

Resolution No. 2026 - 080

AUTHORIZING PARTICIPATION IN AN AMICUS BRIEF IN CHANG v. CITY OF MILTON ON REMAND BEFORE THE GEORGIA COURT OF APPEALS OR, IF WARRANTED, THE GEORGIA SUPREME COURT; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS the litigation styled Chang v. City of Milton arises from claims asserted against the City of Milton, Georgia, related to a 2016 motor vehicle collision on Batesville Road; and

WHEREAS on September 16, 2024, the Georgia Court of Appeals issued its decision in City of Milton v. Chang, 373 Ga. App. 667 (2024); and

WHEREAS the Supreme Court of Georgia thereafter granted certiorari and, on March 12, 2026, vacated the Court of Appeals decision and remanded the case for further proceedings, holding that a municipality's ministerial duty over roadway upkeep and repair did not apply where the alleged unsafe condition was outside the lanes of ordinary travel, City of Milton v. Chang, 2026 WL 695364; and

WHEREAS following remand, the Georgia Court of Appeals will consider the separate question of whether a Georgia municipality may nevertheless be subjected to liability under a so-called nuisance theory for personal injury claims;

WHEREAS the City recognizes that any asserted waiver of sovereign immunity for nuisance claims resulting in personal injury does not arise from any express constitutional or statutory waiver applicable to municipalities, but instead traces to judicial decisions such as Town of Fort Oglethorpe v. Phillips, 224 Ga. 834 (1968);

WHEREAS the Supreme Court of Georgia explained in Georgia Department of Natural Resources v. Center for a Sustainable Coast, Inc., 294 Ga. 593 (2014), that waivers of sovereign immunity must come from the Constitution or the General Assembly and that courts may not create new exceptions to sovereign immunity;

WHEREAS in Mayor & C. of Savannah v. Palmerio, 242 Ga. 419 (1978), Justice Hall, in a concurring opinion, advised that "the time is long past for this court to re-examine its opinion in Town of Ft. Oglethorpe v. Phillips, 224 Ga. 834, 165 S.E.2d 141 (1968);"

WHEREAS in Gatto v. City of Statesboro, 312 Ga. 164, fn. 6 (2021), the Court observed "[s]ome of us have doubts about the legal foundations of Phillips, which also divorced municipal nuisance liability from its basis in our Constitution's Takings Clause;"

WHEREAS a nuisance theory that permits personal-injury claims against cities, but not counties, creates an uneven exposure to liability that is not supported by a clear constitutional or statutory waiver;

WHEREAS Georgia law has long distinguished between nuisance claims that implicate the Takings Clause and nuisance claims seeking damages for personal injury;

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WHEREAS municipalities across the State have a substantial interest in ensuring that any waiver of sovereign immunity remains tied to a constitutional or statutory foundation rather than a judicially created expansion;

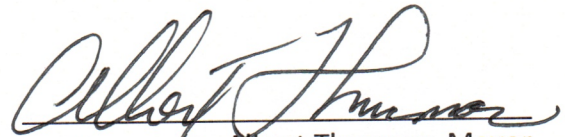
WHEREAS the City finds that it is in the best interests of its citizens and residents to support the City of Milton in seeking an appellate ruling that there is no waiver of municipal sovereign immunity for an alleged nuisance resulting in personal injury, outside the limited context of a nuisance claim amounting to a constitutional taking; and

WHEREAS the City further finds that Georgia cities should have their collective voice heard on this issue of statewide importance through coordinated amicus participation before the Georgia Court of Appeals and/or the Georgia Supreme Court.

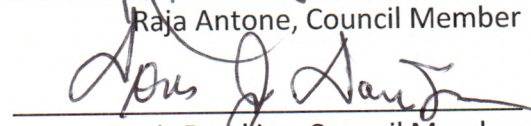
NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council for the City of Powder Spring that:

- The City authorizes participation in, support for, and joinder with an amicus curiae brief or briefs to be filed in Chang v. City of Milton on remand before the Georgia Court of Appeals and/or, if further appellate proceedings occur after the Court of Appeals, before the Georgia Supreme Court, and authorizes the City's name to be included as an amicus participant.
- The City supports the position that any purported waiver of a city's sovereign immunity for nuisance claims seeking recovery for personal injury is a judicially created doctrine rather than an express waiver grounded in the Georgia Constitution or an act of the General Assembly.
- The City supports the position that, consistent with Sustainable Coast and related sovereign-immunity precedent, no waiver of municipal sovereign immunity exists for an alleged nuisance resulting in personal injury.
- The Mayor, City Manager, City Attorney, and such other officers as may be appropriate are authorized to take all actions reasonably necessary to implement this Resolution and to coordinate with counsel for the City of Milton and other participating municipalities.

SO RESOLVED AND EFFECTIVE this 4th day of May 2026.

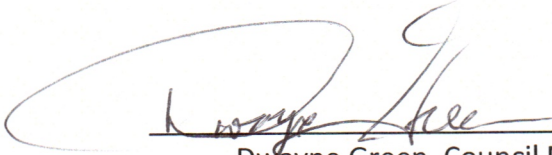

Albert Thurman, Mayor

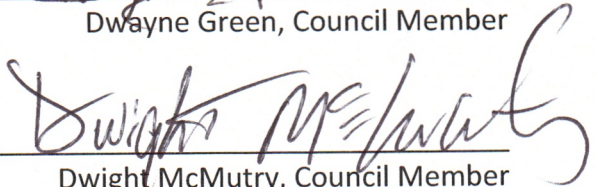

Raja Antone, Council Member

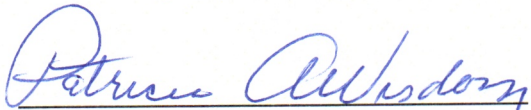

Doris Dawkins, Council Member

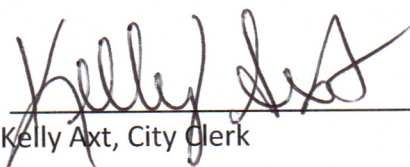
[additional signatures follow]

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Dwayne Green, Council Member


Dwight McMurtry, Council Member


Patricia Wisdom, Council Member

ATTEST: 
Kelly Axt, City Clerk