

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY D IN OFFICE  
STATE OF GEORGIA

2015 APR 15 PM 4: 18

M. LINDA PIERCE  
MUSCOGEE COUNTY  
SUPERIOR COURT

GREGORY D. COUNTRYMAN, SR.,  
individually and as Elected Marshal of  
Muscogee County, Georgia and,  
VIVIAN BISHOP, individually and as  
Elected Clerk of the Municipal Court of  
Columbus, Georgia,

Plaintiffs,

v.

COLUMBUS, GEORGIA, TERESA P.  
TOMLINSON, individually and as Mayor,  
JERRY "POPS" BARNES, individually  
and as District 1 Councilor, GLENN  
DAVIS, individually and as District 2  
Councilor, BRUCE HUFF, individually  
and as District 3 Councilor, EVELYN  
TURNER PUGH, individually and as  
District 4 Councilor, MIKE BAKER,  
individually and as District 5 Councilor,  
GARY ALLEN, individually and as  
District 6 Councilor, EVELYN "MIMI"  
WOODSON, individually and as  
District 7 Councilor, JUDY THOMAS,  
individually and as District 9 Councilor,  
and BERRY "SKIP" HENDERSON,  
individually and as District 10 Councilor,  
ISAIAH HUGLEY, individually and as  
City Manager, PAMELA HODGE,  
individually and as Finance Director, and  
CLIFTON C. FAY individually and as  
City Attorney,

Defendants.

CIVIL ACTION FILE  
NO. SU14-CV-3468-94

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**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR MANDAMUS RELIEF**

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Plaintiffs Marshal Countryman and Municipal Court Clerk Bishop are elected officials within the Columbus Consolidated Government ("CCG") in offices that originate entirely from

local legislation for the establishment of the Columbus Municipal Court. (Second Amended Complaint ¶28). Plaintiffs have filed a Second Amended Complaint, which included a Motion for Mandamus Relief, to request the Court force the withdrawal of the FY16 Recommended Budget and to require the Columbus Council to consider, and grant, each and every one of their budget requests. *See* Motion for Mandamus Relief, Prayer for Relief. Contrary to these incorrect assertions, the Columbus Charter requires that the Mayor, with the assistance of the City Manager, prepare the initial FY16 Recommended Budget for presentation to the Columbus Council. (Charter §7-401(2)(outlines budget process, including Mayor's fiscal policy recommendations); Charter §4-307(3)(requires City Manager to propose and present to the Mayor the annual recommended budget); Charter §4-201(10)(requires the Mayor to submit an executive-recommended budget to Council annually); and 7-401(4)(c)(Mayor is to propose expenditures for each department, elected office, board and agency of jurisdiction) Both Marshal Countryman and Municipal Court Clerk Bishop have the opportunity to appear before the Columbus Council to present their own budget requests if a hearing is requested. Instead of continuing to participate in the ongoing FY16 budget process, Plaintiffs have filed a mandamus action to request this Court enter into the budget negotiations and demand certain appropriations for their offices, without any legal support or authority from the Charter or Georgia law. The Charter provides only that all CCG elected officials and outside agencies may have their budget requests submitted and heard. No evidence suggests the Defendants, in following the Charter-mandated FY16 budget process, have excluded any elected official or outside agency from this process. The contrary is shown here. Plaintiffs can show no legal right to mandamus relief, as the law states the opposite of what they pose. Plaintiffs have failed to plead a proper mandamus

case, and their Second Amended Complaint continues to ask for extraordinary and overreaching forms of relief, to which they have no legal right to seek.<sup>1</sup>

## INTRODUCTION

Marshal Countryman and Clerk Bishop are not simply asking this Court to allow them to be heard in the budget process, because their budget requests were already received and considered by the Executive Branch in the formulation of the Mayor's Recommended Budget. In addition, their initial budget requests have also been copied and sent to Council for consideration and may be deliberated further through a hearing, if requested. Instead, the Plaintiffs want this Court to disregard the discretion and authority provided to both the Mayor (executive branch) and the Council (legislative branch) in the Charter, namely: (1) the Mayor's consideration and determination of all financial data and budget requests incorporated and balanced into her presentation to Council of the FY16 Recommended Budget; and (2) the discretion of the Council to deliberate and approve or disapprove of the various items in the Mayor's FY16 Recommended Budget and hear any of the budget requests made by the elected officials and agencies not under Council's control. These budgetary roles and functions are mandated in several Charter provisions and demonstrate the full consideration and deliberation consistent with the local budgetary powers provided by Georgia law.<sup>2</sup>

Essentially, the Marshal and Municipal Court Clerk request this Court circumvent the required duties of the executive branch to allow "all elective officers officials such as the sheriff,

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<sup>1</sup> The Supreme Court of Georgia has not distinguished between the types of relief and the implications of the sovereign immunity decision rendered in the Sustainable Coast opinion, such that it may be entirely plausible that a mandamus action is likewise barred. *See* Defendants' Amended Motion to Dismiss Plaintiffs' Second Amended Complaint.

<sup>2</sup> Georgia law provides the executive branch of a local government may provide initial budget-making policy functions as allowed by local law, O.C.G.A. §36-81-4. Under the provisions of the Charter in Charter §4-201(10), §4-307(3), §7-401, §7-402, and §8-105 the executive branch's role in the mandated and discretionary proposal of the FY16 recommended budget uses its discretion to provide fiscal policy recommendations and the proposed budget to Council. Council then must review, deliberate, and hear from elected officials on their submissions before approving a final FY16 budget. Charter §7-401 and §7-402.

tax commissioner, Judge of Probate Court, coroner and other elective officers, and all agencies not under the direct control and jurisdiction of the Council such as the board of health and board of family and children services” to set and determine their own budgets without any involvement of the Executive Branch and without any review or discretion of Council. (Second Amended Complaint ¶134 and Prayer for Relief; Motion for Mandamus, Prayer for Relief). These assertions are contradictory to the language of the Charter and the law, and they would render the Charter-outlined CCG budget process meaningless, so as to frustrate its very purpose.<sup>3</sup>

The only provision cited by the Plaintiffs which they contend supports their vast expansion of their budgetary authority is Charter §8-105, which notes that all elected officials, constitutional officers and outside agencies not under the direct control and jurisdiction of the Council will have their budget requests “incorporated into the overall consolidated government budget for submission by the Mayor to the Council.” The interpretation of the Plaintiffs in this citation, without further analysis, ignores Section 7-401(4)(c), which mandates that the Mayor’s Recommended Budget shall contain propose expenditures for the Marshal’s Office, to-wit:

Proposed expenditures detailed by each department, board, commission, *office*, agency, and activity in accordance with an established classification of accounts,...

See Charter, Section 7-401(4)(c)(emphasis added). Further, the Mayor’s “initial budgetary policy-making function” in proposing such budget expenditures is required by the Charter, to wit:

A proposed annual operating and capital budget for the ensuing fiscal year shall be prepared by the city manager to be submitted by the mayor to the Council on or before a date fixed by ordinance, but not less than 60 days prior to the

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<sup>3</sup> Under Plaintiffs’ theory, the elected officials and outside agencies would be able to demand any amount of funding they deemed necessary and could decide to take up the entire amount of available CCG funds. There would be no funds left for the Executive Branch to recommend for distribution to the other departments of CCG and no ability to present a balanced budget to City Council as required by Charter – an action which would eliminate the discretion present throughout the CCG budget process.

beginning of the fiscal year. Such budgets shall be accompanied by a budget message from the mayor containing explanations of general fiscal policies, explanations of major changes recommended for the next fiscal year, a general summary of the budgets, and other information deemed appropriate.

*See* Charter §7-401(2),(emphasis supplied), the provisions of which are also recognized in Georgia law in OCGA §36-81-4(c).

Nothing in this language, or anywhere else in the Charter, suggests that the Executive Branch has lost all of its discretion to formulate a balanced budget for the Mayor to provide to Council. In fact, the Charter requires that the Mayor do precisely as she has done. Plaintiffs' interpretation of Section 8-105 contradicts the Charter provisions quoted above and conflicts with Georgia law, as it wrongfully eliminates the discretion of the Executive Branch and the Council outlined in the various budget provisions of the Charter. *See* Charter §7-401, §7-402, and §8-105. All parts of a statute should be harmonized and given sensible and intelligent effect, because it is not presumed that the legislature intended to enact meaningless language. English v. State, 282 Ga. App. 552, 555 (2006). The practical difficulties of this interpretation are obvious, as the City Manager would only be able to provide the Mayor a proposed budget on the remaining funds, if any were left after the other elected officials and boards submitted their budget requests. Any mandamus issued to expand the authority of these officials in this manner, without legal or other justification, would be in error. As such, Plaintiff's Motion, as well as their Second Amended Complaint, is due to be denied, and their claims dismissed.

#### **BACKGROUND OF CCG BUDGET PROCESS**

The Charter demands that the annual operating and capital budget for the CCG begins with the work of the executive branch of the CCG, namely the Finance Director and City Manager, who collect necessary and relevant financial data and conduct fiscal policy assessments over several months to ensure the budget for the next fiscal year is realistic and

balanced. *See* Charter §4-307(3)(noting the City Manager must “prepare and submit” to the Mayor the annual operating and capital budget) and Charter §4-201(10)(noting the Mayor’s duty to submit the recommended annual operating and capital budget to Columbus Council). This recommendation process, found in Charter §7-401(2), requires the City Manager and Mayor to use their discretion in the budget process as follows:

A proposed annual operating and capital budget for the ensuing fiscal year *shall be prepared by the city manager to be submitted by the mayor* to the Council on or before a date fixed by ordinance, but not less than 60 days prior to the beginning of the fiscal year. Such budgets *shall be accompanied by a budget message from the mayor* containing explanations of general fiscal policies, explanations of major changes recommended for the next fiscal year, a general summary of the budgets, and other information deemed appropriate.

*See* Charter §7-401(2)(emphases supplied). The Charter then provides that the Mayor is to propose expenditures of *each elected office*, among other departments and boards, in detail pursuant to the Georgia mandated chart of accounts. *See* Charter §7-401(4)(c)(“each of the above-described sections of the annual operating budget *shall* contain, with respect to each of the operating funds of the consolidated government to which they are applicable...proposed expenditures detailed by each department, board, commission, office, agency, and activity in accordance with an established classification of accounts...”).

The discretion afforded to the CCG Executive Branch in reviewing, proposing and balancing revenues and expenditures for all of CCG through the Mayor’s Recommended Budget is mandated throughout the Charter and affirmed in Georgia law. *See* O.C.G.A. §36-81-4(c)(contemplates budgets proposed by executive officers as “initial budgetary policy-making functions”); Charter §7-401(2)(outlining the process which mandates an executive recommended budget to be presented by the Mayor to Columbus Council) Charter 7-401(4)(c)(requiring detailed proposed expenditures); Charter 7-401(5)(proposed budget expenditures must be limited

to expected revenues and reserves); and Charter §4-201(10))(requiring Mayor to annually submit the recommended operating and capital budget improvement program to Council); and Charter §8-105(expressly directing elective officers shall participate in the initial budgetary policy making process of the executive branch by submitting budget requests). In accordance with those provisions, the Marshal and the Clerk submitted their respective budget requests to the City Manager and Finance Director on February 5, 2015. (Second Amended Complaint ¶110).

After a period of review and analysis by the Executive Branch, the Mayor's FY16 Recommended Budget was presented to Council on March 31, 2015. (Exhibit A, *Letter dated March 31, 2015 from Mayor Tomlinson to Citizens of Columbus and Councilors with supporting attachments*). Council receives the Mayor's FY16 Recommended Budget Letter to explain the policy and the proposals in the Mayor's FY16 Recommended Budget Book, a copy of which is attached as Exhibit B. The Mayor confirms for Council that the recommended budget is the incorporation, synthesis and balancing of all revenues, budgetary requests, data and information necessary to set the fiscal policy for CCG and the proposed budget to be funded by the taxpayers. Her letter also specifically recognized the fact that the recommended budget has no force or effect, since it must be "reviewed, debated, deliberated upon, modified, amended and/or adopted by a majority vote" of Council. (Exhibit A, ¶1-2, pg.1.) The City Finance Director also provides each Councilor with copies of the budget requests made by elected officials and other entities subject to Charter §8-105. (Exhibit C, *Affidavit of Pam Hodge with copies of all budgetary attachments provided to Councilors outside of the Mayor's FY16 Recommended Budget, which is Exhibit B*). The Charter does not provide any of its elected officials with guaranteed or minimum requirements of funding by CCG, nor does its language give them preference in the budget process or the ability to avoid the deliberations necessitated in the proposals of the

Executive Branch. No such requirement exists in Georgia law, either. Chaffin v. Calhoun, 262 Ga. 202 (1992)(county commissioners do not have to approve a budget the sheriff proposes).

The Charter only provides the elected officials with the opportunity to make “budget requests” (*see* Charter §8-105) not budgets as the Plaintiffs erroneously insist, for consideration and incorporation with the Mayor’s other requirements to provide a complete proposed budget for all fifty (50) departments, offices, boards and agencies of the CCG and, yet, provide that proposed budget and expenditures to be balanced against expected revenues. Compare Charter §8-105 with Charter §4-201(10), §§7-401(1)–(6). None of the submissions of these elected officials constitutes “budgets”, as that term is defined by law, i.e. O.C.G.A. §36-81-2 (1)(noting a “budget” means a plan of financial operation which shows planned expenditures during a budget time period and the proposed means of financing those expenditures). *See also*, Charter §7-401(4)(c) (requiring the proposed expenditures of elected offices be submitted by the Mayor in form consistent with the Georgia Chart of Accounts). No Plaintiff has submitted a “budget” to the Executive Branch to include the City Manager, and the budget requests that have been submitted in no event could be deemed “budgets”. Nevertheless, these officer “budget requests” are submitted to the Columbus Council by the Mayor as supporting documentation for the FY16 Recommended Budget. *See* Exhibit C (Affidavit of Pam Hodge with thousands of pages of supporting materials to include budget requests of all elected offices and other CCG departments.) The Charter clearly places the burden of proposing a recommended budget on the Executive Branch. *See* Charter §7-401(2)(requiring Mayor to submit to Council a complete balanced budget and an accompanying budget message to explain fiscal policies, changes and other information appropriate to budget process). Nothing in the Charter suggests the budget requests of the elected officials must be submitted in lieu of the Mayor’s proposed budget, and

this argument contradicts the express mandates provided therein for the use of the executive branch's initial policy-making budgetary functions.

The Charter allows the elected officials two opportunities to have the budget requests heard – (a) by giving them to the Executive Branch prior to the submission of the Mayor's Recommended Budget; and (b) by allowing for a separate hearing for their budget requests to be deliberated before Council. *See* Charter §8-105(noting Council "shall grant a hearing" to any officer on such proposed budgets) and Charter §7-402(1)(describes the hearings allowed to review proposed budget requests). None of these provisions limit the power and demands placed upon the Executive Branch to use its discretion in formulating a recommended and proposed budget for the Mayor to present to Council. *See* Charter §7-401(2). The Mayor's FY16 Recommended Budget includes a letter from the City Manager on FY16 recommendations, detailed revenue and expenditures by department, office, board and agency pursuant to the state required Chart of Accounts, and such other information as may be considered necessary or desired by Council, such as the "budget requests" of elected officers. (Exhibits A, B, and C). Council makes its decisions on the FY16 budget only after its review of all information and the opportunity is provided to elected officers to be heard.

Similarly, there is no legal justification to suggest the elected officials, particularly the Marshal and the Clerk, will receive all of the funds they request.<sup>4</sup> The hearings for the Marshal

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<sup>4</sup> This argument could only be made upon the erroneous assumption of the title of "budget officer" which both the Marshal and Clerk now claim, although the law provides otherwise. Only one budget officer is contemplated for the Columbus Consolidated Government under O.C.G.A. §36-81-2(2). "'Budget officer' means that local government official charged with budget preparation and administration for the local government". *Id.* Their offices simply do not qualify as a unit of local government. *See* O.C.G.A. §36-81-2(16), which provides as follows:

"Unit of local government," "unit," or "local government" means a municipality, county, consolidated city-county government, or other political subdivision of the state. Such terms do not include any local school district or board of education. For purposes of this paragraph, "county" **includes any county officer** who is paid in whole or in part

and Municipal Court Clerk, should they request them, will be scheduled prior to Council's determination and vote on its FY16 budget – a process which is still ongoing. The Charter is clear. The Plaintiffs have had the opportunity to submit “budget requests”, which were reviewed and considered by the Executive Branch. They may also have their desired appropriations heard by Council in full upon request. *See* Charter §7-401(2) and (4); Charter §8-105; Exhibits A, B and C.

### MANDAMUS RELIEF REQUESTED

Essentially, the Marshal and Clerks' Motion for Mandamus Relief asks this Court to ignore the mandates of the Charter, as well as all discretion afforded in the budget process, and grant them a mandamus in two parts, as follows:

- (a) **Mandamus to compel the Mayor, City Manager and City Finance Director to withdraw their recommended budget submitted to Columbus Council and instead submit the budget requests provided by the Marshal and Clerk.**

Marshal Countryman and Clerk Bishop have asked this Court to force the executive branch to withdraw its FY16 Recommended Budget, presented by the Mayor under the requirements of Charter §7-401(2)-(6) and Charter§4-201(10). *See* Motion for Mandamus Relief, Prayer for Relief *and* Second Amended Complaint ¶¶120-122. This request contradicts the explicit directives of the Charter, which require the Mayor to submit a proposed FY16 Recommended Budget and FY16 Recommended Budget Letter. *See* Charter §7-401(2)(“[a] proposed annual operating and capital budget for the ensuing fiscal year *shall be prepared by the city manager to be submitted to the mayor* to the Council on or before a date fixed by ordinance, but not less than 60 days prior to the beginning of the fiscal year.”)(emphasis supplied). *See also*

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on a salary basis and over whom the county governing authority exercises budgetary authority.

Under the express terms of the statute, the Marshal and Clerk's Offices are included in the county unit of government. *Id.*

Charter §7-401(4)(requiring the executive recommended budget to contain “proposed expenditures detailed by each department, board, commission, office, agency, and activity in accordance with an established classification of accounts...”). In seeking this Court's Order to exclude and usurp the role of the Mayor, City Manager and Finance Director in the annual CCG Budget Process as it relates to their offices, as well as all other elected officials and outside agencies, the Marshal and Clerk are trying to obtain unwarranted preferential treatment and circumvent the discretion necessary to the determination of the CCG appropriations in its FY16 budget.

**(1) Neither the Marshal, nor the Municipal Court Clerk, may ignore the authority of the Charter in requiring the Mayor (executive branch) to provide Columbus Council with an annual recommended budget for their offices, such that the requested withdrawal of the Mayor’s Budget would be in violation of the express Charter provisions requiring this submission.**

None of the elected officials are entitled, as a matter of law or under the Charter, to prepare their own binding budgets or participate in a budget process separate and apart from the CCG's other departments and officers. *See* O.C.G.A. §36-81-4(c)(contemplates budgets proposed by executive officers as “initial budgetary policy-making functions”); Charter §7-401(2)(requiring Mayor to submit proposed budget); Charter §7-401(4)(c)(requiring Mayor to propose detailed expenditures for each “office”); and Charter §8-105(expressly directing officer will participate in the initial budgetary policy making process of the executive branch by submitting “budget requests”, not budgets or even recommended office budgets). Accordingly, this portion of the mandamus requests must fail as a matter of law, as there is no clear legal right to the relief requested. *See* O.C.G.A. §9-6-20 (noting the right to the extraordinary relief of a mandamus may only issue if the applicant has a clear, legal right to the relief sought.)

This request of the Marshal and Clerk to independently demand their own budgets in lieu of having their requests considered for the Mayor's Recommended Budget exceeds the authority of their positions, as neither official is legally recognized as a "budget officer". Only one budget officer is contemplated for the Columbus Consolidated Government under O.C.G.A. §36-81-2(2). "'Budget officer' means that local government official charged with budget preparation and administration for the local government". *Id.* Their offices of limited jurisdiction simply do not qualify as a unit of local government. Neither the Marshal, nor the Municipal Court Clerk, has ever operated as separate units of local government. *See* O.C.G.A. §36-81-8(b)(1)(A)(notes local unit of governments are required to provide an annual report of local government finances). The Department of Community Affairs or the Office of Research for the State of Georgia, the agencies that oversee the local units of government, does not have either of these individuals, or their offices, listed as a budget officer or a local unit of government. *See* <https://ted.cviog.uga.edu/financial-documents/>. Essentially, they ask this Court to require recognition of a power the law specifically does not grant them, but instead which is specifically granted to the Columbus Consolidated Government. Neither Plaintiff has demonstrated any legal right upon which to order a mandamus. *See* O.C.G.A. §9-6-20.

Importantly, the Plaintiffs have to misquote and misconstrue Section 8-105 to make their erroneous assertions. Charter §8-105 plainly states that the officers shall submit "budget requests", not budgets or even recommended budgets. They are entitled to make requests for the executive's overall incorporation in light of the competing requirements that the Mayor match all expenditures to the expected revenues, and propose funding for all fifty (50) departments, offices, board and agencies of the jurisdiction.. In no event does the Charter or Georgia law suggest that an elected official gets what they want. *See* O.C.G.A. §36-5-22.1(vests original and

exclusive jurisdiction over appropriations in local governing authority, i.e. Columbus Council), and *see also* Bd. of Comm'rs of Randolph County v. Wilson, 260 Ga. 482(1990)(holding the county had the power to determine the Sheriff's budget to fund his operations) and Chaffin v. Calhoun, 262 Ga. 202 (1992)(holding the "county commissioners [do not have to].. approve the budget that a sheriff proposes", particularly when the county is adjusting budgets to avoid the duplication of law enforcement efforts). Georgia law and the Charter have very specific requirements for what constitutes a "budget". A "budget" means "a plan of financial operation embodying an estimate of proposed expenditures during a budget period and the proposed means of financing them". *See* OCGA §36-81-2(1). Neither the Marshal nor the Municipal Clerk has submitted anything resembling a budget.

Additionally, Georgia law, O.C.G.A. §36-81-31(e), and the Charter, §7-401(4)(c), require that budgets and the expenditures of each department and elected office be in the form of the approved Georgia Chart of Accounts. The Plaintiffs have submitted no such thing. They have, though submitted "budget requests" to be incorporated – not adopted in full, not delivered in final, unchangeable form, and not tendered to Columbus Council – into the overall proposed budget in accordance with all the provisions of state and local law. *See* O.C.G.A. §36-81-8(f) (recognizes the local budgets must be balanced against available resources/revenues); and *see also* Charter §7-401(5)(regarding the proposed budget "[i]n no event shall the total proposed expenditures from any fund exceed the total anticipated revenues plus the estimated unappropriated surplus of fund balance and applicable reserves and less any estimated deficit at the end of the current fiscal year.")

Granting the Plaintiffs' request would also lead to absurd results, as the elected officials and outside agencies could demand most of the available money of CCG before the

Recommended Budget was drafted for Council. If the Plaintiffs' interpretation of Charter §8-105 were followed, the City Manager would be unable to present the Mayor with a balanced, proposed budget as required, since he would have to first consider, and eliminate from his own budget plan, all funds requested by "all elective officers such as the sheriff, tax commissioner, Judge of Probate Court, coroner and other elective officers, and all agencies not under the direct control and jurisdiction of the Council such as the board of health and board of family and children services, which receive appropriations from Council... [who must all] submit to the City Manager annual operating and capital budget requests for the ensuing fiscal year." If all of these elected officials and outside agencies gets primary funding and the ability to set their own budgets, then the City Manager could only propose a distribution of those remaining funds, if any existed, that the elected officials and outside agencies did not request in their submissions.

There is no language of the Charter or Georgia law to suggest all of these individuals and agencies receive priority in the budget-making process. Instead, the Charter is explicit in its explanation of the vested discretion and requirements of the Executive Branch in its initial budget policy-making function and in the Council to review the Mayor's Recommended Budget. *See* Charter §7-401(2)(a proposed annual budget shall be prepared by the city manager to be submitted by the Mayor to Columbus Council with a budget message and explanation of same); Charter §4-201(10)(Mayor is required to submit her recommended annual operating and capital budget to Columbus Council) and Charter §4-307(e)(City Manager is required to propose and submit the recommended annual operating and capital budget to Mayor for submission to Columbus Council).

- (2) The budget requests of the Plaintiffs have already been submitted to the Columbus Council, since the elected officials may request a hearing on those requests, so this portion of their mandamus claim is moot and unnecessary.**

The Marshal and Municipal Court Clerk are not in need of the extraordinary remedy suggested by their Motion in asking this Court to demand the submission of their budget requests to the Columbus Council. In fact, their point is moot. Plaintiffs should have known that prior to the filing of this Second Amended Complaint, the budget requests of all elected officials were transmitted to the Columbus Council, with all other budgetary material, in addition to the Mayor's FY16 Recommended Budget. *See* Exhibit C. Each of these officials has participated in the budget process for years, and knows that Charter §8-105 provides elected officials, constitutional officers and outside agencies the opportunity to have a hearing on their respective budget requests before the final ensuing fiscal year budget is passed. Indeed, they have only ever submitted "budget requests," not "budgets" to be wholly placed into the Mayor's recommended budget. The Executive Branch Defendants have already transmitted Plaintiffs' budget requests, in addition to the Mayor's FY16 Recommended Budget. Plaintiffs' attempts to misconstrue the language of Charter §8-105 to insist their budget requests deserve full protection as to each and every item contradicts and ignores the power and discretion required of the Executive Branch in formulating the annual recommended budget. *See* Charter §7-401(requiring Mayor to submit annual recommended budget to Columbus Council with any explanation of major changes and fiscal policy, Charter §7-401(delineating the content of the recommended budget, including the proposed expenditures of all CCG departments and offices; Charter §4-307(3)(requiring City Manager to assist in the formulation and submission of the Mayor's annual recommended budget); and Charter §4-201(10)(recognizing Mayor must submit annual recommended budget as part of duties).

As stated previously, the budget requests submitted by the elected officials are, by definition and under the specific language of the Charter, budget requests, and only requests.

Nothing in the Charter, or Georgia law, or their very basic definition should allow an interpretation that these “budget requests” could constitute full and complete, unchangeable “budgets”.<sup>5</sup> *See pg. 7, above.* The Plaintiffs understand this process and its requirements, having submitted their budget requests to the Executive Branch almost two months before the City Manager and Mayor completed and provided her FY16 Recommended Budget to Council. (Second Amended Complaint ¶110; Exhibit A, pg. 9 and Exhibit B). Plaintiffs even complain of the budget meetings in which their attendance was requested by the Finance Director. (Second Amended Complaint ¶111). Regardless, the Plaintiffs’ requests to have their budget requests submitted to Columbus Council are moot, as that has already occurred before the filing of this Second Amended Complaint. The law provides that a mandamus will not lie if the writ would, for any cause, be nugatory or fruitless. *See O.C.G.A. §9-6-26.*

**(b) Mandamus to compel the Columbus Council to approve the Marshal and Clerk budget requests in their entirety, as they are submitted to Council.**

The request of Marshal Countryman and Municipal Court Clerk Bishop to force CCG to provide them with all of their requested appropriations is patently frivolous.<sup>6</sup> They simply do not, and cannot, cite to any provision of the law, or other authority, which grants them the right to receive specific appropriations they request from Council.<sup>7</sup> Similarly, these elected officials are not granted priority or preference in the language of the Charter, or the law, in the CCG

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<sup>5</sup> Compare Charter §8-105 with Charter §4-201(10), §§7-401(1)–(6). None of the submissions of these elected officials legally (or otherwise) constitute “budgets”, as that term is defined by law, i.e. O.C.G.A. §36-81-2 (1)(noting a “budget” means a plan of financial operation which shows planned expenditures during a budget time period and the proposed means of financing those expenditures). *See also*, Charter §7-401(4)(c) (requiring the proposed expenditures of elected offices be submitted in form consistent with the Georgia Chart of Accounts). No Plaintiff has submitted a budget to the Executive Branch to include the City Manager, and the budget requests that have been submitted do not comply with the Charter of Accounts and in no event could be deemed “budgets”.

<sup>6</sup> Notably, the Plaintiffs do not request this relief in their Second Amended Complaint, which states only that they should receive “sufficient” funding to enable them to carry out the duties of their respective offices. (Second Amended Complaint ¶127 and Prayer for Relief, ¶5)

<sup>7</sup> As the Plaintiffs are so fond of quoting, “[i]f there is any reasonable doubt as to the existence of a power,... such doubt must be resolved against the existence of such power”. (Second Amended Complaint ¶45, 47 & 48, presumably citing Boswell v. Bramlett, 274 Ga. 50, 52 (2001).

budget process. Instead of having a clear legal right to relief, the mandamus requests of the Marshal and Clerk actually contradict the discretion and requirements made in the Charter for the CCG's Executive Branch and Legislative Branch.<sup>8</sup>

**(1) Neither Plaintiff has a right to demand a specific budget.**

Control over the distribution of the funds of a local government is well within the legislative authority of Council. Neither the Charter, nor the law contemplates allowing an elected official this type of control or input into the distribution of the funds of CCG. *See* O.C.G.A. §36-5-22.1; Charter §7-401, §7-402, and §7-404. Despite being elected officials, the offices of the Marshal and the Municipal Court Clerk were created solely by local legislation. *See* 1983 Ga. Laws, pp. 4443-4465. They are not constitutional officers and have limited jurisdiction and powers. There is no provision of law, or the Charter, which provides them a guarantee of a minimum level of funding for their offices. They serve only to ensure the needs of the limited jurisdiction of the Municipal Court are met. *See* 1983 Ga. Laws, Session No. 457, pg. 4443-4465. Any law enforcement capacity the Municipal Marshal has emanates from the limited jurisdiction of the Municipal Court and is ancillary to the chief law enforcement agency of this county -- the Columbus Police Department.<sup>9</sup> *Id.* *See also* Exhibit D, copy of Attorney General Opinion 2005-1 (noting the "county marshal's office is not equivalent to a county police force" and that "marshals are employees of the governing authority of the county employed to perform the duties of constables for courts of limited jurisdiction, i.e. magistrate courts."). Even

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<sup>8</sup> Again, this idea would lead to absurd results and an entitlement to funding, which is not in evidence or suggested in the Charter. To follow the Plaintiffs' mistaken interpretation of Charter §8-105, all of the "elective officers such as the sheriff, tax commissioner, Judge of Probate Court, coroner and other elective officers, and all agencies not under the direct control and jurisdiction of Council" would be entitled to demand any and all amounts of funding they deemed necessary. No authority even implies this right. Their argument would eliminate all discretion of Council to distribute its available funds, and possibly leave Council with no funds to ensure the operation of the remaining departments of the CCG.

<sup>9</sup> The Marshal's pleadings demonstrate his law enforcement duties have been examined for duplicative services before, which only confirms the analysis is appropriate and fiscally responsible (Second Amended Complaint ¶112-113).

constitutional officers, which operate independently from county governments, do not have the capability of demanding a particular budget. *See Chaffin v. Calhoun, supra* (recognizing the county commissioners did not have to provide the sheriff with all he requested, and in fact, could reallocate county resources to avoid the duplication of law enforcement efforts in the county); *See also Bd. of Comm'rs of Randolph County v. Wilson, supra* (holding the county has the power over its resources and the ability to cut a constitutional officer's funding). Since neither Plaintiff can demonstrate entitlement to specific funding as requested, this portion of the mandamus claim should be dismissed. *Id.*

**(2) A mandamus is not a proper vehicle to force the Columbus Council to exercise its discretion in a particular way.**

Marshal Countryman and Clerk Bishop seek this Court's assistance to instruct Council to grant all of their budget requests for the not-yet-final-or-approved FY16 budget, as if this Court were a participant and decision-maker in the CCG budget process. *See* Motion for Mandamus Relief, Prayer for Relief. Asking the Court to intervene in this manner exceeds the relief available and boundaries of a mandamus, which will "not lie to compel a general course of conduct or the performance of continuous duties, nor will it lie where the court issuing the writ would have to undertake to oversee and control the general course of official conduct of the party to whom the writ is directed." *Lowe v. State*, 267 Ga. 754 (1997). *See also Bibb County v. Monroe County*, 294 Ga. 730 (2014)(mandamus will not issue to compel the manner in which an official exercises discretion, nor can it dictate the results of the use of that discretion). Plaintiffs request this Court impose itself into the FY16 legislative budgetary process for both the Executive Branch and Council, and dictate the results of the decision, actions which are well beyond the jurisdiction of this Court and inappropriate for a mandamus. *Id.* Georgia law does not allow the extraordinary relief of a mandamus to provide Council with a mandate as to its

budgetary decisions, which are within the exclusive discretion and realm of its legislative authority. Id. See also James v. Montgomery County Bd. of Educ., 283 Ga. 517 (2008)(setting school board agenda is a discretionary act which is not subject to mandamus, as mandamus not contemplated to compel a course of conduct or use of specific discretion.) As such, Plaintiffs' claims for mandamus must fail as a matter of law.

**(3) The Plaintiffs' requests to order specific payment of CCG funds for FY16 would be outside the jurisdiction of a mandamus and this Court.**

Georgia law provides that the "governing authority" of each county has "original and exclusive" control over the property of the county, and oversees the collection and disbursement of the money of the county, even when it is in the accounts of officers, to-wit:

(a) The governing authority of each county has original and exclusive jurisdiction over the following subject matters:

(1) The directing and controlling of all the property of the county, according to law, as the governing authority deems expedient; ...

(7) The examining and auditing of the account of all officers having the care, management, keeping, collection or disbursement of money belonging to the county or appropriated for its use and benefit and settling of the same; ....

See O.C.G.A. §36-5-22.1(a)(emphases added). Georgia law recognizes the control over funding maintained by the local governments, even when presented with county officers who operate independently from the county, which is certainly not the case here. See 1983 Ga.Laws, *supra* and Lovett v. Bussell, 242 Ga. 405, 406 (1978)(Court denied request of sheriff to demand pay raises for his personnel from county authorities, noting it did not want to delegate to constitutional officers the authority to set county pay scales) and Lawson v. Lincoln County, 292 Ga.App. 527 (2008)(Court recognized that to allow the sheriff to operate "independent from the county's budgeting process would, in the extreme undermine the county's broad discretion to

exercise control over public property"). Any request to enter the FY16 budget process and alter the control afforded to Council would be outside the realm of mandamus relief and outside the jurisdiction of this Court. *See Dekalb County v. Adams*, 272 Ga. 401, 403 (2000)(recognizing Court cannot order payment of county funds without express statutory authority or mandate); *and* O.C.G.A. §9-6-20(Court will not order a mandamus absent the applicant's clear, legal right to the relief requested).

### CONCLUSION

Nothing in the CCG Charter or Georgia law allows Plaintiffs to avoid the discretion afforded in the presentation of the Executive Recommended Budget, nor is there any authority to provide them with the ultimate entitlements in the budget process. Instead, the Charter is replete with provisions requiring the Executive Branch to use its discretion - in weighing the various budget requests and providing Council with a balanced, recommended budget after those deliberations are made. The recommended budget has no legal force or effect and must reviewed, deliberated and adopted or changed by Council, who must use its discretion and bear the fiscal responsibility for the CCG in its appropriations. The Charter provides only that all CCG elected officials and outside agencies may have their budget requests heard, and there is nothing to suggest the FY16 budget process has excluded any elected official or outside agency from this process. Plaintiffs' request for extraordinary relief in the form of a mandamus is simply unavailable, as they have no legal rights to the relief requested. For all of the foregoing reasons, the Defendants request denial of the Motion for Mandamus Relief and request dismissal of Marshal Greg Countryman and Municipal Court Clerk Vivian Bishop's Second Amended Complaint in its entirety, with prejudice.

## REQUEST FOR VERIFICATION OF SECOND AMENDED COMPLAINT

Defendants request this Court order the Plaintiffs to verify the allegations contained in the Second Amended Complaint, as the complete amendment operates as a new pleading and adds factual assertions not mentioned previously. *See* O.C.G.A. §9-11-15. Plaintiff Bishop has stated to two local media sources that she did not authorize the new filing. Verification is required in any petition seeking extraordinary relief, pursuant to the provisions of O.C.G.A. §9-10-110. Mandamus has been held to constitute an “extraordinary remedy” and should, therefore, be filed pursuant to a verified petition. Bankers Life & Casualty Co. v. Cravey, 209 Ga. 274, 277 (1952)(mandamus is an extraordinary remedy) and *see also* Davis & Shulman’s Georgia Practice and Procedure, §7.23, FN 8, (noting verification requirements of mandamus action). Plaintiffs’ Second Amended Complaint contains several requests for extraordinary relief and should, therefore, be verified.

**WHEREFORE**, Defendants having filed this Response to Plaintiffs’ Motion for Mandamus Relief, respectfully requests that it be denied in its entirety, and for all costs and other equitable relief, including attorneys’ fees, be granted to Defendants, after this Court requires Plaintiffs to verify the Second Amended Complaint.

Respectfully submitted this 15<sup>th</sup> day of April, 2015.

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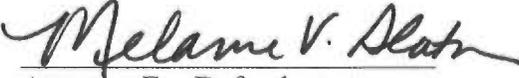
**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing **DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR MANDAMUS RELIEF** in the service manner agreed-upon by counsel, via electronic mail, addressed as follows:

Christopher D. Balch  
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This 15<sup>th</sup> day of April, 2015.

  
Attorney For Defendants

**EXHIBIT A**

**Exhibits to Letter attached as CD-ROM**

# COLUMBUS CONSOLIDATED GOVERNMENT

*Georgia's First Consolidated Government*

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*Mayor*

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March 31, 2015

RE: Mayor's Fiscal Year 2016 Recommended Budget

Dear Citizens of Columbus, Georgia and City Councilors:

This Mayor's Recommended Budget is the culmination of many months of data/information collection and fiscal policy assessment. The process that leads up to the Mayor's Fiscal Year (FY) 2016 Recommended Budget takes place over many months. It involves numerous meetings with department heads, office holders, and Columbus Councilors and is led by executive management staff to include the City Manager, Finance Director, both Deputy City Managers, Human Resource Director and Budget Analysts. The submission of this recommended budget to our Councilors is expressly recognized in Georgia as the "initial budgetary policy-making function" of the elected chief executive official of the Columbus, Georgia Consolidated Government (CCG). The Mayor's Recommended Budget is required to be accompanied by a budget message from the mayor containing explanations of general fiscal policies, explanations of major changes recommended for the next fiscal year, a general summary of the capital and operation budgets, and other information deemed appropriate for Council's consideration.

The Mayor's Recommended Budget incorporates, synthesizes and balances all revenues, budgetary requests, data and information necessary to set the fiscal policy of CCG and proposes a budget for all departments, divisions, elected offices, authorities and commissions funded by the taxpayers of this jurisdiction. The Mayor's Recommended Budget, in and of itself, has no force or effect; it must be reviewed, debated, deliberated upon, modified, amended, and/or adopted by a majority vote of the CCG legislative body - the Columbus Council. Rather, the Mayor's Recommended Budget is a proposed policy path forward given the expected revenues of this jurisdiction and the often competing governmental needs of our community. Based upon these principles of our local government, it is my honor and privilege to submit this FY 2016 Recommended Budget for Council's consideration.

**I. Laying a Firm Budgetary Foundation:**

Over the past several years, CCG has done the hard work of getting our financial house in order. We have had to face persistent reductions in our local revenue and reserves due to state mandates and revenue exemptions, the years-long recession and the unexpected \$11.3 million budget

overruns in the Sheriff's Office. Those realities have required us to change the way we do business, to recalibrate the services we provide our citizens and to address certain systemic inefficiencies within the CCG government because we simply could no longer afford to avoid the reform. Those realities also have resulted in a General Fund revenue crisis, while other dedicated or restricted funds of CCG are fairly stable. In Columbus/Muscogee County, our General Fund revenues are made up of unrestricted funds, including our property tax revenues, our Local Option Sales Tax (LOST) revenues, our Other Local Option Sales Tax (OLOST) revenues and other unrestricted license fees, fines, etc. Even though our OLOST revenue is a General Fund revenue, indistinguishable under the law or accounting principles from other General Fund revenue, our local government tabulates our OLOST monies separately for purposes of the transparency promised in the OLOST referendum. These funds were promised to be spent 70% for Public Safety and 30% for infrastructure, and this promise has been strictly kept.

Pursuant to Resolution No. 224-11, CCG is required to maintain enough unrestricted revenue in our General Fund Reserve to run the city/county for 60 days. Below is a summary of the impact the foregoing budget factors have had on our General Fund Reserve days:

<b>GENERAL FUND RESERVE DAYS</b>						
	<b>FY11</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>
	<b>Actual</b>	<b>Actual</b>	<b>Actual</b>	<b>Actual</b>	<b>Projection</b>	<b>Projection</b>
<b>Traditional Funds</b>	79.84	71.57	68.73	38.33	28.32	27.60
<b>OLOST Funds</b>	6.30	5.25	5.35	16.88	32.94	32.77
<b>Total General Fund Reserve Days</b>	86.14	76.82	74.08	55.21	61.26	60.37
<b>Value of 1 Day</b>	\$414,861	\$428,774	\$420,001	\$408,126	\$413,407	\$415,672

Here are some of the difficult decisions we have made to reverse this course:

- We unanimously passed comprehensive Pension Reform, which has thus far saved taxpayers \$2.7 million;
- We implemented comprehensive employee healthcare reform saving the taxpayers \$4.5 million a year, while still providing value to employees;
- We renegotiated a decades old contract with our partners at the Medical Center to save hundreds of thousands of dollars a year;
- We reduced city subsidies to third-party affiliates by over \$800,000 a year since FY2011;
- We have increased user fees throughout the CCG government where appropriate;
- We have launched a recycling effort that has returned approximately \$60,000 per month to CCG and has postponed the impending cost of closing our landfill; and

- We have thus far avoided broad scale layoffs or furloughs of city employees, though we have reduced through attrition and defunding some \$1.34 million in city employee positions and benefits costs over a three year period.

These efforts to reform city finances have had a positive effect on the financial viability of this city, though it has placed increased burden on our employees to maintain our current level of city services with less. We also deferred tens of millions of dollars in maintenance and capital expenditures for equipment, primarily garbage trucks, lawn mowers, fire trucks, ambulances, police cruisers and undercover vehicles.<sup>1</sup>

Just last year we faced the prospect of laying off 100 to 120 employees with severe impact on our city services. Because of the leadership and teamwork of our legislative and executive officials, those 100-plus jobs were saved and nearly 12 days, or some \$5 million, were added back to our dwindling General Fund Reserve, only to have the goalpost moved by the new application of a municipal accounting principle. This change in accounting application and the resulting reduction in our Reserve brings us back down perilously close to our required 60-day threshold necessary to fund CCG and meet our obligations. Had we not made the significant financial changes we did over the last four years and this new principle been applied, the effect would have been devastating for our city, our employees and our citizens.

However disheartening this move of the financial goalpost, it gets us closer to a truer number of where we actually are and what monies are available for our use and benefit. Regardless of the new playing field, our recent history tells us: 1) that we have the necessary leadership to steer Columbus through this fiscally challenging time; 2) that our tough decisions have worked; 3) that we can solve these issues; and 4) that we have another tough year ahead of us.

## **II. Budgetary Path Forward:**

### **A. Revenue Expectations**

The FY 2016 Recommended Budget is based on revenue expectations of \$264 million. We predict a 1.5% increase in the CCG property tax digest putting gross property tax revenue at \$77 million. Local Option Sales Tax (LOST) FY2016 revenue is expected to be \$35 million and Other Local Option Sales Tax (OLOST) revenue is expected to be \$34 million, for a total FY2016 sales tax revenue of \$69 million. Occupancy tax, licensing fees, and other miscellaneous revenues account for the remaining \$118 million of the FY2016 recommended budget.

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<sup>1</sup> It should be noted, however, when dire circumstances have arisen, we have found a way to cover "must haves" such as the replacement of the Burn Tower for Fire/EMS training; replacement of our Public Safety Motorola Radio System; an upgrade of the fire alarm system and security cameras for the Muscogee County Prison; and investments in a state-of-the art record management system for the Columbus Police Department and a new assessment software for our Tax Assessor/Tax Commissioner.

We are hopeful that our efforts to update our Tax Assessment system will provide a better structure going forward for improved, and more accurate, property tax revenues. We work to protect our sales tax revenues from state legislative bills that attempt to usurp county funds or provide broad, costly exemptions. We also work to make certain that the state sales tax remittance distribution system is fair and reflective of revenues actually collected in Muscogee County. And, we are initiating a referendum ballot effort to “thaw” our residential homestead property valuation freeze in November 2016, which Freeze system denies us the benefit of our growth.

We have not sat idly by and accepted our flat revenues over these past many years. We will continue to work to enhance revenues through growth and other fair, transparent means.

## **B. Addressing Systemic Budget Issues**

### **1. Pension Costs**

This year’s Pension contribution will be \$18,180,671 for both our General Government Pension Plan (\$5,843,267) and our Public Safety Pension Plan (\$12,337,404). Had we not adopted this important reform, our FY2016 contribution would have been approximately \$542,455 more. Thus far we have saved \$2.7 million due to our pension reform and are positioned to save approximately \$28 million over a 15 year period. In addition, our Pension Fund has grown stronger. Our Public Safety Pension is now 80% funded, while our General Government Pension Fund is 87% funded. Our combined pension plan fund stands at \$371 million.

Next year our Pension Board will most likely recommend a shift away from the 1994 mortality table we currently use to a mortality table published later than 2000 in order to calculate our annual pension contribution. Life expectancies are increasing, and our pension must be well-funded to support these increased expectancies. We will need to find several million dollars in our FY2017 budget for the anticipated increased pension contribution. Given our stagnant revenues and other budget demands as set forth herein, we must begin planning now for this significant budget issue.

### **2. Healthcare**

As healthcare costs continue to rise throughout the country, we at CCG have taken pro-active steps to ensure that our self-funded healthcare plan remains a value for both our employees and our taxpayers. We have started a Health and Wellness Clinic Plan, while providing HMO and PPO plans. Though many of the necessary adjustments made in FY2015 to keep our healthcare plans stable only went into effect January 1, 2015, we believe these efforts will moderate healthcare cost increases. We continue, however, to consider other potential efficiencies and opportunities for savings:

- We propose a new Pharmacy Benefits Manager in this recommended budget, saving CCG an estimated \$800,000 per year.
- We are currently speaking with post-65 year old retirees about the possibility of entering into private healthcare exchanges to increase their options and to reduce our costs. This

effort is not expected to be completed prior to the adoption of the FY2016 budget and, therefore, no such recommendation is made in this letter. We do hope to continue this discussion and perhaps bring a proposal forward for Council discussion and a possible effective date of January 1, 2017.

- Last year Council ratified the longstanding policy that CCG share the cost of healthcare with our employees in a 70% (CCG)/ 30% (active employee) split. Given the increase in healthcare cost this year, the 70%/30% split will result in employee healthcare contribution adjustment estimated to be between \$3-\$10 per paycheck depending on the plan the employee has selected. The increase for CCG was adopted last year and those costs have been adopted into the FY2016 Recommended Budget.
- In order to assure the lowest, competitive administrative fees associated with our healthcare plans, CCG has advertised a competitive Request for Proposal. This competitive bid process has resulted in efficiencies and savings, which are passed along in this recommended budget.

Controlling healthcare costs and servicing the healthcare needs of our employees is a major priority for CCG. These efforts are daily and year long. We will continue to look for improvements.

### **3. Renegotiation of Medical Center Contract**

The CCG agreement with the Columbus Regional Medical Center for indigent and prisoner healthcare was entered into in 1992. By its original terms the agreement expires in 2022, and few believed amendment of the agreement was possible. Perseverance and partnership won out in the end and on July 1, 2014 our decades long contract with the Medical Center was amended so that:

- CCG only pays 3 mills on property taxes actually collected as opposed to the value of the entire digest.
- CCG can recoup 50% of any surplus if the discounted cost of the care provided to indigents under the agreement does not exceed CCG's total payments under the contract.
- CCG is now receiving a value of \$1,000,000 of prisoner healthcare for free as opposed to just \$500,000, due to a negotiated 50% discount on the billing rate.

Due to the contract amendment we have saved \$300,000 in FY2015.

### **4. Reduction in Payments to Third-Party Affiliates**

Since FY2011, we have decreased General Fund subsidies to third-party affiliates by \$876,215 per year:

Discretionary Third-Party Appropriations						
	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>
Health Department Services	813,475	813,475	813,475	650,780	502,012	502,012
DFACS	90,000	90,000	80,000	62,400	48,135	48,135
Keep Columbus Beautiful	80,784	72,706	72,706	64,628	49,854	-
New Horizons	234,823	234,823	234,823	187,858	144,932	144,932
Uptown Columbus	81,000	72,900	72,900	58,320	44,988	44,988
Literary Alliance	16,200	14,580	18,822	-	-	-
Naval Museum Subsidy	300,000	250,000	200,000	175,000	135,000	-
<b>TOTAL</b>	<b>1,616,282</b>	<b>1,548,484</b>	<b>1,492,726</b>	<b>1,198,986</b>	<b>924,921</b>	<b>740,067</b>

We transferred the Literacy Alliance to the more appropriate funding source of our Crime Prevention grant program. We have weaned the Naval Museum from the CCG coffers over a four-year period with the help of its Board and our partners at the Columbus Convention and Visitors Bureau. After reducing its subsidy nearly 50% over the past several years, the Recommended Budget proposes moving Keep Columbus Beautiful to our Integrated Waste Fund in order to directly align it with its closest CCG partner.

For FY2016, we keep the remaining affiliates' funding rates at the same level as FY2015, though we suggest working with our partners at Uptown, Inc. to discuss an alternative to it being funded from the strained General Fund.

### 5. Enterprise Funds, Authorities, and Mandates

Each year we are faced with having to subsidize some of our Enterprise Funds, Authorities and Agencies. Some subsidies are directed by law, such as our payments to the Health Department, the River Valley Regional Commission, and Airport Authority. Other subsidies are made as loans or as temporary bridges to get the entity over difficult financial challenges. The FY2016 recommended subsidies for funds, authorities or agencies are:

FUND/AUTHORITY/AGENCY	PROPOSED FY2016 SUBSIDY
Civic Center Enterprise Fund	\$200,000
Golf Authority	\$300,000
Parking Management Enterprise Fund	\$135,273
Airport Authority	\$40,000
Health Dept. Rent	\$318,595
River Valley RDC	\$202,824
<b>TOTAL</b>	<b>\$1,196,692</b>

Our management team is working to mitigate these subsidies and to make proposals to Council to alleviate the subsidy burden on our General Fund. For instance, the Civic Center has done a tremendous job of reducing cost overruns and improving revenue, even in the face of the addition of a new ice rink, which we knew from the beginning would be a financial struggle. The Civic Center leadership has worked diligently to mitigate costs, engage in creative partnerships, and re-think the revenue model of the public assets with which they have been charged. Others, however, have struggled either due to a lack of innovation, a lack of community consensus or lack of political will to make the changes necessary to reduce or end the annual subsidies. Some of these subsidies in the aggregate amount to millions of dollars over just the past few years.

In a time when we are struggling to maintain employee positions, pay and benefits, and essential capital investment, subsidies of this magnitude cause citizens and employees to call into question the need for such subsidies. Accordingly, a Mayor’s Commission will be established pursuant to CCG Charter Secs. 4-201 (11) and (13) to study the subsidies to Enterprise Funds, Authorities and Agencies to determine whether efficiencies can be had or revenue increased so as to reduce, or eliminate said subsidies. The Commission will report back to Council with its findings and proposals in the coming year.

#### 6. Proposed User Fee Adjustments

Attached hereto as Exhibit A is a list of \$233,498 in proposed FY2016 User Fee adjustments for Council’s consideration.

#### 7. Garbage Collection

CCG’s Integrated Waste program collects waste four times a week from each house: two trips per week for household garbage; one trip per week for recycling; and one trip per week for yard waste. There is an additional fifth trip per week throughout CCG for “White Goods,” that are placed on the curb by residents. This is a higher level of service than nearly any community in the region or state. Indeed, the only twice-a-week household garbage pick-up programs we could find charge their residents significantly more than what residents in Muscogee County are charged:

No. of 32 Gallon Containers	Monthly Fees For Twice Weekly Garbage Pick Up						
	1	2	3	4	5	6	7
Columbus	\$15.00	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
Gainesville	\$32.10	No Charge	No Charge	No Pick-up	No Pick-up	No Pick-up	No Pick-up
Marietta	\$22.75	\$27.75	\$33.50	\$38.50	\$43.50	\$48.50	\$53.50
Moultrie	\$28.00	\$39.40	\$50.80	\$62.20	\$73.60	\$85.00	No Pick-up

The cost of such a high level of waste collection service is many fold, but is particularly onerous as it relates to the wear and tear on our garbage trucks. We currently need to replace 56

garbage/recycling trucks at \$225,000 apiece for a capital cost of \$12.6 million. Forty-four of these trucks are considered urgent/critical replacement needs. Our waste collection fee has not supported, and cannot support, the actual cost of the capital demand of the service we provide; and, the General Fund Reserve that we depended on for so many years to subsidize these types of capital demands can no longer provide that revenue.

Neither our Integrated Waste Fund nor our General Fund can support the cost of our impending landfill closure, which is estimated to be \$22.4 million and is unfunded. Our two day-a-week household garbage pick-up increases waste directed to the landfill and discourages recycling. A strong recycling program is an essential part of our cost management strategy for closing the landfill.

Over the years, staff has provided numerous presentations on the costs and effects of our current waste collection service. Many alternatives have been presented. In the spring of 2011, the Mayor's FY2012 Recommended Budget proposed that CCG reduce its household garbage collection service to one-time per week. That proposal was not accepted.

On May 18, 2012, the Public Works Director proposed that CCG begin one day per week household garbage pick-up in January 2014. After discussion and public input, it was decided that we would revisit the issue of changing to once-a-week household garbage pick-up after our new \$8 million recycle center had opened. A target date for switching to once-a-week pick-up was then proposed for September 2014, a date which has come and gone.

Our Recycle Center has opened, and it is successful. We have had a 108% increase in recycling, resulting in an additional four years added to the life of our landfill. We are receiving \$60,000 a month in the sale of recycled material and have additional capacity for growth. The time is now to convert our Integrated Waste System to a once-a-week household garbage pick-up service. Because we cannot adequately provide for the system we currently have, this conversion will provide not a budgetary savings, but a valuable cost avoidance of \$495,000 per year. This change also will increase recycling and prolong the life of our landfill.

This recommended budget also proposes a cost avoidance of an additional \$521,400 per year due to prohibiting the use of plastic bags for yard waste. This prohibition has been discussed at Council meetings and work sessions. Public input was received and information collected. Notably, this prohibition still allows for citizens to use containers, brown bags, and other biodegradable bags. This is a best practices policy and will save CCG the cost of three trucks and three drivers. The community is well informed of the merits of this proposal, it can be implemented with little impact to our citizens, and it provides significant cost avoidance to CCG. See Staff Report, Exhibit B.

## **8. Capital Replacement**

These years of budget woes have resulted in an inability to follow our capital re-investment plan. As a few examples of our critical needs, we note the \$12.6 million needed to purchase the 56 garbage/recycle trucks mentioned above. We note \$225,000 is needed to purchase 28

lawnmowers Parks and Recreation has had to scrap over the past few years while trying to make do through cannibalizing aged mowers. Recently, we had to cut a 90+ acre CCG park with weed-eaters. We also have learned from our new Information Technology Director that there are costly immediate needs which must be funded in order to ensure the stable functioning of CCG.

We have a critical need for 4 ambulances, 3 fire trucks, and 1 quint. We also need dozens of replacement pursuit and undercover vehicles for CPD, among other needs. We have explored lease options and have assigned out the OLOST capital funds as evenly as possible to meet the most urgent Public Safety need. See Exhibit C (List of Proposed Public Safety Capital funded in FY2016 from OLOST).

This lack of funding for our comprehensive capital investment plan cannot continue indefinitely.

## **9. Budget Requests of Departments and Offices**

As part of the FY2016 initial budget process, we received \$25 million in budget requests from our departments and offices over and above the FY2015 Adopted Budget levels. Though there are worthy, necessary and even critical requests among them, our expected revenues and General Fund Reserve cannot sustain those requests. As our Charter states, the budgeting process is an incorporation and balancing of the desires, needs and mandates of the jurisdiction and the revenues that can sustain them. Accordingly, we have prioritized the various requests in order of urgency, critical impact, legal mandate and magnitude. We recommend that Council appropriate \$5 million across various funds to fill the highest priority funding needs. The recommended budget additions by department and office are identified in the FY2016 Recommend Budget Book, which is submitted herewith and incorporated herein.

### **C. Elimination of Duplicative Law Enforcement Services**

During our FY2015 budget sessions, members of the Columbus Council requested that staff investigate issues of potential duplicative law enforcement services among the following: 1) Columbus Police Department; 2) Muscogee County Sheriff's Office; and 3) Municipal Court Marshal's Office. In assessing this referral from Council and inquiries from citizens, the administration has reviewed:

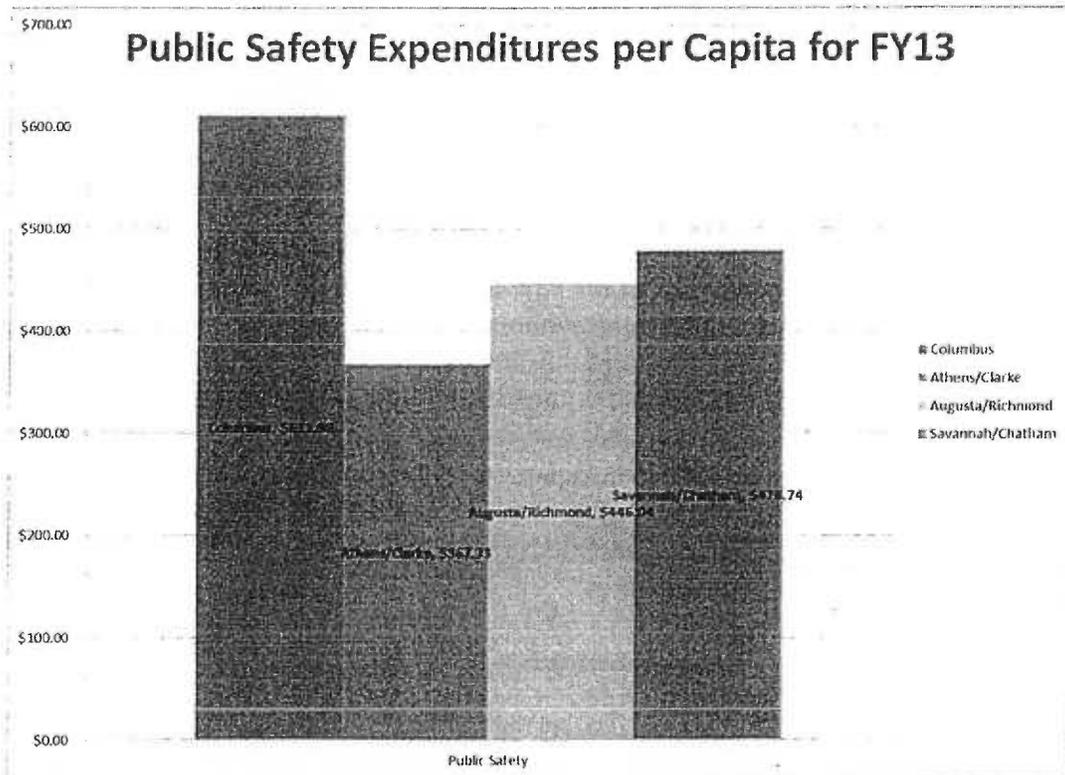
- Service Line Resource Allocation ("Service Allocation") reports of the Departments/Offices;
- Accounting Records for the past decade;
- Internal and Third-party Comparative Cost Analyses for law enforcement departments/offices in comparable jurisdictions;
- Interviews with subject matter experts and law enforcement service providers;<sup>2</sup>

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<sup>2</sup> Both the Sheriff and Marshal were invited on several occasions to participate in these discussions. While the Marshal responded in part and in writing to Council's inquiry during the FY 2015 budget process, neither elected officer has thus far participated in staff's review of information related to Council's referral for this FY2016 Recommended Budget.

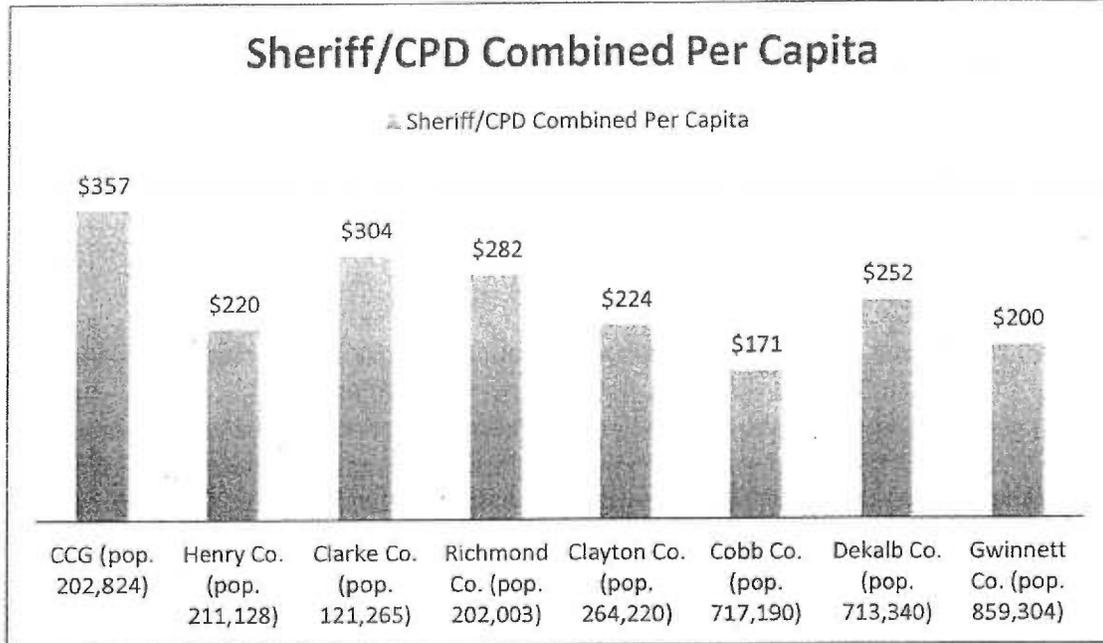
- Other materials and information available to CCG to include, but not limited to, media reports, verified anecdotal information and publicly filed or submitted documents.

In Columbus/Muscogee County, we spend \$612 per person per year on Public Safety.<sup>3</sup> That is the highest per capita expenditure for Public Safety for any comparable city/county in the State of Georgia. The next highest per capita expenditure is Savannah, Georgia at \$479 per person, per year.



When we compare the operating and capital budgets of Columbus Police Department (CPD) and our Sheriff's Office to those of other comparable communities, the discrepancy in investment remains:

<sup>3</sup> Public Safety comparison includes monies for the Police Department, E911, Fire/EMS Department, Muscogee County Prison, Sheriff's Office, Marshal's Office and Homeland Security.



As shown above, CCG invests significantly more dollars per citizen on Public Safety, and law enforcement in particular, than other large counties in the State of Georgia.<sup>4</sup> When the cost of the Marshal's office is added to the per capita law enforcement chart above, the difference in CCG's higher expenditures remains. The comparisons of law enforcement expenditures regarding the Marshal's Office in other communities is difficult, though, as so few other Municipal Court Marshals engage in law enforcement activities outside the confines of the Municipal Court they serve.

Despite our greater level of investment, our citizens say to us repeatedly that they wish to have more resources expended for law enforcement "on the streets." Citizens have been clamoring for years for efficiencies in our use of and investment in law enforcement services on the streets. Before simply appropriating more funds to "law enforcement," we must first responsibly address whether we are spending our sizable funds in an efficient and effective manner to effectuate the desired impact on the street and our crime rate, or whether we have wasteful or unnecessary duplication in our law enforcement agencies.

<sup>4</sup> Note that Augusta/Richmond County is a consolidated government like CCG and Athens/Clarke County; however, Augusta/Richmond County has a single combined law enforcement office that provides all the duties of a Sheriff's Office and a County Police Department. Athens/Clarke County is consolidated, but maintains a separate Sheriff's Office and County Police Department. Our inquiry revealed that the Athens/Clarke County Sheriff's Office concentrates its resources on its required mission of maintaining a jail, protecting the courts, serving civil process and providing "some" law enforcement or peacekeeping services.

In order to make this assessment, the Columbus Council must look to the mission and jurisdiction of each said department or office and reduce or eliminate duplicative resources that do not directly appertain to the respective missions or prescribed jurisdictions of the Columbus Police Department, Sheriff's Office and Marshal' Office.

#### **D. Separate Agencies Participating In Law Enforcement**

##### **1. Columbus Police Department**

In Columbus/Muscogee County, the chief law enforcement agency is the Columbus Police Department (CPD), which has the maximum law enforcement authority allowed by law within the county. In our consolidated city/county government, there is no other municipal jurisdiction within the county limits with a separate law enforcement agency. The Columbus Police Department is the only law enforcement agency within this jurisdiction which receives and responds to 911 calls.

In 2014, CPD received 170,112 calls for emergency response, filed 57,035 reports, assigned 10,716 cases for investigation, wrote 43,225 citations and made 10,467 arrests. CPD is comprised of 488 POST-certified, sworn officers and 61 civilian workers. It is a highly effective office that could have an even greater impact on crime with well-placed, targeted additional resources.

##### **a. Additional Personnel Resources**

Intelligence-Based Policing has enhanced law enforcement practices by using state-of-the-art technologies. These practices and technologies have emphasized the need for analysts to sift through data and make important connections of related crime fighting and crime solving information. In addition to the some 75 additional police officers that we have put on the streets since our OLOST passed in 2008, it is evident that we need additional investigators particularly in the Robbery/Assault/Homicide Division to make certain we are closing the maximum number of cases possible and making the strongest cases possible against suspects resulting in convictions and appropriately long sentences. Currently, we have 86 sworn investigators spread over the 7 divisions of the CPD Investigations Bureau to field 10,716 new case each year. That is an *additional* criminal investigation caseload of 124 per investigator each year. In that vein, this recommended budget provides for 7 new sworn investigator positions and a new non-sworn analyst position.

CPD BUREAU	TITLE	GRADE	SALARY
Investigative Services	Sergeant	18	\$44,062
Investigative Services	Corporal	16	\$40,211
Investigative Services	Corporal	16	\$40,211
Investigative Services	Corporal	16	\$40,211
Investigative Services	Corporal	16	\$40,211
Investigative Services	Corporal	16	\$40,211
Investigative Services	Corporal	16	\$40,211
Administrative Services	Non-Sworn	16	\$37,091
<b>Sub-Total (includes OLOST supplement)</b>			<b>\$322,419</b>
Benefits Cost			\$136,294
<b>TOTAL</b>			<b>\$458,713<sup>5</sup></b>

The addition of these positions will have a direct effect on decreasing investigator caseload, increasing closed cases, lengthening sentences for those convicted, reducing crime, reducing costly overtime pay and reducing unsustainable workloads for our current investigators. The addition of these positions will be budget neutral as they can be largely funded through the reallocation of duplicative law enforcement resources currently allocated to non-911 responder agencies, which have only ancillary law enforcement duties.

**b. Reform and Restructure of Police Pay**

In years past, CCG has had a variety of pay plans for General Government and Public Safety employees. Those plans have not been funded regularly with incremental raises or even cost of living adjustments; though, the University of Georgia shows our current CCG pay plan is set at 100% of comparable market pay and we have provided 6% across the board pay adjustments for our employees over the last four years. The erratic funding of varying pay plans over several decades has resulted in pay compression throughout CCG. CCG is in need of a pay plan that is mandated to be followed and, accordingly, any such plan must be prudently and responsibly devised so that mandate can be met without hardship or dramatic effect to the normal functioning of CCG. Accordingly, a Mayor’s Commission to Reform the CCG Pay Plan will be established for the purpose of providing recommendations to Council of methods to resolve compression and other salary and benefits issues regarding all of our hardworking employees.

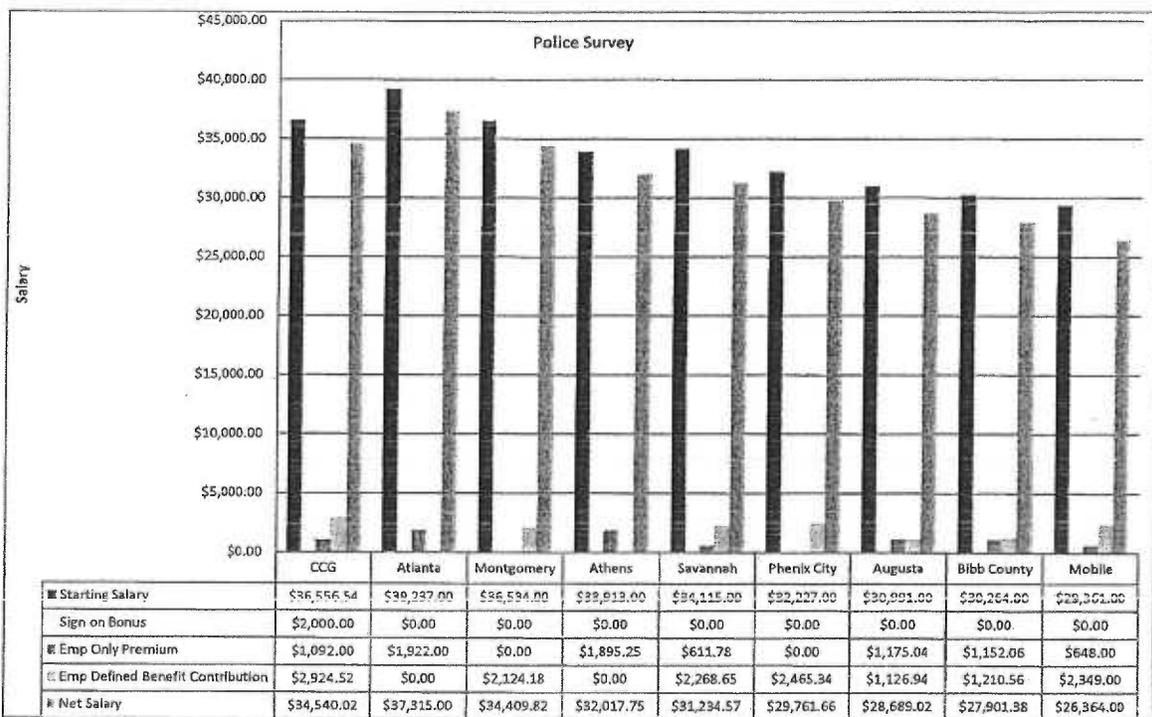
In the meantime, we have an opportunity to apply a pilot project of sorts within the CPD using mostly existing monies already appropriated to that department for compensation purposes. This proposal addresses an immediate challenge our community faces, better uses our CPD existing funding, and may well serve as an exemplar of how we might structure a solution to salary compression throughout CCG.

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<sup>5</sup> Some \$34,300 in uniforms and equipment will be required for these new positions.

Pay compression has been particularly impactful in the Columbus Police Department where the work schedule, promotion process and the application of a confused and inefficient payment system known as "Straight Time" or "Gap Time" have resulted in compensation resources being used in a manner that allows newly hired officers to be compensated at the same or similar pay scale as more senior officers. This has resulted in more than a decade of morale and retention issues.

In 2008, the citizens passed a penny sales tax known as the OLOST in part to address entry-level pay issues and to increase pay across the board for law enforcement officers. The entry pay for police officers at CPD is relatively competitive:



However, the pay supplement provided for officers' was a flat amount of \$3,000, which exacerbated compression.<sup>6</sup> In addition to the foregoing, officers in Columbus/Muscogee County have long considered themselves as hourly employees, though they are compensated as salaried employees and though the Fair Labor Standards Act (FLSA) provides all such officers are partially-exempt salaried employees working up to a 171 hour schedule in a 28 -day work cycle for that salary. After said 171 hours worked, officers receive legally mandated time and one-half hourly overtime pay. Because of the years-long confusion over the correct application of officers' salaried pay, many patchwork compensation schemes have developed. One has historically been called

<sup>6</sup> This supplement amount is now \$3,121 due to the 4% pay increase due to Pension Reform. The supplement curiously is not subject to Cost of Living Adjustments. We are working to bring these supplements into the base pay for law enforcement officers in order to stop such anomalies.

“Straight Time” or “Gap Time” through which officers work 160 hours for their salary and then are paid hourly on top of their salary for any time worked up to 171 hours, after which point they earn the legally mandated time and one-half overtime.

This patchwork system works to the officers’ disadvantage in what is called “short weeks”, where officers are scheduled to work less than 160 hours and have their pay docked for this short fall. This utterly contrived payment scheme is inconsistent with federal law, guidelines and best practices. This so-called Straight/Gap Time scheme costs CCG millions of dollars (particularly in the Sheriff’s Office) in extra pay, creates erratic pay rates from year to year and ignores the FLSA provision of officers as partially-exempt employees. Quite simply, officers’ salaries need to be set at a rate that compensates them for up to 171 hours, whether they work all of those hours or not, and, thereafter, they will receive the legally mandated time and one-half overtime. In order to correct this dysfunctional and costly patchwork system and to relieve the damaging effects of compression, the compensation system within the Columbus Police Department must be structurally reformed with management directives and process that eliminates the culture of “Straight Time” or “Gap Time”.

In an attempt to begin to address compression and to end the inefficient pay practices of the Columbus Police Department, the Mayor’s Commission on Officer Retention and Longevity was convened in September of 2014. The Commission was comprised of approximately 30 members of the Columbus Police Department from varying divisions, ranks and seniority. Pertinent CCG staff from our Finance and Human Resource Departments and two Columbus Council members joined the regular meetings. Data and anecdotal information was received and various potential solutions and eight pay “Options” were vetted. The conclusions were not surprising given the complexity of the challenge and the natural resistance to change. Those conclusions are: 1) there is no consensus as to a potential solution because of sharply divergent interests by assignment, rank and seniority; and, 2) the consistent bargaining position of the officers was to correct the pay compression and other pay plan issues now and all at once, which is a cost of \$15 million or more and would require a new comprehensive pay plan.

Despite the lack of consensus on a particular option or proposed solution, there was broad consensus that something needed to be done and could be done. In the end, the Administration believes we can offer a proposed solution that uses the revenue currently spent for police pay to establish a better, fairer pay system which begins to address compression. This FY2016 Recommended Budget submits for Council consideration a reallocation of monies spent inefficiently for Straight/Gap Time and signing bonuses to a graduated interval pay plan.

Proposed CPD Salary Restructure					
Graduated Pay Increases up to 35 Years of Service	Base Pay Is Increased By	Total Cost of Changes 1 <sup>st</sup> Year	Total Cost of Changes 2 <sup>nd</sup> Year	2-Year Financial Impact	
After 1 Year Service	\$750	\$42,750	\$17,250	Remove Sign Bonus	(\$54,500)
After 3 Years Service	\$1,000	\$47,000	\$25,000	Remove Gap Time	(\$514,282)
After 5 Years Service	\$1,200	\$94,800	\$27,600	Add Increase Year 1	\$531,050
After 7 Years Service	\$1,200	\$60,000	\$36,000	Add Increase Year 2	\$173,350
After 10 Years Service	\$1,500	\$54,000	\$13,500	Court Pay	\$115,450 <sup>7</sup>
After 15 Years Service	\$1,500	\$54,000	\$19,500	Net 2 Year Impact	\$135,618
After 20 Years Service	\$1,500	\$42,000	\$12,000	Benefits Impact	<u>\$6,182</u>
After 25 Years Service	\$1,500	\$67,500	\$7,500	Total 2 Year Impact	<b>\$141,800</b>
After 30 Years Service	\$1,500	\$69,000	\$15,000		
		<b>\$531,050</b>	<b>\$173,350</b>		

This proposal, which was known as "Option 2" to the Mayor's Commission on Officer Retention and Longevity, provides that all officers would receive a graduated pay enhancement in FY2016 according to their years of service and, thereafter, would receive a pay enhancement only upon the anniversary markers provided in the chart. Effective July 1, 2015, every officer would find the last anniversary marker they have reached on the chart and their base salary would be increased by that amount. Thereafter, an officer's base pay would be enhanced on the next anniversary marker, and not in between. The object of this pay scale is to incentivize longevity, reduce pay compression, and eliminate "Straight Time" or "Gap Time". In application, this pay schedule begins to correct systemic pay issues within the police department and utilizes city revenue resources efficiently and consistent with FLSA guidance.

<sup>7</sup> This new system creates an opportunity to greatly reduce Court Pay by scheduling court appearances (to the extent possible) within the 171 hours an officer is scheduled to work in a 28-day cycle. This is a management/scheduling issue and may result in as much as a \$100,000 reduction in the Total 2 Year Impact of this proposal, bringing the two-year cost of the proposal to approximately \$40,000.

## 2. Sheriff's Office

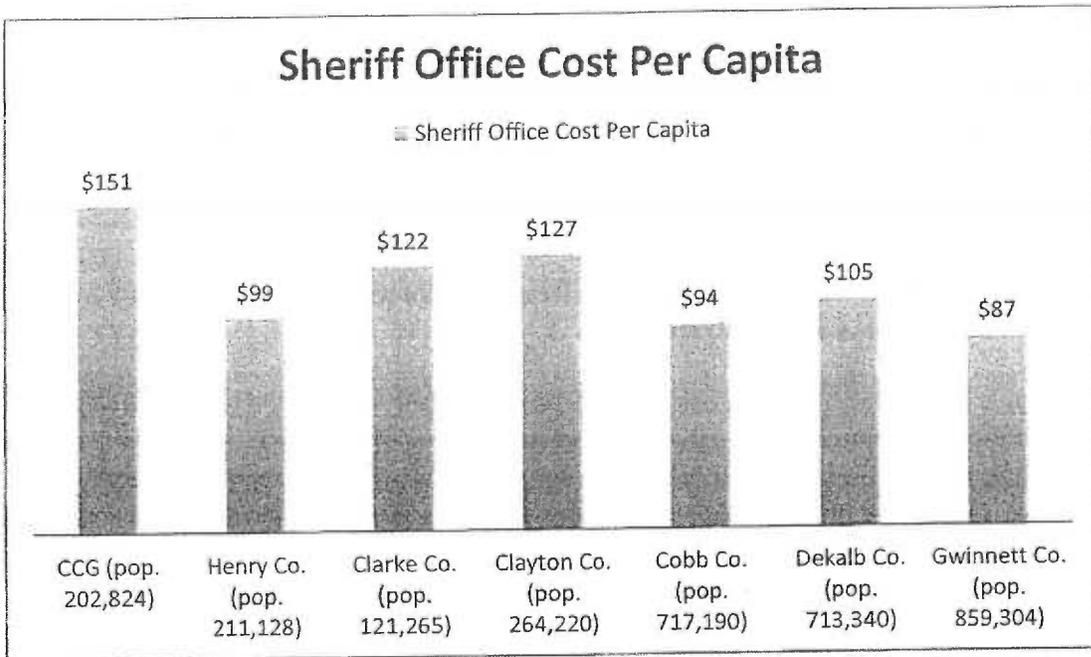
The Muscogee County Sheriff's Office (MCSO) is in charge of civil service of process for the courts, security for the courts, a county jail and such other duties as may be imposed by law or are necessary to the Office. The Sheriff's Office must be funded to perform "some" law enforcement or peacekeeping services, but those services are ancillary to the services provided by the Columbus Police Department and are not required to be duplicative of other law enforcement resources within the county. It is the exclusive role of Council to review law enforcement resources within the county in determining budget appropriations.

In the last six years, the Sheriff's Office has been \$11.3 million over budget and has required CCG to expend some 22 days from our General Fund Reserve monies to cover those overages. These overruns have occurred despite \$24-\$29 million in annual funds allocated to the Sheriff's Office in each of the last six years.<sup>8</sup> Had it not been for these overruns, our current General Fund Reserve would stand at over 83 days, well over the required 60-day Reserve minimum. These annual overruns, together with the stagnant revenues following the Great Recession, have brought CCG perilously close to the edge of financial stability. Often these overruns are not known to CCG because the accounting management practices of MCSO result in hundreds of thousands of dollars in invoices being held and not submitted to CCG until months after the close of the fiscal year in which the expense was incurred.

CCG has reviewed Sheriff Offices in counties around the state where there is both a Sheriff's Office and a County Police Department as in Muscogee County. We have learned that Muscogee County appropriates considerably more revenue per capita for the MCSO than other such jurisdictions:

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<sup>8</sup> The Sheriff's Office has expended \$173,276,203 in six years, which comprised 11.67% of all CCG expenditures for over 50 departments, elected offices, agencies, boards, and authorities funded by the taxpayers of this jurisdiction



Indeed, this graph demonstrates that Muscogee County spends approximately \$5+ million more in comparable per capita dollars per year for our Sheriff's Office than any other community with the same County Police Department/Sheriff's Office construct. No matter how we look at the numbers, whether by resident population, jail capacity, number of municipal entities within the county or whether the county has a consolidated government, CCG expends more per capita than any other jurisdiction with a Sheriff's Office and a County Police Department.

As a result of: 1) Council's referral to review expenditures and structure for duplicative law enforcement services; 2) years of citizen inquiries regarding duplicative law enforcement services; 3) dramatic financial effects of budget issues within the Sheriff's Office; 4) internal and independent analyses of comparable costs of Sheriff Offices in other communities; and 5) concerted efforts of numerous elected offices to curb inefficiencies affecting court process and jail costs through collaborative action, we hereinafter recommend the realignment of certain law enforcement and other resources for purposes of efficiency and effectiveness. We note that this analysis should not be a one-time consideration. Such an analysis should be undertaken each year during the budget process to ensure that the legal mission of the Sheriff is funded and that duplicative law enforcement resources are minimized, because the existence of three separate agencies with asserted law enforcement capacity will tend toward duplication without budgetary review and oversight.

**a. FY2016 Recommended Budget for Sheriff's Office**

Based on the information and data presented in this letter, the attachments hereto and the voluminous additional data and information tendered and made available to Council to include the

MCSO's FY2016 budget request forms, the total recommend FY2016 budget for the Sheriff's Office is \$26,972,433. This recommended budget includes proposed additions to MCSO's FY2015 budget of \$237,200 for capital, such as new jail washers, dryers, kitchen equipment, clinic medical equipment and updated security equipment, among other proposed capital expenditures. The FY2016 recommended budget for MCSO also is increased \$600,000 due to monetary transfers for recently filled positions.

The FY2015 Adopted Budget for the Sheriff's Office was \$27,653,956, an approximate \$410,000 increase over its FY2014 Adopted Budget.

#### **b. Duplicative Investigative Resources**

In assessing duplicative law enforcement resources for purposes of this FY2016 budget, we note that CCG has been funding twelve positions within the Investigation Unit of the Sheriff's Office, though the mission of that office is limited to running a jail, providing court security and service of process, and providing some law enforcement service within the county. Rarely should MCSO investigate crime that is associated with a 911 request or that is not in collaboration with another law enforcement agency. The twelve Investigation Unit positions are comprised of: 1 Lieutenant; 1 Sergeant; and 10 Deputies or Deputy Technicians. The Sheriff's FY2015 Service Allocation demonstrates that the job assignments associated with these positions include activities that are duplicative of many of the efforts of the seven divisions of the CPD Bureau of Investigative Services. The stated tasks of the MCSO Investigation Division include: Criminal Investigations (surveillance, interviews, Computerized Voice Stress Analysis (CVSA), criminal warrants, searches, crime reports); Narcotic Investigations (same); and Internal Investigations (jail investigations, K-9 searches, interviews, CVSA, drug testing, assistance to other law enforcement agencies). Two of the three stated activities of the Division are duplicative of law enforcement services provided by CPD. Attached as **Exhibit D** is a chart showing the overlapping job descriptions and listed duties of investigators in MCSO and in CPD.

If CCG wishes to reduce duplicative law enforcement resources, it is recommended that Council limit its funding of this function and maintain funding only for the Sheriff's Office Lieutenant, Sergeant, and two deputy investigation positions. This allocation maintains in MCSO the deputy position funded by OLOST proceeds. It is recommended that the MCSO budget be reduced by the value of eight positions at a Grade 16 with a salary of \$37,091, plus OLOST supplement of \$3,121 and \$17,356 in benefits for a total recommended budget reduction of \$460,544, so that these monetary resources may be reallocated to CPD in order to fund the needed investigation positions identified above. This budgetary reallocation will increase efficiency and maximize the law enforcement effectiveness on the streets of our community and in the lives of our citizens.

This reallocation leaves the Sheriff with funding for Internal Investigations, assistance with investigations of other law enforcement agencies when needed and some other law enforcement activities. Should the Sheriff wish to maintain these duplicative investigative resources within MCSO, he may have that prerogative and may do so through management and priority judgments by redistributing monetary resources otherwise appropriated for the prescribed mission of the

office. The Sheriff also may reallocate appropriated funds through enacting efficiencies, which create savings to be redirected. Doing so may suggest those funds are not needed for the mission for which they have been appropriated; however, nothing requires that CCG allocate funding simply because the Sheriff or any other elected officer wishes to provide a service; and, certainly, nothing requires CCG to fund services primarily provided elsewhere.

It is not the object of this reallocation to layoff or end the employment of any existing investigator employed with the Sheriff's Office. In addition to the possibility of the Sheriff finding a way to fund the positions through his FY2016 Adopted Budget, the individuals that currently hold the MCSO investigative positions can have the right of first refusal for the CPD positions, for which they should qualify and be otherwise eligible.

### **c. Duplicative SWAT Team Resources**

The MCSO uses paramilitary equipment to include a converted armored tank with turret, which was obtained through a Homeland security grant, and a mobile command unit. This equipment was recently the subject of an Internal Audit by CCG. A report was issued and some equipment reassigned to the appropriate agency for purposes of a coordinated Homeland Security objective. Some equipment was left housed within MCSO by agreement, and it is expressly held for the general and shared use of any CCG Department or Office. Any equipment purchased or maintained with funds of, or by agreement with, the local governing authority, here CCG, and used for the shared benefit of the community, is the property of CCG regardless of where it may be housed on a daily basis.

MCSO regularly conducts SWAT team exercises, including sniper training, crisis negotiation, and tactical team training. See Exhibit E (newspaper article regarding MCSO SWAT team exercise). This equipment and these activities are similar to and duplicative of SWAT and tactical resources provided by CPD. The MCSO Service Allocation ascribes combined full-time equivalent units of approximately 3 positions to these SWAT team and tactical services.<sup>9</sup> Since these services are not mandated by the mission of MCSO, this FY2016 Recommended Budget proposes that Council reduce the Sheriff's Office budget by the salary and benefit value of three deputies, or \$159,186, in order to avoid duplicative or wasteful resources. It is recommended that these resources be allocated to replenish the General Fund Reserve, from which it may be reallocated by Council for non-duplicative law enforcement needs.

Should the Sheriff wish to maintain these duplicative SWAT and tactical resources within MCSO, the Sheriff may have that prerogative. He can do so through management and priority judgments by redistributing monetary resources otherwise budgeted by Council for the prescribed mission of the Sheriff's Office. The Sheriff also may reallocate appropriated funds through enacting efficiencies, which create savings to be redirected. Doing so may suggest those funds are not

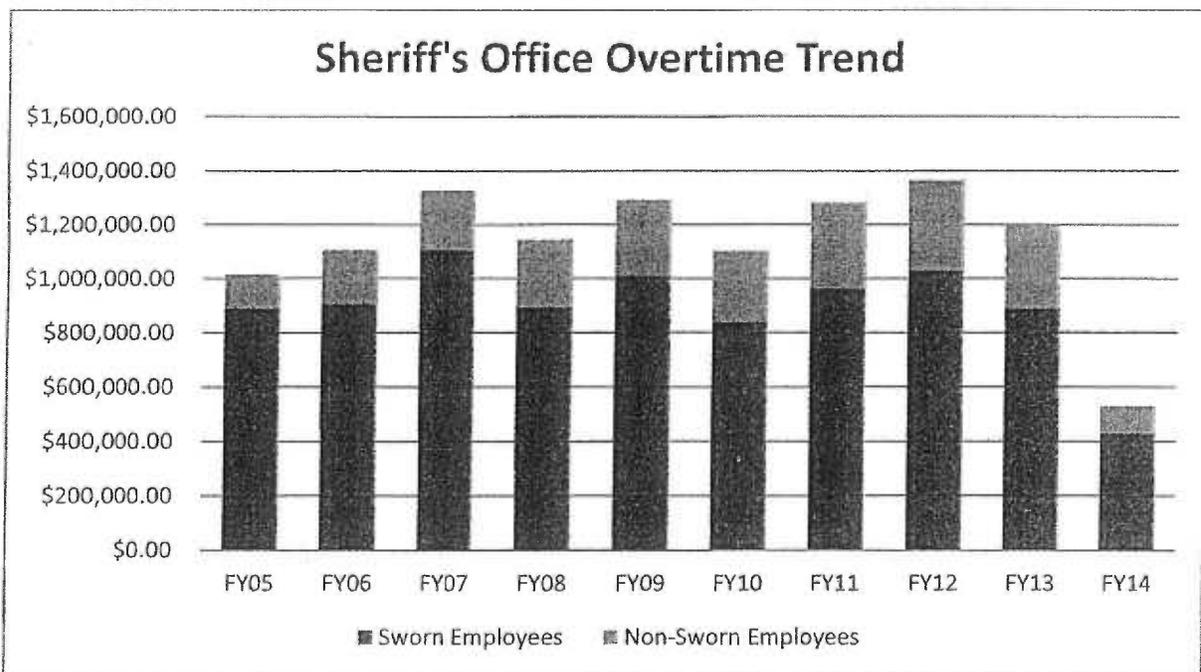
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<sup>9</sup> A Full-Time Equivalent (FTE) is a unit that indicates the workload of an employed person and can be comprised of fractions of multiple duties or part-time positions. An FTE of 1.0 equates to a full-time worker.

needed for the mission for which they have been appropriated. However, nothing requires that CCG allocate funding simply because the Sheriff or any other elected officer wishes to provide a service; and, certainly, nothing requires CCG to fund services primarily provided elsewhere.

**d. Duplicative Monetary Resources for "Straight Time" or "Gap Time" Pay**

For years MCSO has used overtime as a compensation enhancement strategy, not as an exception to the normal work schedule. MCSO has expended on average \$1,129,377 in overtime annually over the last six years. The majority of that overtime average, or some \$860,455, is related to the scheduling of sworn officers and the discretionary payment by MCSO of costly Straight/Gap Time.



Though improvement was made in MCSO overtime in FY2014, we have determined that 90% of MCSO overtime pay to sworn officers is due to a managerial scheduling decision, which builds in Straight/Gap Time pay and results in increased payroll and increased benefits costs to CCG.

As noted above, Straight/Gap Time pays sworn employees an hourly rate on top of their salary, or double time. This pay method is not required by law or the mission of the Sheriff's Office. It is a managerial decision to inflate pay, which is in conflict with FLSA directives and is duplicative of salaried pay provided. The citizens and CCG are not required to, nor should they in the exercise of fiscal prudence, pay for such duplication of compensation.

Based on personnel and payroll records, presentations and public discussion at Council meetings, and other information gathering meetings with city leaders (to include the Sheriff) regarding Straight/Gap, this recommended budget provides for \$50,000 in overtime to MCSO, which we would hope would be dedicated to only that overtime required under federal law by the FLSA.

Should the Sheriff wish to continue the Straight/Gap Time pay supplement, he may redirect savings from efficiencies or other monies Council appropriates to MCSO for its required office mission. The \$300,000 normally budgeted to MCSO for overtime is recommended to be placed in the General Fund Reserve until otherwise appropriated by Council for non-duplicative law enforcement needs.

**e. Expedited Prisoner Disposition Efforts**

Over the past year, Superior Court Chief Judge Gil McBride has led an effort to reduce the time it takes to move criminal defendants through the court system thereby reducing the days spent in the jail and the attendant costs per prisoner per day. The Sheriff, the District Attorney, the Public Defender, and many other stakeholders throughout the community have participated in this process. These elected officials, to include the Sheriff, have proposed an early prisoner release program known as the “Rapid Resolution Initiative” (RRI). The object of RRI is to streamline or expedite less complicated cases, such as first offender cases or cases where the defendant wishes to enter a plea deal. See Exhibit F (information on the proposed RRI program). Currently, due to strained resources and structural inefficiencies in the prosecutorial and court systems, these cases can take as long to process through the courts as much more complex criminal cases. Too often, defendants sit months in the county jail awaiting the adjudication of their case, when under a targeted RRI program, that wait could be reduced to a few weeks, or less. With a \$40 per day per prisoner cost, county jail savings can be realized through the lessened jail stay. It is estimated that with an investment of \$458,093, RRI will return an immediate and conservative FY2016 savings in jail costs of \$540,000.

RRI has the following estimated costs:

OFFICE	NUMBER	POSITION	COST WITH BENEFITS
Public Defender	1	Assistant Public Defender II	\$73,302
Public Defender	1	Assistant Public Defender II	\$70,046
Public Defender	N/A	Equipment/Supplies	\$65,440
District Attorney	2	Assistant District Attorney	\$145,266
District Attorney	1	Investigator	\$50,772
District Attorney	1	Clerk	\$40,900
District Attorney	N/A	Equipment/Supplies	\$12,367
<b>TOTAL RRI COSTS</b>			<b>\$458,093</b>

Accordingly, it is recommended that Council recoup and reallocate \$458,093 of the expected savings of this RRI program from the Sheriff’s Office budget.

**f. Pursuit Vehicles and Take-Home Cars**

CCG has funded some 113 vehicles for MCSO. Approximately, 61 of these vehicles are pursuit vehicles and approximately 55 of those are take-home pursuit vehicles. Pursuit vehicles cost roughly \$50,000 each. That increased cost is due to a \$25,000 technology package added to each pursuit vehicle. Take-home cars also are costly because those cars use city fuel to travel to and from home and to serve in off-duty security jobs, which fuel is funded by the taxpayers.

Because the Sheriff's Office is not required to provide traffic enforcement, law enforcement patrol services, or respond to 911 calls as part of its mission, the number of costly pursuit vehicles funded by CCG is duplicative and excessive for the actual mission of that office.

Accordingly, it is recommended that Council fund no more than 26 pursuit vehicles and no more than 26 take-home cars for the Sheriff's Office. According to the MCSO Service Allocation, the Sheriff's Office has approximately 21 positions in its "Patrol" division, which primarily serves civil process and warrants throughout the community. The Sheriff may assign the pursuit/take-home vehicles as he sees fit. This is a policy recommendation that is not expected to have any capital budget impact in FY2016 as the current number of pursuit and take-home vehicles assigned to the Sheriff's Office far exceeds these recommended numbers so that these new thresholds can be achieved over the next several years via attrition. It is expected that this more fiscally prudent change in policy will result in saving \$875,000 in capital expenditures in immediate future years and should be adopted now to enhance the ease of implementation. There will also be a sum saved in fuel cost by reducing the number of take-home vehicles, and it is here recommended that the Sheriff's Budget be reduced by \$20,000 due to fuel savings and said sum be placed in the General Fund Reserve until otherwise appropriated by Council for non-duplicative law enforcement needs.

**g. Other Budgetary Resources**

The foregoing proposed reallocations are in no way meant to be a comprehensive assessment of resources that are potentially duplicative or beyond the mission of the Sheriff's Office. This review has indicated that there are other opportunities for better use of fiscal resources, which should be explored by the Sheriff and Council. Should Council wish to have a work session to discuss these additional areas for future budget years or wish to conduct an audit of the Sheriff's Office, as is its right, we may pursue that. At this time, however, it is recommended that the above limited reallocations be adopted by Council.

**3. Marshal's Office**

The Municipal Court Marshal's Office has similar duties and powers of the sheriff of Muscogee County, but only so far as said duties and powers may be applicable to the Municipal Court of Columbus/Muscogee County and only so far as those duties and powers are not inconsistent with the Local Act which defines the jurisdiction of that Court. Accordingly, any law enforcement or peacekeeping services of the Marshal's Office are limited to the jurisdiction of the Municipal Court and, like the Sheriff's Office, are ancillary to the services provided by the Columbus Police

Department. Said services are not required to be duplicative of other law enforcement resources within the county.

The Municipal Marshal's Office is comprised of 22 full-time positions. Council also provides funding for bailiff positions. In FY2014 the Marshal's Office was \$13,500 over its \$1,589,196 Adopted Budget. In FY2015, the Marshal's Office was appropriated \$1,579,177. This recommended budget proposes the Marshal's Office FY2016 budget at \$1,236,498.

**a. Duplicative Law Enforcement Resources**

Of said full-time positions, the Marshal has 19 deputies for the purposes of court security, service of civil documents, and the execution of evictions associated with the Municipal Court. Regularly, however, these deputies are seen throughout the community conducting traffic enforcement details with nine or ten Marshal's Office pursuit vehicles. See Exhibit G (an exemplar media report of a Marshal's Office traffic detail). These traffic details last hours and are not within the mission of the Municipal Court Marshal's Office. Said traffic enforcement efforts are, however, within the purview of CPD. Accordingly, this proposed budget recommends a reduction in Municipal Court Marshal deputies to 13, which results in a savings of \$ 318,384 to be reallocated to the General Fund Reserve until appropriated by Council for non-duplicative law enforcement purposes. Because CPD currently has open/funded patrol positions which engage in traffic enforcement, the individual deputies can have the right of first refusal for those positions, for which they should qualify and be otherwise eligible.

**b. Pursuit Vehicles and Take-Home Cars**

The Marshal's Office has some 25 vehicles purchased by CCG. Approximately, 13 of these vehicles are pursuit vehicles and approximately 18 are take-home vehicles. Pursuit vehicles cost roughly \$50,000 each as discussed above. Because it is not within the mission of the Municipal Court Marshal's Office to provide traffic enforcement, law enforcement patrol services, or take 911 calls, the number of costly pursuit and take-home vehicles is duplicative and unnecessary.

It is recommended that going forward Council fund no pursuit vehicles and no more than 5 take-home cars for the Municipal Court Marshal's Office. This is a policy recommendation that is not expected to have any capital budget impact in FY2016 as the current number of pursuit and take-home vehicles assigned to the Marshal's Office exceeds these recommended numbers so that the new thresholds can be achieved over the next several years via attrition. It is expected that this more fiscally prudent change in policy will result in saving \$325,000 in capital expenditures in immediate future years and should be adopted now to enhance the ease of implementation. There will also be a fuel cost savings due to the reduction in take-home vehicles in FY2016. It is here recommended that the Marshal's Office Budget be reduced by \$3,000 due to fuel savings and that said sum be placed in the General Fund Reserve until otherwise appropriated by Council for non-duplicative law enforcement needs.

As for excess pursuit vehicles due to the reduction of the 6 deputy positions, it is recommended that CCG transfer any idle vehicles to CPD where there is need for such vehicles to fulfill their law enforcement mission.

**c. Duplication of SWAT and Tactical Operations**

The Marshal's Office uses tactical equipment and trains its deputies in SWAT and tactical type operations. See **Exhibit H** (media articles about the Marshal's Office acquiring drones for surveillance purposes and running active shooter response and other tactical scenarios). These acquisitions and activities have a financial impact on CCG. These activities, training courses and equipment are beyond the mission of the Municipal Court Marshal's Office and are duplicative of resources provided by the CPD SWAT and tactical units. Accordingly, this recommended budget proposes a reduction in operating expenses of \$17,000, which is proposed to be moved to the General Fund Reserve until appropriated by Council for non-duplicative law enforcement purposes.

**III. Conclusion:**

This Mayor's FY2016 Recommended Budget Letter is presented together with the City Manager's budget letter and the FY2016 Recommended Budget Book. This FY2016 Recommended Budget has been presented earlier than is typical in order to allow Council ample time to deliberate the important policy issues set forth herein. Through the next two months of budget meetings, I believe Council will find this recommended budget sets a reasonable and balanced way forward. We should be emboldened by the progress we have made over the past few difficult years, and know the decisions we make this year will likewise move us toward greater financial security and community prosperity.

I want to thank our City Manager Isaiah Hugley, Finance Director Pam Hodge, our Department Heads, our elected partners and staff for their tremendous assistance in the effort of composing this Mayor's recommended balanced budget.

To our Council, I thank you in advance for the hard work that will be necessary to complete this budget process. This is the Columbus, Georgia Consolidated Government Mayor's Recommended Fiscal Year 2016 Budget submitted for your consideration and approval.

Very truly yours,



Teresa Pike Tomlinson

Mayor

Consolidated Government of Columbus, Georgia

**EXHIBIT B**

**Attached as CD-ROM**

**EXHIBIT C**

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY  
STATE OF GEORGIA

GREGORY D. COUNTRYMAN, SR.,  
individually and as Elected Marshal of  
Muscogee County, Georgia and,  
VIVIAN BISHOP, individually and as  
Elected Clerk of the Municipal Court of  
Columbus, Georgia,

Plaintiffs,

v.

COLUMBUS, GEORGIA, TERESA P.  
TOMLINSON, individually and as Mayor,  
JERRY "POPS" BARNES, individually  
and as District 1 Councilor, GLENN  
DAVIS, individually and as District 2  
Councilor, BRUCE HUFF, individually  
and as District 3 Councilor, EVELYN  
TURNER PUGH, individually and as  
District 4 Councilor, MIKE BAKER,  
individually and as District 5 Councilor,  
GARY ALLEN, individually and as  
District 6 Councilor, EVELYN "MIMI"  
WOODSON, individually and as  
District 7 Councilor, JUDY THOMAS,  
individually and as District 9 Councilor,  
and BERRY "SKIP" HENDERSON,  
individually and as District 10 Councilor,  
ISAAH HUGLEY, individually and as  
City Manager, PAMELA HODGE,  
individually and as Finance Director, and  
CLIFTON C. FAY individually and as  
City Attorney,

Defendants.

CIVIL ACTION FILE  
NO. SU14-CV-3468-94

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**AFFIDAVIT OF PAMELA HODGE**

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COMES NOW, the undersigned affiant, PAMELA HODGE, who states and avers as  
follows:

1.

I am providing this Affidavit for use in the above-referenced case. I am over the age of eighteen (18) years old, and have personal knowledge as to the matters stated herein.

2.

I have been employed as the Finance Director for the Columbus Consolidated Government since April of 2007.

3.

On the afternoon of April 7, 2015, at the Budget Review Meeting with members of Council, I provided them a flash drive of information for the ongoing FY16 budget deliberations. On the flash drive was the following:

- (1) FY15 Budget to Actual Reports through March 31, 2015;
- (2) FY16 Mayor's Recommended Budget:
  - a. Mayor's Budget Letter
  - b. City Manager's Budget Letter
  - c. Financial Summaries
  - d. Personnel Summary
  - e. Operating Funds Summaries by Department/Office/Agency
  - f. Capital Improvement Projects
  - g. Non-Operating Funds
  - h. Capital Outlay
- (3) FY16 Overview;
- (4) FY16 Budget Review Schedule;
- (5) FY16 C100 (Line Item Report);
- (6) Copy of April 7, 2015 Powerpoint presentation; and
- (7) Budget Requests from:
  - a. Clerk of Superior Court
  - b. Sheriff
  - c. Probate Court
  - d. Tax Commissioner

- e. Coroner
- f. District Attorney
- g. Municipal Court Clerk
- h. Marshal

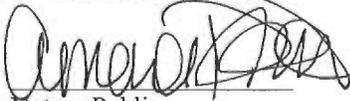
4.

I have provided a copy of the information which was provided to Council on April 7, 2015, as described in Paragraph 3, above, onto a CD, which is attached to this Affidavit and labeled as Pam Hodge Affidavit Attachments, April 15, 2015.

Further affiant sayeth not.

*Pamela Hodge*  
PAMELA HODGE, as  
Finance Director for  
Columbus Consolidated Government

Executed before me  
this 15 day of April, 2015.



Notary Public

My Commission Expires:



**EXHIBIT D**

GEORGIA.GOV



THURBERT E. BAKER  
ATTORNEY GENERAL

Department of Law  
State of Georgia

40 CAPITOL SQUARE SW  
ATLANTA, GA 30334-1300

## Official Opinion 2005-1

February 18, 2005

**To:**  
Commissioner  
Georgia Department of Public Safety

**Re:**  
Questions concerning whether a county marshal has authority to operate speed detection devices or otherwise make vehicle stops based on such operation

You have asked whether a county marshal and the marshal's deputies have authority to operate speed detection devices or otherwise make vehicle stops based on the operation of such devices. Your request states that the Department of Public Safety has received a number of requests from county marshals' offices requesting permits to operate speed detection devices. You further state that the Department has issued one such permit, but because of the limited jurisdiction of marshals questions have arisen about the authority of marshals to operate speed detection devices and make vehicle stops based on such operation.

The Department of Public Safety is given the authority under state law to issue permits for the use of speed detection devices and "to prescribe by appropriate rules and regulations the manner and procedure in which applications shall be made for such permits." O.C.G.A. § 40 14 3(b). The Department may deny or suspend such permits. *Id.*

Georgia law also provides that "[t]he law enforcement officers of the various counties, municipalities, colleges, and universities may use speed detection devices" when approved by the appropriate governing official, i.e., the sheriff of the county, the governing authority of the county, the governing authority of the municipality, or the president of the college or university. O.C.G.A. § 40 14 2(a). That official "shall apply to the Department of Public Safety for a permit to use such devices in accordance with this chapter." *Id.* "Speed detection devices can only be operated by registered or certified peace officers of the county sheriff, county, municipality, college, or university to which the permit is applicable." O.C.G.A. § 40

14 2(c). Thus, in order to apply for and receive a permit pursuant to O.C.G.A. § 40 14 3, the agency must be a law enforcement agency that employs or appoints peace officers in a sworn law enforcement capacity.

This office has previously opined that “a county marshal’s office is not equivalent to a county police force” and that a county “[does] not establish a county police force when it create[s] a county marshal’s office” pursuant to O.C.G.A. § 15 10 100. 1995 Op. Atty. Gen. U95-14. Rather, marshals are employees of the governing authority of the county employed to perform the duties of constables for courts of limited jurisdiction, i.e., magistrate courts. O.C.G.A. § 15 10 100(c.1)(1); 1982 Op. Atty. Gen. 82-45. Moreover, county marshals may not exercise any power or authority, such as the power of arrest, vested in the office of sheriff or any other peace officer “except as may be authorized by law.” O.C.G.A. § 15 10 100(c.1)(2).<sup>1</sup>

Marshals, like constables, do not have general police powers. 1987 Op. Atty. Gen. U87 21. Like constables, a marshal may only arrest an individual when the marshal has a warrant or is directed to arrest the individual *and* is in the presence of a magistrate or the judge of another court. O.C.G.A. § 15 10 103. It is plain, therefore, that a county marshal is not a “law enforcement agency” as that term is used in Chapter 14 of Title 40 of the Official Code of Georgia. Moreover, although O.C.G.A. § 15 10 100(c.1)(3) requires that any person employed or appointed as a marshal *meet the requirements* of Chapter 8 of Title 35 (the Peace Officer Standards and Training Act), those persons so employed or appointed are not “peace officers” as that term is defined in O.C.G.A. § 35 8 2(8) because they are not employed or appointed by a law enforcement unit.

Therefore, it is my official opinion that, absent independent legal authorization, a county marshal or deputy marshal does not have authority to apply for or use speed detection devices. Without a demonstration that such independent legal authorization exists, the Department of Public Safety is not authorized to issue permits to county marshals in the State of Georgia. Any permits that may have been erroneously issued by the Department of Public Safety are void and should be withdrawn.

Prepared by:

ROBERT W. SMITH, JR.  
Assistant Attorney General

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<sup>1</sup> See, e.g., Act of March 29, 1983, No. 457, § 16, 1983 Ga. Laws 4443, 4449, regarding the Municipal Court of Columbus and Muscogee County and providing that “[a]ll . . . the duties and power and authority imposed by law and conferred . . . upon the sheriff and his deputies of Muscogee County shall be obligatory upon and shall be vested in the . . . marshal[] and deputy marshal or marshals of said court . . . so far as said duties may be applicable to said court and except where inconsistent with or limited by the provisions of this Act defining the jurisdiction of said court.”

Source URL: <http://law.ga.gov/opinion/2005-1>