



City Council Meeting - Final

April 08, 2024
7:00 PM

F. RES2024-007 Adopt resolution RES2024-007 authorizing joint Service Delivery Strategy negotiations, both informal and through mediation and authorizing legal actions as necessary to secure a Service Delivery Strategy Agreement with Cobb County and further authorizing a joint SDS Proceedings Agreement with the cities of Acworth, Austell, Kennesaw, Marietta, and Powder Springs.



City of Smyrna

Issue Sheet

A Max Bacon
City Hall
2800 King Street
Smyrna, GA 30080

File Number: RES2024-007

Agenda Date: 4/8/2024

In Control: City Council

File Type: Resolution

Agenda Section:

Agenda Number: F.

Formal Business

Department: City Attorney

Agenda Title:

Adopt resolution RES2024-007 authorizing joint Service Delivery Strategy negotiations, both informal and through mediation and authorizing legal actions as necessary to secure a Service Delivery Strategy Agreement with Cobb County and further authorizing a joint SDS Proceedings Agreement with the cities of Acworth, Austell, Kennesaw, Marietta, and Powder Springs.

Citywide

ISSUE AND BACKGROUND:

State law requires each county and affected municipalities located therein to develop, approve, and implement a service delivery strategy that specifies the way all local governmental services will be provided and funded. Smyrna has worked together with Acworth, Austell, Kennesaw, Marietta, and Powder Springs attempting to reach an agreement with Cobb County as required by state law. After nearly two years of negotiations, the cities have been unable to reach an agreement with Cobb County. State law governs how local governments resolve disputes regarding the review and revision of a service delivery strategy and this resolution authorizes those steps. Smyrna wishes to cooperate with its fellow cities in negotiation, alternative dispute resolution, and possible litigation and work jointly to achieve a fair Service Delivery Strategy agreement in accordance with state law and by joining those Cities in a joint SDS Proceedings Agreement.

RECOMMENDATION / REQUESTED ACTION:

Staff recommends the adoption of resolution RES2024-07 authorizing joint Service Delivery Strategy negotiations, both informal and through mediation and authorizing legal actions as necessary to secure a Service Delivery Strategy Agreement with Cobb County and further authorizing a joint SDS Proceedings Agreement with the cities of Acworth, Austell, Kennesaw, Marietta, and Powder Springs.

RESOLUTION 2024-07

A RESOLUTION OF THE CITY OF SMYRNA (“CITY”) GRANTING AUTHORITY TO ENTER INTO A JOINT SERVICE DELIVERY STRATEGY (“SDS”) NEGOTIATIONS, ALTERNATIVE DISPUTE RESOLUTION AND LITIGATION AS NECESSARY; TO AUTHORIZE ENTERING INTO A JOINT SDS PROCEEDINGS AGREEMENT WITH THE CITIES OF ACWORTH, AUSTELL, KENNESAW, MARIETTA AND POWDER SPRINGS; TO FILE LEGAL ACTIONS ON BEHALF OF THE CITY AS NECESSARY TO ACCOMPLISH THE PURPOSE OF SECURING A SERVICE DELIVERY STRATEGY AGREEMENT WITH COBB COUNTY; AND FOR OTHER PURPOSES.

WITNESSETH:

WHEREAS, the City of Smyrna (“City”) is a municipal corporation duly organized and existing under the laws of the State of Georgia, and is charged with providing public services to its residents; and

WHEREAS, the Service Delivery Act, O.C.G.A. §36-70-20 *et seq.*, (“Act”) requires each county and affected municipalities located therein to develop, approve, and implement a service delivery strategy that specifies the manner in which all local governmental services will be provided and funded; and

WHEREAS, the Act also requires the periodic review and revision of service delivery strategies upon the occurrence of any one of the six conditions specified on O.C.G.A. §36-70-28(b); and,

WHEREAS, Cobb County, and the Cities of Cobb County have been reviewing the existing Service Delivery Strategy and over the course of nearly two (2) years discussing how to revise it as provided for in the Act to no avail; and,

WHEREAS, according to the Georgia Department of Community Affairs (“Department”) the existing Service Delivery Strategy is set to lapse after October; and,

WHEREAS, if no new Service Delivery Strategy is verified by the Department by October 31, 2024, then the sanctions (withholding state permits and grants) as provided for in O.C.G.A. §36-70-27 will be imposed on all local governments and governmental entities within Cobb County; and

WHEREAS, the Act provides for a means by which local governments can resolve a dispute regarding the review and revision of a service delivery strategy; and

WHEREAS, the City wishes to cooperate with its fellow cities in negotiation, alternative dispute resolution, and possible litigation and work jointly to achieve a fair Service Delivery Strategy agreement in accordance with the Act; and

WHEREAS, the City wishes to cooperate the Cities of Acworth, Austell, Kennesaw, Marietta and Powder Springs by joining those Cities in a joint SDS Proceedings Agreement; and

WHEREAS, the Mayor and City Council in the exercise of their sound judgment and discretion, after giving thorough thought to all implications involved, and keeping in mind the public interest and welfare of the citizens of the City, have determined it to be in the best interest of the citizens of the City, that this Resolution be adopted.

THEREFORE, IT IS NOW RESOLVED BY THE CITY COUNCIL OF THE CITY OF SMYRNA, GEORGIA AS FOLLOWS:

1. **Incorporation of Recitals.** The above-stated recitals are true and correct and are incorporated as though fully set forth herein.
2. **Authorization to Legal Counsel.** The City hereby authorizes the Mayor (a) to retain separate specialized legal counsel to represent the City and those other Cities which agree to be jointly represented by such counsel (hereinafter “Special Counsel”); (b) to enter into a joint SDS Proceedings Agreement with the other Cities which will allow for the sharing of information without waiving any privilege held by the City except to the extent authorized in said Agreement; and (c) authorizes the City Attorney and Special Counsel to take all actions necessary or convenient toward seeking alternative dispute resolution, mandatory mediation, and judicial resolution, as appropriate, pursuant to the dispute resolutions process provided for in the Act generally and O.C.G.A. §36-70-25.1(d) particularly. Moreover, the City Attorney and Special Counsel are hereby authorized to take all such legal actions as may be necessary or convenient toward protecting the rights of the City of Smyrna related to the provision and funding of services and the review and revision of the Service Delivery Strategy for Cobb County as may be necessary by law. The City Attorney and Special Counsel are hereby authorized to file petitions for mandatory mediation and/or judicial review pursuant to the Act. No authority to settle is granted to the City Attorney or Special Counsel until settlement is approved by the City Council.
3. **Representation of City to Special Counsel.** The City represents that it will pay its portion of legal fees, expert witness fees, and all other costs and expenses of such legal action incurred by Special Counsel if Special Counsel is retained.
4. **Additional Documents, Attestation, and Authorization.** The City Council hereby authorizes the Mayor to execute any and all documents which may be necessary or convenient to effectuate this Resolution and for the City Clerk to attest same. Moreover, the Mayor, City Manager, City Attorney, Special Counsel and other City personnel, as may

be necessary, are authorized to assist in all legal endeavors related to the purpose for this Resolution, including, investigation, processing, and filing of lawsuits, mediation, actions for recoupment, arbitration, and any other action that may be necessary, including but not limited to hiring experts or consultants to assist with the above-stated purposes.

5. **Severability**. To the extent any portion of this Resolution is declared to be invalid, unenforceable, or nonbinding, that shall not affect the remaining portions of this Resolution.
6. **Repeal of Conflicting Provisions**. All City resolutions are hereby repealed to the extent they are inconsistent with the Resolution.
7. **Effective Date**. This Resolution shall take effect immediately.

This Resolution was adopted by the Governing Authority of the City of Smyrna, Georgia on the 8th day of April 2024.

Tim Gould, Mayor Pro Tem

ATTEST:

Heather K. Peacon-Corn, City Clerk

Approved as to form:

Scott Cochran, City Attorney

CITY SEAL



RESOLUTION NO. _____

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W I T N E S S E T H:

WHEREAS, the City of Smyrna (“City”) is a municipal corporation duly organized and existing under the laws of the State of Georgia, and is charged with providing public services to its residents; and

WHEREAS, the Service Delivery Act, O.C.G.A. §36-70-20 *et seq.*, (“Act”) requires each county and affected municipalities located therein to develop, approve, and implement a service delivery strategy that specifies the manner in which all local governmental services will be provided and funded; and

WHEREAS, the Act also requires the periodic review and revision of service delivery strategies upon the occurrence of any one of the six conditions specified on O.C.G.A. §36-70-28(b); and,

WHEREAS, Cobb County, and the Cities of Cobb County have been reviewing the existing Service Delivery Strategy and over the course of nearly two (2) years discussing how to revise it as provided for in the Act to no avail; and,

WHEREAS, according to the Georgia Department of Community Affairs (“Department”) the existing Service Delivery Strategy is set to lapse after October; and,

WHEREAS, if no new Service Delivery Strategy is verified by the Department by October 31, 2024, then the sanctions (withholding state permits and grants) as provided for in O.C.G.A. §36-70-27 will be imposed on all local governments and governmental entities within Cobb County; and

WHEREAS, the Act provides for a means by which local governments can resolve a dispute regarding the review and revision of a service delivery strategy; and

WHEREAS, the City wishes to cooperate with its fellow cities in negotiation, alternative dispute resolution, and possible litigation and work jointly to achieve a fair Service Delivery Strategy agreement in accordance with the Act; and

WHEREAS, the City wishes to cooperate the Cities of Acworth, Austell, Kennesaw, Marietta and Powder Springs by joining those Cities in a joint SDS Proceedings Agreement; and

WHEREAS, the Mayor and City Council in the exercise of their sound judgment and discretion, after giving thorough thought to all implications involved, and keeping in mind the public interest and welfare of the citizens of the City, have determined it to be in the best interest of the citizens of the City, that this Resolution be adopted.

THEREFORE, IT IS NOW RESOLVED BY THE CITY COUNCIL OF THE CITY OF SMYRNA, GEORGIA AS FOLLOWS:

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5. **Severability.** To the extent any portion of this Resolution is declared to be invalid, unenforceable, or nonbinding, that shall not affect the remaining portions of this Resolution.
6. **Repeal of Conflicting Provisions.** All City resolutions are hereby repealed to the extent they are inconsistent with the Resolution.
7. **Effective Date.** This Resolution shall take effect immediately.

THIS RESOLUTION adopted on ____ day of _____, 2024.

Derek Norton, Mayor

ATTEST:

Heather K. Peacon-Corn,
City Clerk

APPROVED AS TO FORM:

Scott Cochran
City Attorney