

Quinton Washington, Esq.  
David Dreyer, Esq.  
D. Brannon Byers, Esq.  
Shaun Bussert, Esq.  
Samantha Embry, Esq.



270 Peachtree St. NW Suite 1040  
Atlanta, Georgia 30303  
404-437-6641 | Fax: 404-474-3730  
info@washingtondreyer.com

## **LEGAL MEMO**

To: Fort Valley Mayor, City Councilmembers and City Administrator

From: Attorney Quinton Washington

Date: 11/9/2023

Re: **Legal Opinion on 2023 General Election - Runoff**

### **Introduction**

On Tuesday, November 7, 2023, Peach County Board of Elections conducted the 2023 General Election for Fort Valley, Georgia for the following City Council seats with terms of service that expire on December 31, 2023. This memorandum, informed by review of Georgia law and the state approved Fort Valley Charter, provides an analysis of whether a runoff election is needed to determine the election winners.

### **Background**

The current state approved Fort Valley Charter in the online Municode Library (online content last updated on April 26, 2019 [https://library.municode.com/ga/fort\\_valley/codes/code\\_of\\_ordinances](https://library.municode.com/ga/fort_valley/codes/code_of_ordinances)) requires that the Mayor and Councilmembers to be elected by a majority of votes cast in the race for the respective seats. (Ft. Valley Charter Section 3(c)) To the contrary, Section 2.14 of the revised Charter, dated December 13, 2022, provides “The candidates receiving a plurality of the votes cast for any city office shall be elected.” Although the revised Charter was sent to State Representative Patty Bentley, it has not been approved by the Georgia General Assembly.

## **Charter Revision Process**

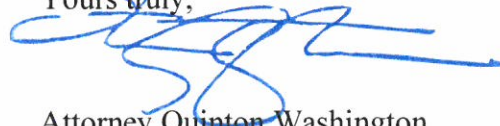
Georgia law grants home rule legislative power to municipalities “. . . to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto.” (O.C.G.A. § 36-35-3) Although a municipality can use home rule power to make amendments to its charter, amendments that change the composition and form of the municipal governing authority, the procedure for election or appointment of the members thereof, or the continuance in office and limitation thereon for such members must be made by local Act of the Georgia General Assembly. (O.C.G.A. § 36-35-6)

The current Fort Valley Charter was approved by local Act of the Georgia General Assembly in 1991 and requires that the Mayor and Councilmembers be elected by majority of votes cast for each elected office. Since the change from majority of votes cast to plurality of votes cast is a change in the procedure for election of members to the Fort Valley City Council, such change must be made through local Act of the Georgia General Assembly. A search and review of the Georgia General Assembly revealed only two approved charter amendments. The first charter amendment, HB 685 of the Georgia General Assembly, signed by Governor Kemp on May 6, 2019, established the Fort Valley Utility Commission. The second charter amendment, HB 743 of the Georgia General Assembly, signed by Governor Kemp on May 3, 2021, added three appointed members to the Fort Valley Utility Commission. The revised Charter located on the City of Fort Valley website through the link titled “City Charter As Sent to Atlanta” is dated December 13, 2022, and was sent to State Representative Patty Bentley. There was no legislation filed nor adopted for the City of Fort Valley in the 2023 Session of the Georgia General Assembly. The “City Charter As Sent to Atlanta” has not been approved by local Act of the Georgia General Assembly. Therefore, the current Fort Valley Charter, which requires majority of votes cast, is the governing authority.

### **Conclusion**

The governing authority for the 2023 General Election is the Fort Valley Charter that requires a person receive a majority of votes cast to be elected as Mayor or Councilmember of Posts 1, 2, 3, 4, 5, and 6. Therefore, since in each of the races on the 2023 General Election ballot, At Large Seat, East Ward Seat and West Ward Seat, none of the candidates in the race received a majority (over 50%) of the votes cast, then a runoff election is needed for these three races to determine the winner.

Yours truly,



Attorney Quinton Washington  
Fort Valley City Attorney