a unified settlement structure that benefits both the State and its local governments and brings full and complete closure to the claims that were asserted or could have been asserted and maximizes the State and local governments' potential recovery to address this extraordinary crisis.

SECTION 3

§ 10-13B-2 Definitions

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As used in this Chapter the following definitions shall apply:

(1) "Governmental Entity" means:

(A) this state and each of its departments, agencies, divisions, boards, commissions, authorities, instrumentalities; and

(B) a political subdivision or creation of this state, including a county, municipality, special district, school district, community service board, authority, any county or state officeholder and any other public officeholder or public entity which has asserted or could assert a claim for damages as a result of the manufacture, marketing, sale, dispensing, or distribution of opioids.

(2) "Released Claim" means a claim by a Governmental Entity that has been or could have been released under a statewide opioid settlement agreement.

(3) "Released Entity" means an entity against which a claim has been released under a statewide opioid settlement agreement.

(4) "Statewide Opioid Settlement Agreement" means:

(A) any settlement agreement and related documents entered into by this State through the Attorney General with opioid manufacturers, distributors, retailers, labelers, marketers, pharmacies or other entities concerning the use or prescription of opioid products; and

(B) which relates to illegal or tortious conduct in the manufacturing, marketing, promotion, sale, distribution, or dispensing of opioids; and

(C) which was entered into by the State on or after March 31, 2021; and

(D) which provides a mechanism which permits Governmental Entities to join into such settlement agreement; and

(E) which is the subject of a memorandum of understanding or similar agreement entered into by both the Attorney General and at least sixty five percent (65%) of the Governmental Entities which have active and pending litigation against the Released Entity or Entities identified in the settlement agreement as of the date when Governmental Entities are first permitted to join such settlement agreement.

SECTION 4

§ 10-13B-3 Entry into a Statewide Opioid Settlement Agreement With Sufficient Georgia Governmental Entity Support Shall Serve to Resolve All Past, Present and Future Opioid Legal Claims of All Georgia Governmental Entities

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Entry into a Statewide Opioid Settlement Agreement shall serve to bar any and all past, present or future claims on behalf of any Governmental Entity seeking to recover against any business or person that is a Released Entity under the terms of the relevant settlement. Such bar shall apply to any and all Released Claims or suits by any Governmental Entity created by or pursuant to an Act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive or any other relief. No such claim barred by this code section shall be brought, threatened, asserted or pursued in any way in any court and any such claim shall be dismissed by the court in which the claim is brought.

The bar shall become active and effective upon the filing of a Consent Order by the State of Georgia which attests to and shows that a Statewide Opioid Settlement Agreement has been reached, and that the parameters of this Act have been met.

EXHIBIT 3

OUTSIDE COUNSEL RECOMMENDATION

[INSERT EXECUTED PORTION OF THE BELOW]

* * * * *

WHEREFORE, PREMISES CONSIDERED, each of the undersigned has attached a complete list of all LG entities that they represent. As counsel for their respective clients, the undersigned acknowledge that they were active participants in the formation of this Memorandum, were not subject to duress or undue influence, and acknowledge and agree that the execution of this Memorandum, and participation in the National Distributor Settlement and the J&J Settlement is in the best interest of their clients.

Therefore, in compliance with all ethical obligations owed to their clients, the undersigned agree to recommend execution of this Memorandum and full participation in the National Distributor and J&J Settlements to each of their

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respective clients and move immediately to obtain from their respective clients execution of this Memorandum.

_____ [Counsel Name]
_____ [Counsel Firm]

COUNSEL FOR:

[Name of Government Entity(ies)]

EXHIBIT 4 DISTRIBUTOR PARTICIPATION AGREEMENT

EXHIBIT 5
J&J PARTICIPATION AGREEMENT

**ACKNOWLEDGEMENT AND AGREEMENT
TO BE BOUND BY MEMORANDUM OF UNDERSTANDING**

WHEREFORE, the undersigned, as a duly-appointed representative of the below-referenced entity, acknowledges the following:

- Duluth city, GA has received the State of Georgia and Local Governments: Memorandum of Understanding Concerning National Distributor and Johnson & Johnson Opioid Settlements.
- The undersigned is a duly-appointed representative of Duluth city, GA, and has the authority to execute this document and bind Duluth city, GA to the Memorandum of Understanding.
- Duluth city, GA is either represented by legal counsel, or has the ability to obtain advice from legal counsel, concerning the contents and implication of the Memorandum of Understanding.
- The undersigned, on behalf of Duluth city, GA, understands and acknowledges the terms of the Memorandum of Understanding, and Duluth city, GA agrees to be bound by its terms.
- No party is under duress or undue influence.

Signature: _____

Name: _____

Title: _____

Date: _____

Entity: Duluth city, GA



ORDINANCE

WHEREAS, the Mayor and Council of the City of Duluth desire to amend the ordinances of the City of Duluth to clarify the distance requirement between licensees selling distilled spirits or spirituous liquors for retail by the package and private residences.

NOW THEREFORE, the Council of the City of Duluth hereby ordains that Code Section 3-111 of Division 1 of Article I of Chapter 3 of the Duluth Code of Ordinances is hereby deleted in its entirety and replaced with the foregoing amended Section 3-111:

Sec. 3-111. - Distance requirements.

(a) For the purposes of this code section, distance shall be measured by the most direct route of travel on the ground in a straight line from ~~the nearest point of front door of~~ the structure from which alcoholic beverages are sold or offered for sale, to the front door of the building of a church, government owned treatment center or a retail package store or to the nearest property line of ~~any private residence, or any the~~ real property being used for school or educational purposes.

(b) No license permitting the sale of malt beverages or wine or both for retail by the package shall be issued for any proposed location which is:

(1) Within a distance of one hundred (100) yards of any school building, educational building, school grounds or college campus; or

(c) No license permitting the sale of any distilled spirits or spirituous liquors for retail by the package shall be issued for any proposed location which is:

(1) Within a distance of fifty (50) yards of any private residence unless such residence is located in a commercially zoned (C-1, C-2, HC-R or HC-A) district;

(2) Within a distance of one hundred (100) yards of any church building;

(3) Within a distance of one hundred (100) yards of any public library or branch thereof;

(4) Within a distance of one hundred (100) yards of a public park;

(5) Within a distance of two hundred (200) yards of any school building, educational building, school grounds or college campus; or

(6) Within a distance of five hundred (500) yards of any business licensed to sell package spirituous liquors pursuant to this article unless other such business is a hotel.

IT IS SO ORDAINED THIS ___ DAY OF _____, 2022

Those voting for:

Mayor Nancy Harris

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those voting against:

Council Member

Council Member

Council Member

Council Member

Council Member

ATTEST: _____
Teresa S. Lynn, Asst. City Manager/City Clerk

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