

House Bill 254 (AS PASSED HOUSE AND SENATE)

By: Representatives Corbett of the 174th, Spencer of the 180th, Shaw of the 176th, and Nimmer of the 178th

A BILL TO BE ENTITLED
AN ACT

1 To amend an Act providing a new charter for the City of Waycross, approved
2 August 17, 1909 (Ga. L. 1909, p. 1456), as amended, particularly by an Act approved April
3 13, 1989 (Ga. L. 1989, p. 4916), an Act approved April 13, 1992 (Ga. L. 1992, p. 6055), and
4 an Act approved April 4, 1997 (Ga. L. 1997, p. 3814), so as to change the term recorder to
5 judge of municipal court of Waycross; to rename the police court as the municipal court and
6 provide new provisions for the operation of that court; to change the name of the recorder to
7 the judge of municipal court; to provide for related matters; to repeal conflicting laws; and
8 for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 An Act providing a new charter for the City of Waycross, approved August 17, 1909
12 (Ga. L. 1909, p. 1456), as amended, particularly by an Act approved April 13, 1989
13 (Ga. L. 1989, p. 4916), an Act approved April 13, 1992 (Ga. L. 1992, p. 6055), and an Act
14 approved April 4, 1997 (Ga. L. 1997, p. 3814), is amended by revising paragraph (1) of
15 subsection (d) of Section 15 as follows:

16 "(1) To preside at meetings of the commission, and he shall have all the rights, powers,
17 and duties and responsibilities as a commission member except that the mayor shall be
18 entitled to vote on matters before the mayor and commission only where there is an equal
19 division on the question, and then the mayor shall determine the matter by his vote. The
20 mayor shall also be entitled to vote on the election of the following officers and
21 employees of the commission: mayor pro tempore, city manager, city attorney, and judge
22 of the municipal court."

23 **SECTION 2.**

24 Said Act is further amended by revising Section 59 as follows:

25 "SECTION 59.
 26 Municipal court.

27 (1) Creation.

28 (A) There shall be a court to be known as the Municipal Court of the City of Waycross
 29 (hereinafter referred to as 'municipal court'), the same is hereby granted all such powers
 30 as are inherent in courts generally and as usually belong to municipal courts under the
 31 laws of this state, as well as those hereinafter more particularly set forth.

32 (B) The municipal court shall be held at such place as the city commission shall
 33 prescribe by ordinance, or as may be necessitated by the emergencies of the case.

34 (2) Judge.

35 (A) No person shall be eligible to serve as judge of municipal court unless such person
 36 shall be, at the time of qualification, at least 25 years of age, shall be a resident of the
 37 Waycross Judicial Circuit, and shall be a licensed, practicing attorney at law in good
 38 standing with the State Bar of Georgia.

39 (B) Any person selected to be judge of said court shall preside over said court and shall
 40 try and determine all cases therein, without a jury. Said person shall be clothed with
 41 all the powers as judge of said court as set forth in this charter, the ordinances of the
 42 City of Waycross, Georgia, and as provided by law.

43 (C) Before entering upon his or her duties of office, said person shall take and
 44 subscribe to the following oath, which shall be entered upon the minutes of the
 45 commission, and said oath taken and subscribed shall comply with the requirements of
 46 Code Sections 45-3-1 through 45-3-10 of the O.C.G.A.:

47 'I solemnly swear (or affirm) that I will uprightly demean myself as Judge of the
 48 Municipal Court of the City of Waycross and that I will faithfully and impartially
 49 discharge all the duties incumbent on me as presiding Judge of said municipal court of
 50 said city, according to the best of my ability and understanding. I further swear (or
 51 affirm) that I am not the holder of any unaccounted for public money due to the State
 52 of Georgia, or any political subdivision or authority thereof, and am not the holder of
 53 any office of trust under the government of the United States, any other state, or any
 54 foreign state which state by the laws of the State of Georgia I am prohibited from
 55 holding; and that I am otherwise qualified to hold said office according to the
 56 Constitution and laws of Georgia. I swear (or affirm) that I will uphold and support the
 57 Constitution of the United States, and the Charter and Ordinances of the City of
 58 Waycross, and the laws and Constitution of the State of Georgia, so help me God.'

59 (D) The judge shall hold court at stated hours, Sundays excepted, or as often as the
 60 exigencies of business demand. In case the judge is absent from the city, sick,

61 disqualified, or for other cause is unable to hold court, the judge pro tempore may
62 preside and act as judge of said court in the place of said judge and, while so doing,
63 shall be clothed with all the rights and powers of the judge of said court.

64 (E) The judge of said court and the judge pro tempore of said court shall serve at the
65 pleasure of the commission of the City of Waycross.

66 (F) The judge of said court and the judge pro tempore shall be selected by the
67 commission of the City of Waycross in the same manner as the city manager for a term
68 of one year.

69 (G) In case a vacancy shall occur in the office of the judge of municipal court, such
70 vacancy shall be filled by the commission of the City of Waycross.

71 (3) Jurisdiction, powers.

72 (A) The municipal court shall have jurisdiction to try and determine all offenses
73 against the laws and ordinances of the city committed within the jurisdictional limits
74 of the city, and upon conviction, to punish the offenders for the violation of such laws
75 and ordinances by imposing such fines and sentences, and inflicting such punishment
76 as shall be prescribed by the provisions of this Act and the ordinances and resolutions
77 adopted in pursuance thereof. The judge or judge pro tempore of the municipal court
78 shall have the power to impose fines and inflict punishments after conviction upon all
79 violations of the laws and ordinances of said city by fine not to exceed \$1,000.00, or
80 by labor on the streets or public works of said city under the control and direction of the
81 proper officers, not to exceed six months, or by confinement not to exceed six months,
82 either one or more or all, in the discretion of the judge or judge pro tempore trying the
83 case. Upon failure or refusal of any person to pay promptly any fine or costs imposed
84 by the municipal court, the same may be enforced and collected by an execution issued
85 and directed as is provided for the issuance and collection of tax executions by the city
86 and levies may be made and sales thereunder may be conducted in the same way, this
87 method being cumulative and to be used at the option of the commission of the City of
88 Waycross.

89 (B) The municipal court shall have jurisdiction to try and determine all misdemeanor
90 traffic offenses as authorized by Code Sections 40-6-372 through 40-6-376 of the
91 O.C.G.A., and such other offenses as authorized presently, or in the future, by state law.
92 The municipal court may prescribe punishment for offenses within its jurisdiction to the
93 fullest extent allowed by state law.

94 (C) The municipal court may fix punishment for offenses within its jurisdiction,
95 including both fines and imprisonment or alternative sentencing; provided that such
96 fines or imprisonment does not exceed the statutory limits as now exist or thereafter
97 provided by law.

98 (D) The municipal court shall have jurisdiction to forfeit all appearance bonds and
99 recognizances returnable to said court and to hear, try and determine all issues made
100 therein and to render judgment on the same; and also, to try all nuisances and questions
101 arising in reference thereto and to grant judgments for the abatement of the same and
102 for the removal thereof.

103 (E) The municipal court shall have authority to recommend to the city commission for
104 approval of a schedule of fees to defray the cost of operation.

105 (F) The municipal court shall have authority to establish bail and recognizances to
106 ensure the presence of those charged with violations before said court and shall have
107 discretionary authority to accept cash or personal or real property as security for
108 appearances of persons charged with violations. Whenever any person shall give bail
109 for his or her appearance and shall fail to appear at the time fixed for trial, the bond
110 shall be forfeited to the judge presiding at such time and an execution issued thereon
111 by serving the defendant and his or her surety, or sureties, with a rule nisi at least three
112 days before a hearing on the rule nisi. In the event that cash or property is accepted in
113 lieu of bond for security for the appearance of a defendant at trial, and if such defendant
114 fails to appear at the time and place fixed for trial, the cash so deposited shall be on
115 order of the judge declared forfeited to the City of Waycross, or the property so
116 deposited shall have a lien against it for the value forfeited.

117 (G) The municipal court shall have the authority to bind prisoners over to the
118 appropriate court when it appears, by probable cause, that a state law has been violated.

119 (H) The municipal court shall have the authority to administer oaths and to perform all
120 other acts necessary and proper for the conduct of court.

121 (I) The municipal court may compel the presence of all parties necessary to a proper
122 disposal of each case by the issuance of summons, subpoenas, and warrants which may
123 be served as executed by any officer as authorized by this charter or by state law.

124 (J) The municipal court shall have the authority to punish those in its presence for
125 contempt; provided that such punishment shall not exceed the statutory limits for fines
126 and imprisonment for such municipal courts.

127 (K) The municipal court is specifically vested with all of the judicial jurisdiction and
128 judicial powers throughout the entire area of the City of Waycross granted by state laws
129 generally to municipal courts, including the power to impose sentences for those
130 offenses that carry a maximum penalty under state law of up to 12 months
131 imprisonment, and particularly by such laws as authorize the abatement of nuisances.

132 (L) The judge or judge pro tempore of the municipal court shall have and are given the
133 same powers and authorities as magistrates in the matter of and pertaining to criminal
134 cases of whatever nature in the several courts of this state. The judge or judge pro

135 tempore are authorized and empowered to issue warrants for offenses committed within
136 the jurisdiction of the City of Waycross for police purposes, against the penal laws of
137 the state, this either before or after the hearing or trial of the charge in said municipal
138 court, and consequently where, in the course of an investigation of a matter in said
139 municipal court, it shall appear that the penal laws of the state have been violated, it
140 shall be the duty of the judge or judge pro tempore to bind over the offender to the
141 proper court having jurisdiction of such matter in said County of Ware; and to that end,
142 the judge or judge pro tempore shall have the power and authority to commit such
143 offender or offenders to the county jail of said county or admit them to bail, inailable
144 cases, for their appearance at the next term of a court of competent jurisdiction to be
145 held in and for said county.

146 (4) Contempt.

147 (A) The judge or judge pro tempore of the municipal court shall have the authority to
148 issue attachment and inflict summary punishment for contempt of court in cases of:

149 (i) Misbehavior of any person or persons in the presence of such court or so near
150 thereto as to obstruct the administration of justice;

151 (ii) Misbehavior of any of the officers of the court in their official transactions; or

152 (iii) Disobedience or resistance of any officer of the court, party, juror, witness, or
153 other person or persons to any lawful writ, processed order, rule, decree, or command
154 of the court.

155 (B) The judge or judge pro tempore of the municipal court shall have the power and
156 authority to punish for contempt by fine not to exceed \$1,000.00, or confinement not
157 to exceed 20 days, either one or both, in the discretion of the judge or judge pro
158 tempore trying the case. Upon failure or refusal of any person to pay promptly any fine
159 or cost imposed by said judge or judge pro tempore, the same may be enforced and
160 collected by an execution issued and directed as is provided for the issuance and
161 collection of tax executions by the city and levies may be made and sales thereunder
162 may be conducted in the same way, this method being cumulative and to be used at the
163 option of the commission of the City of Waycross.

164 (5) Docket. There shall be kept one or more dockets, on which shall appear the name of
165 each person arrested by the officers of the city for any offense against the municipal
166 ordinances or laws in force within the jurisdictional limits of the city, and a brief and
167 clear statement of the offense with which such person is charged. Upon the trial of such
168 person, the sentence imposed or the disposition made of the case shall be entered in
169 writing opposite the name and charge by judge or judge pro tempore of said court, which
170 respective entries shall be signed by the judge or judge pro tempore in such cases.

171 (6) Summons and subpoenas.

172 (A) The municipal court shall have the power to compel the attendance of persons
173 charged with the violation of any ordinance or law within the jurisdiction of the
174 municipal court, by summons, which summons shall be issued by the city clerk and
175 bear testament in the name of the judge of municipal court, and shall set forth the nature
176 of the charge or case, and the time set for trial or hearing, and shall be served upon the
177 defendant by any officer or member of the police force. Likewise, said court shall have
178 the power to compel the attendance of witnesses in all proceedings by issuing
179 subpoenas which shall be similarly issued and served as are summons.

180 (B) The municipal court shall have the power to punish any person disobeying such
181 summons or subpoena as for contempt. Any person who may be charged with
182 contempt may be arrested by attachment in writing or warrant signed by the judge or
183 judge pro tempore, which said attachment or warrant shall be executed by any member
184 of the police force.

185 (7) Trial. The cases before the municipal court shall be tried as speedily as possible.
186 With due regard to the rights of the accused and of the city, continuances may be granted
187 by the court upon proper showing made, in accordance with the rules governing such
188 matters in the superior courts of this state, but such continuances shall be only until a time
189 when the case can be properly tried in the discretion of the presiding judge or judge pro
190 tempore.

191 (8) Bonds and forfeitures.

192 (A) When any person who is charged with an offense against the laws or ordinances
193 of the city, or who is arrested for such offense, shall give bond for his or her appearance
194 at any session of municipal court, and if such person shall fail to appear at the time
195 appointed in said bond, then and in such event, said bond shall be forfeited and the
196 amount of same collected from the principal and sureties thereon in a manner to be
197 provided for by ordinance of the city. And said commission is hereby expressly
198 authorized and empowered to provide by ordinance for the forfeiture and collection of
199 such appearance bonds similarly to the way in which they are forfeited and collected
200 in the superior courts of this state, and said municipal court is hereby clothed with full
201 power and authority to forfeit said appearance bonds and grant judgments upon the
202 same for the amounts thereof, in the same way that superior courts grant such
203 judgments. On the entering of such judgment, the city clerk shall issue an execution
204 against the principal and surety or sureties on such bonds in conformity with such
205 judgment, and in the form and manner prescribed for executions issued by the city for
206 taxes, and the city shall proceed to enforce and collect the same as tax executions of the
207 city are enforced and collected.

208 (B) In any case where any person charged with an offense brought in the municipal
209 court, or arrested for such offenses, has deposited a sum of money as a bond for his
210 appearance in said municipal court, and similarly where some other party has deposited
211 a sum of money for the appearance of such person in said municipal court, then and in
212 the event such person does not appear at the time appointed, for whose appearance such
213 sum of money was deposited in lieu of a bond as aforesaid, said sum of money shall be
214 forfeited instantly by the judgment of the municipal court entered upon the municipal
215 court docket and shall be paid over to the City of Waycross.

216 (C) No resident of Ware County, Georgia, who is not a resident of the City of
217 Waycross, Georgia, shall be prohibited from giving a property bond, solely on the basis
218 of residency for the appearance in the municipal court of a person who is charged with
219 an offense against the laws or ordinances of the City of Waycross. The means and
220 method for giving bond, forfeiture of bond, execution, and judgment thereon shall be
221 established by the code of the City of Waycross, Georgia, the ordinances and laws
222 applicable to the City of Waycross, Georgia.

223 (D) If Ware County residents who are not residents of the City of Waycross give bond
224 for a person or persons to appear in the municipal court, and if such person shall fail to
225 appear at the time appointed in said bond, then in such event, said bond shall be
226 forfeited and the amount of same collected from the principal and his sureties as
227 established by the ordinances and laws of the City of Waycross, Georgia, and general
228 laws of the State of Georgia applicable to said court. Any ordinances and laws in effect
229 at the time this ordinance is adopted, as well as any amendments that may be adopted
230 from time to time thereafter, shall apply to persons and bonds which are given by Ware
231 County residents who are non-residents of the City of Waycross.

232 (9) Costs. Said commission shall have the power to provide by ordinance for the charge
233 and collection of all items of costs in cases brought into said municipal court, such as are
234 usually incident and lawfully chargeable to the prosecution of said cases, same to be
235 added to the amount of the fines imposed and collected, and then to be paid over to the
236 proper officers for whose use they are charged.

237 (10) Certiorari. The right of certiorari from the decision and judgment of the municipal
238 court shall exist in all cases, and any and all persons who shall complain, and take
239 exception at any decision or judgment rendered in said municipal court, shall have the
240 right to have same reviewed by a writ of certiorari which shall be applied for, issued and
241 heard and determined under the provisions of the laws of the State of Georgia in such
242 cases made and provided."

243 **SECTION 3.**

244 Said Act is further amended by revising Section 105 as follows:

245 "SECTION 105.

246 City attorney, judge of municipal court; separate offices.

247 The offices of city attorney and judge, or judge pro tempore, of municipal court, shall be
248 separate and distinct offices, and the judge, or judge pro tempore, of municipal court shall
249 not be competent or eligible to hold the office of city attorney of the city during the term
250 for which he or she was elected or selected."

251 **SECTION 4.**

252 All laws and parts of laws in conflict with this Act are repealed.