

# Proposed City of Mulberry

## HOUSE BILL 869 & SENATE BILL 333

Gwinnett County's vision is to be the preferred community where everyone thrives. The Board of Commissioners, as the governing authority of the County, facilitates this vision by ensuring the interests, needs and voices of all residents are considered without regard to whether they are located in incorporated or unincorporated areas. To facilitate well-informed decisions regarding House Bill 869 and Senate Bill 333, Gwinnett County has a responsibility to provide available information to both residents and legislators. This ensures that everyone involved has the necessary facts to better understand the implications of incorporating the City of Mulberry.

### **This Legislation would have a significant financial impact on all of Gwinnett's City residents.**

- The City of Mulberry would become the 17<sup>th</sup> city in Gwinnett, the largest in Gwinnett in terms of land area, and the second largest in terms of population, estimated at almost 43,000 residents.
- If the City of Mulberry is incorporated as proposed it is estimated that Gwinnett County would lose approximately \$9,100,000.00 in revenue annually. This loss would require the County to increase taxes, increase other service fees, or reduce service levels for unincorporated residents.
- The creation of a new city could result in the future loss of Special Purpose Local Option Sales Tax (SPLOST) revenue.
- The incorporation of the City of Mulberry requires the renegotiation of the existing Service Delivery Strategy (SDS) between Gwinnett County and its 16 cities, currently not required by the Department of Community Affairs until 2029.
- The early renegotiation of the comprehensive intergovernmental agreements existing in our current Service Delivery Strategy could result in changes to service costs and fees charged to the residents of unincorporated Gwinnett and those in our existing cities.

- As a city which is expressly limited by this legislation to providing only three services, the City of Mulberry would be required to enter into intergovernmental agreements with Gwinnett County or other governmental or private entities to provide all other services to its residents at costs yet to be determined.
- The future cost of services resulting from new SDS negotiations may be substantially more than the existing cost of services relied upon by feasibility estimates supporting the incorporation of the City of Mulberry.
- To fund its operations the City of Mulberry would likely need to impose new utility franchise fees, resulting in a significant new cost to all residents and businesses.

### **This legislation does not meet Constitutional or Statutory Requirements.**

- The proposed City of Mulberry does not meet the threshold incorporation requirements of O.C.G.A. § 36-31-4 with regard to acreage as only approximately 57% of the land used for residential purposes is subdivided into lots of 5 acres or less.
- This legislation attempts to create a "City Lite", a city that in this instance is limited to providing only three services - planning and zoning, storm-water collection and disposal, and code enforcement.

- This legislation attempts to prohibit the City from establishing a millage rate or assessing, levying, or collecting any ad valorem tax.
- This legislation also attempts to prohibit the City Council from exercising its Home Rule powers under state law to amend its Charter except by a resolution ratified by voter referendum.
- The Georgia Constitution expressly prohibits the General Assembly from limiting any such powers or services, except by a general law that would apply statewide.
- Legislative experts, including the Carl Vinson Institute of Government, the General Assembly's Office of Legislative Counsel, and a former Chief Justice of the Supreme Court of Georgia, have all concluded that "City Lite" charter provisions that limit a city's ability to provide a service, or that require the provision of a service to first be approved by voter referendum, are unconstitutional.
- Regardless of the legislation's attempted restrictions, the Georgia Constitution requires that the City of Mulberry have authority to provide all services authorized by law and impose ad valorem taxes on property as may be necessary to pay for these services without a voter referendum.
- In recognition of these constitutional concerns, in 2015 the Senate Annexation, Deannexation, and Incorporation Study Committee recommended prohibiting the "City Lite" concept from being included in future municipal incorporation proposals.
- This Committee further recommended "that language be inserted into charters including a millage cap that clarifies that the caps can indeed be increased by a City Council through its home rule powers and without voter approval."
- In recognition of the requirements of the Georgia Constitution, the General Assembly amended the Charter for the City of Peachtree Corners to remove similar "City Lite" restrictions on services and the requirement that a voter referendum be held to approve the provision of new services in 2018.

**This legislation could result in a two-year moratorium on zoning of property in this area of Gwinnett.**

- If the City of Mulberry is incorporated the legislation provides that Gwinnett County is prohibited from making modifications to the zoning of any property located within the City during the two-year transition period, effectively enacting a moratorium on zoning until such time as the City can assume responsibility for zoning matters.
- Both the Constitutions of the United States and Georgia grant property owners the right to seek a constitutional zoning for their property.
- Changes to individual lots, homes, and businesses within the proposed city boundaries would be prohibited during the moratorium.
- The new City will face the costly challenge of defending the legality of the moratorium and restrictions on the constitutionally protected rights of property owners.

**The proposed timeline for this legislation, customarily a two-year period, does not allow for thoughtful study and consideration of the significant financial impacts to Gwinnett County residents and Constitutional concerns raised by this legislation.**

- This legislation, as well as the Feasibility Study prepared by a private consulting firm, was first made public on Friday, January 5, 2024.
- This legislation was introduced in the General Assembly on Monday, January 8, 2024, and proposes a referendum submitting the question of the incorporation of the City of Mulberry to the qualified voters concurrent with the general primary election scheduled for May 21, 2024, with advance voting beginning on April 29, 2024.
- Given the potential significance of this legislation, Gwinnett and its impacted residents should be afforded the opportunity to complete its own impact study to better inform members of the General Assembly and the public concerning the significant financial impact to Gwinnett residents.