

FIRST READING: November 8, 2016

PASSED: _____

AN ORDINANCE NO. _____

AN ORDINANCE TO CREATE THE OFFICE OF PROSECUTING ATTORNEY OF THE MUNICIPAL COURT OF THE CITY OF BLUE RIDGE, GEORGIA; TO PROVIDE FOR THE APPOINTMENT OF A PERSON AS THE PROSECUTING ATTORNEY OF THE MUNICIPAL COURT OF THE CITY OF BLUE RIDGE, AND THE REQUIREMENTS FOR APPOINTMENT; TO PROVIDE FOR AN OATH OF OFFICE FOR THE PROSECUTING ATTORNEY; TO PROVIDE THAT THE PROSECUTING ATTORNEY SHALL BE A PART-TIME POSITION, AND ANY ATTORNEY ACTING AS THE PROSECUTING ATTORNEY OF THE MUNICIPAL COURT OF THE CITY OF BLUE RIDGE MAY ENGAGE IN THE PRIVATE PRACTICE OF LAW WITH CERTAIN RESTRICTIONS; TO PROVIDE A PROCEDURE FOR THE APPOINTMENT OF A SUBSTITUTE PROSECUTING ATTORNEY; TO PROVIDE THE DUTIES AND AUTHORITY OF THE PROSECUTING ATTORNEY; TO PROVIDE THE TERM OF OFFICE AND COMPENSATION FOR THE PROSECUTING ATTORNEY; TO PROVIDE FOR CLERICAL STAFF FOR THE PROSECUTING ATTORNEY; TO REQUIRE THAT THE PROSECUTING ATTORNEY BE A MEMBER IN GOOD STANDING OF THE STATE BAR OF GEORGIA; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to the City Charter of the City of Blue Ridge, Georgia, and as provided by general law, the City of Blue Ridge operates a Municipal Court regarding violations of City ordinances, traffic operations, and certain state law provisions as to which the Municipal Court has jurisdiction;

WHEREAS, pursuant to O.C.G.A. §15-18-90 et seq., the City Council of the City of Blue Ridge, Georgia, is authorized to create the office of Prosecuting Attorney of the Municipal Court of the City of Blue Ridge, and to provide for the qualifications, term of office, compensation, duties and authority, and as to other related matters regarding the office of Prosecuting Attorney;

WHEREAS, the City Council of the City of Blue Ridge, Georgia, finds that it is in the best interest of the citizens of the City of Blue Ridge, and also appropriate for the proper operation of the Municipal Court of the City of Blue Ridge, Georgia, to establish the office of Prosecuting Attorney of the Municipal Court of the City of Blue Ridge, Georgia; and

NOW, THEREFORE, be it ordained by the City of Blue Ridge, Georgia, and it is hereby ordained by the authority of the City Charter and the above-referenced authority as amended, as follows:

SECTION 1. TITLE OF THE ORDINANCE.

This Ordinance shall be entitled and known as: “The Prosecuting Attorney of the Municipal Court of the City of Blue Ridge, Georgia Ordinance.”

SECTION 2. CREATION OF THE OFFICE OF PROSECUTING ATTORNEY OF THE MUNICIPAL COURT OF THE CITY OF BLUE RIDGE, GEORGIA.

The City Council of the City of Blue Ridge, Georgia does hereby create the office of Prosecuting Attorney of the Municipal Court of the City of Blue Ridge, Georgia. The term of office of said position, compensation, duties and obligations of said position, and related matters shall be as provided hereinafter within this Ordinance.

SECTION 3. QUALIFICATIONS.

The Prosecuting Attorney shall be at least 25 years of age, a resident of the State of Georgia for at least one year, a member in good standing of the State Bar of Georgia, and admitted to practice before the appellate courts of the State of Georgia, and be a practicing attorney with a minimum of three (3) years’ experience.

SECTION 4. TERM AND COMPENSATION.

The person appointed as the Prosecuting Attorney of the Municipal Court of the City of Blue Ridge, Georgia, shall serve in said position at the discretion of the City Council of the City of Blue Ridge, Georgia, but generally for the current term of the current Council. After the election of a new Council, the new Council shall appoint a Prosecuting Attorney for a term generally equal to that of the Council. The City Council shall have the right to remove the person appointed as the Prosecuting Attorney for cause or without cause at any time. Subject to the foregoing, and with the complete right of removal as provided herein, the City Council may appoint a qualified person to be Prosecuting Attorney for a one-year term as determined within the discretion of the City Council. The Prosecuting Attorney shall be compensated by the City of Blue Ridge as determined and agreed to by the City Council with the Prosecuting Attorney and as provided by a resolution passed by the City Council within a public meeting. The Prosecuting Attorney shall be entitled to be reimbursed for actual expenses also incurred in the performance of his or her official duties in the same manner and at the same rate as other municipal employees.

SECTION 5. OATH.

In addition to any oaths required by Chapter 3 of Title 45 of the Official Code of Georgia Annotated, as amended, the Prosecuting Attorney shall also take and subscribe to the following oath: “I affirm that I will well, faithfully, and impartially and without fear, favor or affection discharge my duties as Prosecuting Attorney of the City of Blue Ridge, Georgia.” The Judge of

the Municipal Court of the City of Blue Ridge, Georgia, the Mayor, or any other official designated by resolution of the City Council of the City of Blue Ridge, Georgia, shall give the oath to the person appointed as the Prosecuting Attorney.

SECTION 6. **PART-TIME POSITION.**

The position of Prosecuting Attorney for the City of Blue Ridge, Georgia, shall be a part-time position, and such person appointed shall be a part-time Prosecuting Attorney. Any part-time Prosecuting Attorney of the City of Blue Ridge, Georgia, any part-time Assistant Prosecuting Attorney of the Municipal Court of the City of Blue Ridge, Georgia, and any substitute Prosecuting Attorney of the Municipal Court of the City of Blue Ridge, Georgia, due to the part-time nature of said positions, may engage in the private practice of law, but shall not practice on behalf of private clients in the Municipal Court of the City of Blue Ridge, Georgia, or appear in any matter in which that Prosecuting Attorney has exercised jurisdiction.

SECTION 7. **SUBSTITUTE PROSECUTING ATTORNEY.**

If the Prosecuting Attorney is disqualified from engaging in the prosecution of a particular case or is unable to perform the duties of said office due to illness or incapacity, the City Council of the City of Blue Ridge, Georgia, may provide by resolution for the appointment of a substitute Prosecuting Attorney for such term, and at such compensation, as determined in the discretion of the Blue Ridge City Council. In order to facilitate the holding of Municipal Court, the Judge of the Blue Ridge Municipal Court on a temporary basis, may appoint a temporary substitute Prosecuting Attorney so long as said appointment is not for longer than 60 days and does not require compensation greater than that being paid the Prosecuting Attorney. Upon the appointment of a substitute Prosecuting Attorney by the City Council, the Judge of the Municipal Court of the City of Blue Ridge, Georgia, shall end the term of the temporary substitute Prosecuting Attorney. At any time in which a substitute Prosecuting Attorney is not available or an appointment has not been made, or a temporary substitute Prosecuting Attorney has not been appointed, the City Attorney of the City of Blue Ridge may serve as the substitute Prosecuting Attorney until such time as a Prosecuting Attorney, substitute Prosecuting Attorney, or a temporary substitute Prosecuting Attorney is available or appointed.

SECTION 8. **DUTY AND AUTHORITY OF PROSECUTING ATTORNEY.**

(a) The Prosecuting Attorney [or Assistant Prosecuting Attorney, or substitute Prosecuting Attorney, or temporary substitute Prosecuting Attorney, or the City Attorney acting as the Prosecuting Attorney] shall have the duty and authority to represent the City of Blue Ridge:

(1) In the Municipal Court of the City of Blue Ridge, Georgia [and which shall include any Magistrate's Court acting as the Municipal Court for the City of Blue Ridge, Georgia]:

(A) In the prosecution of any violation of the laws or ordinances of the City of Blue Ridge which is within the jurisdiction of the Municipal Court of the City of Blue Ridge and punishable by confinement or a fine or both or by a civil penalty authorized by O.C.G.A. § 40-6-163; and

(B) In the prosecution of any violation of state laws which by general law municipal courts have been granted jurisdiction to try and dispose of such offenses, specifically including those offenses described in Chapter 32 of Title 36 of the Official Code of Georgia Annotated, and O.C.G.A. § 40-13-21;

(2) In the appeal of any case prosecuted in the Municipal Court of the City of Blue Ridge, Georgia, to the Superior Court or the appellate courts of the State of Georgia;

(3) In any case in which the defendant was convicted in the Municipal Court of the City of Blue Ridge, Georgia, and is challenging such conviction through habeas corpus;

(4) To administer the oaths required by law to the bailiffs or other officers of the Court and otherwise to aid the presiding judge in organizing the Court as may be necessary;

(5) To aid the Blue Ridge Police Department or other agent of the City of Blue Ridge, Georgia, in the preparation of cases for trial; and

(6) To perform such other duties as are or may be required by law or ordinance or which necessarily appertain to such Prosecuting Attorney's office.

(b) The Prosecuting Attorney [including any Assistant Prosecuting Attorney, any substitute Prosecuting Attorney, any temporary substitute Prosecuting Attorney, or the City Attorney, as applicable] shall have the authority to:

(1) File, amend, and prosecute any citation, accusation, summons, or other form of charging instrument authorized by law for use in the Municipal Court of the City of Blue Ridge, Georgia;

(2) Dismiss, amend, or enter a nolle prosequi on any accusation, citation, or summons filed in the Municipal Court as provided by law, except that the Prosecuting Attorney shall not have the authority to dismiss or enter a nolle prosequi in any case in which the accused is charged with a violation of state law other than one which the Municipal Court has jurisdiction to try and dispose of such offense without the consent of the proper prosecuting officer having jurisdiction to try and dispose of such offense. As used in this paragraph, the term "proper prosecuting officer" means, in the case of felonies, the district attorney, and in the case of misdemeanors, the solicitor-general, unless there is no solicitor-general, then it refers to the district attorney;

(3) Reduce to judgment any fine, forfeiture, or restitution imposed by the Municipal Court as part of a sentence in an ordinance case or forfeiture of a recognizance which is not paid in accordance with the order of the Court. The Prosecuting Attorney may institute such civil action in the courts of this state or of the United States or any of the several states to enforce such judgment against the property of the defendant; and

(4) Request and utilize the assistance of any other municipal prosecutor, solicitor-general, district attorney, assistant district attorney, or other attorney employed by an agency of the state or its political subdivisions or authorities in the prosecution of any criminal action.

(c) The provisions of this Ordinance shall not be deemed to restrict, limit, or diminish any authority or power of the District Attorney or any solicitor-general to represent this state in any criminal case in which the accused is charged with a felony or a misdemeanor, when the Municipal Court is acting as a court of inquiry pursuant to Article 2 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated, as amended, or setting bail for any such offense, other than one which the Municipal Court has, by law, jurisdiction to try and dispose of.

SECTION 9. **EMPLOYEES OF THE PROSECUTING ATTORNEY'S OFFICE.**

The City Council of the City of Blue Ridge, Georgia, in its discretion, may provide to the Prosecuting Attorney, such clerical staff as is needed for the proper performance of the duties of the Prosecuting Attorney, and may set the compensation and duties of such staff by resolution passed by the City Council in a public meeting. The duties assigned to such staff shall be fixed after consultation with the Prosecuting Attorney, and the Prosecuting Attorney may designate further duties [but no additional compensation] for such staff as is necessary for the proper operation of the office of the Prosecuting Attorney.

SECTION 10. **NOTICE TO THE PROSECUTING ATTORNEYS' COUNCIL OF THE STATE OF GEORGIA.**

The Municipal Court Clerk, the City Clerk, the City Attorney, or other person properly designated by the City Council of the City of Blue Ridge, Georgia, shall provide a copy of this Ordinance creating the office of Prosecuting Attorney of the Municipal Court of the City of Blue Ridge, Georgia, to the Prosecuting Attorneys' Council of the State of Georgia. The Municipal Court Clerk, the City Clerk, the City Attorney, or other person properly designated by the City Council of the City of Blue Ridge, Georgia, shall also notify the Prosecuting Attorneys' Council of the State of Georgia of the name of any person appointed by the City Council to be the Prosecuting Attorney of the Municipal Court of the City of Blue Ridge within 30 days of such appointment.

SECTION 11. **REPEAL OF CONFLICTING ORDINANCES TO THE EXTENT OF THE CONFLICT.**

All parts of previously ordained ordinances in conflict with the terms of this Ordinance are hereby repealed to the extent of the conflict; but it is hereby provided that any ordinance or law which may be applicable hereto and aid in carrying out and making effective the intent, purpose and provisions hereof, is hereby adopted as a part hereof and shall be legally construed to be in favor of upholding this ordinance on behalf of the City of Blue Ridge, Georgia.

SECTION 12. SEVERABILITY.

If any paragraph, subparagraph, sentence, clause, phrase or any portion of this ordinance should be declared invalid or unconstitutional by any court of competent jurisdiction or if the provisions of any part of this ordinance as applied to any particular situation or set of circumstances should be declared invalid or unconstitutional, such invalidity shall not be construed to effect the provisions of this ordinance not so held to be invalid, or the application of this ordinance to other circumstances not so held to be invalid. It is hereby declared to be the intent of the City Council of the City of Blue Ridge to provide for separate and divisible parts, and it does hereby adopt any and all parts hereof as may not be held invalid for any reason.

SECTION 13. EFFECTIVE DATE.

The effective date of this ordinance will be upon its passage by the City Council of the City of Blue Ridge, Georgia.

SO ORDAINED this _____ day of _____, 2016.

BLUE RIDGE CITY COUNCIL

By: _____
Mayor

Councilperson

Councilperson

Councilperson

Councilperson

Attest: _____
Councilperson