

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

GEORGIACARRY.ORG, INC.,)
TAI TOSON,)
EDAWARD WARREN,)
JEFFREY HUONG,)
JOHN LYNCH,)
MICHAEL NYDEN, and)
JAMES CHRENCIK,)
Plaintiffs,)

Civil Action No. 2007cv138552

v.)
)
FULTON COUNTY, GEORGIA,)
CITY OF ATLANTA, GEORGIA,)
CITY OF EAST POINT, GEORGIA,)
CITY OF MILTON, GEORGIA,)
CITY OF ROSWELL, GEORGIA,)
CITY OF SANDY SPRINGS, GEORGIA,)
and CITY OF UNION CITY, GEORGIA,)
Defendants.)

CITY OF ATLANTA’S ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW the City of Atlanta, Defendant in the above-styled case, and file its Answer and Affirmative Defenses to Plaintiffs’ Complaint as follows:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a claim against the City of Atlanta upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

To the extent Plaintiffs seek any damages from the City of Atlanta, Plaintiffs’ claims are, or may be barred in whole or in part by the doctrines of sovereign, governmental, qualified, and official immunity.

THIRD AFFIRMATIVE DEFENSE

The City of Atlanta Ordinance §110-66 is not preempted by state law, the Georgia Constitution, and is not ultra vires.

ANSWER

INTRODUCTION

1.

Paragraph 1 requires no response from the City of Atlanta, but the City of Atlanta specifically denies any wrong doing alleged by Plaintiffs.

2.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 2.

3.

The City of Atlanta admits the allegations set forth in Paragraph 3.

4.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 4.

5.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 5.

6.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 6.

7.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 7.

8.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 8.

9.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 9.

10.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 10.

11.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 11.

12.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 12.

13.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 13.

14.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 14.

15.

Paragraph 15 requires no response from the City of Atlanta.

16.

Paragraph 16 requires no response from the City of Atlanta.

17.

The City of Atlanta admits the allegations set forth in Paragraph 17.

18.

Paragraph 18 requires no response from the City of Atlanta.

19.

Paragraph 19 requires no response from the City of Atlanta.

20.

Paragraph 20 requires no response from the City of Atlanta.

21.

Paragraph 21 requires no response from the City of Atlanta.

22.

Paragraph 22 requires no response from the City of Atlanta.

23.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 23.

24.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 24.

25.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 25.

26.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 26.

27.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 27.

28.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 28.

29.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 29.

30.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 30.

31.

The City of Atlanta admits that it has not repealed City Ordinance §110-66.

32.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 32.

33.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 33.

34.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 34.

35.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 35.

36.

The City of Atlanta admits the allegations set forth in Paragraph 36.

37.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 37.

38.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 38.

39.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 39.

40.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 40.

41.

The City of Atlanta is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 41.

42.

Paragraph 42 requires no response from the City of Atlanta. The City of Atlanta denies any implication that its ordinances are preempted and ultra vires.

43.

Paragraph 43 requires no response from the City of Atlanta. The City of Atlanta denies any implication that its ordinances are preempted and ultra vires.

44.

Paragraph 44 requires no response from the City of Atlanta. The City of Atlanta denies any implication that its ordinances are preempted and ultra vires.

45.

Paragraph 45 requires no response from the City of Atlanta. The City of Atlanta denies any implication that its ordinances are preempted and ultra vires.

46.

The City of Atlanta maintains that the legislative code sections cited by Plaintiffs in Paragraph 46 speak for themselves and require no response. The City of Atlanta denies any implication that its ordinances are preempted and ultra vires.

47.

The City of Atlanta maintains that the legislative code sections cited by Plaintiffs in Paragraph 47 speak for themselves and require no response. The City of Atlanta denies any implication that its ordinances are preempted and ultra vires.

48.

The City of Atlanta maintains that the legislative code sections cited by Plaintiffs in Paragraph 48 speak for themselves and require no response. The City of Atlanta denies any implication that its ordinances are preempted and ultra vires.

COUNT I – THE ORDINANCES ARE PREEMPTED

49.

The City of Atlanta denies the allegations set forth in Paragraph 49.

50.

The City of Atlanta denies the allegations set forth in Paragraph 50.

51.

The City of Atlanta denies the allegations set forth in Paragraph 51.

COUNT II – THE ORDINANCES ARE ULTRA VIRES

52.

The City of Atlanta denies the allegations set forth in Paragraph 52.

COUNT III – THE ORDINANCES ARE VOID

53.

The City of Atlanta denies the allegations set forth in Paragraph 53.

COUNT IV – ATTORNEY’S FEES

54.

The City of Atlanta denies the allegations set forth in Paragraph 54.


WHEREFORE, having answered all of Plaintiffs’ allegations and claims, the City of Atlanta prays for the following:

- a) that all of Plaintiffs’ prayers for relief be denied;
- b) that the action against the City of Atlanta be dismissed with prejudice for failure to state a claim;
- c) that all costs incurred by the City of Atlanta to defend this claim be cast upon the Plaintiffs; and
- d) any such other relief as the Court deems proper.

Respectfully submitted this 21st day of September 2007.

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and CITY OF UNION CITY, GEORGIA,)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2007, I served a true and correct copy of the foregoing **THE CITY OF ATLANTA'S ANSWER AND AFFIRMATIVE DEFENSES** by electronically filing the same on the LexisNexis File & Serve System.

I further certify that I deposited the same with the United States Postal Service, adequate postage affixed thereto and addressed to the following:

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