



City of Tucker, GA
CITY COUNCIL

Frank Auman, Mayor

Honey Van De Kreke
District 1, Post 1
Bill Rosenfeld
District 1, Post 2

Matt Robbins
District 2, Post 1
Noelle Monferdini
District 2, Post 2

Michelle Penkava
District 3, Post 1
Anne Lerner
District 3, Post 2

August 8, 2016

CITY COUNCIL AGENDA
Tucker Recreation Center
4898 Lavista Road
Tucker, GA 30084

6:30 PM

A) CALL TO ORDER

B) ROLL CALL

C) PLEDGE OF ALLEGIANCE

D) PUBLIC COMMENTS

E) MAYOR'S OPENING REMARKS

F) MINUTES

1. Special Called Council Meeting Minutes – August 1, 2016

G) APPROVAL OF MEETING AGENDA

H) PRESENTATIONS AND REPORTS

1. **Presentation** Tucker Northlake CID Master Plan Presentation

I) OLD BUSINESS

1. **O2016-06-06** Brian Anderson **Second Read** of an Ordinance to establish a franchise fee of cable and video.
2. **O2016-08-23** Tami Hanlin **Public Hearing & Second Read** and Consideration of an Ordinance to adopt the Fiscal Year 2016 Budget.
3. **O2016-08-24** Tami Hanlin **Second Read** and Consideration of an Ordinance to establish a Fiscal Year.

4. **O2016-08-25**
Tami Hanlin

Second Read and Consideration of an Ordinance to adopt the Purchasing Policy.

J) NEW BUSINESS

1. **O2016-08-26**
Brian Anderson
2. **O2016-08-27**
Brian Anderson
3. **O2016-08-28**
Brian Anderson
4. **Action Item**
Brian Anderson

First Read and Consideration of an Ordinance to Amend Chapter 16 – Licenses, Permits, and Business Regulations.

First Read and Consideration of an Ordinance granting franchise to Walton EMC

First Read and Consideration of an Ordinance granting franchise to Comcast

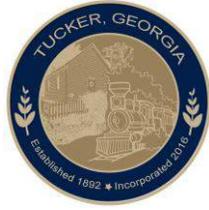
Presentation of applications for annexation

K) EXECUTIVE SESSION (If required)

L) MAYOR AND COUNCIL COMMENTS

M) ADJOURNMENT

**Special Called Council
Meeting Minutes
August 1, 2016**



**CITY OF TUCKER
SPECIAL CALLED COUNCIL MEETING MINUTES
August 1, 2016 at 7:00 PM**

The Mayor and Council of the City of Tucker held a Special Called Council Meeting at Discover DeKalb, 1957 Lakeside Parkway, Suite 510, Tucker, GA 30084. The following were in attendance:

Mayor	Frank Auman
Council Member	Honey Van De Kreke – District 1, Post 1
Council Member	Bill Rosenfeld – District 1, Post 2 - Absent
Council Member	Matt Robbins – District 2, Post 1
Council Member	Noelle Monferdini – District 2, Post 2
Council Member	Michelle Penkava – District 3, Post 1
Council Member	Anne Lerner – District 3, Post 2
Interim City Manager	Tami Hanlin
City Clerk	Jennifer Davis
City Attorney	Brian Anderson
Community Development Director	John McHenry

CALL TO ORDER: Mayor Frank Auman called the meeting to order at 7:02 pm.

PLEDGE OF ALLEGIANCE: Mayor Frank Auman led the Pledge of Allegiance.

PUBLIC COMMENT: Theoan Ledoux stated she is a teacher for C.E.R.T. (Community Emergency Response Team), a 9-week course starting on August 9 from 12:00 pm to 2:30 pm at Tucker Recreation Center. She encouraged City Council to attend the class.

MAYOR’S OPENING REMARKS:

Mayor Frank Auman introduced Laura Smith, Marsha Ashby, and members of the Boy Scouts Troop 876 (Charlie Smith, Will Ashby, Davis Summers, and Daniel Robertson). Mayor Auman mentioned the Boys Scouts are working on their communication merit badge.

MINUTES:

MOTION TO APPROVE THE SPECIAL CALLED MEETING MINUTES FROM THE JULY 8, 2016 COUNCIL MEETING.

By: Council Member Van De Kreke

Seconded by: Council Member Robbins

Vote: (6-0) (Van De Kreke, Robbins, Auman, Monferdini, Penkava, Lerner)

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MOTION TO APPROVE THE SPECIAL CALLED MEETING MINUTES FROM THE JULY 11, 2016 6:30 AM COUNCIL MEETING WITH 2 CORRECTIONS.

By: Council Member Van De Kreke

Seconded by: Council Member Monferdini

Vote: (6-0) (Van De Kreke, Monferdini, Auman, Robbins, Penkava, Lerner)

MOTION TO APPROVE THE MEETING MINUTES FROM THE JULY 11, 2016 6:30 PM COUNCIL MEETING WITH 1 CORRECTION.

By: Council Member Van De Kreke

Seconded by: Council Member Robbins

Vote: (6-0) (Van De Kreke, Robbins, Auman, Monferdini, Penkava, Lerner)

OLD BUSINESS: None

NEW BUSINESS:

R2016-08-18

A Resolution to appoint members of the Community Council for the City of Tucker, Georgia.

Mayor Frank Auman appointed Frank Luton, Frank Sapp, Janet Curtis, Seth Burrow, Jonathan Vaughters, Will Arroyo, and Cara Schroeder.

MOTION TO APPROVE R2016-08-18

By: Mayor Auman

Seconded by: Council Member Robbins

Vote: (6-0) (Auman, Robbins, Van De Kreke, Monferdini, Penkava, Lerner)

R2016-08-19

A Resolution to approve holiday schedule for the City of Tucker, Georgia.

MOTION TO APPROVE R2016-08-19

By: Council Member Monferdini

Seconded by: Council Member Lerner

Vote: (6-0) (Monferdini, Lerner, Auman, Van De Kreke, Robbins, Penkava)

O2016-08-23

First Read and Consideration of an Ordinance to adopt the Fiscal Year 2016 Budget.

O2016-08-24

First Read and Consideration of an Ordinance to establish a Fiscal Year.

O2016-08-25

First Read and Consideration of an Ordinance to adopt the Purchasing Policy.

Action Item

Presentation of applications for annexation.

No applications were presented for annexation.

EXECUTIVE SESSION: None

MAYOR AND COUNCIL COMMENTS:

Council Member Anne Lerner expressed her excitement for the Community Council. She mentioned the Tucker Civic Association event “Give-An-Hour” Midvale Elementary Cleanup on August 6 at 8 am.

Council Member Noelle Monferdini thanked everyone for coming out and also thanked staff for their hard work and support. She expressed her excitement to have the Boy Scouts at the meeting.

Council Member Michelle Penkava expressed her excitement for the budget.

Council Member Matt Robbins thanked staff and Boy Scouts for attending. He mentioned the Library Exhibit: Changing America: The Emancipation Proclamation, 1863 and The March on Washington, 1963. He stated the exhibit will there until September 3rd and urged everyone to visit. He mentioned that Frank Nix, regular Council meeting attendee, had an accident recently and hopes he has a speedy recovery.

Council Member Honey Van De Kreke thanked staff and Community Council.

Mayor Frank Auman commented on the proposed budget and noted that city does not have a city property tax. He mentioned that we received money the previous week from DeKalb County for business license fees.

ADJOURNMENT: The City Council Meeting adjourned at approximately 7:39 pm.

Approved,

Attest:

Frank Auman, Mayor

Jennifer Davis, City Clerk

(Seal)

02016-06-06

AN ORDINANCE OF THE CITY OF TUCKER THROUGH THE COUNCIL TO ESTABLISH A FRANCHISE FEE APPLICABLE TO HOLDERS OF CABLE AND VIDEO FRANCHISES ISSUED BY THE STATE OF GEORGIA

WHEREAS, the City considers collecting a franchise fee from a cable or video provider utilizing the public rights of way as compensation to the public for the use of the rights of way and a means of promoting the public health, safety, welfare and economics development of the City and to protect public works infrastructure;

WHEREAS, the City of Tucker is authorized to collect, a franchise fee of 5% the maximum amount established by federal and state law of each cable or video providers gross revenues received from the provision of cable or video service generated within the City;

NOW THEREFORE BE IT ORDAINED, that the Mayor and Council of the City of Tucker hereby requires a franchise fee of 5% of any cable or video state franchise holder's gross revenues received from the provision of cable or video service generated within the corporate boundaries of the City of Tucker, pursuant to a franchise issued by the State of Georgia pursuant to O.C.G.A. 36-76-1 et seq. known as the "Consumer Choice for Television Act" of 2007.

ORDAINED by the Mayor and Council of the City of Tucker this 8th day of August 2016.

ATTEST:

By _____
Jennifer Davis, City Clerk

Frank Auman, Mayor

(SEAL)

02016-08-23

AN ORDINANCE TO ADOPT A BUDGET FOR THE CALENDAR YEAR 2016

WHEREAS, the City of Tucker is required by Section 5.03 of the City Charter to adopt an operating and capital budget; and

WHEREAS, the City of Tucker held a hearing with proper notice on the budget on August 8, 2016

WHEREAS, the City Charter requires an accompany budget message; and

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the City of Tucker while at a regular called meeting on August 8, 2016 that the attached 2016 operating and capital budget is approved for the calendar year 2016 and becomes effective upon its adoption;

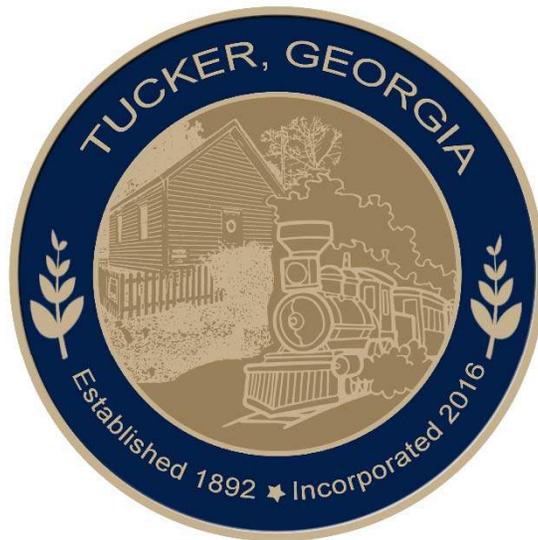
SO ORDAINED, this the 8th day of August, 2016.

Approved: _____
Frank Auman, Mayor

Attest: _____
Jennifer Davis, City Clerk (SEAL)

2016

PROPOSED BUDGET



Fiscal Year 2016
January 1, 2016 – December 31, 2016



MEMO

To: Mayor and City Council

Cc: City Attorney

From: Tami Hanlin, Acting City Manager

Date: July 29, 2016

Subject: FY2016 Budget

Mayor and City Council,

I am pleased to submit for your consideration the proposed budget for the City of Tucker for calendar year 2016. The proposed budget balances anticipated revenues for the City's first year with expected startup expenses for planning and zoning and code enforcement services, and for administrative functions and facility expenses. It assumes a zero property tax millage rate, and allocates a significant amount for reserves to support short-term cash flow and begin to provide for needed future expenses.

Because this is the first year of the City's operations, there is no history on which to base revenue and expenditure estimates. Because of this lack of information, we have taken a very conservative approach, estimating expected revenues on the low range of likely collections. Once we complete a full annual cycle we will be able to forecast revenues with much more certainty. Expenditures are more predictable and controllable, and items not included in the City's lump sum services contracts are the only expenditures that must be estimated. These we have estimated generally on the high side, to be conservative.

Further, the recommended budget does not contain funding for City Council priorities other than starting up the services described above. Any special projects or initiatives desired by the Mayor and Council to begin prior to the year's end may be funded from the Reserve Contingency through a budget amendment.

GENERAL FUND

Overall, the proposed General Fund budget for 2016 anticipates \$2,305,600 in revenue, \$1,612,858 in expenses, and a budgeted reserve of \$692,742.

Based on negotiations with DeKalb County and the start of services July 1, revenues for 2016 are estimated to be collected for the final six months of the year. The major revenue for this time

period is business and occupation taxes, estimated at \$1,547,000. Other major revenues expected in the second half of the year include franchise fees from utilities that have facilities in the public streets (estimated at \$400,000), and alcoholic beverage licenses (estimated at \$200,000). As mentioned above, there is no property tax collection proposed.

Expenditures are primarily for services contracts with CH2M and InterDev and for staffing contracts for the city attorney and city manager. These items total \$1,101,282. Other notable items in the expense budget include the reserve contingency of \$692,742, professional services for comprehensive planning, Mayor and City Council expense, and computer equipment and software.

HOTEL MOTEL FUND

Revenues and expenses related to Hotel/motel taxes are tracked in a separate fund due to state restrictions on use of the tax proceeds. As with the General Fund revenues, we are recommending a conservative estimate for hotel/motel revenue. Expenses are allocated between Discover DeKalb (40 percent of revenue) and the City's General Fund (60 percent of revenue).

CONCLUSION

The new City of Tucker's financial position appears to be strong. The local economy is growing, and the City is an attractive place to invest, both as a resident and as a business owner. By careful stewardship the Mayor and City Council can lay a strong financial foundation that will enable the City to offer high-quality operations and services to its residents and businesses.

It is a pleasure to serve the City and I look forward to working with the Mayor, Council, staff and community to lay a solid base on which to build the great new City of Tucker.

FY2016 GENERAL FUND BUDGET SUMMARY

FY2016 Budget

Taxes	2,037,000.00
Licenses & Permits	226,600.00
Intergovernmental	0.00
Fines & Forfeitures	0.00
Interest Earned	0.00
Other Sources of Revenue	42,000.00
Total General Fund Revenues	2,305,600.00

City Council	136,297.00
City Manager	137,200.00
City Clerk	0.00
Finance/Administration	0.00
Legal	150,000.00
General Operations	1,153,861.00
Facilities and Buildings	55,500.00
Designated Reserve	672,742.00
Total General Fund Expenditures	2,305,600.00

FY2016 HOTEL/MOTEL FUND BUDGET SUMMARY

Taxes	70,000.00
Total Hotel/Motel Fund Revenues	70,000.00
Discover Dekalb	28,000.00
Transfer to General Fund	42,000.00
Total Hotel/Motel Fund Expenditures	70,000.00

100 - General Fund Revenue Detail

General Property Tax

100-310-31100-31100 Ad Valorem Tax-Current Year	-
100-310-31100-31110 Public Utility Tax	-
100-310-31100-31200 Ad Valorem Tax-Prior Year	-
100-310-31100-31310 Motor Vehicle Tax	-
100-310-31100-31315 Title Ad Valorem Tax	50,000.00
100-310-31100-31320 Mobile Home Tax	-
100-310-31100-31325 Heavy Equipment Tax	-
100-310-31100-31340 Intangible Tax Revenue	-
100-310-31100-31350 Railroad Equipment Tax	-
100-310-31100-31360 Real Estate Transfer Tax	-
100-310-31100-31370 Franchise Fees	400,000.00
Subtotal	450,000.00

Selective Sales and Use Tax

100-310-31400-34200 Alcoholic Beverage Excise Tax	25,000.00
100-310-31400-34300 Local Option Mixed Drink	15,000.00
100-310-31400-34900 Other Selective Tax	-
Subtotal	40,000.00

Business Taxes

100-310-31600-31610 Business & Occupation Taxes	1,547,000.00
100-310-31600-31620 Insurance Premium Tax	-
100-310-31600-31630 Financial Institutions Taxes	-
Subtotal	1,547,000.00

Penalties & Interest on Delinquent Tax

100-310-31900-39100 Pen & Int on Delinq Tax	-
Subtotal	-

Business License

100-320-32100-32110 Alcoholic Beverages	200,000.00
100-320-32100-32120 General Business License	-
100-320-32100-32190 Other Licenses/Permits	600.00
100-320-32100-32210 Insurance License	-
Subtotal	200,600.00

Licenses & Permits

100-320-32200-32200 Building Permits	25,000.00
100-320-32200-32202 Development Permits	1,000.00
Subtotal	26,000.00

Regulatory Fees	
100-320-32300-32300 Regulatory Fees	-
100-320-32300-32310 Inspection Fees	-
Subtotal	-
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100-350-35100-35100 Municipal Court	-
Subtotal	-
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Interest Revenues	
100-360-36100-36100 Interest Revenues	-
Subtotal	-
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Contribution/Donations	
100-370-37100-37100 General City	-
Subtotal	-
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Other Charges for Svcs	
100-340-39000-34930 Bad Check Fees	-
Subtotal	-
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Other Financing Sources	
100-390-39100-39120 Transfer from Hotel/Motel	42,000.00
Subtotal	42,000.00
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Total Department Revenues	2,305,600.00

100 - General Fund Expenditures Detail

City Council	
100-010-51100-51110 Regular Salaries	86,667.00
100-010-51100-51200 FICA/Medicare	6,630.00
100-010-51100-52370 Education & Training	20,000.00
100-010-51100-53160 Mayor expense	5,000.00
100-010-51100-53165 Council expense	18,000.00
Subtotals	136,297.00
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City Manager	
100-010-51300-52121 Contractual Svcs CH2M	137,200.00
Subtotals	137,200.00

Legal Services Department

100-010-51530-52122 Attorney Fees/City Attorney	115,000.00
100-010-51530-52130 Attorney Fees/Other	35,000.00

Subtotals	150,000.00
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Facilities & Buildings Dept

100-010-51565-51300 Technical Services	5,000.00
100-010-51565-52200 Repairs & Maintenance	11,000.00
100-010-51565-52301 Real Estate Rents/Leases	31,500.00
100-010-51565-53123 Electricity	3,000.00
100-010-51565-53103 Office Supplies	2,500.00
100-010-51565-54230 Furniture And Fixtures	2,500.00

Subtotals	55,500.00
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General Operations

100-010-51590-52101 Official/Admin Start Up	20,000.00
100-010-51590-52120 Professional Services	100,000.00
100-010-51590-52121 Contractual Services CH2M	663,030.00
100-010-51590-52122 Contractual Services InterDev	186,052.00
100-010-51590-52310 General Liability Insurance	12,779.00
100-010-51590-52330 Advertising	1,500.00
100-010-51590-52340 Printing	10,000.00
100-010-51300-52370 Education & Training - Boards	5,000.00
100-010-51590-53100 Operating Supplies	22,000.00
100-010-51590-53101 Postage	10,500.00
100-010-51590-53103 Office Supplies	5,000.00
100-010-51590-53175 City Events	10,000.00
100-010-51590-54230 Furniture & Fixtures	5,000.00
100-010-51590-54231 Signs	8,000.00
100-010-51590-54240 Computer/Software	90,000.00
100-010-51590-54250 Other Equipment	5,000.00

Subtotals	1,153,861.00
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Designated Reserve

100-010-59000-57902 Reserve Contingency	672,742.00
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Subtotals	672,742.00
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Total Department Expenditures	2,305,600.00
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275 - Hotel/Motel Tax Fund Revenue Detail

275-310-31400-31410 Hotel/Motel	70,000.00
Subtotals	70,000.00

275 - Hotel/Motel Tax Fund Expenditures Detail

275-075-75000-75400 Discover Dekalb	28,000.00
275-075-75000-61100 Transfer to General Fund	42,000.00
Subtotals	70,000.00

02016-08-24

STATE OF GEORGIA
CITY OF TUCKER

Ordinance 2016-08-24

AN ORDINANCE TO SET A FISCAL YEAR

WHEREAS, the City of Tucker is required by Section 5.01 of the City Charter to set the fiscal year by ordinance; and

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the City of Tucker while at a regular called meeting on August 8, 2016 that the initial fiscal year of the City shall be the calendar year. Accordingly, the fiscal year for the year 2016 shall end on December 31, 2016.

Approved: _____
Frank Auman, Mayor

Attest: _____
Jennifer Davis, City Clerk (SEAL)

02016-08-25

AN ORDINANCE TO ADOPT A PURCHASING POLICY

WHEREAS, the City of Tucker is required by Section 5.06 of the City Charter to prescribe procedures for a system of centralized purchasing for the City; and

WHEREAS, the Mayor and City Council desire to adopt a centralized purchasing for the City; and

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the City of Tucker while at a regular called meeting on August 8, 2016 that the attached centralized purchasing policy is approved and effective upon its adoption;

SO ORDAINED, this the 8th day of August, 2016.

Approved: _____
Frank Auman, Mayor

Attest: _____
Jennifer Davis, City Clerk (SEAL)



MEMO

To: Mayor and City Council

Cc: City Attorney

From: Tami Hanlin, Acting City Manager

Date: August 4, 2016

Subject: Purchasing Policy, final with changes since the first read noted

Mayor and City Council,

Attached please find the final draft of the Purchasing Policy for your review and approval. I have attempted to incorporate all of the suggested changes into this document. We may also include changes that come up during the discussion at the Council meeting. I will send out a finalized document after the August 8th meeting.

Changes to the policy since the first read are highlighted or struck through in the document. Below is a listing of the changes and the reasoning behind each proposed change:

1) Section: Page 5: V. Competitive Procurements/ Formal Sealed Bids

Change: We added the words “which are not professional services”.

Rational: Sealed bids are the best method when purchasing commodities since the price is often the most important consideration. When hiring professionals, such as auditors, consultants and engineers, it is not in best interest of the City to evaluate professional solely on price.

2) Section: Page 6: V. Competitive Procurements/Invitation for Bids

Change: added the word ‘least’ to the 3rd paragraphs, second line

Rational: It was a typo.

3) Section: Page 11, VII Definitions H. CHANGE ORDER

Change: Added the definition of a Change Order

Rational: Change orders can be costly and it is important to have a clear understanding of what constitutes a change order.

4) Section: Page 12: **VII Definitions V. GIFTS or FAVORS**

Change: Changed \$100 to \$150

Rational: \$150 is the limit as defined in the City Charter, we wanted to be consistent.

5) Section: Page 13; **VII Definitions Z. INVITATION TO NEGOTIATE**

Change: The definition was deleted

Rational: We are not recommending this option in this document and do not want to provide a definition for a procedure which is not included in the policy.

City of Tucker, GA

Financial Management Policies Purchasing Policy

Approved on: _____ by Mayor and Council

I. Purpose

PURCHASING POLICY

The purpose of this policy is to state the City's position regarding the responsibility and authority for the acquisition and contracting for Goods, Services, Professional Services, Real Estate, Construction Services and Capital Assets. This document will clarify purchasing functions and outline purchasing policies, as well as describe departmental relationships, responsibilities and participation in the procurement cycle. This policy will provide control functions, assure proper record keeping and confirm purchases in writing to allow the City to meet the following goals:

- A. Maintain at all times and under all conditions a continuous supply of Goods and Services necessary for the operation of the City;
- B. Encourage and promote fair and equal opportunity for all persons doing, or seeking to do, business with the City;
- C. Safeguard the quality and integrity of the City's procurement process;
- D. Ensure compliance with laws and regulations pertaining to the procurement of Goods, Services, Professional Services, Real Estate, Construction Services and Capital Assets;
- E. Manage procurement and inventories of purchased Goods to meet the use requirements of City departments at the most advantageous cost to the City;
- F. Administer procurement contracts and contract amendments; and
- G. Properly dispose of all material and equipment declared to be surplus or obsolete.

The philosophy behind this policy is one of separating the need for Goods and Services from the function of negotiation and executing the necessary contractual purchase agreement.

The Purchasing Policy outlined herein shall be used in conjunction with the Procurement Card Procedure Manual.

II. Scope

The scope of this purchasing policy covers the procurement of most Goods and Services for non-construction purposes. The policy covers all contractual and purchase agreements between the City and another Person. The procurement function includes the initial agreement/purchase, changes and/or re-negotiations. This policy establishes the specific responsibility and authority of the procurement of materials and services.

The provisions of this policy do not apply to procurements for the following:

- A. Public works construction contracts to the extent governed by O.C.G.A. §36-91-1 et seq.
- B. Services and construction whose procurement falls under a conflicting federal or Georgia statute;
- C. Land, artistic work, or other good whose inherent nature is unique and cannot be competitively compared to other goods within its class, except as provided in section VIII. Real Estate Acquisition;
- D. Employee Benefits and health related services procured through a quotation and negotiating process conducted by an expert in the field, or to maintain continuity of employee-health records;
- E. Travel, entertainment, conferences, training, speakers, instructors, facilitators, and meeting expenses, or other expenditures covered by another City policy;
- F. Insurance procured through a negotiating process;
- G. Items or services procured for resale or to generate a revenue;
- H. Advertising;
- I. Subscriptions and dues established during the budget process;
- J. Utilities; and
- K. Seized Property included in a court order authorizing disposal.

III. Ethics in Procurement

(Tucker City Charter, Section 2.1.3, Prohibitions)

“(a) No elected official, appointed officer, or employee of the city or any agency or political entity to which this charter applies shall knowingly:

(1) Engage in any business or transaction or have a financial or other personal interest, direct or indirect, which is in conflict with or which is within the scope of the proper discharge of official duties or which would tend to impair the independence of his or her judgment or action in the performance of official duties;

(2) Engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of official duties or would tend to impair the independence of his or her judgment or action in the performance of official duties;

(3) Disclose confidential information concerning the property, government, or affairs of the governmental body by which engaged without proper legal authorization or use such information to advance the financial or other private interest of himself or herself or others, except as required by law;

(4) Accept any valuable gift, whether in the form of service, loan, object, or promise, from any person, firm, or corporation which to his or her knowledge is interested, directly or indirectly, in any manner whatsoever, in business dealings with the governmental body by which he or she is engaged. As used in this paragraph, the term "valuable" means an amount determined by the city council; provided, however, that the amount shall not exceed \$150.00; or

(5) Vote or otherwise participate in the negotiation or in the making of any contract with any business or entity in which he or she or any member of his or her immediate family has a financial interest.

(b) Any elected official, appointed officer, or employee who has any private financial interest, directly or indirectly, in any contract or matter pending before or within any department of the city shall disclose such private interest to the city council. As used in this subsection, the term "private financial interest" includes the interest of a spouse, child, or significant other or domestic partner. The mayor or any councilmember who has a private interest in any matter pending before the city council shall disclose in writing such private interest, such disclosure shall be entered on the records of the city council, and he or she shall disqualify himself or herself from participating in any decision or vote relating thereto. Any elected official, appointed officer, or employee of any agency or political entity to which this charter applies who shall have any private financial interest, directly or indirectly, in any contract or matter pending before or within such entity shall disclose such private interest to the governing body of such agency or entity.

(c) No elected official, appointed officer, or employee of the city or any agency or entity to which this charter applies shall use property owned by such governmental entity for personal benefit, convenience, or profit, except in accordance with policies promulgated by the city council or the governing body of such agency or entity

(d) Any violation of this section which occurs with the knowledge, express or implied, of a party to a contract or sale shall render such contract or sale voidable at the option of the city council.

(e) Except as authorized by law, no member of the city council shall hold any other elective city office or be employed by any city or county government during the term for which elected.”

IV. Responsibility

A. Purchasing Agent

The City Council appoints the City Manager, or such other Employee appointed by the City Manager, to serve as the Purchasing Agent for the City, or the City Council may contract with an independent third party to serve as the Purchasing Agent under the direction and control of the City Manager (City Charter, Section 3.04).

Where in the best interest of the City, the Purchasing Agent may require Bid/Proposal Bonds, insurance and other forms of protection for the City on the process of procuring Goods, Capital Assets, Services and Construction Services for the City.

B. City Council

The City Council shall approve final Contracts and Amendments valued more than \$25,000 and execute and bind the City to such agreements. Contracts valued at less than \$25,000 may be approved, executed and delivered by the City Manager or designee of the City Manager with a copy of said contract to be delivered to the City Council by the City Clerk via email. No contract shall be approved unless the funds have been appropriated in the budget of the City or otherwise by the City Council.

V. Competitive Procurements

Verbal Quotes: Requisitions for items under \$10,000 require at least three (3) verbal quotes. The vendor name and quote must be written on the requisition, which is used to generate the purchase order.

Written Quotes: Purchasing will receive at least three (3) written quotes on items requisitioned that are valued over \$10,000 to \$50,000. These requests will always be made in writing. The request for quotes can be made in writing; the Purchasing Agent will determine this.

Formal Sealed Bids: The Purchasing Office will request sealed bids on items or projects requisitioned **which are not professional services**, that meet the following criteria:

- The items or projects are valued over \$50,000.
- Clear and adequate specifications are available.
- Two or more responsible offerors are willing to participate in the process.

These requests are always made in writing. The vendor list is made up of companies from the bid list and recommendations from the department. The Bid List is a current file of requests from companies for this purpose. Sealed bids will be publicly advertised for a minimum of two (2) consecutive weeks in the City's legal organ.

Public Works Projects over \$100,000 are required by Georgia State Law to have Payment Bonds and Performance Bonds for 100% of the contract amount. When these bids are requested the standard City documents with this information will be used. The City will also require that a 5% Bid Bond be submitted with the bid. These projects will be advertised in the legal organ for the City.

A split or partial quotation may be awarded, if a request is for multiple Goods or Services, more than one Vendor provides a quotation that meets the specifications for the items, and a price comparison can be made between the items quoted.

Invitation for Bids

Invitation for Bids (IFB) are prepared and issued to prospective Bidders, with the goal of obtaining competitive responses for in the procurement of Goods, Capital Assets, Services and Construction Services.

Public notice (such as publication in a newspaper of general circulation or posting on the Purchasing Agent's Internet Web page) of the IFB must be given a minimum of fourteen (14) calendar days prior to the date set for bid opening, unless it can be demonstrated that an Emergency requirement for Goods Capital Assets, Services or Construction Services exists, in which instance, the requirement for public notice may be reduced by the Purchasing Agent.

Bids shall be opened publicly in the presence of the Purchasing Agent or the designee of the Purchasing Agent and at **least** one other witness at the time and place designated in the Invitation for Bids. All relevant information, including each Bid amount and Bidder's name, will be recorded on a summary sheet.

Split or partial bid awards may be awarded with the same guidelines and restrictions as those provided for split or partial quotation awards.

Correction or withdrawal of inadvertently erroneous bids is permitted in accordance to the terms indicated within the IFB; however, minor irregularities may be waived by the City. No bid may be withdrawn for a period of ninety (90) days after the time scheduled for bid opening, or as otherwise stated in the IFB.

Late bids will be rejected and returned unopened.

Bids will be evaluated based on the qualification factors set forth in the IFB, which may include criteria to determine acceptability of Goods or Capital Assets (for example, inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose). Criteria for the acceptability of Goods or Capital Assets shall be used to determine whether particular Goods are responsive to the IFB, and not to determine the relative desirability between acceptable Goods or Capital Assets. The City reserves the right to waive any informalities or irregularities of bids, to request clarification of information submitted in any bid, to further negotiate with the Responsive and Responsible Bidder selected for Contract award, or to reject any or all bids for any reason whatsoever.

If no Responsive and Responsible Bids are received or all bids are rejected, the City may procure such Goods and Services by direct negotiation as indicated below in Non-Competitive Procurement of Goods and Services.

The Bid will be awarded, if an award is made, to the Responsible and Responsive Bidder offering the lowest price whose bid meets the requirements and criteria set forth in the Invitation for Bid. The Bid may require a Contract.

Request for Proposals (RFP)

When the Purchasing Agent determines the use of an Invitation for Bids is not practical or not advantageous because of existing market conditions or the type of items required, the City may procure Goods, Capital Assets, Services, or Construction Services through receipt of competitive sealed proposals. Competitive sealed proposals are solicited through the use of an RFP, with the goal of obtaining competitive responses.

Public notice of the RFP shall be given in the same manner as the procurement described in section VII, sub-section A of this policy.

Proposals shall be opened publicly by the Purchasing Agent, in the presence of one or more witnesses at the time and place designated in the RFP. A register of proposals is prepared that lists each Proposer's name. Interested persons shall have access to information regarding procurement transactions of the City in accordance with City policy and the Georgia Open Records Act, O.C.G.A. §50-18-70 et seq.

Correction or withdrawal of proposals is permitted in accordance with instructions contained within the RFP. No proposal may be withdrawn for a period of ninety (90) days after the time scheduled for proposal opening, or as otherwise stated in the RFP.

Late proposals will be rejected and returned unopened.

The RFP will identify the criteria to be considered and evaluated as the basis of award.

Proposals submitted by Responsible and Responsive Proposers are evaluated by Purchasing Agent or the designee of the Purchasing Agent based upon the criteria applicable to the RFP. All proposals (or the most acceptable proposals in the discretion of any committee evaluating proposals) will be ranked in order of their acceptability to the City, giving consideration to the criteria. The City has no obligation to award the Contract to the Proposer who proposes the lowest price.

The City reserves the right to waive any informalities or irregularities of proposals, to request clarification of information submitted in any proposal, to further negotiate with a Responsive and Responsible Proposer who has been selected for Contract award, or to reject any or all proposals for any reason whatsoever.

The Contract award will be awarded, if award is made, by the City to the Responsive and Responsible Proposer whose proposal is determined, in the City's exclusive discretion, to be the most advantageous to the City, taking into consideration price, qualifications, and other factors as indicated in the RFP. The RFP will contain the basis on which the award is to be made.

If no Responsive and Responsible proposals are received or all proposals are rejected, the City may procure such Goods, Capital Assets, Services, and Construction Services by direct negotiation as indicated below in Non-Competitive Procurement of Goods and Services.

Request for Qualifications

Requests for Qualifications (RFQ) may be used when it is determined to be in the City's best interest to evaluate the experience and qualifications of a Service, Construction Service or Professional Service provider, without regard to price or prior to considering price.

The procedure for soliciting, opening and evaluating statements of qualifications shall be the same as described herein for competitive sealed proposals. Such service providers whose qualifications meet the criteria established in the RFQ, at the sole discretion of the City, may be considered for Contract award by participation in the completion price negotiation. The City shall attempt to negotiate a fee with the highest ranked firm. If no agreement is reached, the City shall begin negotiations with the next highest ranked firm. Negotiations will proceed in this manner until an agreement is reached. Alternatively, the City may, by Direct Negotiation, finalize terms with service providers who are selected for award based on qualifications. The City reserves the right to reject any or all responses for any reason. Clarification of information may be requested by the City.

Online Reverse Auction

The City reserves the right to utilize this procurement method when advantageous. The process will be specified in the Solicitation Documents.

Performance Guarantee

A Bid/ Proposal Bond or Performance Bond may be required for any solicitation.

Approval of Awards and Recommendations

Prior to the consummation of the purchase by the City of Goods, Services, or Professional Services, such purchase shall be approved by a person having approval authority over such purchase.

Forms

The Purchasing Agent shall provide and update all forms to procure Goods, Services, and Professional Services, as needed.

VI. Non-Competitive Procurements

The provisions of this policy section shall apply to the procurement of Goods, Capital Assets, Services, Construction Services or Professional Services, when competitive procurement is not practical, feasible, possible or desirable. Notwithstanding any other provision, any Contract or subcontract entered into by the City with any Person for the construction, reconstruction, or maintenance of all or part of a public road in the City, including but not limited to a Contract or subcontract for the purchase of materials, for the hiring of labor, for professional services, or for other things or services incident to such work, shall be entered into in accordance with O.C.G.A. § 32-4-114.

Sole Source Procurement

The City may acquire Goods, Capital Assets, Services, Construction Services or Professional Services

pursuant to a Sole Source Procurement. Sole Source Procurement is available when Goods, Services, or Professional Services are limited to one source, or when they must be obtained from a specific manufacturers' dealer and valid competition among dealers does not exist. The User must provide the justification for the Sole Source Procurement to the Purchasing Agent after approved by the City Manager or Council.

Single Source Procurement

The City may acquire Goods, Capital Assets, Services, Construction and Professional Services pursuant to a Single Source Procurement. A Single Source Procurement is a procurement made from one Person among others in a competitive marketplace which, for justifiable reasons, is found to be most advantageous for the purpose of fulfilling the given purchasing need. The User must provide the justification for the Single Source Procurement to the Purchasing Agent after approved by the City Manager or City Council. The Purchasing Agent may elect to purchase particular brand name Goods or Services when the Goods or Services comprise a major brand system, program or service previously selected by the City and due to operational effectiveness, future enhancements or additions, or maintenance or storage of spare parts precludes the mixing of brands, manufacture, etc.

Direct Negotiation

Following the completion of a Competitive Award solicitation process above that fails to produce a responsible or responsive Bidder or Proposer, fails to produce a qualified respondent, or for which all submissions were rejected for any reason, the City may procure the Goods, Capital Assets, Services, Construction Services or Professional Services that were the subject of such failed solicitation by Direct Negotiation with any provider of such Goods or Services when issuing a revised solicitation is not recommended by the City Manager with concurrence from legal counsel.

Direct Negotiation will be completed by the Purchasing Agent, assisted as needed by the User and legal counsel.

Emergency Procurement

The City may acquire Goods, Capital Assets, Services, Construction Services or Professional Services by directly negotiating an award in the event of an Emergency.

The City Manager shall make the determination when an Emergency exists. Such emergency procurements shall be made with as much competition as is practicable under the circumstances.

A written basis for declaring the Emergency and for the selection of the particular Person for the provision of Goods, Capital Assets, Services, Construction Services or Professional Services shall be included in the Contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the Contract, a listing of the item procured under the Contract, and the identification number of the contract file.

If an Emergency situation should arise after office hours which requires immediate action on the part of the agency involved for the protection of the best interest of the City or if a like situation arises on a weekend or holiday and when it is not possible or convenient to reach the City Manager or Purchasing Agent, any purchase necessary shall be made by the official in charge of such agency, and such purchase reported to the Purchasing Agent within 24 hours.

Costs under the Competitive Threshold

The Purchasing Agent with the consent of the City Manager, where applicable, may acquire Goods, Capital Assets, Construction Services and Professional Services appropriated by the City Council in the City budget or otherwise by Direct Negotiation or by some other non-competitive method, when the dollar value of the purchase does not exceed \$[25,000] and a properly executed and authorized Requisition is received. Under this non-competitive method, the Purchasing Agent shall attempt to obtain the Goods, Capital Assets, Services, Construction or Professional Services most advantageous to the City, price and other factors considered.

The User may acquire by Requisition Goods, Services, Construction Services and Professional Services appropriated by the City Council in the City budget or otherwise by Direct Negotiation or by some other non-competitive method, when the dollar value of the purchase does not exceed \$25,000. Under this non-competitive method, the User shall attempt to obtain the Goods, Capital Assets, Services, Construction or Professional Services most advantageous to the City, price and other factors considered.

Direct Negotiation and Other Public Entities and Co-ops

The City may acquire Goods, Capital Assets and Services by Direct Negotiation or other method involving limited or no competition from a Supplier having a requirements Contract/Annual Agreement with any public entity (e.g., federal, state, county, city, authority, school board, Buying Cooperative, etc.) for Goods, Capital Assets or Services described in such contract and at prices or discounts no less favorable than any set forth in such Contracts. Use of State/Co-Op Contracts: The Purchasing Agent may, independent of the requirements of bid process of this article, procure supplies, services or construction items through the Contract established through competitive means by the purchasing division of the State of Georgia, national Co-Ops (i.e.-U.S. Communities), and collaborative purchasing agreements with other local governments when deemed to be in the best interest of the City.

- A. Once a Contract is awarded by the City, the Contract may be amended, without the necessity of rebidding such Contract, provided the original Contract amount and the scope of the Contract is not substantially altered. The Purchasing Agent will review all change orders. Change orders will be processed to correct the account distribution, quantity, addition/deletion of line items, change in description and unit price. If a quoted price of the change order is less than \$25,000, the requisition will be processed pursuant to the requirements of Section V(A)(12) of this Purchasing Policy. Any requisitions with a change order of \$25,000 or more require City Council approval. The Purchasing Agent cannot use the change order process to circumvent the Purchasing Policy. Change orders cannot substantially change the scope of the Contract.

Credit Cards

Credit Cards shall only be issued upon approval of both of the department head and the City Manager. The Credit limit for each card shall be established by the Director of Finance. All individuals assigned a Credit Card on behalf of the City shall be personally responsible for its use and any fraudulent use. The

City Manager shall maintain a Procurement Card Procedure Manual. This manual shall be on file with the City Clerk and made available for all users.

VII. Definitions

When used in this policy, the following words, terms and phrases, and their derivations, shall be the meaning ascribed to them in this section, except where the context clearly indicates a different meaning,

A. ADDENDUM means a change, clarification or correction in the Solicitation Documents, prior to the award of a Contract.

B. AMENDMENT means an agreed upon change order, addition to, deletion from, correction or modification of a Contract including a Contract Extension or a Contract Renewal.

C. APPEAL means a specific written objection by an interested Person to a Request for Qualifications, a Request for an IWQ, an Invitation for Bid, an Invitation to Negotiate, a Request for proposal, or an award or proposed award of a Contract, with the intention of receiving a remedial result.

D. BID / PROPOSAL BOND means a form of bid security executed by the Bidder (or Proposer) as principal and by a Surety, to guarantee that the Bidder (or Proposer) will enter into a Contract within the time specified in the Invitation for Bid or Request for proposals, and will furnish the necessary bonds and insurance, and meet any other requirements of those documents.

E. BIDDER means a person or entity submitting a bid or quote to the City for the supply of Goods or Services.

F. BUYING COOPERATIVE OR ALLIANCE means a group of public entity purchasers organized for the purpose of creating contracts or pricing agreements in order to take advantage of group or quantity buying discounts or special pricing from which members of the group can benefit.

G. CAPITAL ASSET is an item of personal property having a normal life expectancy of three years or more other than components.

H. CHANGE ORDER means a valid instruction, from an authorized signatory of the city, that results in revised work to a contract that increases the cost to the City. Change orders are appended to the original contract and become part of said contract.

I. CITY means the City of Tucker and, as the context warrants, those persons or bodies authorized to act on its behalf, including but not limited to the City Council, committees, boards and staff.

J. CITY ETHICS POLICY shall mean Article XI., Code of Ethics, of Chapter 2, Administration, of the Code of the City of Tucker, as amended.

K. CITY FINANCE DIRECTOR/FINANCE DIRECTOR means the City Accountant as described in the City Charter, his agent, or the department head of the City Finance Department, if such a department is in existence.

L. COMPETITIVE AWARD means a procurement based upon the outcome of one of the competitive processes set forth in this Policy, where award is made based on the lowest quotation or Bid submitted by a responsible and responsive Bidder or to the most qualified or advantageous Proposer based on the

qualitative and/or quantitative factors identified for the procurement. A Competitive Award can be made even if only a single bid or proposal has been received from a Bidder or Proposer who is determined to be responsible and responsive.

M. CONSTRUCTION means the process of building, altering, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property including the provision of materials therefor. The term "Construction" does not include the routine operation, repair and/or maintenance of existing structures, buildings or real property.

N. CONSTRUCTION SERVICES means services rendered by an independent and licensed contractor having expertise in Construction.

O. CONTRACT means all types of City agreements for the purchase or disposal of Goods, Real Estate or Capital Assets, and the procurement of Services, Professional Services or Construction Services regardless of what they may be called, including contracts for a fixed price, cost plus a fixed fee, incentive contracts, and contracts providing for the issuance of job or task orders, leases, letter contracts and purchase orders. Contracts also include Amendments, modifications and supplemental agreements with respect to any of the foregoing. Every Contract must be duly authorized and approved prior to execution.

P. CONTRACT EXTENSION means an Amendment to a Contract that includes an increase in the term of a Contract, for which no options to renew the Contract beyond the current expiration date exist.

Q. CONTRACT RENEWAL means an exercise of an approved, existing option to increase the term of a Contract. Options to renew a Contract are often done in annual increments.

R. EMPLOYEE means an individual drawing a salary or wage from the City whether on a full-time or part-time basis. The term shall encompass all members of the City Council without regard to whether or not such individuals are compensated. For purposes of this Purchasing Policy the term "employee" shall include, any Vendor or any employee of such Vendor who has entered into a Contract with the City to provide administrative and department services contemplated in Section 2.12 of the Charter of the City.

S. EMERGENCY PROCUREMENT means any procurement of Goods, Capital Assets, Services or Professional Services in the context of an Emergency.

T. EMERGENCY means a situation that occurs suddenly and unexpectedly and demands immediate action to prevent delays which may vitally affect the health, safety or welfare of the public or City Employees and affects the continuation of services to the citizens, and/or serious loss or injury to the City. Emergency shall also mean a condition, malfunction, or occurrence in which the immediate procurement of an item (i.e. Good, Services, or Professional Service) is essential to comply with regulatory requirements.

U. ENVIRONMENTALLY PREFERABLE GOODS AND SERVICES means Goods and Services that have a lesser or reduced negative effect on human health and the environment when compared with competitive Goods and Services that serve the same purpose.

V. GIFTS or FAVORS means anything of any service of value. Value shall be defined in the same manner as defined as the lesser of \$150 or an amount specified in any City's ethics policy.

W. GOODS or COMMODITIES means supplies, apparatus, materials, equipment and other forms of tangible personal property used by a City department in the accomplishment of its responsibilities other than Capital Assets.

X. GOVERNING AUTHORITY means the City entity responsible for the Contract.

Y. INFORMAL WRITTEN QUOTES (IWQ) means all documents utilized for soliciting quotations for Goods, Services, or Professional Services, in which award is made based on the lowest responsive and responsible quotation and in which the type or cost of the procurement does not require a more formal Bid or proposal process.

Z. INVITATION FOR BID (IFB) means all documents utilized for soliciting bids, including those attached or incorporated by reference. These include a scope of work and all contractual terms and conditions applicable to the procurement. Bids are requested when requirements are clearly defined, price is the major determining factor for award, and a formal sealed submittal is required.

~~Z. INVITATION TO NEGOTIATE (ITN) means documents used for soliciting competitive proposals in which negotiation of price and other factors is to commence after receipt of proposals and prior to recommendation of award. This process may be used when the scope of work is complex or difficult to define, if strict comparison of Services or Goods required may be difficult because components are likely to vary among Proposers or in any situation when it is in the City's best interest to negotiate prior to recommendation of award to obtain the Services or Goods that best meet the City's needs, price and other factors being considered.~~

AA. LATE BID/PROPOSAL means a Bid or proposal received after the time or date such bid or proposal was due, as stated in the Solicitation Documents.

BB. LIFE CYCLE COST ASSESSMENT means the comprehensive accounting of the total cost of ownership, including initial costs, energy and operational costs, longevity and efficacy of service and disposal costs.

CC. MULTIPLE AWARD SCHEDULE CONTRACT means a Contract based upon one solicitation awarded to two or more Vendors to supply Goods or Services.

DD. NEGOTIATED AWARD means a procurement made as the result of negotiations between the City and a Supplier, such as a Sole Source Procurement or Single Source Procurement or another instance, including competitive Invitation to Negotiate, where a Contract award based on direct negotiations with a Supplier of Goods or Services is appropriate.

EE. OFFICIAL means any City elected or appointed person who holds office or any person appointed by the mayor and council of the City to serve on (1) the planning commission of the City, (2) any board or commission of the City having quasi-judicial authority; and, (3) any authority created by the City, either individually or jointly with other local governments pursuant to Georgia law.

FF. ONLINE REVERSE AUCTION means a purchasing method wherein Bidders enter prices for items electronically, and their prices are displayed for other bidders to see with all Bidders given the opportunity to continually bid a lower price until the time period of the bid expires.

GG. ORDINANCE means related Administration Ordinance in Chapter 2, Article 7 of the City's Municipal Code.

HH. PAYMENT TERMS means the established due date for payments by the City to pay an invoice. Absent any agreement otherwise stated, the City's payment term will be Net 30.

II. PERFORMANCE BOND means a bond provided by a contractor/supplier in which a surety guarantees to the City that the Goods or Capital Assets are delivered or the Services or Construction Services are performed in accordance with the Contract documents. A letter of credit issued by a financial institution that meets the City's requirements may, at the discretion of the City, be

02016-08-26

**STATE OF GEORGIA
CITY OF TUCKER**

ORDINANCE 2016-08-26

**AN ORDINANCE TO AMEND CHAPTER 16
LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS**

WHEREAS, the City of Tucker is a municipality created by the 2015 Georgia General Assembly pursuant to House Bill 515 (hereinafter referred to as “HB 515”); and

WHEREAS, the Mayor and City Council has previously adopted Chapter 16 Licenses, Permits and Miscellaneous Regulations; and

WHEREAS, the Mayor and City Council desire to amend the Chapter add additional business to be regulated by the City; and

NOW THEREFORE, the Mayor and Council hereby ordains that the Chapter 16 of the Code is hereby amended by appending the attached Articles to the existing Chapter. This ordinance shall become effective upon its adoption.

SO ORDAINED, this the 8th day of August, 2016.

Approved:

Frank Auman, Mayor

ATTEST:

Jennifer Davis, City Clerk

Chapter 16 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS¹¹

ARTICLE III. - ASTROLOGERS¹³

Footnotes:

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Cross reference— Fortunetelling prohibited, § 16-2.

State Law reference— Authority to prohibit, tax and regulate astrology, O.C.G.A. § 36-1-15.

Sec. 15-71. - Definition.

In this article, "astrology" means the interpretation of human experience based upon an examination and correlation to celestial activity for fee, gift or donation.

(Code 1976, § 7-1212)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 15-72. - Applicability.

This article governs the practice of astrology in the unincorporated area of the county.

(Code 1976, § 7-1211)

Sec. 15-73. - Penalty.

Any person violating any of the provisions of this article shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days, or both.

State Law reference— Authority for above penalty, O.C.G.A. § 36-1-15.

Sec. 15-74. - License—Required.

It shall be unlawful for any person to practice astrology in the unincorporated area of the county unless such person holds a valid, unexpired and unrevoked license to engage in such practice in astrology issued by the county.

(Code 1976, § 7-1213)

Sec. 15-75. - Same—Application.

An application for a license to engage in the practice of astrology shall be made to the finance department on a form prepared by it. Prior to being licensed to practice astrology the applicant shall:

- (1) Be eighteen (18) years of age or over.
- (2) Be of good moral character.
- (3) Not have been convicted of a crime or violated any ordinance involving the following: criminal conduct, larceny, embezzlement, fraudulent conveyancing, perjury and/or false swearing, or subrogation of either, gambling, deceitful means, artful practices, lottery, felonies or other crimes involving moral turpitude within three (3) years of the date of application.
- (4) Have a high school diploma or the equivalent thereof.

(Code 1976, § 7-1214)

Sec. 15-76. - Other rules apply.

In addition to the requirements of this article, the same rules apply to an astrology applicant or licensee that apply to general business applicants or licensees.

(Code 1976, § 7-1215)

Secs. 15-77—15-90. - Reserved.

ARTICLE IV. - GOING-OUT-OF-BUSINESS SALES^[4]

Footnotes:

--- (4) ---

Cross reference— Going-out-of-business sale signs, § 21-147.

DIVISION 1. - GENERALLY

Sec. 15-91. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fire and other altered goods sale means a sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water or other means.

Going-out-of-business sale means a sale held out in such a manner as to reasonably cause the public to believe that upon the disposal of the stock or goods on hand the business will cease and be discontinued, including but not limited to the following sales: Adjuster's; adjustment; alteration; assignee's bankrupt; benefit of administrator's; benefit of creditor's; benefit of trustee's; building coming down; closing; creditor's committee; creditor's end; executor's; final days; forced out; forced out of business; insolvent's last days; lease expires; liquidation; loss of lease; mortgage sale; receiver's; trustee's; and quitting business.

Goods means any goods, wares, merchandise or other property capable of being the object of a sale regulated under this article.

Removal of business sale means a sale held out in such a manner as to reasonably cause the public to believe that the person conducting the sale will cease and discontinue business at the place of sale upon disposal of the stock of goods on hand and will then move to and resume business at a new location or will then continue business from another existing location.

(Code 1976, § 7-1072)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 15-92. - Persons exempt from article.

The provisions of this article do not apply to or affect the following persons:

- (1) Persons acting pursuant to an order or process of a court of competent jurisdiction.
- (2) Persons acting in accordance with their powers and duties as public officials.
- (3) Duly licensed auctioneers, selling at auction.
- (4) Any publisher or newspaper, magazine or other publication that publishes in good faith any advertisement, without knowledge of its false, deceptive or misleading character or without knowledge that there has not been compliance with the provisions of this article.

(Code 1976, § 7-1074)

Sec. 15-93. - Duties of licensee.

A licensee under this article shall:

- (1) *Adhere to inventory.* Make no additions during the period of the licensed sale to the stock of goods set forth in the inventory attached to the application for license.
- (2) *Advertise properly.* Refrain from employing any untrue, deceptive or misleading advertising.
- (3) *Adhere to advertising.* Conduct the licensed sale in strict conformity with any advertising or holding out incident thereto.
- (4) *Keep duplicate inventory.* Keep available at the place of sale a duplicate copy of the inventory submitted with the application, and present this duplicate to inspecting officials upon request.
- (5) *Segregate noninventoried goods.* Keep any other goods separate and apart from the goods listed in the filed inventory as being objects of sale, and make this distinction clear to the public by placing tags on all inventoried goods in and about the place of sale apprising the public of the status of all these goods.

(Code 1976, § 7-1080)

Sec. 15-94. - Interval between sales.

Any person who has held a sale as regulated under this article at the location stated in the application within one (1) year last past from the date of the application shall not be granted a license.

(Code 1976, § 7-1081)

Sec. 15-95. - Location of sale restricted.

Where a person applying for a license required by the provisions of this article operates more than one (1) place of business, the license issued shall apply only to the one (1) store or branch specified in the application. No other store or branch shall advertise or represent that it is cooperating with this sale or in any way participating in the licensed sale, nor shall the store or branch conducting the licensed sale advertise or represent that any other store or branch is cooperating with it or participating in any way in the licensed sale.

(Code 1976, § 7-1082)

Sec. 15-96. - Bankrupt or fire sales.

- (a) *Sale of unaffected or undamaged goods.* It shall be unlawful for any person conducting any sale, whether by auction or otherwise, of any goods, wares or merchandise which are or have been or which are claimed to be or claimed to have been in or damaged by a fire, or which are or have been or which are claimed to be or claimed to have been sold or purchased on account of any fire, or which are or have been or are claimed to be or claimed to have been the property of any bankrupt or person who has failed in business or has made a general assignment, or which are being sold or offered for sale in any other way than through the usual channels of trade, to sell or offer for sale therein any goods, wares or merchandise not so circumstanced or affected or damaged.
- (b) *Adding to goods.* It shall be unlawful for any person to add to, or to permit to be added to, or to bring into or permit to be brought into any store, warehouse or other building in the county, any goods for the purpose of adding to these goods, wares or merchandise so circumstanced or affected and on hand in this store, warehouse or other building for the purpose of being sold at this sale.

(Code 1976, § 7-1083)

Sec. 15-97. - Advertising restrictions.

- (a) It shall be unlawful for any person to advertise, in any newspaper, handbill, sign, poster or any other such printed media, or by radio or television broadcast to residents of the unincorporated area of the county, that the person is conducting a closing-out, going-out-of-business, fire or bankrupt sale or similar sale as defined in this article as a means of attracting the general public to the person's place of business when such person does not actually intend to close out or go out of business or has not purchased the license required by this article.
- (b) It shall be unlawful for any person to advertise by sign, poster, handbill, newspaper or any other such printed or written media any closing-out, going-out-of-business, fire or bankrupt sale or similar sale as defined in this article unless all the written or printed matter in this advertisement shall be of the same size and type, including the notice that sales, excise and other taxes are either included or excluded from the advertised price and also whether the advertised price includes an article of the type being advertised to be traded in on the advertised article.

(Code 1976, § 7-1084)

Secs. 15-98—15-115. - Reserved.

DIVISION 2. - LICENSE

Sec. 15-116. - Required.

A license issued by the finance department shall be obtained by any person before selling or offering to sell any goods at a sale to be advertised or held out by any means to be any of the following kinds:

- (1) Going-out-of-business sale.
- (2) Removal of business sale.
- (3) Fire and other altered stock sale.

(Code 1976, § 7-1073)

Sec. 15-117. - Application.

A person desiring to conduct a sale for which a license is required by this division shall make a written application to the finance department setting forth the following information:

- (1) The true name and address of the owner of the goods to be the object of the sale.
- (2) The true name and address of the person from whom the applicant purchased the goods to be sold and the price therefor, and if not purchased, the manner of this acquisition.
- (3) A description of the place where the sale is to be held.
- (4) The nature of the occupancy, whether by lease or sublease and the effective date of the termination of such occupancy.
- (5) The dates of the period of time in which the sale is to be conducted.
- (6) A full and complete statement of the facts in regard to the sale, including the reason for the urgent and expeditious disposal of goods thereby and the manner in which it will be conducted.
- (7) The means to be employed in advertising the sale together with the proposed content of any advertisement.
- (8) A complete and detailed inventory of the goods to be sold at this sale as disclosed by the applicant's records. This inventory shall be attached to and become part of the required application.

(Code 1976, § 7-1075)

Sec. 15-118. - Established business required; exception.

- (a) Any person who has not been the owner of a business advertised or described in the application for a license under this division for a period of at least twelve (12) months prior to the date of the proposed sale shall not be granted a license under this division.
- (b) Upon the death of a person doing business in the county, such person's heirs, devisees or legatees or the representative of such person's estate shall have the right to apply at any time for a license under this division.

(Code 1976, § 7-1076)

Sec. 15-119. - Inventory restrictions.

- (a) All goods included in the inventory of an applicant for a license under this division shall have been purchased by the applicant for resale on bona fide orders without cancellation privileges and shall not comprise goods purchased on consignment.

- (b) The inventory shall not include goods ordered in contemplation of conducting a sale regulated under this division. Any unusual purchase or additions to the stock of goods of the business hereby affected within thirty (30) days before the filing of an application under this division shall be deemed to be of this character.

(Code 1976, § 7-1077)

Sec. 15-120. - Conditions of issuance.

A license shall be issued under this division on the following terms:

- (1) *Licensing period.* The license shall authorize the sale described in the application for a period of not more than thirty (30) consecutive days, Sundays and legal holidays excluded, following the issuance thereof.
- (2) *Renewal procedure.* The finance department shall renew a license for one (1) period of time only, this period to be in addition to the thirty (30) days permitted in the original license and not to exceed thirty (30) consecutive days, Sundays and holidays excluded, when it finds that all of the following exists:
 - a. Facts justifying the license renewal.
 - b. The licensee has filed an application for renewal.
 - c. The licensee has submitted with the application for renewal a revised inventory showing the items listed on the original inventory remaining unsold and not listing any goods not included in the original application and inventory. For the purpose of this subparagraph, any application for a license under the provisions of this division covering any goods previously inventoried as required hereunder shall be deemed to be an application for renewal, whether presented by the original applicant, or by any other person.
- (3) *Nature of sale.* The license shall authorize only the type of sale described in the application at the location named therein.
- (4) *Salable goods.* The license shall authorize only the sale of goods described in the inventory attached to the application.
- (5) *Surrender of general licenses.* Upon being issued a license hereunder for a going-out-of-business sale, the licensee shall surrender to the finance department all other business licenses the licensee may hold at the time applicable to the location and goods covered by the application for a license under this division.
- (6) *Nontransferability.* Any license provided for shall not be assigned or transferable.

(Code 1976, § 7-1079)

Sec. 15-121. - Fees.

- (a) Any applicant for a license under this division shall submit to the finance department with the application the required license fee.
- (b) Any applicant for a renewal license under this article shall submit to the finance department with the renewal application the required renewal license fee.
- (c) The license fee shall be in the amount established by action of the board of commissioners, a copy of which is on file in the office of the clerk of the board of commissioners.

(Code 1976, §§ 7-1078, 7-1085)

Secs. 15-122—15-135. - Reserved.

ARTICLE V. - PAWNSHOPS^[5]

Footnotes:

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State Law reference— Pawnbrokers, O.C.G.A. § 44-12-130 et seq.

Sec. 15-136. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Employee means any person working for an owner or pawnbroker, or any owner or pawnbroker who, in the performance of duties or the management of the business affairs of a pawnshop, comes into substantial contact with members of the public, or is employed on a part-time or full-time basis, either with or without remuneration, by a pawnshop.

Pawn or *pledge* means a bailment of personal property as security for any debt or engagement, redeemable upon certain terms and with the implied power of sale on default.

Pawnbroker means any person, whether an owner or not, who works in a pawnshop on a regular basis and in a managerial capacity whereby the person has charge of the business or operations of the pawnshop. "Pawnbroker" includes any person whose business or occupation it is to take or receive, by way of pledge, pawn or exchange, any goods, wares or merchandise or any kind of personal property whatever, as security for the repayment of money lent thereon.

Pawnshop means any business wherein a substantial part thereof is to take or receive, by way of pledge, pawn or exchange, any goods, wares, merchandise or any kind of personal property as security for the repayment of money lent thereon.

(Code 1976, § 7-1131)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 15-137. - Penalties; suspension or revocation of license.

Any person who violates any provision of this article shall, upon conviction, be punished as provided in section 1-10. Further, any person failing to comply with any provision of this article, or such other laws, ordinances and regulations as may be passed by the board of commissioners for the conduct of the business of a pawnbroker, shall have the license to conduct this business revoked. This revocation shall result from conviction in any court for a violation of any provision of this article or any other ordinance or regulation covering the conduct of the business for which a permit and license have been issued.

(Code 1976, § 7-1143)

Sec. 15-138. - Responsibility for enforcement.

The police department shall have the responsibility for the enforcement of this article.

(Code 1976, § 7-1144; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-139. - Annual permit.

- (a) All persons, before beginning the business of operating a pawnshop or becoming an employee of a pawnshop or similar place where money is advanced on goods or other effects or merchandise of any kind is taken in pawn, shall first file an application with the police department and obtain an annual permit to conduct or be employed in the business. No permit shall be issued until a fee in the amount established by action of the board of commissioners, a copy of which is on file in the office of the clerk of the board of commissioners, is paid to the police department.
- (b) The requirements of this section are in addition to the requirements of article II of this chapter.
- (c) The application for the permit required shall state the street and number at which it is proposed to operate the business. The application shall contain the full name, address, phone number, date of birth and social security number of all persons, including pawnbrokers, owning any interest in the proposed business, plus any additional information, including fingerprints, deemed necessary by the police department.
- (d) No business license shall be issued to a person until the permit required by this section has been granted by the police department.

(Code 1976, §§ 7-1132—7-1134; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-140. - Employees.

No person shall be employed by a pawnshop in any capacity until such person has been fingerprinted by the police department and has been issued an annual permit authorizing such person to be employed by a pawnshop. It shall be the duty of the pawnbroker to assure that there is compliance with the provisions of this section.

(Code 1976, § 7-1136; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-141. - Character of persons connected with business.

No owner, stockholder, employee, pawnbroker or any other person connected with the business for which a license or permit is sought shall have been convicted of a crime involving moral turpitude or shall have been convicted of any crime involving theft or a crime against property.

(Code 1976, § 7-1137)

Sec. 15-142. - Records.

All pawnbrokers shall keep books wherein shall be entered an accurate description of all property pledged, traded or sold to them. This description shall include, to the extent possible, the name of the maker of the article, any identifying mark or number and a statement of the kind of material of which it is made. In these books there shall be entered also the full name and address of the person by whom it was deposited or sold, and the time when it was done. These entries shall be made as soon after the transaction as is possible, in no event more than one (1) hour thereafter. The pawnbroker shall photograph the person pawning the merchandise along with a pawnbroker's ticket showing a transaction number. The pawnbroker

shall obtain the right index fingerprint provided it has not been amputated; if so, the next adjoining finger shall be acceptable.

(Code 1976, § 7-1138)

State Law reference— Permanent records, O.C.G.A. § 44-12-132 et seq.

Sec. 15-143. - Daily reports; fingerprinting, photographing of persons pawning articles.

- (a) Every pawnbroker shall make a daily report in writing to the police department in such form as may be prescribed by the police department of all property pledged, traded or bought by such pawnbroker during the twenty-four (24) hours ending at 9:00 p.m. on the date of the report. These reports shall be typewritten. In addition to any other information required by the police department, the reports shall show:
 - (1) The name and address of the pawnbroker.
 - (2) The time of transaction.
 - (3) The serial numbers of pawn tickets.
 - (4) The amount paid or advanced.
 - (5) A full description of articles, including kind, style, material, color, design; kind and number of stones in jewelry and all identifying names, marks and numbers.
 - (6) A description of the person selling or pawning, including name, address, race, weight and height.
- (b) Insufficient reports shall be rejected, and any pawnbroker making them shall be deemed guilty of an offense.
- (c) In addition to the other records and information, each pawnbroker shall obtain from each person pawning any articles with such pawnbroker the fingerprint of the right-hand index finger, unless this finger is missing, in which event the print of the next finger in existence on the right hand of the person pawning the articles shall be obtained with a notation as to the exact finger printed. All prints shall be made on forms approved by the police department and the pawnbroker shall obtain all other information called for on the form approved. Fingerprints and the information as required in this section shall be obtained from all persons each time these persons pawn any article with a pawnbroker, regardless of whether the person may have previously pawned an article with the pawnbroker and been fingerprinted.
- (d) In addition to other records and information, each pawnbroker shall photograph each customer with the photograph showing the pawnbroker's ticket and transaction number. This photograph shall be reduced to a negative form and maintained by the pawnbroker as a permanent record.

(Code 1976, § 7-1139; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-144. - Hours of operation.

Pawnbrokers may not keep open their places of business except between 7:00 a.m. and 9:00 p.m., Monday through Saturday.

(Code 1976, § 7-1140)

Sec. 15-145. - Waiting period prior to disposal of articles.

Any pawnbroker or person operating under a pawnbroker's license who takes goods on pawn or buys goods, taking full title thereto, the word "goods" being used in the broadest sense and including all kinds of personal property, shall hold these goods so taken in pawn or purchase for at least thirty (30) days before disposing of them by sale, transfer, shipment or otherwise.

(Code 1976, § 7-1141)

Sec. 15-146. - Dealing with minors.

It shall be unlawful for any pawnbroker, the pawnbroker's agents or employees to receive goods in pawn from minors.

(Code 1976, § 7-1142)

Secs. 15-147—15-165. - Reserved.

ARTICLE VI. - PRECIOUS METAL DEALERS^[6]

Footnotes:

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State Law reference— Dealers in precious metals and gems, O.C.G.A. § 43-37-1 et seq.; additional local requirements authorized, O.C.G.A. § 43-37-5.

DIVISION 1. - GENERALLY

Sec. 15-166. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dealer means any person engaged in the business of purchasing precious metals or gems or goods made from precious metals or gems from persons or sources other than manufacturers or manufacturers' representatives or other dealers in precious metals or gems or a person engaged in any other business if, in conjunction with such business, precious metals or gems or goods made from precious metals or gems are purchased from persons or sources other than manufacturers or manufacturers' representatives or other dealers in precious metals or gems when the purchase is for resale in its original form or is changed by remounting, melting, reforming, remolding or recasting, or for resale as scrap or in bulk.

Employee means any person working for a dealer, whether or not the person is in the direct employment of the dealer, who, in the performance of duties or the management of the business affairs of the dealer, handles precious metals or gems, or who prepares any reports or records which are required by this article. "Employee" does not include any employee of any bank, armored car company, private security company, or other business entity which is acting in the sole capacity of bailee-for-hire in relationship to the dealer.

Gem means any precious or semiprecious stone cut and polished.

Precious metal means gold, silver, platinum or any alloy containing gold, silver or platinum.

Purchase means buy, barter, trade, accept as collateral for a loan, or receive for the purpose of melting down, crushing or otherwise altering the appearance of the item.

(Code 1976, § 7-1251)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 15-167. - Purpose; applicability of state law.

The purpose of this article is to regulate and establish qualifications for dealers of precious metals, gems and goods made from precious metals and gems, who engage in business in the unincorporated areas of the county. It is a further purpose of this article to enhance and supplement state law. Any permit fee required by the terms of this article shall be collected in addition to any license or registration fee as may be imposed on dealers by any state law.

(Code 1976, § 7-1265)

Sec. 15-168. - Exemptions.

- (a) The provisions of this article shall not apply to dealers exclusively engaged in the sale or exchange of numismatic coins or to transactions exclusively involving numismatic coins or other coinage.
- (b) The provisions of this article shall not apply to pawnshops, pawnbrokers, or employees of pawnbrokers who maintain permanent places of business within the unincorporated area of the county and are in compliance with article V of this chapter.

(Code 1976, § 7-1271)

Sec. 15-169. - Violations.

- (a) It shall be unlawful for any dealer or employee to violate any of the provisions of this article, whether or not such dealer or employee is the holder of a current, valid permit issued according to the terms of this article. It shall be a violation of this article for any person to:
 - (1) Make any false statement in an application for any permit provided for in this article.
 - (2) Make any false entry in any record or form required by the terms of this article.
 - (3) Violate any criminal law of this state while acting in the course of business as a dealer or employee of a dealer.
- (b) Willful violation of any of the provisions of this article shall be grounds for revocation of the dealer's business license.

(Code 1976, § 7-1266)

Sec. 15-170. - Responsibility for enforcement.

The police department shall have the responsibility for the enforcement of this article.

(Code 1976, § 7-1268; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-171. - Records of transactions.

- (a) Every dealer shall maintain a book in permanent form in which shall be entered at the time of each purchase of precious metals or gems or goods made from precious metals or gems, the following:
 - (1) The date and time of the purchase transaction.
 - (2) The name of the person making the purchase from the seller.
 - (3) The name, age and address of the seller of the items purchased and the distinctive number from each seller's driver's license or other similar identification card containing a photo of the seller.
 - (4) A clear and accurate identification and description of the purchased goods, including the serial model or other number, and all identifying marks ascribed thereon.
 - (5) The price paid for the goods purchased.
 - (6) The number of the check issued for the purchase price if payment is made by check.
 - (7) The signature of the seller.
- (b) The permanent record book required in this section shall be in legible English. Entries shall appear in chronological order, and shall be numbered in sequence. No blank lines may be left between entries. No obliterations, alterations or erasures may be made. Corrections shall be made by drawing a line of ink through the entry without destroying its legibility. The book shall be maintained for each purchase of precious metals or gems or goods made from precious metals or gems for at least two (2) years. The book shall be open to the inspection of any duly authorized law enforcement officer during the ordinary hours of business or any reasonable time. The book shall be kept at the business premises during ordinary hours of business.
- (c) Dealers exclusively engaged in buying or exchanging for merchandise scrap dental gold and silver from licensed dentists by registered or certified mail may record the post office record of the mail parcel in lieu of the seller's age, driver's license number and signature as required in this section.

(Code 1976, § 7-1259)

State Law reference— Permanent records, O.C.G.A. § 43-37-3.

Sec. 15-172. - Daily reports.

- (a) Every dealer shall record, on cards or forms furnished or approved by the police department the details of each purchase of precious metals or gems or goods made from precious metals or gems. These records shall be entered in legible English at the time of each purchase of such items, and each card or form shall bear the number of the corresponding entry made in the book required by section 15-171 of this article. Each record shall include such information as may be reasonably required by the police department and shall include, as a minimum, the following:
 - (1) An accurate description of all articles received in the transaction with the particular seller. This description shall include to the extent possible the maker of each article, any identifying mark, number or initials, any pattern or shape, and a statement of the kind of materials of which it is composed.
 - (2) The date and time of the transaction.
 - (3) The name and address of the dealer.
 - (4) The name of the person making the purchase.
 - (5) The full name, date of birth and address, race and gender of the seller, as well as a general description of the seller.
 - (6) The number of the seller's valid state driver's license or state-issued I.D. card, or other similar identification which bears a photograph of the seller.

- (7) Signature of seller.
 - (8) Such other information as may be required by any state law regulating dealers of precious metals and gems.
- (b) Each card or form required by this section shall be delivered or mailed to the police department within twenty-four (24) hours after the date on which the transaction occurred, and shall be handled in the following manner:
- (1) All such forms or cards shall be maintained in a locked container under the direct supervision of the police department and shall be available for inspection only for law enforcement purposes.
 - (2) The police department may allow any person to inspect the records for the purpose of locating stolen property, providing such person demonstrates theft of precious metals or gems by presenting an incident report or other similar document.

(Code 1976, § 7-1260; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

State Law reference— Written reports of certain purchases, O.C.G.A. § 43-37-4.

Sec. 15-173. - Photographs of articles and sellers; photocopies of documents.

- (a) Every dealer shall take a well-focused, properly exposed color photograph of all precious metals, gems or goods made from precious metals or gems, which are purchased by the dealer. In the case of flatware, a photograph may be made of a representative place setting.
- (b) In addition to photographing the items purchased, the dealer shall take a well-focused, properly exposed color photograph of the seller, and shall attach the photograph to the corresponding form or card required by section 15-172. In addition to the required photographs, the dealer shall attach to the form or card a photocopy of any bill of sale, receipt or other document tending to show the seller's ownership of the items purchased by the dealer, if any such documents exist, and a photocopy of the seller's driver's license or other identification authorized by this article.
- (c) All photographs required in this section shall be made with a self-developing camera and film system, or such other system as may be authorized in writing by the police department.

(Code 1976, § 7-1261; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-174. - Hours of operation.

Dealers may not keep open their places of business except between 7:00 a.m. and 9:00 p.m.

(Code 1976, § 7-1262)

Sec. 15-175. - Waiting period prior to disposing of articles.

Any dealer who in the course of business acquires precious metals or gems or goods made from precious metals or gems shall hold these items for at least seven (7) calendar days before disposing of them by sale, transfer, shipment, grinding, melting, crushing or otherwise altering the appearance of the items. This section does not prevent any dealer from storing such items off the business premises, or from placing such items in the hands of any bank or security company for safekeeping, provided that no such item shall be removed from the county during the above-described holding period.

(Code 1976, § 7-1263)

State Law reference— Similar provisions, O.C.G.A. § 43-37-6(a)(6).

Sec. 15-176. - Inspection of items held by dealer.

All items held by any dealer in accordance with the terms of section 15-175 shall be produced for inspection upon the demand of any authorized law enforcement officer or, if the items are stored off the premises, within one (1) business day thereof, during normal business hours. If the provisions of this section are in conflict with the provisions of section 15-175, the provisions of this section shall control.

(Code 1976, § 7-1264)

Secs. 15-177—15-190. - Reserved.

DIVISION 2. - PERMIT

Sec. 15-191. - Required; prerequisite to issuance of business license.

- (a) No business license shall be issued to conduct the business of purchasing precious metals or gems until the annual permit required by this section has been issued by the police department.
- (b) No dealer shall engage in the business of purchasing precious metals or gems without having first obtained an annual permit issued by the police department and no dealer shall allow an employee to be involved in any way in the purchase of precious metals or gems until that employee has first obtained an annual employee permit from the police department and no person shall work as an employee of a dealer until such person has first obtained an annual employee permit. No annual employee permit shall be issued unless the dealer with whom employment is authorized is a holder of a current dealer's permit.

(Code 1976, § 7-1252; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-192. - Application.

- (a) The application for the annual dealer's permit required by this division shall include such fingerprints, photographs and information as may be reasonably required by the police department, but shall in any case include the following:
 - (1) The name, age and business address of the person applying for the permit.
 - (2) The telephone number of the applicant.
 - (3) The name, age and business address of all other persons having an ownership interest or actually employed in the business other than publicly held corporations.
 - (4) The address of the premises upon which the business is conducted and the zoning and planning classification of the premises.
 - (5) The applicant shall be required to notify the police department within seven (7) calendar days of any change of address of the applicant or business or any change of ownership in the business.
- (b) The applicant shall attach to this application a completed and signed employee or owner application as described in section 15-194 for each person named in the dealer's application. Each such application shall be signed by the owner, managing partner, corporate president or chief executive officer of the business, and there shall be a description of the capacity in which the signator is acting.

(Code 1976, § 7-1253; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-193. - Denial.

No permit required by the provisions of this division shall be issued under any of the following circumstances:

- (1) The applicant has no permanent place of business other than a van, mobile home, trailer or similar nonpermanent structure.
- (2) No owner, corporate officer, majority stockholder, partner or managing director of the business entity applying for the license has been a legal resident of the state for a minimum of ninety (90) days preceding the date of application.
- (3) Any person required to be listed in the application for a dealer's permit has been convicted of or has entered a plea of guilty to a misdemeanor involving moral turpitude or any felony under the laws of this state or of the jurisdiction in which the verdict or plea was entered. This paragraph does not apply to any person who has been convicted of or has entered a plea of guilty to a misdemeanor involving moral turpitude or any felony after ten (10) years have expired from the date of the plea, conviction or completion of sentence, whichever is later.
- (4) The person is not eligible to register as a dealer in precious metals or gems by the terms of any law of this state requiring such registration.

(Code 1976, § 7-1254)

Sec. 15-194. - Employee or owner application.

- (a) Persons required to obtain an employee permit by this division shall complete an employee or owner application which shall state relevant information including, but not limited to, the following:
 - (1) Name.
 - (2) Date of birth.
 - (3) Driver license, state identification card or social security number.
 - (4) Race.
 - (5) Sex.
 - (6) Residential address and telephone number.
 - (7) Last previous residential address.
 - (8) Height and weight.
 - (9) Hair and eye color.
 - (10) Name, address and telephone number of the dealer.
 - (11) Either a statement that the applicant has never been convicted of, plead guilty to or been sentenced to probation for any offense other than a minor traffic violation, or a list of all such pleas, convictions and sentences of probation.
- (b) The application form shall also provide a place for the applicant's signature. Persons required to be listed in a dealer's application shall also complete an employee or owner application.

(Code 1976, § 7-1255)

Sec. 15-195. - Fingerprints.

All persons required to complete an employee or owner application shall also submit to fingerprinting by the police department or by any agency or individual designated by the police department.

(Code 1976, § 7-1256; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-196. - Issuance; fee.

- (a) The police department shall provide the permit application forms required by this division, and shall review each completed application prior to issuing any permit. No employee or dealer permit shall be issued if it appears that the applicant or any person required to complete an employee or owner form has been convicted of, or has entered a plea of guilty to a misdemeanor involving moral turpitude, or any felony.
- (b) After ascertaining that all requisite forms have been completed, all fingerprint cards have been submitted, that no applicant or listed person is disqualified by virtue of a prior criminal record, and that all other requirements of this article have been complied with, the police department shall approve the application, subject to payment of an annual permit fee in the amount established by action of the board of commissioners, a copy of which is on file in the office of the clerk of the board of commissioners.

(Code 1976, § 7-1257; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-197. - Expiration and renewal.

Each permit required by this division shall indicate thereon an expiration date which is at least one (1) year from the date of issue and must be posted in a conspicuous place on the premises. Any permit holder may reapply for a permit at any time following the sixtieth day preceding the date of expiration. It shall be unlawful for any dealer to apply for a renewal unless all of the dealer's employees are holders of current, valid employee permits. No permits shall be renewed unless the dealer is the holder of a current, valid business license.

(Code 1976, § 7-1258)

Sec. 15-198. - Revocation and surrender of permits.

- (a) Any dealer or employee permit issued in accordance with provisions of this division shall be revoked by operation-of-law upon the occurrence of any of the following:
 - (1) The conviction of the dealer or employee for violating any state law or county ordinance pertaining to making false statements for the purpose of obtaining registration or authorization to become a dealer or employee of a dealer.
 - (2) The conviction of the dealer or employee for violation of a provision of this article after the dealer or employee has been previously convicted of a violation of this article within the preceding three (3) years.
- (b) Upon revocation, the permit holder shall surrender the permit to the police department within one (1) business day of the conviction resulting in revocation, and failure to do so shall constitute a separate violation for each day the permit is withheld.

(Code 1976, § 7-1267; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-199. - Appeals.

In any case in which it appears to the police department that an applicant is not entitled to the issuance of a dealer or employee permit under the provisions of this article, the police department shall so notify the applicant in writing by mailing the notice to the last address furnished to the police department by the applicant. If the police department refuses to issue a permit, or if a permit is surrendered pursuant to the provisions of this article, the applicant or permit holder shall have an absolute right of appeal to the board of commissioners according to the procedures set forth herein. The appeal shall be perfected by filing with the police department a notice of appeal to the board of commissioners. The notice of appeal to the board of commissioners must be filed with the police department within fourteen (14) days following the mailing of the notification of denial or surrender of the permit and it shall be the duty of the police department, upon receipt thereof, to transmit such notice of appeal to the clerk of the board of commissioners, together with copies of all papers constituting the record upon which the action appealed from was taken. Thereafter, it shall be the duty of the clerk of the board to place the appeal upon the agenda of the board the first available date for hearing on the matter. It shall be the duty of the clerk of the board to so notify the appellant in writing of the date, time and place when the matter shall be heard.

(Code 1976, § 7-1269; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Secs. 15-200—15-215. - Reserved.

ARTICLE VII. - PEDDLERS, DOOR-TO-DOOR SALES AND SIMILAR OCCUPATIONS^[7]

Footnotes:

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Cross reference— Selling or soliciting on public right-of-way, § 16-3; soliciting or begging on county property, § 16-91.

State Law reference— Peddlers and itinerant traders, O.C.G.A. § 43-32-1 et seq.; peddling by disabled veterans, etc., O.C.G.A. § 43-12-1 et seq.

DIVISION 1. - GENERALLY

Sec. 15-216. - Definition.

In this article "solicitor" includes any person who solicits orders door-to-door or house-to-house on behalf of a business, individual, vocation or occupation.

(Code 1976, § 7-1161)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 15-217. - Exemptions.

- (a) Persons, businesses and organizations exempted from local regulation by operation of state or federal law, or by the Constitution of the United States, or of the state, are exempt from the requirements of this article.

- (b) Representatives or agents of charitable or nonprofit organizations or corporations registered with the secretary of state, or tax-exempt organizations which have been recognized as such by the Internal Revenue Service of the United States Treasury Department, shall be treated as exempt from the provisions of division 2 of this article, provided that such organization first supplies proof of the recognized status to the police department, and has received from such department written confirmation of its exempt status. The organization shall then furnish each of its agents or representatives with a copy of the confirmation letter. The organization shall then furnish the regulatory enforcement unit of the police department with a list of such agents or representatives, and shall promptly notify the unit of changes in the list.
- (c) Any sales representative who calls upon prospective customers at their prior invitation shall be treated as exempt from the provisions of division 2 of this article.
- (d) Any sales representative who does not demand, accept or receive payments in advance of final delivery and who has had, for the previous six (6) months, a regularly established place of business or permanent residence in the county from which the sales representative transacts business or solicits orders on a continuing and ongoing basis within the county, shall be treated as exempt from the provisions of division 2 of this article. Any person who is exempt under this subsection must be soliciting orders only for goods capable of being delivered at one (1) time and must have on such person proper identification which substantiates the claim to an exemption. In this subsection, "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph and giving such person's date of birth, and includes without being limited to a passport, military identification card, driver's license or an identification card issued by the police department, but shall not include a birth certificate.

(Code 1976, § 7-1162; Ord. No. 89-19, § 1, 5-9-89; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

State Law reference— Exemption for blind persons, disabled veterans, etc., from license fees, O.C.G.A. § 43-12-1 et seq.

Sec. 15-218. - Violation of other ordinances and laws.

- (a) It is unlawful for any person while engaging in any activity for which a permit is required by this article to:
 - (1) Violate any county ordinance.
 - (2) Violate any criminal law of this state, or violate any state or federal consumer protection law.
- (b) In this section "consumer protection law" includes the Fair Business Practices Act of 1975, O.C.G.A. tit. 10, ch. 1, pt. 3 [§ 10-10-410 et seq.], O.C.G.A. tit. 43, ch. 17 [§ 43-17-1 et seq.] and the Federal Consumer Credit Protection Act (truth-in-lending and truth-in-leasing).

(Code 1976, § 7-1171(b), (c))

Sec. 15-219. - Hours of operation.

It is unlawful for any person to engage in any of the conduct for which a permit is required by this article between the hours of 9:00 p.m. and 9:00 a.m., according to the standard time in effect.

(Code 1976, § 7-1171(e); Ord. No. 89-10, § 4, 5-9-89)

Sec. 15-220. - Restriction on number of persons soliciting.

It is unlawful for more than two (2) individuals to engage in solicitation upon any premises at the same time for the same goods or services, or religious or charitable purposes. Each individual member of a group engaged in solicitation in violation of this provision shall be deemed to have violated this section.

(Code 1976, § 7-1171(g))

Sec. 15-221. - Persons with criminal records.

It is unlawful for any person with a criminal record as described in section 15-247, whether or not otherwise eligible for an exemption under section 15-217, to engage in any of the activities for which a permit is required by this article.

(Code 1976, § 7-1171(j))

Sec. 15-222. - Frequency of solicitation of same premises.

It is unlawful for any person to make more than one (1) solicitation call at the same premises for identical goods or services within any consecutive two-week period, without receiving a prior invitation therefor from the occupant of any such premises. This section includes solicitation upon the same premises by employees, agents or representatives of any person more than once during such period without a prior invitation.

(Code 1976, § 7-1171(h); Ord. No. 89-19, § 5, 5-9-89)

Sec. 15-223. - Solicitation to be at main entrances.

It is unlawful for any person to solicit or attempt to solicit at a place of residence at any entrance or part of the building other than the main entrance to the residence.

(Code 1976, § 7-1171(m))

Sec. 15-224. - Announced purpose of call.

At each dwelling, whether it is an apartment unit or private residence, the solicitor shall inform the occupant in unambiguous terms of the purpose of the call and shall not represent that the solicitor is participating in any contest, game or other competitive endeavor, or that the solicitor is offering the occupant an opportunity to participate in any such contest, game or endeavor.

(Code 1976, § 7-1168)

Sec. 15-225. - Identification to prospective customers.

It is unlawful for any person, at the time of initial contact with a prospective customer, to fail to verbally identify himself for the purpose of the solicitation, and the company and product line represented.

(Code 1976, § 7-1171(k))

Sec. 15-226. - Fraud, etc.

It is unlawful for any person engaged in solicitation to misrepresent the purpose of the solicitation or use any false or deceptive statements or any misrepresentation to induce a sale or contribution, or use any plan, scheme or ruse which misrepresents the status or purpose of the person making the call.

(Code 1976, § 7-1171(I))

Secs. 15-227—15-240. - Reserved.

DIVISION 2. - PERMIT

Sec. 15-241. - Required.

Any person engaged in or desiring to engage in any type of selling, soliciting, canvassing, survey-making or any other business, occupation or vocation, which by its nature requires going from door to door or house to house in the residential areas of the unincorporated areas of the county, whether on a temporary or a permanent basis and whether or not it is for any religious, charitable, nonprofit or profit-making organization, shall obtain a solicitor's permit from the police department.

(Code 1976, § 7-1161; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-242. - Application.

(a) *Questionnaire*. The police department shall prepare a questionnaire requiring pertinent information regarding the physical description, identity, and background of each applicant for a permit, to include the following:

- (1) Name, local address and telephone number.
- (2) Date and place of birth.
- (3) Driver's license number and issuing state.
- (4) Social Security number (if different from driver's license number).
- (5) Race and sex.
- (6) Height and weight.
- (7) Eye color and hair color.
- (8) Name, address and telephone number of the organization represented.
- (9) Name and telephone number of immediate supervisor.
- (10) Product or service.
- (11) A list of all arrests, convictions and the disposition of each charge, other than minor traffic violations.

(b) The questionnaire form shall also bear the following statement:

"Georgia Code section 16-10-71 provides that a person who makes a lawful oath or affirmation or who executes a document knowing that it purports to be an acknowledgment of a lawful oath or affirmation commits the offense of false swearing when, in any matter or thing other than a judicial proceeding, he knowingly and willfully makes a false statement."

(Code 1976, §§ 7-1161, 7-1163; Ord. No. 89-19, § 3(a), (b), 5-9-89; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-243. - Investigation and issuance.

- (a) Upon filing of an application for a solicitor's permit, the police department shall review the application for the purpose of ascertaining whether the applicant has plead to, or has been convicted of, a felony, or a misdemeanor involving violence or moral turpitude. After ascertaining that the application has been properly completed, and that the applicant has not been disqualified by virtue of prior pleas of conviction, the finance department shall approve the application.
- (b) In any case in which it appears to the finance department that a solicitor's permit should not be issued to an applicant, the finance department shall so inform the applicant, and upon the applicant's request, shall furnish the applicant with a reasonably detailed written statement of the reasons why the permit will not be issued.
- (c) Following approval of the permit application and prior to issuance of a permit, the applicant shall obtain a business license and pay the required license fee.
- (d) Upon payment of the business license fee, the applicant shall receive from the finance department a copy of the license application, which the applicant shall then carry to the police department. Upon payment by the applicant of a fee in the amount established by action of the board of commissioners, a copy of which is on file in the office of the clerk of the board of commissioners, the police department shall photograph the applicant and provide the applicant with a permit bearing the applicant's photograph, name, and organization, and identifying the applicant as a solicitor.

(Code 1976, §§ 7-1161, 7-1163, 7-1165, 7-1175(a); Ord. No. 89-19, § 3(c), 5-9-89; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

State Law reference— Exemption of blind persons, disabled veterans, etc., from license fees, O.C.G.A. § 43-12-1 et seq.

Sec. 15-244. - Expiration and renewal.

Each solicitor's permit shall indicate thereon an expiration date which is one (1) year from the date of issue. Application for renewal may be made at any time following the sixtieth day preceding the date of expiration.

(Code 1976, § 7-1166)

Sec. 15-245. - Selling, renting, etc.

It is unlawful for any person to lend, rent or sell a solicitor's permit card to another.

(Code 1976, § 7-1171(d))

Sec. 15-246. - Display.

The police department shall furnish to each holder of a solicitor's permit a device suitable for attaching the permit card to the outer clothing. No person shall act as a solicitor without wearing and displaying the permit in a conspicuous manner. Such a person shall display such identification to any authorized person or potential customer upon request.

(Code 1976, §§ 7-1167, 7-1171(i); Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-247. - Denial; suspension or revocation.

- (a) No solicitor's permit shall be issued to any person who has been found guilty of any misdemeanor involving violence or moral turpitude any time within five (5) years prior to the date of application, nor shall a permit be issued to any person convicted of a felony, except that a permit may be issued to a convicted felon if it appears that such person either has been pardoned, or that such person has been free from any legal restriction for a period of five (5) or more years prior to the date of application. In this section "conviction" and "found guilty" include verdicts or pleas of guilty, entered by a court of this state, a court of any sister state, or any federal district court. Any permit issued as the result of willful false statements or omissions in the solicitor's application for the permit shall be deemed null and void from the time of its issue.
- (b) The permit of any solicitor charged with a felony, or a misdemeanor involving violence or moral turpitude shall be deemed suspended from the time of lawful arrest, formal accusation or indictment, whichever shall first occur; such suspension shall remain in effect until the solicitor is convicted or acquitted, or until the charge is dismissed, dead-docketed, nol-prossed or no-billed.
- (c) The permit of any solicitor who is convicted of a felony, or of a misdemeanor involving moral turpitude or violence, shall be deemed revoked from the time of such conviction. The permit of any solicitor convicted of having violated any provision of this article after issuance of the permit shall be deemed revoked from the time of such conviction.
- (d) Any suspension or revocation occurring pursuant to the provisions of this article shall be effective by operation of law, whether or not any formal notification to the solicitor is given or received.
- (e) It is unlawful for any person to act as a solicitor while such person's permit has been suspended or after it has been revoked.

(Code 1976, §§ 7-1171(f), 7-1173)

Sec. 15-248. - Surrender.

Each solicitor's permit shall remain the property of the county. Each permit holder shall surrender the permit card to the police department no later than three (3) business days following the expiration, suspension or revocation of the permit or upon the demand of the police department or finance department, whichever occurs first.

(Code 1976, § 7-1174; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-249. - Appeals.

A person to whom the county refuses to issue a solicitor's permit or whose solicitor's permit is suspended or revoked may appeal pursuant to section 15-47.

(Code 1976, § 7-1175(b))

Secs. 15-250—15-265. - Reserved.

ARTICLE VIII. - MASSAGE THERAPY LICENSING^[8]

Footnotes:

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Editor's note—Ord. No. 99-05, § 1, adopted Feb. 9, 1999, deleted former Art. XV of Ch. 15 in its entirety and enacted new provisions as Art. XV to read as herein set out. Former Art. XV, §§ 15-266—15-282, pertained to similar subject matter and derived from Ord. No. 96-15, § 1, adopted Sept. 24, 1996.

Sec. 15-266. - Definitions.

The following definitions shall apply to this article. Any word or phrase not defined below but otherwise defined in this article shall be given that meaning. All other words or phrases shall be given their common ordinary meaning unless the context clearly requires otherwise.

- (a) The word "director" shall mean the director of finance, or his/her designee.
- (b) The term "massage establishment" shall mean any business established for profit which employs or contracts with one (1) or more "massage therapists," or operates or maintains for profit one (1) or more "massage apparatus", and which, for good or valuable consideration, offers to the public facilities and personnel for the administration of "massages." This term shall not include hospitals or other professional health care establishments separately licensed as such by the State of Georgia.
- (c) The term "massage" or "massages" or "massage therapy" shall mean the manipulation and/or treatment of soft tissues of the body, including but not limited to the use of effleurage, petrissage, pressure, friction, tapotement, kneading, vibration, range of motion stretches, and any other soft tissue manipulation whether manual or by use of massage apparatus, and may include the use of oils, lotions, creams, salt glows, hydrotherapy, heliotherapy, hot packs, and cold packs. This term shall not include diagnosis, the prescribing of drugs or medicines, spinal or other joint manipulations, or any service or procedure for which a license to practice chiropractic, physical therapy, podiatry, or medicine is required by the State of Georgia.
- (d) The term "massage therapist" shall mean any person whom for good or valuable consideration administers a "massage."
- (e) The term "massage apparatus" shall mean any manual, mechanical, hydraulic, hydrokinetic, electric, or electronic device or instrument or any device or instrument operated by manual, mechanical, hydraulic, hydrokinetic or electric power, which is utilized by a "massage therapist" for the purpose of administering a "massage."

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-267. - Licenses required.

- (a) *Massage therapist license.* It shall be unlawful for any natural person to administer massages without having obtained a license in accordance with the requirements of this article.
- (b) *Massage establishment license.* It shall be unlawful for any person, natural or corporate, to operate a massage establishment without having obtained a license therefor; or for any person, natural or corporate, to allow a massage therapist to administer massages without having obtained a license in accordance with the requirements of this article.

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-268. - Scope of regulations.

- (a) All licenses issued under this article shall constitute a mere privilege to conduct the business so authorized during the term of the license or permit only and subject to all terms and conditions imposed by the county and state law.
- (b) Nothing in this article shall be construed to regulate, prevent, or restrict in any manner: (i) any physician, chiropractor, physical therapist, or similar professional licensed and regulated by or through the State of Georgia while engaged in the practice of said profession; or (ii) any hospital or other professional health care establishment separately licensed as such by the State of Georgia; or (iii) any other individual or entity expressly exempted from local legislation by the laws of the State of Georgia.
- (c) Except as specified in subsection (b) of this section, the requirements of this article shall be in addition to all other licensing, taxing, and regulatory provisions of local, state or federal law, and shall not authorize violations of said other applicable laws.

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-269. - Application process.

- (a) *Application Requirements.* Any person desiring to obtain a massage establishment license or massage therapist license shall make application to the finance department. All applications shall be sworn to by the applicant as true, correct and complete before a notary public or other officer authorized to administer oaths. All applications shall be in writing and shall set forth the following information:
 - (1) The full legal name of the applicant, including all aliases, nicknames, pseudonyms or trade names currently or heretofore used by the applicant;
 - (2) The current and all previous business and residence addresses of the applicant within the three (3) years immediately preceding the date of application;
 - (3) Sworn affidavits of at least three (3) bona fide residents of DeKalb County that the applicant is personally known to them and they believe the person to be of good moral character;
 - (4) Written proof that the applicant is over the age of eighteen (18) years;
 - (5) The applicant's height, weight and color of eyes and hair;
 - (6) Two (2) current photographs of the applicant at least two (2) inches by two (2) inches in size;
 - (7) The business, occupation or employment of the applicant for three (3) years immediately preceding the date of application;
 - (8) Any massage or similar business license history of the applicant, including whether such person, in any previous operation in any jurisdiction, has had such a license revoked or suspended, the reason therefor, and any business activity or occupation subsequent to the action of suspension or revocation;
 - (9) All convictions, pleas of guilty, or pleas of nolo contendere for violations of any law and the grounds therefor;
 - (10) The applicant shall be fingerprinted by the DeKalb County Police Department and such fingerprint card and record shall be attached as an exhibit to the application. Payment of all fees charged by the DeKalb County Police Department in connection with this requirement shall be the responsibility of the applicant.
 - (11) Applicants for a massage therapist license shall provide a certificate dated within thirty (30) days of application from a physician licensed in the State of Georgia, certifying that the applicant is in sound mental and physical health, and free of all contagious or communicable diseases;

- (12) Applicants for a massage therapist license must furnish a certified copy of a diploma or certificate of graduation (demonstrating compliance with section 15-270 (a) (2)), along with a certified statement from the National Certification Board of Therapeutic Massage and Body Work evidencing passage by the applicant thereof of the exam for massage therapists administered by said Board. Applicants for a massage establishment license must furnish an affidavit demonstrating compliance with section 15-270 (b)(2) and 15-270 (b)(3).
 - (13) If the applicant is a corporation or partnership, such corporation or partnership shall submit the foregoing information and exhibits with regard to each employee, independent contractor agent and partner, general or limited, associated with the operation of the licensed establishment.
 - (14) If the applicant is a corporation, such corporation shall, in addition to the foregoing information, submit a complete list of the stockholders of said corporation, including names, current addresses and current occupations, and provide the name and address for its registered agent in DeKalb County, Georgia.
 - (15) If the applicant is an individual, the applicant must reside in the State of Georgia and must submit written, reliable proof thereof. Additionally, if the applicant does not reside in DeKalb County, the applicant must provide the name and address for an agent who resides in DeKalb County authorized to receive legal process and notices under this article on behalf of the applicant.
- (b) *Fees.* All license applications shall be accompanied by a fee as elsewhere established by the DeKalb County Board of Commissioners to defray the costs associated with issuance of said licenses. All fees associated with the background check required by section 15-269(a)(10) shall be the responsibility of the applicant and shall be in addition to the application fee.

(Ord. No. 99-05, § 1, 2-9-99; Ord. No. 99-60, § I, 10-12-99; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-270. - Minimum standards.

- (a) *Massage therapist.* No applicant shall be issued a license as a "massage therapist" unless both of the following standards are first met:
 - (1) The applicant must be of good moral character. No applicant shall be found to have met this requirement if said applicant has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, within a period of five (5) years prior to the filing of the application; and
 - (2) The applicant must be the holder of a diploma or certificate earned by the applicant from a state certified school, representative of the fact that the applicant attended a course of massage therapy education and study of not less than five hundred (500) classroom hours consisting of a curriculum of anatomy and physiology, basic massage theory, technique and clinical practice, approach to massage, allied modalities and disease awareness, and other such subjects and have passed the National Certification Board of Therapeutic Massage and Body Work exam for massage therapists.
- (b) *Massage establishment.* No applicant shall be issued a license for a "massage establishment" unless all of the following standards are first met:
 - (1) The applicant, including the partner applying on behalf of a partnership and an agent applying on behalf of a corporation, must be of good moral character. No applicant shall be found to have met this requirement if said applicant has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, within a period of four (4) years prior to the filing of the application;
 - (2) A corporate applicant must be chartered under the laws of Georgia or authorized by the Secretary of State to do business in Georgia. The applicant shall be the owner or legal agent of the establishment. The corporate applicant must identify an agent for service of process in DeKalb County;

- (3) The owner/applicant, or corporate agent must be a resident of the State of Georgia;
- (4) A readable sign shall be posted at the main entrance identifying the establishment as a massage establishment, provided also that all such signs shall comply with the sign requirements of the DeKalb County Code;
- (5) Minimum lighting shall be provided in accordance with the Uniform Building Code, and, additionally, at least one (1) artificial light of not less than forty (40) watts shall be provided in each enclosed room or booth;
- (6) Ordinary beds or mattresses shall not be permitted in any licensed massage establishment;
- (7) Minimum ventilation shall be provided in accordance with the Standard Mechanical Code and the Georgia Energy Code; and
- (8) The establishment, prior to the issuance of any license hereunder, must be in compliance with all applicable building and life safety codes, and the building to be occupied must have a valid, current certificate of occupancy.

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-271. - Issuance of license.

- (a) *Review of applications.* If a license application is submitted in proper form, including all information and exhibits required herein and accompanied by the correct fees, the application shall be accepted and a review of the application and an inspection and investigation shall be conducted by the director. The director shall transmit a copy of the completed application to the DeKalb County Police Department. Upon the payment by the applicant of the required fees, the DeKalb County Police Department, or its designee, shall cause to be conducted a background investigation of the police record of the applicant, and shall transmit a summary of the investigation results to the director.
- (b) *Action on applications.* Upon receipt of this background investigation, and completion of review of the application in accordance with the terms of this article, the director shall act on the application. The director shall deny any application that:
 - (1) Fails to meet each of the application requirements specified herein;
 - (2) Fails to meet each of the minimum standards specified in section 15-270; or
 - (3) Contains false information in the application or attached documents.

Otherwise, the director shall approve the application and the license shall be issued by the finance department upon the payment of any applicable county business or occupation tax. All licenses issued pursuant to this article shall be valid for a period of one (1) year. If an application for a license is denied under this article, the applicant shall not be authorized to reapply for said denied license for a period of one (1) year from the date of denial.

- (c) *Appeals of denials of applications.* In the event the director denies a license or apprentice permit application, such denial shall be in written form, addressed to the applicant at the application address, and shall state the grounds upon which the denial is based. Within fifteen (15) days of the date of issuance of such notice, the applicant may appeal the denial by submitting a written notice of appeal to the finance department division of internal audit and licensing. The alcoholic beverage review board, established pursuant to DeKalb County Code section 4-56, shall schedule a hearing on the appeal within thirty (30) days of receipt of the notice of appeal, unless a continuance of such date is agreed to by the appellant and the finance department. The board shall provide written notice of the hearing date, time, and place to the appellant. At the hearing, the appellant and the director may each present evidence relating to the grounds for denial. The appellant may be represented by counsel at the expense of appellant, and shall have the right to present evidence and cross-examine the witnesses.

The board shall decide the appeal within a reasonable time. An appeal shall be sustained upon a finding by the board that the director's action was based on an erroneous finding of a material fact, or that he acted in an arbitrary manner. In exercising its powers, the board may reverse or affirm, or may modify, the decision appealed from, and to that end shall have all the powers of the director and may issue or direct the issuance of a license provided all requirements imposed by applicable laws are met. The findings of the alcoholic beverage review board shall be final, unless appealed within thirty (30) days of the date of the findings by certiorari to the superior court of the county.

(Ord. No. 99-05, § 1, 2-9-99; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-272. - Transfers and sales prohibited.

All licenses issued pursuant to this article are nontransferable.

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-273. - Change of location.

A change of location of massage establishment premises may be approved by the finance department provided all general ordinances are complied with and a change of location fee as elsewhere established by the DeKalb County Board of Commissioners is first paid.

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-274. - Renewals.

All valid licenses may be renewed for additional one (1) year periods provided a renewal application meeting all of the requirements for an initial license application is submitted prior to expiration of the existing license and approved by the director according to the same standards for initial licenses. The fee for said annual renewal shall be as elsewhere established by the DeKalb County Board of Commissioners.

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-275. - Further requirements.

The following additional requirements shall apply to all license holders and establishments:

- (a) All massage therapists and all other persons on the premises, with the exception of the customers, shall be completely clothed at all times when administering a massage. For the purposes of this provision, "completely clothed" shall mean having on the upper portion of the body appropriate undergarments and either blouse or shirt which shall cover all the upper body save the arms and neck and shall mean having on the lower body appropriate undergarments plus either pants or skirt, and said pants or skirt must cover from the waist down to a point at least two (2) inches above the knee. All clothes worn in compliance with this subsection shall be entirely non-transparent.
- (b) Massage of the human genitals or anus within massage establishments is expressly prohibited.
- (c) The storing, serving, sale or consumption of alcoholic beverages within massage establishments is expressly prohibited.
- (d) Every person to whom a license shall have been granted shall display said license in a conspicuous place on the premises that is clearly visible to the visiting public.

- (e) DeKalb County, through the finance department or the police department, shall have the right to inspect any licensed massage premises and its records at any time, with or without notice, during business hours to insure compliance with this article.
- (f) It shall be unlawful for any person under the age of eighteen (18) to patronize any massage establishment unless at the time of such patronage such person carries with him/her a written order directing the treatment to be given by a regularly licensed physician, or unless such person provides a written consent to massage therapy treatment signed by the underage patron's parent or guardian. It shall be the duty of the operator of such massage establishment to determine the age of each person patronizing such massage establishment and a violation of this section shall be grounds for revocation of the license of such massage establishment and/or massage therapist administering massage to an underage patron.
- (g) It shall be the duty of all persons holding a license for a massage establishment under this article to file with the DeKalb County Finance Department the names of all employees and independent contractors other than those holding massage therapist licenses, their home addresses, home telephone numbers and places of employment. Changes in the list of said employees and independent contractors with the names of new employees and independent contractors must be filed with said county department within ten (10) days from the date of any such change.
- (h) It shall be the duty of any person granted a license under this article to maintain correct and accurate records of the names and addresses of the persons receiving treatment at such establishment; and the name of the person at the establishment administering the treatment. The records shall be subject to inspection at any time by DeKalb County through the finance department or the police department.
- (i) It shall be the duty of the licensee establishment to actively supervise and monitor the conduct of any and all employees, independent contractors, customers and all other persons on the premises in order to assure compliance with the provisions of this chapter.

(Ord. No. 99-05, § 1, 2-9-99; Ord. No. 99-60, § II, 11-9-99; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-276. - Revocation of license.

- (a) No license issued hereunder shall be revoked except for due cause as herein defined without the opportunity for a hearing as hereinafter set forth before the alcoholic beverage review board. Notice of such hearing shall be given in writing and served at least ten (10) days prior to the date of the hearing thereon. In the event the license holder cannot be found, and the service of notice cannot be otherwise made in the manner herein provided, a copy of such notice shall be mailed registered postage fully prepaid, addressed to the license holder or the registered agent thereof at his, her, or its place of business or residence at least ten (10) days prior to the date of such hearing. The notice shall state the grounds for revocation of such license and shall designate the time and place where such hearing will be held.
- (b) "Due cause" for revocation of such license shall be as provided in section 15-277 of this article.
- (c) In all hearings pursuant to this section, the following procedures shall prevail, and the proceeding shall be as informal as compatible with justice:
 - (1) The charges and specifications against the licensee shall be read along with any response filed by the licensee.
 - (2) The alcoholic beverage review board shall hear the evidence upon the charges and specifications as filed against the licensee and shall not consider any additional evidence beyond the scope of the charges, and may exclude evidence which is purely cumulative.
 - (3) The order of proof shall be as follows: The county representative shall present his evidence in support of the charges; the licensee shall then present his evidence. Evidence of each party may

be supported by submission of pertinent documents. Each party shall be allowed to present pertinent rebuttal evidence.

- (4) The licensee and county may be represented by counsel, and may present, examine and cross-examine witnesses. Additionally, the alcoholic beverage review board may interrogate all parties and witnesses to obtain necessary information. Following the presentation of evidence, the board may have a reasonable time within which to issue its decision.
- (5) The findings of the alcoholic beverage review board will be final unless within thirty (30) days of the date of the decision, the applicant files a petition for writ of certiorari to the Superior Court of DeKalb County.

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-277. - Grounds for revocation.

- (a) The license of a massage therapist may be revoked upon one (1) or more of the following grounds:
 - (1) Failure of the holder to maintain initial requirements for obtaining the license;
 - (2) The holder is guilty of fraud in the practice of massage, or fraud or deceit in his being licensed in the practice of massage;
 - (3) The holder is engaged in the practice of massage under a false or assumed name, or is impersonating another therapist of a like or different name;
 - (4) The holder is addicted to the habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate such person to the extent that he/she is unable to perform his or her professional duties;
 - (5) The holder is guilty of fraudulent, false, misleading or deceptive advertising or practices any other licensed profession without legal authority therefor;
 - (6) The holder has violated any of the provisions of this chapter;
 - (7) The holder has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, distribution of obscene materials, distribution of material depicting nudity, or sexual conduct as defined under Georgia law; or has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude;
 - (8) The original application, or renewal thereof, contains materially false information; or the applicant has deliberately sought to falsify information contained therein; or
 - (9) There has been the occurrence of a fact which would have barred the issuance of the original license.
- (b) The license of a massage establishment may be revoked upon one (1) or more of the following grounds:
 - (1) Failure of the holder to maintain initial requirements for obtaining the license;
 - (2) The holder allows or permits any person who is not a licensed massage therapist to administer a massage in said establishment;
 - (3) The premises in which the massage establishment is located are in violation of any federal, state, or county laws designated for the health, protection and safety of the occupants or general public;
 - (4) The premises are in violation of the DeKalb County building or life safety codes;
 - (5) The original application or renewal thereof, contains materially false information; or the applicant has deliberately sought to falsify information contained therein;

- (6) The holder of the license, including any person with an ownership interest in the license, has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, or has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, distribution of obscene materials, distribution of material depicting nudity, or sexual conduct as defined under Georgia law;
 - (7) Any of the license holder's employees, independent contractors or agents has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or to any misdemeanor involving moral turpitude, or has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, distribution of obscene materials, distribution of material depicting nudity, or sexual conduct as defined under Georgia law, in connection with the operation of the massage establishment or on or about the premises of the massage establishment;
 - (8) Failure of the holder to actively supervise and monitor the conduct of the employees, independent contractors, agents, customers, or others on the premises in order to protect the health, safety and welfare of the general public and the customers; or
 - (9) The holder, his employees, agents, or independent contractors associated with the establishment have allowed to occur or have engaged in a violation of any part of this chapter.
- (c) Any massage therapist or massage establishment who has his or her or its license or permit revoked shall be disqualified from reapplying for such a license or permit for a period of twelve (12) months immediately following the date of revocation.

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-278. - Violations; penalties.

- (a) Any person, firm, corporation or other entity violating the provisions of this article shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) per violation or by imprisonment for a period not to exceed sixty (60) days, or by both such fine or imprisonment. Violation of this article shall also be grounds for immediate suspension or revocation of the license issued hereunder.
- (b) The violation of the provisions of this article may be abated as a nuisance.
- (c) The violation of all provisions of this article by any person may be enjoined by instituting appropriate proceedings for injunction in any court of competent jurisdiction. Such actions may be maintained notwithstanding that other adequate remedies at law exist. Such actions may be instituted in the name of the governing authority of DeKalb County.

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-279. - Unlawful operation declared nuisance.

- (a) Any massage establishment operated, conducted or maintained contrary to the provisions of this article shall be and the same is hereby declared to be unlawful and a public nuisance. The county may, in addition, or in lieu of all other remedies, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinder thereof, in the manner provided by law.
- (b) No massage establishment shall operate at any location nor on any premises which does not comply with all zoning, building code, fire safety code, and other ordinances and laws of DeKalb County and the State of Georgia.

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-280. - Existing practices.

Any person who is actually engaged as a massage therapist or who operates a massage establishment upon the effective date of this article, shall have through December 31, 1999 to comply with this article.

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-281. - Severability.

- (a) Should any section or provision of this article be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the article as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional.
- (b) Should any section or provision of this article be in conflict with any other ordinance, rule, regulation, provision, requirement or law, then the more restrictive ordinance, rule, regulation, provision, requirement, or law shall control.
- (c) All ordinances or resolutions, or parts thereof, in conflict with this article are repealed.

(Ord. No. 99-05, § 1, 2-9-99)

Sec. 15-282. - Effective date.

This article shall be effective upon adoption by the board of commissioners and approval by the chief executive officer.

(Ord. No. 99-05, § 1, 2-9-99)

Secs. 15-283—15-310. - Reserved.

ARTICLE IX. - ESCORT OR DATING SERVICES

Sec. 15-311. - License.

- (a) Any person desiring to engage in the business of providing or arranging dates, escorts or partners for persons shall, before engaging in such business, file an application for a business license on a form supplied by the finance department and shall comply with all the provisions of this article.
- (b) The applicant for a dating or escort service license must be an owner, partner or majority stockholder.
- (c) Each applicant shall submit the following information, as a minimum:
 - (1) Trade name and business address.
 - (2) Applicant's name and residence address.
 - (3) Names and residence addresses of all interested persons, to include owners, partners, stockholders, officers and directors.
 - (4) Manager's name and residence address.
 - (5) Employees' names and residence addresses.

(Code 1976, §§ 7-1231, 7-1232)

Sec. 15-312. - Qualifications of license applicant, others connected with business.

No applicant, owner, partner, stockholder, officer, director or any other interested person connected with the business for which a license is applied under this article shall have been convicted of a crime involving moral turpitude, lottery or illegal sale or possession of narcotics within the preceding ten-year period; any subsequent convictions of the above nature automatically acts to void any such license and permits held.

(Code 1976, § 7-1234)

Sec. 15-313. - Police department permit required.

All applicants for an escort or dating service business license, along with their employees, must also file for a permit with the police department accompanied by a permit fee in the amount established by action of the board of commissioners, a copy of which is on file in the office of the clerk of the board of commissioners and providing the information in section 15-311 as well as any additional information and fingerprinting as deemed necessary by the police department for the purposes of conducting a background investigation of the applicant.

(Code 1976, § 7-1233; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-314. - Employees.

No person under eighteen (18) years of age shall be employed by an escort or dating service in any capacity and not before such person has been fingerprinted by the police department. When determined that the employee applicant has not been convicted of a crime involving moral turpitude for the preceding three-year period, an annual personal identification card authorizing such person to be employed by the escort or dating service will be issued. It shall be the responsibility of the business license applicant to ensure that the provisions of this section are complied with and that no employee possesses an expired identification card or permit while in the business' employ.

(Code 1976, § 7-1235; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Secs. 15-315—15-330. - Reserved.

ARTICLE X. - POOLROOMS

DIVISION 1. - GENERALLY

Sec. 15-331. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Pool or billiards includes any game played on a table surrounded by an elastic ledge of cushions with balls which are impelled by a cue.

Poolroom means any public place where a person is permitted to play the game of pool or billiards.

(Code 1976, § 7-1182)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 15-332. - Applicability.

O.C.G.A. tit. 43, ch. 8 [§ 43-8-1 et seq.] does not apply within the unincorporated area of the county. The provisions of this article govern the operation of poolrooms within the unincorporated area of the county.

(Code 1976, § 7-1181)

Sec. 15-333. - Inspection of licensed establishments.

The police department may inspect establishments licensed under this article during the hours in which the premises are open for business. Such inspection shall be made for the purpose of verifying compliance with the requirements of this article.

(Code 1976, § 7-1188; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-334. - Gambling.

No gambling or other games of chance shall be permitted in a poolroom.

(Code 1976, § 7-1187(a))

Sec. 15-335. - Manager.

All poolrooms which have three (3) or more pool tables shall have a manager, or designated employee, on duty during operating hours, whose responsibility is the operation of the pool tables.

(Code 1976, § 7-1187(b))

Secs. 15-336—15-350. - Reserved.

DIVISION 2. - LICENSE

Sec. 15-351. - Required.

No person shall operate a poolroom without a business license issued by the finance department.

(Code 1976, § 7-1183)

Sec. 15-352. - Application.

(a) All persons desiring to operate a poolroom shall make application for a business license on a form prescribed by the finance department.

- (b) The application shall include, but shall not be limited to, the following:
 - (1) The name and address of the owner-applicant.
 - (2) The address of the licensed establishment.
 - (3) The number of pool tables to be operated at the licensed establishment.
 - (4) If the owner-applicant is a partnership, the names and residence addresses of the partners.
 - (5) If the owner-applicant is a corporation, the names of the officers.
 - (6) The name and address of the agent for service of process.
 - (7) The name of the manager.
 - (8) The name of all shareholders holding more than ten (10) percent of any class of corporate stock, or other entity having a financial interest in each entity which is to own or operate the licensed establishment.

If the manager changes, the owner-applicant must furnish the finance department and police department with the name and address of the new manager and other information as requested within ten (10) days of such change.

- (c) All applicants shall furnish data, information and records as required by the finance department to ensure compliance with the provisions of this article. Failure to furnish data shall automatically serve to dismiss the application with prejudice.
- (d) All applications shall be sworn to by the applicant before a notary public or other officer authorized to administer oaths.
- (e) In all instances in which an application is denied under the provisions of this division, the applicant may not reapply for a license for at least one (1) year from the final date of denial.

(Code 1976, § 7-1183; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-353. - Persons eligible.

- (a) No poolroom license shall be granted to any illegal alien.
- (b) Where the owner-applicant is a partnership or corporation, the provisions of this section shall apply to all its partners, officers, managers and majority stockholders. In the case of a corporation, the license shall be issued jointly to the corporation and to the majority stockholder, if an individual. Where the majority stockholder is not an individual, the license shall be issued jointly to the corporation and its agent registered under the provisions of this section. In the case of a partnership, the license will be issued to one (1) of the partners.
- (c) No license shall be granted to any person who has been convicted under any federal, state or local law of any misdemeanor involving moral turpitude within ten (10) years prior to the filing of the application for such license.
- (d) No license shall be granted to any person convicted under any federal, state or local law of any felony within ten (10) years prior to the filing of the application for such license.
- (e) No license shall be granted to any person who has had any license issued under the police powers of the county previously revoked within two (2) years prior to the filing of the application. The finance department may decline to issue a license when any person having an interest in the operation of such place of business or control over such place of business does not meet the same character requirements as set forth for the licensee.
- (f) All licensed establishments must have and continuously maintain in the county a registered agent upon whom any process, notice or demand required or permitted by law or under this article to be

served upon the licensee or owner may be served. This person shall be a resident of the county. The licensee shall file the name of such agent, along with the written consent of such agent with the finance department in such form as is prescribed.

(Code 1976, § 7-1184)

Sec. 15-354. - Expiration; renewal; transfer.

- (a) All licenses granted under this division shall expire on December 31 of each year.
- (b) Licensees who desire to renew their licenses shall file application with all applicable fees with the finance department on the form provided for renewal of the license for the following year. Applications for renewal must be filed before November 30 of each year or the applicant shall pay a late payment penalty in addition to an assessment of interest as specified by section 2-112. No renewal licenses shall be granted after January 1, but such application shall be treated as an initial application and the applicant shall be required to comply with all requirements for the granting of licenses as if no previous license had been held.
- (c) All licenses granted hereunder shall be for the full calendar year. License fees shall not be prorated and are nonrefundable.
- (d) No license shall be transferred without prior approval of the finance department.

(Code 1976, § 7-1185)

Sec. 15-355. - Fee.

No poolroom license shall be issued until a fee in the amount established by action of the board of commissioners, a copy of which is on file in the office of the clerk of the board of commissioners, is paid to the county.

(Code 1976, § 7-1186)

Sec. 15-356. - Issuance.

Before a poolroom license is granted, the applicant therefor shall comply with all rules and regulations adopted by the board of commissioners regulating the operation of poolrooms.

(Code 1976, § 7-1186)

Sec. 15-357. - Suspension or revocation.

A poolroom license may be suspended or revoked by the finance department for failure of a licensee to comply with the provisions of this article or where the licensee furnishes fraudulent or false information in the license application.

(Code 1976, § 7-1189)

Sec. 15-358. - Appeals.

- (a) No poolroom license shall be denied, suspended or revoked without the opportunity for a hearing.

- (b) The finance department shall provide written notice to the owner-applicant and licensee of the order to deny, suspend or revoke the license. Such written notification shall set forth in reasonable detail the reasons for such action and shall notify the owner-applicant and licensee of the right to appeal under the provisions of this article. Any owner-applicant or licensee who is aggrieved or adversely affected by a final action of the county may have a review thereof in accordance with the appeals procedures specified in section 15-47. For purposes of this section notice shall be deemed delivered when personally served or, when served by mail, within three (3) days after the date of disposal in the United States mail.

(Code 1976, §§ 7-1190, 7-1191)

Secs. 15-359—15-374. - Reserved.

ARTICLE XI. - VEHICLES FOR HIRE⁹¹

Footnotes:

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Cross reference— Parking of taxicabs, § 17-146; parking of taxicabs, § 17-146.

Sec. 15-375. - Definitions.

For the purposes of this article, certain terms and words are hereby defined. Where words are not herein defined, but are defined in section 1-2, those words shall have the meaning as defined therein. As used in this article, unless the context otherwise indicates, the following words and terms shall have the meaning ascribed to them:

Limousine shall mean any motor vehicle that meets the manufacturer's specifications for luxury limousines, with a designed seating capacity of no less than five (5) and no more than nine (9) passengers behind the operator of the vehicle. Limousines shall not have a door at the rear of the vehicle to allow entry or exit of passengers. No vehicle shall be allowed to operate as both a taxicab and a limousine. All vehicles for hire shall obtain either a taxicab permit or a limousine permit.

Open stand shall mean locations on the streets of unincorporated DeKalb County, including the locations on the premises of MARTA stations that may be used by any taxicab on a nonexclusive, first come, first served basis, and not by private vehicles or other public conveyances.

Taxicab shall mean a motor vehicle used to transport passengers for a fee or fare and which is fitted with a taximeter or other device that is used to compute such fee or fare.

Taxicab company shall mean an entity licensed to do business by the State of Georgia with its primary business being the operation of motor vehicles used to transport passengers for a fee or fare within unincorporated DeKalb County.

Taximeter shall mean an instrument or device attached to a motor vehicle and designed to measure the distance traveled by such vehicle, or an instrument or device attached to a motor vehicle and designed to compute and indicate the fare or fee to be charged to the passenger(s).

Vehicle for hire shall mean a limousine, taxicab or other passenger-carrying vehicle that is used to transport passengers for a fee. Vehicles regulated by the Georgia Public Service Commission, and passenger vans with a capacity of fifteen (15) or more passengers, shall not be considered a vehicle for hire.

(Code 1976, § 7-3001; Ord. No. 88-11a, § 1, 10-11-88; Ord. No. 01-04, Pt. 1, 4-26-01; Ord. No. 29-03, Pt. I, 10-28-03)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 15-376. - Doing business defined.

Any person shall be deemed doing business in the unincorporated areas of the county under this article if such person is picking up passengers in unincorporated areas of the county and accepting or soliciting any consideration, charge or fee which is determined by agreement, by mileage, by the length of time the vehicle is used or by contract for the use of any motor vehicle or other vehicle designed or used for the purpose of transporting passengers. Any person shall also be deemed as doing business in the unincorporated areas of the county under this article if such person has established a business relationship with independent contractors or operates vehicles for hire on such person's own behalf for the purpose of transporting passengers in the unincorporated areas of the county.

(Code 1976, § 7-3003(A); Ord. No. 88-11a, § 1, 10-11-88)

Sec. 15-377. - Compliance.

No person shall conduct the business of operating vehicles for hire in the unincorporated area of the county without first meeting the requirements of this article.

(Code 1976, § 7-3002; Ord. No. 88-11a, § 1, 10-11-88)

Sec. 15-378. - Taxicab company permit holder's responsibilities for violations.

Taxicab company permit holders are responsible for violations of this article by their employees and independent contractors, including company drivers and dispatchers.

(Code 1976, § 7-3005(I); Ord. No. 88-11a, § 1, 10-11-88; Ord. No. 29-03, Pt. I, 10-28-03)

Sec. 15-379. - Notice.

For the purposes of this article, notice shall be deemed delivered when personally served or when served by mail within three (3) days after the date of deposit in the United States mail.

(Code 1976, § 7-3010; Ord. No. 88-11a, § 1, 10-11-88)

Sec. 15-380. - Hearings.

- (a) Decisions of the finance department that adversely affect or aggrieve any applicant or licensee under this article may be appealed to the finance director or the director's designated representative. Decisions of the police department that adversely affect or aggrieve any permittee may be appealed to the chief of police or the chief of police's designated representative. Any applicant or licensee who is aggrieved or adversely affected by a final decision of the director of finance or the director's authorized representative or any permittee who is aggrieved or adversely affected by a final decision of the chief of police or the chief of police's designated representative may request an appeal to a five-member review board appointed by the chief executive. Such appeal shall be by written petition, filed in the finance director's or chief of police's office of the deciding department within fifteen (15) days after the final decision.

- (b) A hearing shall be conducted on each appeal within thirty (30) days of the date of filing the written petition, unless a continuance of such hearing is agreed to by the appellant and the deciding department director or his designated representative. The appellant at such hearing shall have the right to be represented by an attorney, at the expense of the appellant, and to present evidence and cross-examine witnesses.
- (c) The findings of the review board shall be forwarded to the director of the department originating the review board appeal after the conclusion of the hearing. It shall be the duty of the department director or his designated representative to notify the appellant of the action of the review board.
- (d) The findings of the review board shall be final unless appealed within thirty (30) days of the date of the findings by certiorari to the superior court of the county.

(Code 1976, § 7-3009; Ord. No. 88-11a, § 1, 10-11-88; Ord. No. 11-02, Pt. I, §§ 1, 4, 11-27-01)

Sec. 15-381. - Audits; filing returns.

Each company and individual licensed under the provisions of this article shall be subject to the provisions of article II of this chapter for audits and the filing of returns. No licensed business or individual shall fail to comply with the audit requirements of the county.

(Code 1976, § 7-3007; Ord. No. 88-11a, § 1, 10-11-88)

Sec. 15-382. - Taxicab company permits generally.

- (a) An applicant for a taxicab company permit is required to provide information showing its qualifications on a form(s) provided by the police department.
- (b) Applicants must be approved by the police chief or designee, and such clearance shall include a background investigation and fingerprinting of the applicant.
- (c) No taxicab company permit shall be issued to any taxicab company owning or leasing less than one (1) vehicle.
- (d) No taxicab company permit shall be issued to an applicant unless the applicant has a valid and current business license to do business in the State of Georgia.
- (e) All permits required by the provisions of this article shall expire on the same date as the expiration of the business license.
- (f) If the applicant is not a sole proprietor or individual then all partners, officers or directors holding ten (10) percent or more interest in the company or entity shall be required to comply with the provisions of this section.
- (g) All applicants must:
 - (1) Be at least twenty-one (21) years of age;
 - (2) Be a citizen of the United States or an alien admitted for permanent residence or who has otherwise been granted employment authorization by the United States Immigration and Naturalization Service;
 - (3) Have not been convicted, been on probation, parole, or been imprisoned for a period of five (5) years previous to the date of application, for the violation of any of the following offenses of the State of Georgia, of any other state, or of the United States: any felony; driving under the influence of drugs or alcohol; criminal solicitation to commit any of the offenses listed in this subsection; attempt to commit any of the offenses listed in this subsection; any misdemeanor crime of violence or theft, any misdemeanor crime of possession, sale or distribution of illegal drugs or any crime

involving moral turpitude. Discharge without court adjudication of guilt pursuant to O.C.G.A. § 42-8-62 shall not disqualify an applicant from applying for a permit;

- (4) Provide a verifiable dispatch location staffed by company agents or employees, have a published telephone number and have sufficient parking to accommodate its vehicles for hire when not in use;
- (5) Provide proof that the applicant has a dedicated two-way communication system with a dispatcher that personally mans such communication system during the entire time that the applicant's business is open for service, or that any taxicab is available for transportation of fee-paying passengers. The dedicated two-way communication system must be a Federal Communications Commission licensed two-way radio network. Citizens Band radios, ham radios, cell phones and text paging devices shall not qualify as a dedicated two-way communication system;
- (6) File applications for the initial permitting and inspection of the taxicabs, with a list of all drivers that will be scheduled for driver permitting, indicating whether drivers are company employees or contract drivers. A copy of each contract driver's insurance coverage must be included in the application;
- (7) Provide a copy of the applicant's rate schedule and the daily hours of operation; and
- (8) Provide the name, address and telephone number of a responsible individual residing in DeKalb County who will be the registered agent for the purpose of service of process or receipt of citations.

(Code 1976, §§ 7-3002, 7-3003(B), (C); Ord. No. 88-11a, § 1, 10-11-88; Ord. No. 01-04, Pt. 1, 4-26-01; Ord. No. 05-02, Pt. 1, 10-9-01; Ord. No. 11-02, Pt. I, § 1, 11-27-01; Ord. No. 29-03, Pt. I, 10-28-03)

Sec. 15-383. - Insurance.

- (a) All companies and drivers permitted pursuant to the provisions of this article shall provide with their application, and shall maintain for the duration of the permit, a certificate of insurance showing proof of motor vehicle insurance covering public liability and property damage issued by a state approved insurer. Such insurance shall insure passengers and third person against personal injury and property damage in amounts specified by this section.
- (b) All companies and drivers permitted pursuant to the provisions of this article shall provide with their application, and shall maintain for the duration of the permit, minimum motor vehicle insurance coverage per vehicle as required by Georgia state law.
- (c) All permit holders must provide the police chief or his designee with an annual certificate of insurance showing the existence of such policies of insurance as required by this article. The annual certificate of insurance must be provided to the police chief or his designee thirty (30) days prior to the expiration of any such insurance.

(Code 1976, § 7-3003(B); Ord. No. 88-11a, § 1, 10-11-88; Ord. No. 88-19a, § 1, 12-13-88; Ord. No. 01-04, Pt. 1, 4-26-01; Ord. No. 29-03, Pt. I, 10-28-03)

Sec. 15-384. - Taxicab driver's permits generally.

- (a) No person shall drive a taxicab without a valid driver's permit issued pursuant to the requirements of this article. All drivers must have held a valid Georgia driver's license for a minimum period of twelve (12) consecutive months before applying for a driver's permit pursuant to this article. If an applicant's driver's license is suspended for a nontraffic-related violation or conviction then the applicant is exempt from the requirement that he/she hold a valid Georgia driver's license for twelve (12) consecutive

months before applying for a driver's permit. If an applicant's driver's license has been suspended for a nontraffic-related violation or conviction no taxi driver's permit shall be issued by the county unless and until the applicant provides written certified proof from the state that the applicant's driver's license has been fully reinstated and is valid. No company permitted for operating taxicabs shall employ or otherwise associate with, including as an agent or independent contractor, any driver who has not first met the requirements of this article and been issued a valid driver's permit.

- (b) No drivers' permit shall be issued to any person who is not employed by or represented by a licensed company. All drivers' permits shall expire on the drivers' birthday, and shall be renewed annually.
- (c) Driver permits must be posted on the dash or sunvisor of the vehicle being driven so that it is visible from the passenger area. Licensees under this article are responsible for checking to ensure that each driver has a current driver permit in the driver's possession and posted on the dash or sunvisor of the vehicle being operated along with a visible vehicle inspection sticker.
- (d) No request for a driver's permit will be processed unless the permit applicant presents a letter on company stationery to the police department from a licensed company requesting issuance of a driver's permit to the named individual. The driver's permit applicant will further furnish information requested on a form to be provided by the police department and submit to a police clearance consisting of a background investigation or fingerprinting. Driver permit applicants must meet the following requirements:
 - (1) Be at least twenty-one (21) years of age.
 - (2) Be a citizen of the United States or an alien admitted for permanent residence or who has otherwise been granted employment authorization by the United States Immigration and Naturalization Service.
 - (3) Possess a current valid state driver's license. Such license must not be limited as defined in O.C.G.A. §§ 40-5-58 and 40-5-64.
 - (4) Exhibit a proficiency with the English language so as to be able to comprehend and interpret traffic signs, issue written receipts to passengers and obey lawful orders of police and others in lawful authority.
 - (5) Have not been convicted, been on probation, parole, or been imprisoned for a period of five (5) years previous to the date of application, or for the violation of any of the following offenses of the state, of any other state or of the United States; any felony; driving under the influence of drugs or alcohol; child molestation; criminal solicitation to commit any of these listed offenses; attempts to commit any of these offenses; any crime of violence or theft; any crime of possession, sale or distribution of illegal drugs or moral turpitude. Discharge without court adjudication of guilt pursuant to O.C.G.A. § 42-8-62 shall not disqualify an applicant.
 - (6) Have not been convicted of four (4) or more moving traffic violations, or one (1) or more mandatory suspensions as defined by Georgia law, within the twelve (12) month period preceding the date of application or renewal of the application. Discharge without court adjudication of guilt pursuant to O.C.G.A. § 42-8-62 shall not disqualify an applicant.
- (e) Drivers are responsible for reporting any change in qualifications or other licensing or permitting information previously supplied to the police department within ten (10) days of the change.

(Code 1976, §§ 7-3002, 7-3004, 7-3005(F); Ord. No. 88-11a, § 1, 10-11-88; Ord. No. 01-04, Pt. 1, 4-26-01; Ord. No. 05-02, Pt. 1, 10-9-01; Ord. No. 11-02, Pt. I, § 1, 11-27-01; Ord. No. 29-03, Pt. I, 10-28-03; Ord. No. 08-21, Pt. I, 11-18-08)

Sec. 15-385. - Determination of permit or inspection fees; proration of license, permit or inspection fees.

Fees for vehicle inspections and driver permits under this article shall be recommended by the police department for approval by the board of commissioners. Fees required by this article are nonrefundable and are not prorated.

(Code 1976, § 7-3003(C); Ord. No. 88-11a, § 1, 10-11-88; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-386. - Transfer and term of permits and vehicle stickers.

- (a) No company permits, driver's permits, licenses or county inspection stickers for individual vehicles required by this article are transferable; and they shall expire annually as provided in this article. If not renewed in compliance with this article, all such licenses, permits and inspection stickers shall expire annually and be of no further force and effect.
- (b) All county inspection stickers required by the provisions of this article shall expire on the date the Georgia motor vehicle license tag expires.

(Code 1976, § 7-3002; Ord. No. 88-11a, § 1, 10-11-88; Ord. No. 11-02, Pt. I, § 1, 11-27-01; Ord. No. 29-03, Pt. I, 10-28-03)

Sec. 15-387. - Suspension or revocation of permit.

- (a) *Suspension.* For reasons set forth below, a business license or a driver's permit issued under this article may be suspended until these conditions no longer exist:
 - (1) Failure to maintain all of the general qualifications applicable to the initial issuance of a license or driver's permit.
 - (2) Violation of any part of this article.
 - (3) For driver's permits only: have not been convicted of four (4) or more moving traffic violations, or one (1) or more mandatory suspensions as defined by Georgia law, within the twelve-month period preceding the date of application or renewal of the application. Discharge without court adjudication of guilt pursuant to O.C.G.A. § 42-8-62 shall not disqualify an applicant.
 - (4) Allowing the required insurance coverage to lapse, or allowing a vehicle to operate in the unincorporated area of the county without a county inspection sticker.
- (b) *Suspension for six (6) months.* For reasons set forth below, a business license or a driver's permit issued under this article may be suspended for six (6) months:
 - (1) Charging a fare in excess of those fares on file with the police department.
 - (2) Refusing to accept a passenger solely on the basis of race, color, national origin, religious belief, sex or sexual orientation. Sexual orientation shall mean the state of being heterosexual, homosexual or bisexual. Operators shall not refuse to accept a passenger unless the passenger is obviously intoxicated or dangerous.
- (c) *Revocation.* A business license or a driver's permit issued under this article may be revoked where the applicant furnishes fraudulent or untruthful information, or omits information, requested in the application.
- (d) A taxicab company permit, driver's permit or business license may be revoked for a violation of this article. If any permit holder, or employee or independent contractor of a permit holder, is found to have violated this article on three (3) or more occasions in a twelve-month period, such permit may be revoked.
- (e) A permit may be revoked if any driver affiliated in any way with such permit is found to have violated this article on five (5) or more occasions in a twelve-month period.

- (f) In addition to any other remedies provided by law, the permit holder may also be cited for violating the provisions of this article, and such citation(s) shall be prosecuted in accordance with the requirements of this article in the Recorder's Court of DeKalb County.
- (g) The requirements of this article shall be in addition to all other licensing, taxing, and regulatory provisions of local, state or federal law and shall not authorize violations of any other applicable laws.

(Code 1976, § 7-3008; Ord. No. 88-11a, § 1, 10-11-88; Ord. No. 01-04, Pt. 1, 4-26-01; Ord. No. 05-02, Pt. 1, 10-9-01; Ord. No. 11-02, Pt. I, § 1, 11-27-01; Ord. No. 29-03, Pt. I, 10-28-03)

Sec. 15-388. - Vehicle condition and equipment; inspection and inspection sticker.

- (a) Drivers and company licensees are responsible for maintaining each vehicle for hire in a clean and mechanically safe condition. The interior and exterior shall meet the requirements set out under inspection requirements outlined in this section.
- (b) Drivers are not to drive and company licensees are not to allow drivers to operate a vehicle without the required markings, a taximeter, top light and inspection sticker as outlined in this section. Required markings shall also include the name of the company painted or affixed by decal to the outside right and left front doors and the schedule of rates, including minimum fares, painted or affixed by decal to the outside right and left rear doors. Magnetic signs, or non-permanent signs or markings, shall be prohibited. Limousines are excepted from having markings, top lights, two-way radios or taximeters; however, limousines are required to have a plate attached to their front or rear bumper indicating the company business name.
- (c) All vehicles for hire to be used by a licensee in the county shall be inspected annually and approved by the police department. Once a vehicle meets the requirements of the inspection, a sticker will be affixed to the left side of the windshield. The requirements that each vehicle must meet are as follows:
 - (1) Exterior inspection shall ensure that headlights, taillights, brake lights, directional signal lights, license plate lights, windshield wipers, all vehicle glass, window cranks or electric windows, doors and door locks, trunk lid, trunk, hood, door handles, exhaust system, bumpers, fenders, body, tires and other vehicle parts are in good condition and functioning properly. There shall be no tears or rust holes in the vehicle body and no loose pieces hanging from the vehicle body. There shall be no unrepaired body damage or any body condition which would create a safety problem or interfere with the operation of the vehicle.
 - (2) Interior inspection shall include the rearview mirror, steering wheel, foot brakes, parking brakes, air conditioning and heating systems to ensure each item is in good operating condition. The upholstery, floor mats, headlining, door panels and the trunk compartment shall be inspected to insure there are no tears, that they are clean and have no offensive odors and that the trunk has sufficient space for passenger luggage.
 - (3) The vehicle shall have a spare tire and jack, a functional two-way radio and a taximeter. The taximeter is to be positioned so that it is visible from the passenger compartment. Taximeter accuracy shall be verified according to the police department's published rules and regulations for vehicles for hire. Limousines are excepted from having a two-way radio and a taximeter.
 - (4) Vehicles shall be subject to random inspections at any time. Vehicles found to be substandard shall be removed from service immediately and shall be subject to immediate vehicle inspection sticker removal by the police department. Additional inspection requirements will be outlined in the police department's vehicle rules and regulations governing passenger-carrying vehicles.
- (d) The inspection sticker is proof that the company met the licensing and insurance requirements at the time of license issuance and that the vehicle passed the last vehicle inspection. Each vehicle operator must have in the vehicle proof of current insurance coverage. Any company or vehicle letting insurance coverage lapse shall have the inspection sticker or stickers removed by the police department and the business license suspended or revoked by the finance department. Business operations shall not be

resumed until proof of insurance is provided to the finance department, the license reinstated and the vehicle or vehicles reinspected and new inspection stickers issued by the police department.

- (e) No business licensed for operating vehicles for hire shall use any vehicle that has not been inspected and had the county inspection sticker affixed.
- (f) Inspection sticker are not transferable from vehicle to vehicle and are nonrefundable if the vehicle is wrecked or taken out of service for any reason. The finance department and police department must be notified within ten (10) days of any vehicle being taken out of service; stickers from vehicles taken out of service must be turned in to the police department. Stickers for replacement vehicles or additional vehicles are issued under the same procedures as original inspection stickers.
- (g) The maximum number of inspection stickers issued in any calendar year shall not exceed one thousand (1,000).
- (h) Inspection stickers shall expire on the date the Georgia motor vehicle license tag expires.

(Code 1976, §§ 7-3002, 7-3005(D), (E), 7-3006; Ord. No. 88-11a, § 1, 10-11-88; Ord. No. 01-04, Pt. 1, 4-26-01; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-389. - Miscellaneous requirements and regulations.

- (a) All taxicab drivers shall maintain in each taxicab a suitable map or street guide of the metropolitan Atlanta area.
- (b) All taxicab drivers shall make a reasonable search of their vehicle immediately following each trip, and upon discovery of any personal property left by a passenger in the taxicab, shall immediately notify the dispatcher so that the dispatcher can attempt to locate the owner to return the property. If the owner cannot be located within twenty-four (24) hours, the dispatcher shall forward the property to the police department. The county shall reflect the initial receipt of the property in a log that shall be maintained and available for inspection by the police chief or designee for one (1) year.
- (c) All taxicab drivers shall take the most direct route to a passenger's destination unless otherwise authorized or directed by the passenger.
- (d) No taxicab driver shall refuse to accept a passenger, unless the passenger is obviously intoxicated or dangerous. All employees and independent contractors of companies permitted pursuant to this article shall be courteous and respectful to members of the public.
- (e) No taxicab driver shall refuse to accept a passenger solely on the basis of that passenger's race, color, gender, religion, sex, national origin, sexual orientation, age or disability.
- (f) All taxicab drivers shall provide receipts upon request of a passenger, showing the amount of fare paid, the name of the company, the taxicab identification number, the number of passengers, and origin and termination location of trip.
- (g) No taxicab driver shall refuse to transport a blind or disabled person or that person's guide or service dog. No taxicab driver shall charge any extra fee for the guide or service dog to accompany said blind or disabled person.
- (h) All taxicab drivers shall practice good personal hygiene, and wear proper dress while operating a taxicab. Proper dress shall mean shoes (not sandals), ankle length pants, and a shirt or blouse with sleeves and a collar. Hats must be of the baseball style or a chauffeur's cap. Clothing must be clean and not visibly soiled.
- (i) Taxicab company permit holders are responsible for ensuring that any driver who is affiliated in any way with such permit complies with the requirements of this article. In addition to being cited for a violation of this article, violation(s) of this section may be grounds for suspension or revocation of the permit issued pursuant to this article.

- (j) Failure of a taxicab driver to comply with this article shall result in the issuance of a citation and/or the driver's arrest and the impoundment of the taxicab.
- (k) No taxicab driver's permit shall be issued to a driver not affiliated with a taxicab company properly permitted pursuant to this article.

(Code 1976, § 7-3005(A); Ord. No. 88-11a, § 1, 10-11-88; Ord. No. 29-03, Pt. I, 10-28-03)

Sec. 15-390. - Trip sheets or logs.

Drivers must maintain daily trip sheets or logs of all passengers, the time, place of entry, the destination of each passenger, the amount charged and an itemization of any personal property left in the vehicle for hire. Trip sheets must be maintained in the vehicle for forty-eight (48) hours and, thereafter, transferred to and maintained at the licensed business premises for a period of time to be specified by the police department in that department's published rules and regulations for vehicles for hire.

(Code 1976, § 7-3005(B); Ord. No. 88-11a, § 1, 10-11-88; Ord. No. 11-02, Pt. I, § 1, 11-27-01)

Sec. 15-391. - Drivers smoking, playing radios, etc.

A driver while operating a vehicle for hire is not to smoke or play a radio or tape player if objected to by a passenger.

(Code 1976, § 7-3005(C); Ord. No. 88-11a, § 1, 10-11-88)

Sec. 15-392. - Cruising and use of vehicle stands.

Licensees under this article are responsible for ensuring that no driver participates in cruising. Cruising is defined as moving about the streets of the unincorporated area for the purpose of picking up and transporting passengers who have not previously requested such service by telephone or by personal command. Licensees shall ensure that their drivers use open stands on a nonexclusive, first-come-first-served basis.

(Code 1976, § 7-3005(G); Ord. No. 88-11a, § 1, 10-11-88)

Cross reference— Parking of taxicabs, § 17-146.

Sec. 15-393. - Call jumping.

Licensees under this article shall not participate in nor allow their drivers to practice call jumping or the act of intercepting a passenger who has requested service from another company.

(Code 1976, § 7-3005(H); Ord. No. 88-11a, § 1, 10-11-88)

Sec. 15-394. - Age of vehicles for hire, taxicabs and limousines.

- (a) As of December 31, 2004, no vehicle having a vehicle age greater than fifteen (15) years may be operated as a taxicab, vehicle for hire or limousine in the unincorporated area of the county. For the purposes of this section, the term vehicle age shall be the vehicle's model year.

- (b) As of December 31, 2006, no vehicle having a vehicle age greater than eight (8) years may be operated as a taxicab, vehicle for hire or limousine in the unincorporated area of the county. For the purposes of this section, the term vehicle age shall be the vehicle's model year.

(Ord. No. 29-03, Pt. I, 10-28-03)

Sec. 15-395. - Schedule of fares.

- (a) All permitted taxicab drivers shall charge the following schedule of fares:
 - (1) To the first one-eighth (1/8) of a mile—Two dollars twenty-five cents (\$2.25);
 - (2) Each additional one-eighth mile(1/8)—Twenty-five cents (\$.25);
 - (3) Waiting time—Twenty-one dollars (\$21.00) per hour; and
 - (4) For each additional passenger in excess of one riding in the vehicle on the same trip—One dollar (\$1.00) per extra person. Children under five (5) years of age shall not be charged the extra person fee, and only one (1) child over the age of five (5) in the company of an adult may be charged the extra person fee.
- (b) All taxicab drivers permitted under this article shall have the right to charge a six dollar (\$6.00) charge if the meter is not utilized.
- (c) Taximeters shall be calibrated by the permitted taxicab driver or taxicab company to calculate the fares in accordance with the schedule set forth in this section. The permit holder shall install lead and wire seals to the taximeter once it is calibrated so that no adjustments, alterations or replacements may be made to the taximeter that affects in any way its accuracy or indications.

(Ord. No. 29-03, Pt. I, 10-28-03; Ord. No. 05-15, Pt. I, 9-13-05)

Sec. 15-396. - Temporary fuel surcharge.

- (a) The police chief or designee shall assess fuel prices in the county every three (3) months, the first assessment to occur immediately after approval of this section and again thereafter on November 1, February 1, May 1, and August 1 of each calendar year and repeating every November 1, February 1, May 1, August 1 and/or an assessment may be needed based on a sudden increase in gasoline prices between those dates.
- (b) At the time of the assessment, if the police chief or designee finds that the price of fuel in the county exceeds by twenty (20) percent the average price of fuel in the Atlanta metropolitan area in the preceding year, as published by the American Automobile Association, the police chief or designee shall be authorized to institute temporary fuel surcharges as set forth in this article.
- (c) Within ten (10) days of the assessment of fuel prices, if the price exceeds the standards of subsection (b) above, the police chief or designee shall notify all taxicab companies, taxicab drivers, taxicab trade associations, and all other affected persons or entities operating in the taxicab industry within the county of temporary fuel surcharges that may be imposed on customers.
- (d) If the police chief or designee authorizes the assessment of temporary fuel surcharges, all taxicab companies and drivers shall charge, in addition to the schedule of fares set forth in section 15-395 of the Code of DeKalb County, the following fuel surcharges:
 - (1) A two-dollar fuel surcharge per metered taxicab trip;
 - (2) For each additional passenger in excess of one riding in the vehicle on the same trip, an additional two-dollar fuel surcharge per extra person. Children under five (5) years of age shall not be charged the extra two-dollar per-person fee, and only one (1) child over the age of five (5) in the company of an adult may be charged the extra two-dollar per-person fee.

- (e) No other temporary fuel charges may be assessed against customers and the temporary fuel surcharges applied only remains in effect until the time of the next periodic fuel price assessment by the police chief or designee.
- (f) All taxicab drivers must and shall conspicuously display a printed passenger notice on the taxicab dashboard describing the temporary fuel surcharge.
- (g) The printed notice shall advise passengers that a temporary fuel surcharge will be added to the metered fare or to the flat rate fare due to increases in gasoline prices in the county and shall advise passengers of the amount of the fee as described in [sub]section (d).

(Ord. No. 08-21, Pt. I, 11-18-08)

Secs. 15-397—15-399. - Reserved.

ARTICLE XII. - ADULT ENTERTAINMENT ESTABLISHMENTS

Sec. 15-400. - Findings; public purpose.

- (a) Based on evidence concerning the adverse secondary effects of adult entertainment establishments on the community in the findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Los Angeles, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; and Cleveland, Ohio; findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the evidence and testimony of the citizens and experts who appeared before the DeKalb County Board of Commissioners at a hearing conducted in 1991, and public hearing on the Revised Alcoholic Beverage Ordinance held on March 10, 1998 and April 14, 1998, the DeKalb County Board of Commissioners takes note of the notorious and self-evident conditions attendant to the commercial exploitation of human sexuality, which do not vary greatly among generally comparable communities within our country. Moreover, it is the finding of the DeKalb County Board of Commissioners that adult entertainment establishments, as defined herein, are often associated with criminal behavior and tend to contribute to undesirable community conditions. Among the acts of criminal behavior identified with adult entertainment establishments are disorderly conduct, prostitution, drug trafficking, and drug use. Among the undesirable community conditions identified with adult entertainment establishments are depression of property values in the surrounding neighborhoods, increased expenditure for and allocation of law enforcement personnel to preserve law and order, increased burden on the judicial system as a consequence of the criminal behavior described above, and the acceleration of community blight by the concentration of such establishments in particular areas. Furthermore, the public health, safety, and welfare require that adult entertainment establishments and their locations, operations, and employees be regulated and licensed in order to reduce the potential for harm and in order to preserve the quality of urban life in residential and business areas of the community. Therefore, the limitation of adult entertainment establishments to certain prescribed areas of the community is in the public welfare and it is a matter of governmental interest and concern to minimize the occurrence of criminal behavior and undesirable community conditions normally associated with establishments which provide or establish adult entertainment or adult uses.
- (b) The purpose of this article is to regulate certain types of businesses, including but not limited to, adult entertainment establishments, to the end that the many types of criminal activities frequently engendered by such businesses and the adverse effect on property values and on the public health, safety, and welfare of the county, on its citizens and property, and on the character of its

neighborhoods and development will be curtailed. This article is not intended as a de facto prohibition of legally-protected forms of expression. This article is intended to represent a balancing of competing interests: reducing criminal activity and protection of neighborhoods and development through the regulation of adult entertainment establishments while protecting the rights of adult entertainment establishments and patrons. This article is not intended to allow or license any business establishment or activity that would otherwise be unlawful.

(Ord. No. 94-02, § 2, 2-8-94; Ord. No. 21-03, Pt. I, 8-26-03)

Sec. 15-401. - Definitions.

Adult entertainment establishment is any one (1) or more of the following:

- (a) *Adult bookstore.* An establishment having a significant portion of its stock in trade, books, magazines, printed material, and other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below. For purposes of this subsection, the aforementioned items shall be collectively referred to as "adult material." It may be presumed that a business has a "significant portion of its stock in trade" in adult material if any one (1) of the following criteria is satisfied:
 - (1) Twenty (20) percent or more of the merchandise displayed for sale consists of adult material; or
 - (2) Twenty (20) percent or more of the stock in trade consists of adult material; or
 - (3) Twenty (20) percent or more of all inventory consists of adult material; or
 - (4) Twenty (20) percent or more of the retail floor area is devoted to adult material (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public);
 - (5) Twenty (20) percent or more of the gross sales (including rentals) result from the sale or rental of adult material; or
 - (6) Twenty (20) percent or more of the dollar value of all merchandise displayed at any time is attributable to adult material.
- (b) *Adult business.* An establishment, other than those expressly specified in this section, where employees or patrons expose specified anatomical areas or engage in specified sexual activities.
- (c) *Adult motion picture theater.* An enclosed building with a capacity of fifty (50) or more persons, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.
- (d) *Adult minimotion picture theater.* An enclosed building, or enclosed or semi-enclosed room or booth within an enclosed building, with a capacity of less than fifty (50) persons, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified anatomical areas for observation by patrons therein.
- (e) *Adult motion picture arcade.* Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time and where the images so displayed are distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.
- (f) *Adult video store.* An establishment having a significant portion of its stock in trade, video tapes, digital video devices (DVDs), movies or other reproductions, whether for sale or rent, which are

distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below. For purposes of this subsection, the aforementioned items shall be collectively referred to as "adult material." It shall be presumed that a business shall have a "significant portion of its stock in trade" in adult material if any one (1) of the following criteria is satisfied:

- (1) Twenty (20) percent or more of the merchandise displayed for sale consists of adult material; or
 - (2) Twenty (20) percent or more of the stock in trade consists of adult material; or
 - (3) Twenty (20) percent or more of all inventory consists of adult material; or
 - (4) Twenty (20) percent or more of the floor area is devoted to adult material (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public);
 - (5) Twenty (20) percent or more of the gross sales (including rentals) result from the sale or rental of adult material; or
 - (6) Twenty (20) percent or more of the dollar value of all merchandise displayed at any time is attributable to adult material.
- (g) *Erotic entertainment/dance establishment.* A nightclub, theater, or other establishment which features live performances by dancers, entertainers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas. These establishments are also regulated pursuant to section 4-104 of this Code.

Specified anatomical areas shall include any of the following:

- (a) Less than completely and opaquely covered human genitals or pubic region, buttocks, or female breasts below a point immediately above the top of the areola; or
- (b) Human male genitalia in a discernibly turgid state, even if completely or opaquely covered.

Specified sexual activities shall include any of the following:

- (a) Actual or simulated intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation or unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct; anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, sapphism, zooerasty; or
- (b) Clearly depicted human genitals in a state of sexual stimulation, arousal, or tumescence; or
- (c) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
- (d) Fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts; or
- (e) Masochism, erotic or sexually oriented torture, beating, or the infliction of pain; or
- (f) Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being; or
- (g) Human excretion, urination, menstruation, or vaginal or anal irrigation.

(Ord. No. 94-02, § 2, 2-8-94; Ord. No. 00-20, Pt. 1, §§ I, II, 3-14-00; Ord. No. 42-02, Pt. I, 12-19-02; Ord. No. 21-03, Pt. I, 8-26-03)

Sec. 15-402. - Certain activities prohibited.

- (a) No person or licensee shall admit or permit the admission of any individual under the age of eighteen (18) or allow such individual to remain within a licensed premise.
 - (1) A licensee is defined herein as any person, association, partnership, corporation or other business entity which has obtained a valid DeKalb County license for the operation of an adult entertainment establishment.
 - (2) A licensed premises is defined herein as any adult entertainment establishment which has obtained a valid DeKalb County license.
- (b) No person or licensee shall sell, exchange, barter, trade, give or offer to sell, exchange, barter, trade or give, to any individual under the age of eighteen (18) any entertainment, service, material device or thing offered, for sale or otherwise, at an adult entertainment establishment.
- (c) No licensee shall permit or suffer an employee or other person to appear nude or semi-nude where there is an individual payment offer or solicitation of money occurring between patron and employee.
- (d) No licensee shall permit any employee or patron to use artificial devices or inanimate objects to depict any of the prohibited activities described in this rule.
- (e) No licensee shall suffer or permit an employee or any person on the premises to insert an object into her vagina or his/her anal orifice, except for personal hygiene or necessity.
- (f) No licensee shall suffer or permit an employee or any person on the premises to engage in actual or simulated genital masturbation, or, in the case of females, fondling of the breasts.
- (g) No licensee shall suffer or permit a male employee or any person on the premises to exhibit an unclothed erect penis.
- (h) No licensee shall suffer or permit an employee or any person on the premises to engage in, or simulate bestiality.
- (i) No person other than a dancer or entertainer while on any licensed premises, shall expose or be permitted to expose to public view with less than a complete and opaque covering of his or her genitals, pubic area, buttocks, anus or anal cleft or cleavage, and if a female, her breasts below a point immediately above the top of the areola.
- (j) No employee or person while on a licensed premises shall or be permitted to dance or perform nude or semi-nude in such a manner as to simulate specified sexual activity with any patron, spectator, employee or other person not employed therein.
- (k) No person, while on a licensed premises, shall, while nude, or semi-nude, be permitted to sit upon or straddle the leg, legs, lap or body of any patron, spectator, employee or other person therein, or to engage in or simulate sexual activity while touching or being touched by said patron, spectator or other person.
- (l) No licensee shall suffer or permit the use of any areas on the premises of such establishment for sexual contact or private dancing performance or entertainment.
- (m) No dancer or entertainer while on a licensed premises shall dance on a platform intended for that purpose which is not raised at least eighteen (18) inches from the floor. Furthermore, no dancing shall occur closer than four (4) feet from any patron.
- (n) No licensee shall suffer or permit any signage or advertisement which encourages, solicits, induces or promotes conduct or activities prohibited by this article.
- (o) No erotic entertainment/dance establishment licensee shall serve, sell, distribute or suffer consumption or possession of any alcoholic beverages or controlled substances upon the premise of the licensee.
- (p) No drugs or illegal or controlled substances of any kind shall be allowed, permitted, used, possessed or sold upon the premises, and no gambling shall be allowed or permitted therein.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-403. - Distance requirements.

Adult entertainment establishments, businesses, or uses shall be located within the following distances as defined and measured as stated herein:

- (1) An adult entertainment establishment shall be located no closer than one thousand (1,000) feet to another adult entertainment establishment and shall comply with any distance requirements imposed by this Code including those found in section 4-101.1. The measurement of distances for the purpose of this paragraph shall be from structure to structure along the shortest possible course, regardless of any customary or common route or path of travel, i.e. "as the crow flies."
- (2) An adult entertainment establishment shall not be located on property which is within one thousand (1,000) feet of an R or RM use or district. The measurement of distances for purposes of this paragraph shall be from property line to property line along the shortest possible course, regardless of any customary or common route or path of travel, i.e. "as the crow flies."
- (3) An adult entertainment establishment shall be located no closer than one thousand (1,000) feet of any governmental facility, church, residence, park, library, school ground, or college campus. The measurement of distances for purposes of this paragraph shall be from property line to property line along the shortest possible course, regardless of any customary or common route or path of travel, i.e. "as the crow flies."

(Ord. No. 94-02, § 2, 2-8-94; Ord. No. 00-20, Pt. 1, § III, 3-14-00; Ord. No. 32-02, Pt. I, 8-27-02)

Sec. 15-404. - License required.

It shall be unlawful for any person, association, partnership, corporation, or other business entity, to engage in, operate, conduct or carry on, in or upon any premises, an adult entertainment establishment without first having complied with the provisions of this article, or without a currently valid DeKalb County license for the operation of an adult entertainment establishment. No license issued hereunder shall condone or make legal any activity thereunder if the same is deemed illegal or unlawful under the laws of the State of Georgia or the United States or under any other ordinance, rule or regulation of DeKalb County. The license shall be conspicuously displayed at all times within the premises.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-405. - Adult entertainment establishment employees.

- (a) Employees of adult entertainment establishments shall be not less than eighteen (18) years of age.
- (b) No person shall be employed in any capacity whatsoever, including, but not limited to, performers, entertainers, waiters, bouncers, bartenders, discjockeys, and musicians, who has been convicted in this or any other county or state or in any federal court within five (5) years immediately prior to the application for employment of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, illegally dealing in narcotics, sex offenses, or any charge relating to the manufacture or sale of intoxicating liquors, or any other felony or misdemeanor involving moral turpitude, or for whom any outstanding warrant exists on which service has not been perfected. "Be employed" shall include all work done or services performed while in the scope of employment on the premises and elsewhere than on the licensed premise, for compensation or otherwise. Notwithstanding, this provision shall not apply to an independent contractor who performs accounting, legal, administrative, repair or maintenance services for licensee.

- (c) A permit to work in or be employed by an adult entertainment establishment, whether for compensation or otherwise, shall be required for all employees thereof. For the purpose of this article, independent contractors, such as entertainers, employed or hired by an adult entertainment establishment, shall be licensed as employees, regardless of the business relationship with the owner or licensee of any adult entertainment establishment. Each independent contractor shall be required to have and maintain his or her separate business license. Notwithstanding, this provision shall not apply to an independent contractor who performs accounting, legal, administrative, repair or maintenance services for licensee.
- (d) No person requiring a permit may be employed by or work in an establishment until such person has filed an application, paid the fee for and obtained a work permit from the bureau of police services.
- (e) An application for a permit shall include the applicant's legal name, all of the applicant's aliases and/or any other name by which the applicant has ever been known, address, business name and address, date of birth with written proof thereof, and prior arrest record of the applicant. The bureau of police services shall make a complete search relative to any police record of the applicant. If there is no record of a violation of 15-405(b) herein, or of any other section of this article, the bureau of police services shall issue a permit to the applicant. A permit will be issued or denied within ten (10) business days after submission of a properly completed application. If the permit is not issued or denied within the specified time frame, then the permit shall be deemed approved.
- (f) Any applicant denied a permit may, within ten (10) days of said denial, apply to the chief of police for a hearing. The decision of the chief of police may be appealed within ten (10) days after notification of denial. The applicant must submit in writing a notice of appeal to the board of commissioners by filing with the clerk of the board of commissioners. Said notice shall specify the subject matter of the appeal, the date of any original and amended application or request, the date of the adverse decision and receipt of notice thereof, the basis of the appeal, the action requested of the board of commissioners, and the name and address of the applicant. Said appeal shall be placed on the agenda of the next regular board of commissioners' meeting occurring not less than five (5) no more than thirty (30) days after receipt of said notice of appeal. The decision of the board of commissioners will be final unless the applicant files a petition for writ of certiorari to the superior court within fifteen (15) days of the date of board's decision.
- (g) Any permit for employment issued hereunder shall expire twelve (12) months from the date of issuance unless earlier revoked or suspended. The DeKalb County Police Department may prescribe reasonable fees for certifying the eligibility for employment.
- (h) Employees holding permits issued pursuant to this chapter shall at all times during their working hours have said permits available for inspection at the premises.

(Ord. No. 94-02, § 2, 2-8-94; Ord. No. 00-20, Pt. 1, §§ IV—VI, 3-14-00; Ord. No. 11-02, Pt. I, § 4, 11-27-01)

Sec. 15-406. - Licensing and licenses.

- (a) All licenses herein shall be a mere grant of privilege to carry on such business during the term of the license subject to all the terms and conditions imposed by this article and related laws, applicable provisions of this Code and other ordinances and resolutions of the county relating to such business.
- (b) All licenses hereunder shall have printed on the front these words: "This license is a mere privilege subject to be suspended and revoked under the provisions of the ordinances of DeKalb County."
- (c) A separate license shall be required for each place of business.
- (d) No license shall be issued to any person who is less than twenty-one years of age.
- (e) Application for license shall be written and on forms supplied by DeKalb County at the finance department. Such application shall state the name and address of the applicant; the place where the proposed business is to be located; nature and character of the business to be carried on; if a

partnership, the names of the partners; if a corporation, the names of the officers and shareholders; if other business entity, then the names of all holding any ownership or managerial interests therein.

- (f) All applications shall furnish all data, information and records requested of them by the county and pay an administrative investigation fee to be determined by the finance department. Failure to furnish such data, information and records within thirty (30) days from the date of such request shall mean an automatic denial of the license.
- (g) For the purpose of this article, the term "applicant" shall include a person or persons and, in the case of a partnership or corporation, all partners, officers, directors, principals, and shareholders of said partnership or corporation.
- (h) Each application must be complete in its entirety before being accepted by the county for filing and processing.
- (i) All applicants for licenses shall furnish plans and renderings of the proposed premises. The applicant's structure or premises shall comply with all applicable provisions of this Code. An applicant shall obtain and file with the license application a certificate of zoning compliance, certifying that the property where the applicant seeks to operate the business contains the required zoning and land use for the legally intended use of the business and its premises. The director of planning shall within thirty (30) days after receipt of a complete application, either issue or deny the certification of zoning compliance. If the certificate is not issued or denied within thirty (30) days after the application is submitted, then the certificate shall be deemed issued on the thirty-first day.
- (j) Each application for an adult entertainment establishment license shall be verified and acknowledged under oath to be true and correct by:
 - (1) If the applicant is an individual, the individual;
 - (2) If by a partnership, by the manager or general partner;
 - (3) If a corporation, by the president of the corporation;
 - (4) If any other organization or association, by the chief administrative official.

(Ord. No. 94-02, § 2, 2-8-94; Ord. No. 00-20, Pt. 1, § VII, 3-14-00; Ord. No. 21-03, Pt. I, 8-26-03)

Sec. 15-407. - Notice of intent to engage in business.

- (a) All applicants for licenses hereunder shall give notice that application has been filed and of the purpose of making such application by publication of an advertisement once a week for two (2) consecutive weeks prior to the date of consideration of the application by the business license division in the newspaper in which legal advertisements are published.
- (b) The first advertisement shall not appear more than thirty (30) days prior to the date of such consideration. The advertisement shall be of type not smaller than ten (10) point capital and lower case and shall be at least one-inch column. The advertisement need not appear on the same day as legal advertisements are regularly published.
- (c) The notice shall contain a particular description of the location of the proposed business, the name of the applicant, and if a partnership, the names of the partners, and if a corporation, the names of the officers, and the date, time and place of hearing, and a statement that any objections to the issuance must be made at or prior to the time of hearing, and, if prior to the time of hearing, must be in writing and received by the supervisor on or before the date and time of hearing.
- (d) The applicant shall cause to be placed upon the location of the proposed business a sign or signs stating the following:

"DeKalb County Adult Entertainment License applied for. Any objection to this application must be made at or prior to _____ o'clock _____m., on the

_____/_____/_____ day of _____ 19_____ at _____ (address) which is the date and time of hearing. If prior to the hearing, objections must be in writing."

The sign or signs shall be at least eighteen (18) inches by twenty-four (24) inches in size and shall face toward all public streets, sidewalks, or other public property which adjoin or adjoins the location so as to be clearly visible by persons using such public area. The sign shall be posted on the property from the date of the first publication of the notice of intent to engage in business through the date of the granting or denial of a license.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-408. - License fees and penalty for late payment.

- (a) The annual license fee shall be set by the board of commissioners from time to time by resolution. Licenses shall be issued for a calendar or any partial year and shall expire on December 31st of each year. No license shall be issued or renewed until and unless all fees and penalties due the county are first paid.
- (b) In addition to and not in the alternative to any other penalty which may be provided herein, any licensee, person or entity who fails to pay any fee, tax or other payment due to DeKalb County of any kind when due shall pay, in addition to such fee, tax or other charge, a separate penalty equal to ten (10) percent of the required fee, tax or other charge, for each period of thirty (30) days, or portion thereof, following the due date, until paid in full, including penalties.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-409. - License application investigation.

- (a) Within five (5) days after receipt of a complete application that includes all of the information required in section 15-406 of this Code, the finance department shall transmit a copy to the police department, development department, fire department, and health department for review and comment. Each reviewing department shall review and make any appropriate written comments to the finance department within twenty (20) days of the reviewing department receiving the license application. The county shall then have a reasonable time, not to exceed twenty (20) days after the finance department has received all final documents from the reviewing departments, within which to investigate a license application. The investigation shall be conducted to ensure that an applicant meets the terms and requirements of this article. The director of finance shall within forty-five (45) days after receipt of a complete application, issue or deny the license. If the director of finance or his or her designee does not issue or deny the license within forty-five (45) days after the completed application is submitted, then the license shall be deemed approved on the forty-sixth day. Upon completion of the investigation, a license shall be granted if:
 - (1) The required fee has been paid;
 - (2) The application conforms in all respects to the provisions of this article;
 - (3) The applicant has not made a material misrepresentation in the application;
 - (4) The applicant has not had an adult entertainment establishment permit or other similar license or permit denied or revoked for cause by this county or any other county located within or outside this state within five (5) years of the date of the application;
 - (5) The building, structure, equipment or location of such business as proposed by the applicant complies with all applicable laws and ordinances, including but not limited to health, zoning, distance, fire and safety requirements and standards;

- (6) The applicant is at least twenty-one (21) years of age;
 - (7) Neither the applicant nor any of his or her employees, agents, partners, directors, officers, stockholders, or managers have, within five (5) years of the date of the application, committed or performed or knowingly allowed to be committed or performed any of the specified sexual activities, defined in section 15-401(k) herein, in or upon the premises where the adult entertainment establishment is to be located or knowingly allowed such premises to be used as a place where in solicitations are made for any of the specified sexual activities;
 - (8) On the date the business for which a permit is required herein commences, and thereafter, there will be a responsible person on the premises to act as manager at all times during which the business is open;
 - (9) The proposed premises meets the distance requirements set forth in section 15-403 of this Code.
 - (10) The grant of such license will not cause a violation of this article or any other ordinance or regulation of DeKalb County, the State of Georgia, or the United States;
 - (11) No individual having an interest either as an owner, partner, principal stockholder, directly or indirectly beneficial or absolute, is in violation of section 15-410 of this Code;
 - (12) The applicant is not overdue on payment to the county on taxes, fees, fines, or penalties assessed against, or imposed on the applicant; and
 - (13) The applicant is not residing with or married to a person (i) who has been denied an adult entertainment license within twelve (12) months immediately preceding the date of the application, (ii) whose adult entertainment license has been revoked within twelve (12) months immediately preceding the date of the application, or (iii) whose adult entertainment establishment license is under suspension at the time of the application.
- (b) No further action shall be taken by DeKalb County or by any applicant with respect to any application until completion by the county of its investigation.

(Ord. No. 94-02, § 2, 2-8-94; Ord. No. 00-20, Pt. 1, §§ VIII—XI, 3-14-00; Ord. No. 21-03, Pt. I, 8-26-03)

Sec. 15-410. - Issuance to persons with prior convictions.

No original license shall be issued to any person where any individual having an interest either as owner, partner, principal stockholder, directly or indirectly beneficial or absolute, shall have been convicted within ten (10) years immediately prior to the filing of said application for any felony or misdemeanor or any state of the United States or any municipal ordinance except traffic violations, or for whom an outstanding warrant exists on which no service has been perfected. Where the violation is for misdemeanor, forfeiture of bond, violation of a county or municipal ordinance, or where there is a plea of nolo contendere, the board of commissioners after hearing, may, after investigation, waive same as a disqualification. Such a hearing shall be conducted in the manner provided in section 15-418(c) herein.

(Ord. No. 94-02, § 2, 2-8-94; Ord. No. 00-20, Pt. 1, § XII, 3-14-00)

Sec. 15-411. - License to be obtained within two weeks of approval of application.

- (a) All licenses must be obtained and fees paid not later than two (2) weeks from the date of the approval of the application; and if not so obtained, the permit granted shall be void.
- (b) When a license has been approved and the applicant has deposited with the business license department the required fee, the license shall be issued.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-412. - Causes for mandatory denial of license.

No license shall be issued to an applicant if within twelve (12) months immediately preceding the filing of an application one (1) or more of the following shall have occurred:

- (1) The same applicant for a license or renewal has been rejected for any location, if such rejection was based upon the applicant's failure to meet the terms of the ordinance applicable to the applicant as opposed to rejection for reasons related to the location itself.
- (2) The location has been rejected for any applicant.
- (3) When any application for a license to transact any business within the control of the police powers is denied for cause or any license is revoked for cause by the board of commissioners.

The twelve (12) months waiting period will not apply where the applicant shall apply for a new location which has not been rejected within the preceding twelve months, except if the applicant has had an application for another location rejected within the preceding twelve (12) months, except if the applicant has had an application for another location rejected within the preceding twelve (12) months because of lack of qualifications of the applicant.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-413. - License; refusal, appeal, procedure.

- (a) If, following investigation of the application, the director of finance determines that the applicant does not fulfill the requirements as set forth in this article, the director shall, within the time frame specified in section 15-409(a), notify the applicant that the application is denied. The applicant may appeal such denial in the manner provided in this section.
- (b) Should an applicant desire to appeal a decision under this section, the following procedure shall apply:
 - (1) A notice of appeal must be filed with the director of finance within fifteen (15) calendar days after receipt of the decision complained of. The notice of appeal shall be in the form of a letter, and shall clearly identify all of the objections or exceptions taken to the decision of the director of finance. The notice of appeal shall also contain an address for receipt of future notices and decisions of the certificate review board. Should the aggrieved person or entity fail to file a notice of appeal within the time allowed, the right to appeal is lost.
 - (2) Upon receipt of a timely and proper notice of appeal, the director shall notify the appellant, in writing, of the date, time, and place where a hearing will be held. The hearing shall be held before the certificate review board within forty-five (45) calendar days of the date the notice of appeal is filed with the director, but no sooner than ten (10) calendar days after appellant receives notice of the hearing. The director shall transmit to the certificate review board all documents or materials constituting the record of the action or proceedings below.
 - (3) If the director deems it necessary that an audit of the financial books/records of appellant be conducted, the county shall notify appellant in writing of a reasonable date, time and place for the audit, which shall be conducted prior to the date of a hearing on the matter. The director may hire outside auditors for this purpose. The expense of hiring outside auditors shall be borne by the county if the position of the appellant is sustained by the audit. If not, the expense of the outside auditors shall be due and payable from appellant as part of the costs of appeal.
 - (4) An appeal under this section shall not preclude the county from pursuing legal proceedings to enjoin any violation of this article or of any other article of the DeKalb County Code.
 - (5) Certificate review board. In all hearings pursuant to this section, the following procedures shall prevail, and the proceeding shall be as informal as compatible with justice:

- a. A certificate review board shall be convened. The certificate review board shall be composed of three (3) individuals, selected from the following positions: the deputy public works director for development, the chief of police or the deputy chief of police, the director of the department of fire and rescue services, the director of health, the director of the human resources & merit system department.
 - b. The proceeding before the certificate review board shall be recorded, and all documents and other materials considered by the certificate review board shall be preserved as the record of the proceedings. The record of the proceedings shall be preserved for not less than one hundred fifty (150) calendar days after the hearing.
 - c. Any alleged violations or misconduct levied against the appellant and scheduled for a hearing before the certificate review board shall be read completely to appellant at the commencement of the hearing, unless waived by appellant.
 - d. The certificate review board may receive evidence in support of the alleged violations or misconduct as filed against appellant. Decisions of the certificate review board are to be supported by the evidence accepted and admitted during the hearing.
 - e. The county shall bear the burden of proof. The standard of proof shall be by a preponderance of the evidence.
 - f. The order of proof shall be as follows: The county representative shall present the case-in-chief in support of the alleged violations or misconduct; the appellant may present a case-in-chief, if desired. Each party may be allowed to present one case-in-rebuttal.
 - g. The appellant and county may be represented by counsel, may present evidence, and may examine and cross-examine witnesses. Additionally, members of the certificate review board are permitted to question witnesses. A party is permitted no more than fifteen (15) minutes to present that party's case-in-chief; a case-in-rebuttal is permitted no more than ten (10) minutes of presentation. Presentation of augments and evidence may be in oral or written form, except that affidavits of individuals who are unavailable for cross-examination shall not be accepted or admitted by the certificate review board nor considered by the board.
 - h. Following the presentation of evidence, the board shall issue a written decision within thirty (30) calendar days of the date of the hearing. A copy of the decision shall be mailed, via registered or certified mail, to the parties or the parties' representatives. For the appellant, the decision shall be mailed to the address provided on the notice of appeal. Should the certificate review board fail to issue a timely decision, on the thirty-first day after the date of the hearing appellant may seek review as if a decision adverse to appellant had been rendered.
 - i. The findings of the certificate review board shall be final unless either party files an appeal to the board of commissioners.
- (c) Within ten (10) days of notification of an adverse decision, either party appearing before the certificate review board may submit a written notice of appeal to the board of commissioners. Said notice shall specify the subject matter of the appeal, the date of any original and amended application or request, the date of the adverse decision and receipt of notice thereof, the basis of the appeal, and the action requested of the board of commissioners. Said appeal shall be placed on the agenda of the next regular board of commissioners meeting occurring not less than five (5) nor more than thirty (30) days after receipt of said notice of appeal.
 - (d) The board of commissioners shall review the record of the certificate review board and the standard of review applied shall be whether the decision of the certificate review board was supported by substantial evidence. The board of commissioners shall issue a decision within ninety (90) days of the date of the certificate review board's decision. The board of commissioners may sustain, overrule, or modify the decision of the certificate review board.
 - (e) The decision of the board of commissioners may be immediately reviewed as a matter of right upon the filing by the applicant of a petition for writ of certiorari to the superior court. The decision of the

board of commissioners shall be final if the applicant does not file a petition for writ of certiorari within thirty (30) days of the date of the decision.

(Ord. No. 94-02, § 2, 2-8-94; Ord. No. 00-20, Pt. 1, § XIII, 3-14-00; Ord. No. 21-03, Pt. I, 8-26-03)

Sec. 15-414. - License not transferable; restrictions on additional partners or shareholders; location and name change.

- (a) No license issued hereunder shall be sold, given, transferred or assigned by any licensee, or by operation of law, to any other person, persons or entities. Any such sale, gift, transfer or assignment, shall be deemed to constitute a voluntary surrender of the license and such license shall thereafter be null and void; provided, however, if the licensee is a partnership or corporation, and one (1) or more of the partners or shareholders, as the case may be, should die, one (1) or more of the surviving partners or shareholders who were partners or shareholders at the time of issuance of the license may acquire, by purchase or otherwise, the interest effecting a surrender or termination of such license, and in such case the licensee, shall immediately notify the finance department. An adult entertainment establishment license issued to a closely held corporation shall be deemed terminated and void when either any outstanding stock of the corporation is sold, transferred or assigned after the issuance of a license, or any stock authorized but not issued at the time of the granting of a license hereunder is thereafter issued and sold, transferred or assigned.
- (b) No licensee shall change the location of the establishment without obtaining a new license. The licensee upon change of the name of the establishment must notify the finance department of DeKalb County thirty (30) days prior to the change. An application for a license due to a change of location is subject to all requirements of this article.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-415. - Issuance to persons with prior convictions (felony).

No original license shall be issued to any person where any individual having an interest either as owner, partner, principal stockholder, directly or indirectly beneficial or absolute, shall have been convicted within ten (10) years immediately prior to the filing of said application for any felony.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-416. - Completion of proposed licensed premises.

Where a building where the adult entertainment establishment is to operate is, at the time of the application for such license, not in existence or not yet completed or renovated, a license may be issued for such location provided the plans for the proposed building or renovation show clearly compliance with all other provisions of this article. No business shall be conducted therein until the premises have been completed in accordance with the plans and is in conformity with all of the other provisions of this article, the other ordinances of DeKalb County and laws and regulations of the state or federal government.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-417. - Annual renewal required.

- (a) All licenses issued hereunder shall be issued for a calendar year or any partial year and shall expire on December 31st of each year. All licensees hereunder shall be required to renew their licenses annually on forms prescribed by the county.
- (b) An application for renewal shall meet and qualify under all requirements of this article for the granting of a new license.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-418. - Suspension, revocation and probation of license.

- (a) No license issued hereunder shall be suspended, revoked, or placed on probation except for due cause, as herein defined. If the director of finance determines that the due cause exists, the director shall notify the licensee in writing that the license issued hereunder is suspended, revoked, or placed on probation.
- (b) "Due cause" for suspension, revocation, or probation of such license shall consist of the violating of any local, state, or federal laws, regulations, statutes or ordinances regulating such business or for any reason which would authorize the refusal to issue or renew such license.
- (c) The applicant may appeal any action taken under this section in the manner provided in section 15-413(b) through 15-413(e).

(Ord. No. 94-02, § 2, 2-8-94; Ord. No. 21-03, Pt. I, 8-26-03)

Sec. 15-419. - Falsifying information in applications.

Any material omission, untrue, or misleading information contained in or left out of an original or renewal application for any license or permit issued pursuant to this article shall be unlawful, shall be cause for denial thereof, and shall be punishable as a violation of a county ordinance and applicable state statutes. If any such license or permit has previously been granted under the above circumstances, such shall constitute cause for the revocation of same.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-420. - Inspection and enforcement.

- (a) An applicant or licensee shall permit county representatives from the police department, finance department, health department, fire department, and planning and/or development department to enter the premises of any adult entertainment establishment or proposed adult entertainment establishment at any time between thirty minutes prior to opening for business and thirty (30) minutes after closing to inspect the premises to ensure compliance with applicable provisions of this Code.
- (b) Any person violating the provisions of this article or who refuses to permit inspection of the premises by representatives of the police department, finance department, health department, fire department, or development department, shall be assessed a fine not to exceed one thousand dollars (\$1,000.00) per violation or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. In addition to such fine or imprisonment, violation of this article shall also constitute "due cause," as defined in section 15-418, for the suspension or revocation of the license issued hereunder.
- (c) Any violation of the provisions of this article may be abated by the county as a public nuisance.
- (d) The violation of any provisions of this article by any person may be enjoined by instituting appropriate proceedings for injunction in any courts of competent jurisdiction. Such actions may be maintained notwithstanding that other adequate remedies at law exist. Such actions may be instituted in the name of the governing authority of this county.

(Ord. No. 94-02, § 2, 2-8-94; Ord. No. 21-03, Pt. I, 8-26-03; [Ord. No. 13-16](#), Pt. I, 10-22-13)

Sec. 15-421. - Zones where establishments permitted.

No license for an adult entertainment establishment may be issued for any premises or location, unless the location has been zoned C2 or M, under the zoning laws of DeKalb County and meets all the requirements of the DeKalb County Zoning Ordinance for adult entertainment establishments.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-422. - Unlawful operation declared nuisance.

- (a) Any adult entertainment establishment operated, conducted or maintained contrary to the provisions of this article shall be and the same is hereby declared to be unlawful and a public nuisance. The county may, in addition, or in lieu of all other remedies, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinder thereof, in the manner provided by law.
- (b) No adult entertainment establishment shall be conducted on any premises which does not comply with all zoning, building code, fire and other ordinances and laws of DeKalb County and the State of Georgia.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-423. - Severability and conflict.

- (a) Should any section or provision of this article be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional.
- (b) Should any section or provision of this article be in conflict with any other ordinance, rule, regulation, or law, then the more restrictive ordinance, rule, regulation, provision, requirement, or law shall prevail.

(Ord. No. 94-02, § 2, 2-8-94)

Sec. 15-424. - Effective date.

- (a) This article shall become effective immediately upon its adoption.
- (b) All existing adult entertainment establishments shall obtain a license and comply with all the terms of this article within thirty (30) days of its adoption.

(Ord. No. 94-02, § 2, 2-8-94)

Secs. 15-425—15-499. - Reserved.

ARTICLE XIII. - MULTIFAMILY RENTAL DWELLINGS

Sec. 15-500. - Definitions.

For the purpose of this article, certain terms and words are defined. Where words have not been defined, but are defined in section 1-2, those words shall have the meaning defined therein. The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them as directed below, except where the context clearly indicates a different meaning:

Certified building inspector means a person who has been authorized to perform inspections pursuant to the process established by this article, provided that such person maintains the qualifications for certification as established by this article.

Code compliance certificate means a certificate, in a form authorized by the chief executive officer or his/her designee, executed by a certified building inspector showing compliance with those minimum requirements described in the inspection report attached thereto.

Inspection report means the report attached to the code compliance certificate describing minimum requirements for inspection of each unit.

Lease means any written or oral agreement that sets forth any and all conditions concerning the use and occupancy of multifamily rental dwellings or multifamily rental units.

Multifamily rental dwelling means any multifamily structure, multifamily building, or other facility that is leased to a residential tenant or tenants for use as a home, residence, or sleeping unit. This definition includes, but is not limited to, multifamily dwellings, multifamily apartments, duplexes, boardinghouses, rooming houses, group homes, and flats.

Multifamily rental unit means any one area, room, structure, flat, apartment, or facility of a multifamily rental dwelling that is leased or available for lease to an occupant.

Occupant means any person who is a tenant, lessee, or a person residing within a multifamily rental dwelling or multifamily rental unit.

Owner means any person, agent, firm, or corporation having a legal or equitable interest in a premises.

Premises means any lot or parcel of real property on which exists one or more multifamily rental dwellings or multifamily rental units.

(Ord. No. 10-22, Pt. I, 12-14-10)

Sec. 15-501. - Certification process, requirements, forms and appeals.

- (a) *Process.* The chief executive officer or his/her designee shall create the process for certifying building inspectors, shall establish the requirements and application for becoming a certified building inspector, and shall administer the process. A nonrefundable administrative fee set by the board of commissioners shall be required to be submitted with all applications to be a certified building inspector. Persons who have successfully completed the certification process issued by the chief executive officer or his/her designee shall be designated as certified building inspectors authorized to perform the inspections required by this article.
- (b) *Code compliance certificates and inspection reports.* The chief executive officer or his/her designee is authorized to create the forms for code compliance certificates and inspection reports. At a minimum, inspection reports submitted to the county must contain the certified building inspector's signature and date of certification. A certified building inspector shall personally perform the inspections required by this article. The certified building inspector signing the inspection report and performing the inspection shall not be an employee of, otherwise related to, or affiliated in any way with any owner or occupant of the multifamily rental dwelling or multifamily rental dwelling unit being inspected. Failure to have a certified building inspector personally perform an inspection shall nullify any such code compliance certificate.
- (c) *Certified building inspectors.*

- (1) *Minimum requirements.* At a minimum, a certified building inspector shall be a licensed architect or engineer or shall hold one (1) of the following certifications from the International Code Council: property maintenance and housing inspector, housing rehabilitation inspector, building inspector, building plan examiner or commercial combination inspector.
- (2) *Denial of certification.* Upon receipt of a complete application to be a certified building inspector, the chief executive officer or his/her designee shall have forty-five (45) days to grant or deny the application. If denied, the chief executive officer or his/her designee shall notify the applicant in writing of the reason(s) for the denial at the address set forth on the application.
- (3) *Revocation of certification.* Upon a certified building inspector's conviction of a violation of subsection 15-503(c) of this article, or if a certified building inspector no longer meets the minimum requirements set forth in this article, the chief executive officer or his/her designee shall revoke the authority of that individual to act as a certified building inspector. The chief executive officer or his/her designee shall notify the individual in writing of the reason(s) for the revocation at the address set forth on the application to be a certified building inspector.
- (4) *Appeals.* Any applicant or certified building inspector who believes the provisions of this article have been applied in error may appeal in the following manner:
 - a. A writing identifying the ground(s) for appeal must be filed with the executive assistant within thirty (30) days after the date of the decision for which review is sought.
 - b. The executive assistant shall review the appeal and respond in writing within thirty (30) days by either affirming or reversing the decision for which review is sought.
 - c. A decision of the executive assistant under this article may be appealed by application for writ of certiorari in the Superior Court of DeKalb County filed within thirty (30) days of the decision.

(Ord. No. 10-22, Pt. I, 12-14-10)

Sec. 15-502. - Inspection, certificate and fee required.

- (a) *Code compliance certificate.* A code compliance certificate shall contain the certification of a certified building inspector that all multifamily rental dwellings and/or multifamily rental units subject to this article have been inspected within the twelve-month period immediately preceding the date of certification and are in compliance with applicable provisions of the Code and the requirements set forth in the code compliance certificate and inspection report.
 - (1) Commencing on January 1, 2012, all owners of multifamily rental dwellings and/or multifamily rental units within the unincorporated parts of the county that receive income from four (4) or more such units and meet the requirements of O.C.G.A. § 48-13-5 for having a location or office within the unincorporated parts of the county shall file, simultaneously with their business occupation tax return, code compliance certificate(s) covering one hundred (100) percent of the owner's multifamily rental units located within the unincorporated parts of the county.
 - (2) After submission of the initial code compliance certificate(s), owners shall submit code compliance certificates annually with their business occupational tax return. Each subsequent code compliance certificate shall show an internal and external inspection of at least twenty (20) percent of the units on a premises and all units on a premises shall be inspected, at a minimum, every five (5) years. All units inspected shall be listed individually on the code compliance certificate submitted by the certified building inspector.
- (b) *Fee.* A nonrefundable administrative fee set by the board of commissioners shall be required to be submitted with all code compliance certificates.
- (c) *Inspections and repairs.* Upon initial inspection of multifamily rental dwellings and multifamily rental units subject to this article, should a certified building inspector determine that further work is

necessary to comply with the minimum standards set forth in the Code, an acceptable plan shall be submitted to the building official, outlining the time and scope of work necessary to bring the units into compliance. If the plan is accepted by the building official as reasonable and justified, an extension of the time for compliance with this article may be granted for up to one (1) year so that necessary repairs may be completed. No extension shall be granted if life or safety issues are involved, and none of the units where life or safety issues are involved shall be leased until brought into compliance with the minimum standards set forth in the Code. For years subsequent to the initial year, the one year extension for repairs is not available.

- (d) *Written record of inspection.* Each owner and certified building inspector shall for a period of five (5) years from the date of inspection keep a written record of inspection for each multifamily rental dwelling and/or multifamily rental unit, including the date of the inspection, items inspected, and all violations, if any, observed. These records shall be presented to the building official within ten (10) business days after a request is made in writing to the owner or inspector. Failure to provide these records shall nullify the code compliance certificate for such dwellings or units.
- (e) *Exemptions.* Provided all other required permits, certificates and/or permissions are obtained from the county, this section shall not apply to multifamily rental dwellings or multifamily rental units for a period of five (5) years following issuance of a certificate of occupancy for such dwelling or unit.

(Ord. No. 10-22, Pt. I, 12-14-10)

Sec. 15-503. - Violations.

- (a) No business occupation tax certificate shall be issued to any owner until the owner provides the county with a code compliance certificate in the form and manner required by this article.
- (b) Any person who does anything prohibited or fails to do anything required by this article, upon conviction of the violation in a court of competent jurisdiction, shall be subject to fine and/or imprisonment in accordance with section 1-10.
- (c) An owner who knowingly furnishes or participates in furnishing a code compliance certificate to the county falsely certifying that all multifamily rental dwellings or multifamily rental units inspected are in compliance with the requirements set forth in the code compliance certificate shall be guilty of a violation of this article for each multifamily rental dwelling or multifamily rental unit for which the certification is shown to be false.
- (d) A certified building inspector who knowingly furnishes or participates in furnishing an inspection report containing false information that a multifamily rental dwelling or multifamily rental unit meets the minimum housing standards of the county as shown by the inspection report shall be guilty of a violation of this article.

(Ord. No. 10-22, Pt. I, 12-14-10)

02016-08-27

FRANCHISE ORDINANCE GRANTING PERMISSION AND CONSENT to Walton Electric Membership Corporation (hereafter referred to as “Walton EMC”), its successors, lessees and assigns, to occupy the streets and public places of the City of Tucker, Georgia (hereafter referred to as “the City”) in constructing, maintaining, operating and extending poles, lines, cables, equipment, and other apparatus for transmitting and distributing electricity, and for other purposes.

SECTION I. Grant of Franchise.

Be it ordained by the governing authority of the City that the authority, right, permission and consent are hereby granted to Walton EMC, its successors, lessees and assigns, for a period of twenty (20) years, to occupy and use the streets, alleys and public places of the City within the present and future limits of the City as from time to time Walton EMC may deem proper or necessary for the installation, construction, maintenance, operation and extension of its facilities, which shall include, without limitation, overhead and underground poles, towers, lines, wires, cables, conduits, insulators, transformers, appliances, equipment, connections and other apparatus for the business and purpose of transmitting, conveying, conducting, using, supplying and distributing electricity for light, heat, power and other purposes for which electric energy may be or become useful or practicable for public or private use, and for conducting any other purposes which Walton EMC is authorized to perform, to reenter upon such streets, alleys and public places from time to time as it may deem proper or necessary to perform these functions, and to cut and trim trees and shrubbery when and where necessary or proper, in the judgment of Walton EMC, to ensure safe and efficient service.

SECTION II. Terms and Conditions.

Be it further ordained that the rights, permission and consents herein contained are made for the following considerations and upon the following terms and conditions:

1. Walton EMC shall pay into the treasury of the City on or before the first day of the second month immediately following the Effective Date of this franchise Agreement, a sum of money equal to four percent (4%) of the gross sales of electric energy to customers located within the corporate limits of the City and served under residential rate schedules (as prescribed by Walton EMC and filed with the Georgia Public Service Commission) from lines located on the streets, alleys and public places of the City for payment of the first month of service rendered under this Franchise. Beginning on the first day of each succeeding month after the initial payment during the term of this Franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to such customers for services rendered during each successive month of service, on condition that, in the event the City shall grant any other entity the right to use and occupy its streets for like purposes, such use and occupancy shall be upon the same terms and conditions as those herein contained, including the payment provisions hereof.

2. The amount, if any, of any tax, fee, charge or imposition of any kind required, demanded or exacted by the City on any account shall operate to reduce to that extent the amount due from the percentage of gross sales provided for above.
3. Walton EMC shall fully protect, indemnify, and save harmless the City from all damages to persons or property caused by the construction, maintenance, operation, or extension of the Company's Facilities, or conditions of streets, alleys, or public places resulting therefrom, for which the City would otherwise be liable.
4. Walton EMC shall, in constructing, maintaining, operating, and extending its facilities, submit and be subject to all reasonable exercises of the police power by the City. Nothing contained herein, however, shall require Walton EMC to surrender or limit its property rights created hereby without due process of law, including adequate compensation, for any other purpose at the instance of the City or for any purpose at the instance of any other entity, private or governmental.
5. For purposes of paragraph 6 of this Section II, the term "Distribution Facilities" means poles, lines, wires, cables, conductors, insulators, transformers, appliances, equipment, connections, and other apparatus installed by or on behalf of Walton EMC any (whether before or after the adoption of this ordinance) in the streets, alleys, or public places of the City for the purpose of distributing electricity within the present and future corporate limits of the City. Distribution Facilities do not include any of the following: (i) electric transmission lines with a design operating voltage of 46 kilovolts or greater (hereinafter referred to as Transmission Lines"); (ii) poles, towers, frames, or other supporting structures for Transmission Lines (hereinafter referred to as "Transmission Structures"); (iii) Transmission Lines and related wires, cables, conductors, insulators, or other apparatus attached to Transmission Structures; (iv) lines, wires, cables, or conductors installed in concrete-encased ductwork; or (v) network underground facilities.
6. In the event that the City or any other entity acting on behalf of the City requests or demands that Walton EMC relocate any Distribution Facilities from their then-current locations within the streets, alleys, and public places of the City in connection with a public project or improvement, then Walton EMC shall relocate, at its expense, the Distribution Facilities affected by such project or improvement. Walton EMC's obligations under this paragraph 6 shall apply without regard to whether the Company has acquired, or claims to have acquired, an easement or other property right with respect to such Distribution Facilities and shall not affect the

amounts paid or to be paid to the City under the provisions of paragraph 1 of this Section II. Notwithstanding the foregoing provisions of this paragraph 6, the Company shall not be obligated to relocate, at its expense, any of the following: (i) Distribution Facilities that are located on private property at the time relocation is requested or demanded; (ii) Distribution Facilities that are relocated in connection with sidewalk improvements (unless such sidewalk improvements are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes); (iii) Distribution facilities that are relocated in connection with streetscape projects or other projects undertaken primarily for aesthetic purposes; or (iv) Distribution Facilities that are converted from an overhead configuration or installation to an underground configuration or installation.

SECTION III. Annexation into Corporate Limits.

Be it further ordained that, notwithstanding anything herein to the contrary, Walton EMC shall not be obligated to pay to the City the fee provided for herein, or any portion thereof, as to customers living outside the corporate limits of the City, and as to customers located within areas that, after the effective date of this franchise, are annexed to the corporate limits of the City, such fees shall not be required to be assessed before ninety (90) days after Walton EMC receives written notice from the City that the City has annexed the territory in which said customers are located.

SECTION IV. Severability.

Be it further ordained that, in the event that any provision or portion of this ordinance should for any reason be held void, invalid, or unenforceable for any reason by any court of competent jurisdiction, such provision or portion shall be deemed a separate, distinct and independent provision or portion, and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION V. Notice.

Be it further ordained that all notices under this ordinance shall be made in writing and shall be delivered or sent by (a) first class, registered or certified mail, postage prepaid, return receipt requested; (b) guaranteed overnight delivery (such as Federal Express or United Parcel Service Next Day Air); or (c) hand delivery addressed to the address of the party in question as set forth below or to such other addresses as either party may designate by notice given pursuant to this Section. Notices shall be effective upon receipt by the notified party.

Notices to Walton EMC:

Attn: President/CEO
P.O. Box 260
842 US Hwy 78 NW

Monroe, GA 30655

Notices to the City: City of Tucker
Attn: City Attorney
City Hall
Tucker, GA

SECTION VI. Effective Date.

Be it further ordained that the effective date of this ordinance is the _____ day of _____ 2016, and fees levied herein shall begin to assess on the first day of the month following the effective date.

SECTION VII. Conflicts.

Be it further ordained that, upon acceptance by Walton EMC of the terms and conditions of this ordinance, all laws and ordinances in conflict with this ordinance are repealed to the extent of such conflict.

SECTION VIII. Acceptance.

Be it further ordained that Walton EMC shall, within fifteen days from the date the City provided Notice of the adoption of this ordinance, file its written acceptance of the same with the Clerk of said City, so as to form a contract between the parties.

SO ORDAINED by the **Mayor and Council** of the City of Tucker, this

_____ day of _____, 2016.

CITY OF TUCKER

By: _____

Mayor

ATTEST:

City Clerk

02016-08-28

Franchise Agreement

between the

City of Tucker, Georgia

and

Comcast Cable Communications, LLC

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AGREEMENT

This **AGREEMENT** is effective as of the ____ day of _____, 2016 (the “Effective Date”), and is between the City of Tucker, Georgia, (the “Franchising Authority” or the “City” and Comcast Cable Communications, LLC, whose principal place of business is located at 6200 The Corners Parkway, Peachtree Corners, Georgia 30092 (the “Company”). For purposes of this Agreement, unless otherwise defined in this Agreement, the capitalized terms, phrases, words, and their derivations, shall have the meanings set forth in Appendix A.

The Franchising Authority, having determined that the financial, legal, and technical ability of the Company is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the current and future cable-related needs of the community and that, as of the Effective Date, the Company is in material compliance with the terms and conditions of the cable franchise preceding this Agreement, desires to enter into this Agreement with the Company for the construction, operation, and maintenance of a Cable System on the terms and conditions set forth herein. In consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

SECTION 1 GRANT OF AUTHORITY

1.1 Grant of Franchise. The Franchising Authority hereby grants under the Cable Act a nonexclusive franchise (the “Franchise”) to occupy and use the Streets within the Franchise Area in order to construct operate, maintain, upgrade, repair, and remove the Cable System, and provide Cable Services through the Cable System, subject to the terms and conditions of this Agreement. This Franchise authorizes Cable Service only, and it does not grant or prohibit the right(s) of the Company to provide other services.

1.2 Term of Franchise. This Franchise shall be in effect for a period of ten (10) years commencing on the Effective Date, unless renewed or lawfully terminated in accordance with this Agreement and the Cable Act.

1.3 Renewal. Subject to Section 626 of the Cable Act (47 U.S.C. § 546) and such terms and conditions as may lawfully be established by the Franchising Authority, the Franchising Authority reserves the right to grant or deny renewal of the Franchise.

1.4 Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of the Franchising Authority or of the Franchising Authority’s right to require the Company or any Person utilizing the Cable System to secure the appropriate permits or authorizations for its use, or (iii) be construed as a waiver or release of the rights of the Franchising Authority in and to the Streets. Notwithstanding the above, in the event of any conflict between this Agreement and any code or ordinance adopted by the Franchising Authority, the terms and conditions of this Agreement shall prevail.

1.5 Competitive Equity and Subsequent Action Provisions.

1.5.1 Purposes. The Company and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers, and others; new technologies are emerging that enable the provision of new and advanced services to City residents; and changes in the scope and application of the traditional regulatory framework governing the provision of Video Services are being considered in a variety of federal, state, and local venues. To foster an environment where all Cable Service Providers and Video Service Providers using the Streets can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to City residents; promote local communications infrastructure investments and economic opportunities in the City; and provide flexibility in the event of subsequent changes in the law, the Company and the Franchising Authority have agreed to the provisions in this Section 1.5, and these provisions should be interpreted and applied with these purposes in mind. The parties agree that the Franchising Authority shall not be required to execute a franchise agreement or authorization with a competitive CSP or VSP that is identical, word-for-word, with this Agreement to avoid triggering the provisions of this Section 1.5, so long as the regulatory and financial burdens on and benefits to each CSP or VSP are materially equivalent to the burdens on and benefits to the Company. “Materially equivalent” provisions include but are not limited to: franchise fees and the definition of Gross Revenues; system build-out requirements; security instruments; public, education and government access channels and support; customer service standards; and audits.

1.5.2 Fair Terms for All Providers. Notwithstanding any other provision of this Agreement or any other provision of law,

(a) If any VSP or CSP enters into any agreement with the Franchising Authority to provide Video Services or Cable Services to Subscribers in the Franchise Area, the Franchising Authority and the Company, upon written request of the Company, will use best efforts in good faith to negotiate the Company’s proposed Franchise modifications, and such negotiation will proceed and conclude within sixty (60) days, unless that period is reduced or extended by mutual agreement of the parties. If the Franchising Authority and the Company agree to Franchise modifications pursuant to such negotiations, then the Franchising Authority shall amend this Agreement to include the modifications.

If there is no written agreement or other authorization between the new VSP or CSP and the Franchising Authority, the Company and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (to the extent the Company determines an agreement or authorization is necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Company and other VSPs or CSPs, taking into account the terms and conditions under which the new VSP or CSP is allowed to provide Video Services or Cable Services to Subscribers in the Franchise Area.

(b) Following the Franchise modification negotiations provided for in Section 1.5.2(a), if the Franchising Authority and the Company fail to reach agreement in such negotiations, the Company may, at its option, elect to replace this Agreement by opting in to the same franchise agreement or other lawful authorization that the Franchising Authority has granted to the new VSP or CSP. If the Company so elects, the Franchising Authority shall adopt the Company's replacement agreement at the next regularly scheduled City council meeting.

(c) The Franchising Authority shall at all times enforce the City ordinance, state, and federal ban on providing Cable Service without a franchise. The Franchising Authority's enforcement efforts shall be continuous and diligent throughout the term of this Agreement. Should the Franchising Authority not commence enforcement efforts within sixty (60) days of becoming aware of a VSP or CSP providing Video Service or Cable Service within the Franchise Area, the Company shall have the right to petition the Franchising Authority for the relief provided in Section 1.5.2 above.

(d) This Section 1.5.2 shall not apply for VSPs or CSPs providing Video Service or Cable Service in the Franchise Area under the authorization of the Georgia Consumer Choice for Television Act (O.C.G.A. § 36-76-1, *et seq.*).

1.5.3 Subsequent Change in Law. If there is a change in federal, state, or local law that provides for a new or alternative form of authorization, subsequent to the Effective Date, for a VSP or CSP utilizing the Streets to provide Video Services or Cable Services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP or CSP providing Video Services or Cable Services to Subscribers in the Franchise Area, the Franchising Authority agrees that, ~~notwithstanding any other provision of law~~, upon the written request and at the option of the Company, the Franchising Authority shall: (i) permit the Company to provide Video Services or Cable Services to Subscribers in the Franchise Area on substantially the same terms and conditions as are applicable to a VSP or CSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity between the Company and other VSPs or CSPs, taking into account the conditions under which other VSPs or CSPs are permitted to provide Video Services or Cable Services to Subscribers in the Franchise Area. The Franchising Authority and the Company shall implement the provisions of this Section 1.5.3 within sixty (60) days after the Company submits a written request to the Franchising Authority. ~~Should the Franchising Authority fail to implement these provisions within the time specified, this Agreement shall, at the Company's option and upon written notice to the Franchising Authority, be deemed amended as initially requested by the Company under this Section 1.5.3.~~ Notwithstanding In accordance with the ~~any~~ provision of law that imposes a time or other limitation on the Company's ability to take advantage of the changed law's provisions, the Company may exercise its rights under this Section 1.5.3 ~~at any time, but~~ not sooner than thirty (30) days after the changed law goes into effect.

1.5.4 Effect on This Agreement. Any agreement, authorization, right, or determination to provide Cable Services or Video Services to Subscribers in the Franchise Area under this Section 1.5 shall supersede this Agreement.

SECTION 2 THE CABLE SYSTEM

2.1 The System and Its Operations.

2.1.1 Service Area. As of the Effective Date, the Company operates a Cable System within the Franchise Area.

2.1.2 System. As of the Effective Date, the Company maintains and operates a Cable System capable of providing over 250 Channels of Video Programming, which Channels may be delivered by analog, digital, or other transmission technologies, at the sole discretion of the Company.

2.1.3 System Technical Standards. Throughout the term of this Agreement, the Cable System shall be designed, maintained, and operated such that quality and reliability of System Signal will be in compliance with all applicable consumer electronics equipment compatibility standards, including but not limited to Section 624A of the Cable Act (47 U.S.C. § 544a) and 47 C.F.R. § 76.630, as may be amended from time to time.

2.1.4 Testing Procedures; Technical Performance. Throughout the term of this Agreement, the Company shall operate and maintain the Cable System in accordance with the testing procedures and the technical performance standards of the FCC.

2.2 Requirements with Respect to Work on the System.

2.2.1 General Requirements. The Company shall comply with ordinances, rules, and regulations established by the Franchising Authority pursuant to the lawful exercise of its police powers and generally applicable to all users of the Streets. To the extent that local ordinances, rules, or regulations clearly conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail, except where such conflict arises from the Franchising Authority's lawful exercise of its police powers.

2.2.2 Protection of Underground Utilities. Both the Company and the Franchising Authority shall comply with the Georgia Utility Facility Protection Act (O.C.G.A. § 25-9-1, *et seq.*), relating to notification prior to excavation near underground utilities, as may be amended from time to time.

2.3 Permits and General Obligations.

2.3.1 The Company shall be responsible for obtaining all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain, or repair the Cable System, or any part thereof, prior to the commencement of any such activity. The Franchising Authority shall not charge the Company, and the Company shall not be required to pay, any fee or charge for the issuance of permits, licenses, or other

approvals, as such payments are included in the franchise fees described in Section 5 below. The issuance of permits, licenses, or other approvals shall not be unreasonably delayed or withheld by the Franchising Authority. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Company for use in the Cable System in accordance with this Agreement shall be located so as to minimize interference with the proper use of the Streets and the rights and reasonable convenience of property owners who own property adjoining the Streets.

2.3.2 Code Compliance. The Company shall comply with all applicable building, safety, and construction codes. The parties agree that at present, Cable Systems are not subject to the low voltage regulations of the National Electric Code, National Electrical Safety Code, or other such codes or regulations. In the event that the applicable codes are revised such that Cable Systems become subject to low voltage regulations without being grandfathered or otherwise exempted, the Company will thereafter be required to comply with those regulations.

2.4 Conditions on Street Occupancy.

2.4.1 New Grades or Lines. If the grades or lines of any Street within the Franchise Area are lawfully changed at any time during the term of this Agreement, then the Company shall, upon at least ninety (90) days advance written notice from the Franchising Authority and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with the new grades or lines. If public funds are available to any Person using the Street for the purpose of defraying the cost of any of the foregoing work, the Franchising Authority shall make application for such funds on behalf of the Company. The Company shall be entitled to reimbursement of its costs should any other utility be so compensated as a result of a required protection, alteration, or relocation of its facilities. Notwithstanding the above, the Company shall not be liable for the cost of protecting, altering, or relocating facilities, aerial or underground, where such work is required to accommodate a streetscape, sidewalk, or private development project.

2.4.2 Relocation at Request of Third Party. The Company shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Company may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Company agrees to arrange for such temporary relocation to be accomplished as soon as reasonably practicable, not to exceed ninety (90) days without the prior agreement of the Franchising Authority.

2.4.3 Restoration of Streets. If in connection with construction, operation, maintenance, or repair of the Cable System, the Company disturbs, alters, or damages any Street, the Company agrees that it shall at its own cost and expense restore the Street according to the standards set forth in the Georgia Department of Transportation's Utility

Accommodation Policy and Standards Manual. If the Franchising Authority reasonably believes that the Company has not restored the Street appropriately, then the Franchising Authority, after providing ten (10) business days' advance written notice and a reasonable opportunity to cure, may have the Street restored and bill the Company for the cost of restoration.

2.4.4 Trimming of Trees and Shrubbery. The Company shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Company's wires, cables, or other equipment, the cost of which trimming shall not be borne by the Franchising Authority.

2.4.5 Aerial and Underground Construction. If at the time of Cable System construction all of the transmission and distribution facilities of all of the respective public or municipal utilities in the construction area are underground, the Company shall place its Cable System's transmission and distribution facilities underground. At the time of Cable System construction, in any place within the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Company shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground; however, at such time as all existing aerial facilities of the respective public or municipal utilities are placed underground, the Company shall likewise place its facilities underground, subject to the provisions of Section 2.4.1. Company facilities placed underground at the property owner's request in any area where any of the transmission or distribution facilities of the respective public or municipal utilities are aerial shall be installed with the additional expense paid by the property owner. Nothing in this Section 2.4.5 shall be construed to require the Company to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

2.4.6 Use of Existing Poles. Where possible, the Company shall attach its facilities to existing utility poles and shall use all reasonable efforts to enter into a pole attachment agreement with the owners of such existing utility poles.

2.5 Change in Franchise Area. In the event that the borders of the Franchise Area change, through annexation or otherwise, the Franchising Authority shall provide to the Company written notice of such change, including an updated map and an electronic list of all addresses in the Franchise Area. The Company shall not be required to pay franchise fees on gross revenues earned from Subscribers in annexed areas until sixty (60) days after receiving such notice.

SECTION 3 PUBLIC, EDUCATION, GOVERNMENT ACCESS

3.1 Channel Capacity. The Company agrees to make available Channel capacity (up to one channel) on the digital tier to be designated for non-commercial, non-revenue generating public, educational, or governmental ("PEG") access purposes. Unused time on the PEG Channel

position may be utilized by the Company subject to terms to be mutually agreed upon by the Company and the Franchising Authority.

3.2 Programming Obligations. The Company shall not be required to dedicate a full time channel for use by the Franchising Authority until it has produced eight (8) hours per week of non-duplicative original programming on the activated PEG Channel for three (3) consecutive months. Once the channel is dedicated for PEG use, the Franchising Authority certifies and commits to continued production at the eight (8) hours per week of non-duplicative original programming threshold throughout the term of the Agreement. Should the Franchising Authority fail to maintain eight (8) hours of programming per week for any period of three (3) consecutive months on the PEG Channel, the Company may reclaim the Channel position for its own use. For purposes of this Agreement, original programming includes programming produced specifically for, about, or by the City of Tucker or citizens thereof. Character-generated messages, video bulletin board messages, traffic cameras, or other passively produced content shall not count towards the programming obligations of this Agreement.

3.3 Channel Positions. At any time during the term of this Agreement and at the Company's sole option and discretion, the Company may (i) change the transmission technology by which PEG access programming is delivered to Subscribers, provided, however, that the quality of PEG access programming transmitted over the Cable System to Subscribers is of a quality comparable to that which was delivered to the Company by the PEG programmer, or (ii) relocate any PEG programming to a Channel position on its lowest digital tier service delivered to all of the Company's Subscribers. The Company shall notify the Franchising Authority at least thirty (30) days in advance of such changes.

3.4 Interconnection with other Cable and Video Service Providers. Upon written request of the Franchising Authority, the Company shall interconnect with other cable and video systems in the Franchise Area as required by O.C.G.A. § 36-76-8(i). This subsection 3.4 shall not be construed to mean that the Company is responsible for costs of said interconnection.

3.5 Ownership. The Company does not relinquish its ownership of its ultimate right of control over a Channel position by designating it for PEG access use. A PEG access user, whether such user is an individual, educational, or governmental user, acquires no property or other interest in the Channel position by virtue of the use of a Channel position so designated.

3.6 Equipment. It shall be the sole responsibility of the Franchising Authority to obtain, provide, and maintain any equipment necessary to produce and cablecast PEG programming over the Cable System. The Company shall not be responsible for obtaining, providing, or maintaining any such equipment.

3.7 No Liability. The Company shall have no liability nor shall it be required to provide indemnification to the Franchising Authority for PEG programming cablecast over the Cable System.

3.8 Network Support and PEG Fees. The parties to this Agreement acknowledge that the Company had made certain capital investments as required by the Franchise Agreement between the Company, its Affiliates, and DeKalb County, Georgia. As of this Effective Date, the

Company collects additional fees from customers as reimbursement for those costs. Additionally, the Company will incur significant costs associated with administration of this Franchise. To offset both the embedded capital costs and the one-time administrative costs, the parties agree that the Company may continue to collect and retain fees up to \$1.75 per customer per month through December 31, 2018. These fees will be reflected on customer's bills as "Network Support Fee" or "PEG Support Fee."

3.9 External Cost. The parties to this Agreement acknowledge that the Company incurred significant costs associated with updating their billing records to correctly reflect the jurisdictional boundaries of the Franchising Authority. To offset the Company's costs of a third party vendor to update the billing and address records, the parties agree that the Company may retain up to ~~\$25,000.00~~ \$5,000 of documented costs provided to the City prior to offsetting the actual cost against franchise fees owed the City.

SECTION 4 CUSTOMER SERVICE

Customer Service. The Company shall comply in all respects with the requirements set forth in Appendix B. Individual violations of those requirements do not constitute a breach of this Agreement.

SECTION 5 COMPENSATION AND OTHER PAYMENTS

5.1 Compensation to the Franchising Authority. As compensation for the Franchise, the Company shall pay or cause to be paid to the Franchising Authority the amounts set forth in this Section 5.1.

5.1.1 Franchise Fees—Amount. The Company shall pay to the Franchising Authority franchise fees in an amount equal to five percent (5%) of Gross Revenues derived from the operation of the Cable System to provide Cable Services in the Franchise Area.

5.1.2 Franchise Fees—Payment. Payments of franchise fees shall be made on a quarterly basis and shall be remitted not later than thirty (30) days after the last day of March, June, September, and December throughout the term of this Agreement.

5.1.3 Company to Submit Franchise Fee Report. The Company shall submit to the Franchising Authority, not later than thirty (30) days after the last day of March, June, September, and December throughout the term of this Agreement, a report setting forth the basis for the computation of Gross Revenues on which the quarterly payment of franchise fees is being made, which report shall enumerate, at a minimum, the following revenue categories: limited and expanded basic video service, digital video service, premium video service, pay-per-view and video-on-demand, equipment, installation and activation, franchise fees, guide, late fees, ad sales, home shopping commissions, and bad debt.

5.1.4 Franchise Fee Payments Subject to Audit; Remedy for Underpayment. No acceptance of any franchise fee payment by the Franchising Authority shall be construed as

an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the Franchising Authority may have for further or additional sums payable under this Agreement. The Franchising Authority may conduct an audit no more than once annually to ensure payments in accordance with this Agreement. The audit of the Company's records shall take place at a location, in the State of Georgia, determined by the Company. The Franchising Authority is prohibited from removing any records, files, spreadsheets, or any other documents from the site of the audit. ~~In the event that the Franchising Authority takes notes of any documents, records, or files of the Company for use in the preparation of an audit report, all notes shall be returned to the Company upon completion of the audit.~~ The audit period shall be limited to three (3) years preceding the end of the quarter of the most recent payment. Once the Company has provided information for an audit with respect to any period, regardless of whether the audit was completed, that period shall not again be the subject of any audit.

If, as a result of an audit or any other review, the Franchising Authority determines that the Company has underpaid franchise fees in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, the Company shall reimburse the Franchising Authority for all of the reasonable costs associated with the audit or review, including all reasonable out of pocket costs for attorneys, accountants, and other consultants. The Franchising Authority shall provide the Company with a written notice of audit results and a copy of the final report presented to the Franchising Authority. The Company shall remit any undisputed amounts owed to the Franchising Authority as the result of the audit within forty-five (45) days, or other mutually acceptable timeframe, after the date of an executed settlement and release agreement.

5.2 Payments Not to Be Set Off Against Taxes or Vice Versa. The parties agree that the compensation and other payments to be made pursuant to this Section 5 are not a tax and are not in the nature of a tax. The Company and the Franchising Authority further agree that the provisions of O.C.G.A. § 36-76-6(h) apply to this Agreement. The Franchising Authority and the Company further agree that no additional business license fees, occupational license fees, or permits shall be assessed on the Company related to the provision of services or the operation of the Cable System, nor shall the Franchising Authority levy any other tax, license, fee, or assessment on the Company or its Subscribers that is not generally imposed and applicable to a majority of all other businesses.

5.3 Interest on Late Payments. If any payment required by this Agreement is not actually received by the Franchising Authority on or before the applicable date fixed in this Agreement, the Company shall pay interest thereon, from the due date to the date paid, at a rate of one percent (1%) per month.

5.4 Service to Governmental and Institutional Facilities.

5.4.1 Complimentary Installation and Service. The Company shall, within thirty (30) days of receipt of a written request by the Franchising Authority, provide complimentary standard installation and complimentary Basic Service on one outlet for each public primary or secondary school and public library located within the Franchise Area no more than one hundred twenty-five (125) feet from the nearest point of connection to the distribution plant.

If a public primary or secondary school or public library within the Franchise Area is located more than one hundred twenty-five (125) feet from the nearest point of connection to the distribution plant, the Company shall, within thirty (30) days of receipt of a written request from the Franchising Authority, provide a written estimate for the cost of extending the distribution plant to the school or library, as well as any necessary interior wiring costs.

5.4.2 Government Discounts. The Company ~~may~~ shall provide a government discount rate if the Franchising Authority requests additional outlets at a public school or public library or requests Cable Service to any other government facility within the Franchise Area.

SECTION 6 COMPLIANCE REPORTS

6.1 Compliance. The Franchising Authority hereby acknowledges that as of the Effective Date, the Company is in material compliance with the terms and conditions of the cable franchise preceding this Agreement and all material laws, rules, and ordinances of the Franchising Authority.

6.2 Reports. Upon written request by the Franchising Authority and subject to Section 631 of the Cable Act, the Company shall promptly submit to the Franchising Authority such information as may be necessary to reasonably demonstrate the Company's compliance with any term or condition of this Agreement.

6.3 File for Public Inspection. Throughout the term of this Agreement, the Company shall maintain, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

6.4 Treatment of Proprietary Information. The Franchising Authority agrees to treat as confidential, to the maximum extent allowed under the Georgia Open Records Act (O.C.G.A. § 50-18-70, *et seq.*) or other applicable law, any requested documents submitted by the Company to the Franchising Authority that are labeled as "Confidential" or "Trade Secret" prior to submission. In the event that any documents submitted by the Company to the Franchising Authority are subject to a request for inspection or production, including but not limited to a request under the Georgia Open Records Act, the Franchising Authority shall notify the Company of the request as soon as practicable and in any case prior to the release of such information, by email or facsimile to the addresses provided in Section 10.6 of this Agreement, so that the Company may take appropriate steps to protect its interests in the requested records, including seeking an injunction against the release of the requested records. Upon receipt of said notice, the Company may review the requested records in the Franchising Authority's possession and designate as "Confidential" or "Trade Secret" any additional portions of the requested records that contain confidential or proprietary information.

6.5 Emergency Alert System. Company shall install and maintain an Emergency Alert System in the Franchise Area only as required under applicable federal and state laws. Additionally, the Franchising Authority shall permit only those Persons appropriately trained and authorized in accordance with applicable law to operate the Emergency Alert System equipment and shall take reasonable precautions to prevent any use of the Company's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The Company shall

have no liability nor shall it be required to provide indemnification to the Franchising Authority for its use of the Emergency Alert System.

SECTION 7 ENFORCEMENT

7.1 Notice of Violation. If the Franchising Authority believes that the Company has not complied with the terms of this Agreement, the Franchising Authority shall first informally discuss the matter with the Company. If discussions do not lead to a resolution of the problem, the Franchising Authority shall notify the Company in writing of the nature of the alleged noncompliance (“Violation Notice”).

7.2 Company’s Right to Cure or Respond. The Company shall have thirty (30) days from the receipt of the Violation Notice, or any longer period specified by the Franchising Authority, to respond; cure the alleged noncompliance; or, if the alleged noncompliance, by its nature, cannot be cured within thirty (30) days, initiate reasonable steps to remedy the matter and provide the Franchising Authority a projected resolution date in writing.

7.3 Hearing. If the Company fails to respond to the Violation Notice received from the Franchising Authority, or the alleged noncompliance is not remedied within the cure period set forth above, the Franchising Authority’s governing body shall schedule a hearing if it intends to continue its investigation into the matter. The Franchising Authority shall provide the Company at least thirty (30) days’ prior written notice of the hearing, specifying the time, place, and purpose of the hearing. The Company shall have the right to present evidence and to question witnesses. The Franchising Authority shall determine if the Company has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Company may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

7.4 Enforcement. Subject to applicable federal and state law, if after the hearing provided for in Section 7.3, the Franchising Authority determines that the Company is in default of the provisions addressed in the Violation Notice, the Franchising Authority may

- (a) seek specific performance;
- (b) commence an action at law for monetary damages or seek other equitable relief; or
- (c) in the case of a substantial default of a material provision of this Agreement, seek to revoke the Franchise in accordance with subsection 7.5 below.

7.5 Revocation.

7.5.1 After the hearing and determination provided for in Section 7.3 and prior to the revocation or termination of the Franchise, the Franchising Authority shall give written notice to the Company of its intent to revoke the Franchise on the basis of an alleged substantial default of a material provision of this Agreement. The notice shall set forth the exact nature of the alleged default. The Company shall have thirty (30) days from receipt of such notice to submit its written objection to the Franchising Authority or to cure the alleged

default. If the Franchising Authority is not satisfied with the Company's response, the Franchising Authority may seek to revoke the Franchise at a public hearing. The Company shall be given at least thirty (30) days' prior written notice of the public hearing, specifying the time and place of the hearing and stating the Franchising Authority's intent to revoke the Franchise.

7.5.2 At the public hearing, the Company shall be permitted to state its position on the matter, present evidence, and question witnesses, after which the Franchising Authority's governing board shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Company within ten (10) business days. The decision of the Franchising Authority's governing board shall be made in writing and shall be delivered to the Company. The Company may appeal such decision to an appropriate court, which shall have the power to review *de novo* the decision of the Franchising Authority's governing board. The Company may continue to operate the Cable System until all legal appeals procedures have been exhausted.

7.5.3 Notwithstanding the above provisions, the Company does not waive any of its rights under federal law or regulation.

SECTION 8 ASSIGNMENTS AND OTHER TRANSFERS

The Franchise shall be fully transferable to any successor in interest to the Company. A notice of transfer shall be filed by the Company to the Franchising Authority within forty-five (45) days of such transfer. The transfer notification shall consist of an affidavit signed by an officer or general partner of the transferee that contains the following:

- (a) an affirmative declaration that the transferee shall comply with the terms and conditions of this Agreement, all applicable federal, state, and local laws, regulations, and ordinances regarding the placement and maintenance of facilities in any public right-of-way that are generally applicable to users of the public right-of-way and specifically including the Georgia Utility Facility Protection Act (O.C.G.A. § 25-9-1, *et seq.*);
- (b) a description of the transferee's service area; and
- (c) the location of the transferee's principal place of business and the name or names of the principal executive officer or officers of the transferee.

SECTION 9 INSURANCE AND INDEMNITY

9.1 Insurance.

9.1.1 Liability Insurance. Throughout the term of this Agreement, the Company shall, at its sole expense, maintain comprehensive general liability insurance, issued by a company licensed to do business in the State of Georgia with a rating of not less than

“A minus,” and provide the Franchising Authority certificates of insurance demonstrating that the Company has obtained the insurance required in this Section 9.1.1. This liability insurance policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death of any one person, One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. The policy or policies shall not be canceled except upon thirty (30) days’ prior written notice of cancellation to the City.

9.1.2 Workers’ Compensation. The Company shall ensure its compliance with the Georgia Workers’ Compensation Act.

9.2 Indemnification. The Company shall indemnify, defend, and hold harmless the Franchising Authority, its officers, employees, and agents acting in their official capacities from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Company’s construction, operation, maintenance, or removal of the Cable System, including, but not limited to, reasonable attorneys’ fees and costs, provided that the Franchising Authority shall give the Company written notice of its obligation to indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section 9.2. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

9.3 Liability and Indemnity. In accordance with Section 635A of the Cable Act, the Franchising Authority, its officials, employees, members, or agents shall have no liability to the Company arising from the regulation of Cable Service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of this Franchise. Any relief, to the extent such relief is required by any other provision of federal, state, or local law, shall be limited to injunctive relief and declaratory relief.

SECTION 10 MISCELLANEOUS

10.1 Controlling Authorities. This Agreement is made with the understanding that its provisions are controlled by the Cable Act, other federal laws, state laws, and all applicable local laws, ordinances, and regulations. To the extent such local laws, ordinances, or regulations clearly conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail, except where such conflict arises from the Franchising Authority’s lawful exercise of its police powers.

10.2 Appendices. The Appendices to this Agreement and all portions thereof are, except as otherwise specified in this Agreement, incorporated by reference in and expressly made a part of this Agreement.

10.3 Enforceability of Agreement; No Opposition. By execution of this Agreement, the Company and the Franchising Authority acknowledge the validity of the terms and conditions of this Agreement under applicable law in existence on the Effective Date and pledge that they will not assert in any manner at any time or in any forum that this Agreement, the Franchise, or the

processes and procedures pursuant to which this Agreement was entered into and the Franchise was granted are not consistent with the applicable law in existence on the Effective Date.

10.4 Governmental Powers. The Franchising Authority expressly reserves the right to exercise the full scope of its powers, including both its police power and contracting authority, to promote the public interest and to protect the health, safety, and welfare of the citizens of the incorporated area of the City of Tucker, Georgia.

10.5 Entire Agreement. This Agreement, including all Appendices, embodies the entire understanding and agreement of the Franchising Authority and the Company with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the Franchising Authority and the Company with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any Appendix to this Agreement, and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant, or independent contractor of the Franchising Authority or the Company. All ordinances or parts of ordinances or other agreements between the Company and the Franchising Authority that are in conflict with the provisions of this Agreement are hereby declared invalid and superseded.

10.6 Notices. All notices shall be in writing and shall be sufficiently given and served upon the other party by first class mail, registered or certified, return receipt requested, postage prepaid, or via facsimile (with confirmation of transmission) and addressed as follows:

THE FRANCHISING AUTHORITY:
City of Tucker
Attn: Mayor
City Hall
Tucker, GA 30084
~~123 Main Street~~
~~Tucker, GA 30xxx~~

COMPANY:
Comcast Cable Communications, LLC
Attn: Vice President, External Affairs
6200 The Corners Parkway
Peachtree Corners, GA 30092

With a copy to: Comcast Cable Communications, Inc.
Attn: Vice President, Government Affairs
600 Galleria Parkway, Suite 1100
Atlanta, GA 30339

And: Comcast Cable Communications, Inc.
Attn: Legal Dept.
One Comcast Center
Philadelphia, PA 19103

The Notice Address may be changed by providing the new address in writing and served upon the other party by first class mail, registered or certified, return receipt requested, postage prepaid, or via facsimile (with confirmation of transmission).

10.7 Additional Representations and Warranties. In addition to the representations, warranties, and covenants of the Company to the Franchising Authority set forth elsewhere in this Agreement, the Company represents and warrants to the Franchising Authority and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the Franchising Authority) that, as of the Effective Date:

10.7.1 Organization, Standing, and Authorization. The Company is a corporation validly existing and in good standing under the laws of the State of Colorado and is duly authorized to do business in the State of Georgia and in the Franchise Area.

10.7.2 Compliance with Law. The Company, to the best of its knowledge, has obtained all government licenses, permits, and authorizations necessary for the operation and maintenance of the Cable System.

10.8 Maintenance of System in Good Working Order. Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, in consideration of the Franchise, the Company agrees that it will maintain all of the material properties, assets, and equipment of the Cable System, and all such items added in connection with any upgrade, in good repair and proper working order and condition throughout the term of this Agreement.

10.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted transferees, and assigns. All of the provisions of this Agreement apply to the Company, its successors, and assigns.

10.10 No Waiver; Cumulative Remedies. No failure on the part of the Franchising Authority or the Company to exercise, and no delay in exercising, any right or remedy hereunder including, without limitation, the rights and remedies set forth in this Agreement, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other right or remedy, all subject to the conditions and limitations established in this Agreement. The rights and remedies provided in this Agreement including, without limitation, the rights and remedies set forth in Section 7 of this Agreement, are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights or remedies of the Franchising Authority or Company under applicable law, subject in each case to the terms and conditions of this Agreement.

10.11 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions of this Agreement, which shall continue in full force and effect.

10.12 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent entity and not as an agent of the Franchising Authority.

10.13 Governing Law. This Agreement shall be deemed to be executed in DeKalb County, State of Georgia, and shall be governed in all respects, including validity, interpretation, and effect, by and construed in accordance with the laws of the State of Georgia, as applicable to contracts entered into and to be performed entirely within that state.

10.14 Claims Under Agreement. The Franchising Authority and the Company, agree that, except to the extent inconsistent with Section 635 of the Cable Act (47 U.S.C. § 555), any and all claims asserted by or against the Franchising Authority arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in Georgia (“Federal Court”) or in a court of the State of Georgia of appropriate jurisdiction (“Georgia State Court”). To effectuate this Agreement and intent, the Company agrees that if the Franchising Authority initiates any action against the Company in Federal Court or in Georgia State Court, service of process may be made on the Company either in person or by registered mail addressed to the Company at its offices as defined in Section 10.6, or to such other address as the Company may provide to the Franchising Authority in writing.

10.15 Modification. The Company and Franchising Authority may at any time during the term of this Agreement seek a modification, amendment, or waiver of any term or condition of this Agreement. No provision of this Agreement nor any Appendix to this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Company, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution, letter of agreement, or order by the Franchising Authority, as required by applicable law.

10.16 Delays and Failures Beyond Control of Company. Notwithstanding any other provision of this Agreement, the Company shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, ~~technical failure~~, sabotage, or other events, where the Company has exercised all due care in the prevention thereof, to the extent that such causes or other events are beyond the control of the Company and such causes or events are without the fault or negligence of the Company. In the event that any such delay in performance or failure to perform affects only part of the Company’s capacity to perform, the Company shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause(s). The Company agrees that in correcting such cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible. The Company shall promptly notify the Franchising Authority in writing of the occurrence of an event covered by this Section 10.16.

10.17 Duty to Act Reasonably and in Good Faith. The Company and the Franchising Authority shall fulfill their obligations and exercise their rights under this Agreement in a reasonable manner and in good faith. Notwithstanding the omission of the words “reasonable,” “good faith,” or similar terms in the provisions of this Agreement, every provision of this Agreement is subject to this section.

10.18 Contractual Rights Retained. Nothing in this Agreement is intended to impair the contractual rights of the Franchising Authority or the Company under this Agreement.

10.19 No Third Party Beneficiaries. Nothing in this Agreement, or any prior agreement, is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

10.20 City Addresses. The Company has submitted request to DeKalb County for a confirmation of the city addresses in the form necessary for DeKalb County make sure such determination, and the Franchising Authority and the Company shall use their best effort to assist and request DeKalb County in completing he endeavor.

IN WITNESS WHEREOF, the party of the first part, by its Chairman, thereunto duly authorized by the City Council of said Franchising Authority, has caused the corporate name of said Franchising Authority to be hereunto signed and the corporate seal of said Franchising Authority to be hereunto affixed, and the Company, the party of the second part, by its officers thereunto duly authorized, has caused its name to be hereunto signed and its seal to be hereunto affixed as of the date and year first above written.

City of Tucker, Georgia

By: _____

Name: _____

Title: Mayor
(Seal)

Attest: _____

Date: _____

Comcast Cable Communications, LLC

By: _____

Name: _____

Title: _____

Attest: _____

Date: _____

APPENDIX A DEFINED TERMS

For purposes of the Agreement to which this Appendix A is appended, the following terms, phrases, words, and their derivations shall have the meanings set forth herein, unless the context clearly indicates that another meaning is intended.

“Agreement” means the Agreement to which this Appendix A is appended, together with all Appendices attached thereto and all amendments or modifications thereto.

“Basic Service” means any service tier that includes the retransmission of local television broadcast Signals and any equipment or installation used in connection with Basic Service.

“Cable Act” means Title VI of the Communications Act of 1934 as amended, 47 U.S.C. § 521, *et seq.*

“Cable Service” means the one-way transmission to Subscribers of Video Programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. “Cable Service” does not include any Video Programming provided by a commercial mobile service provider as defined in 47 U.S.C. §332(d).

“Cable Service Provider” or **“CSP”** means any person or group of persons (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

“Cable System” means a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment, that is designed to provide Cable Service, which includes Video Programming and which is provided to multiple Subscribers within a community, but “Cable System” does not include:

- (A) a facility that serves only to retransmit the television Signals of one (1) or more television broadcast stations;
- (B) a facility that serves Subscribers without using any public right-of-way as defined herein;
- (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§201–276, except that such facility shall be considered a Cable System, other than for purposes of 47 U.S.C. § 541(c), to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (D) an open video system that complies with 47 U.S.C. § 573; or

(E) any facilities of any electric utility used solely for operating its electric utility system.

“**Channel**” means a “cable channel” or “channel” as defined in 47 U.S.C. § 522(4).

“**Company**” means Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, a limited liability company validly existing under the laws of the State of Delaware, whose principal place of business is located at 6200 The Corners Parkway, Peachtree Corners, Georgia 30092, or lawful successor, transferee, designee, or assignee thereof.

“**FCC**” means the Federal Communications Commission, its designee, or any successor thereto.

“**Franchise Area**” means the incorporated areas of the City of Tucker, Georgia, including any areas annexed by the Franchising Authority during the term of the Franchise.

“**Franchising Authority**” means the Tucker City Council, or lawful successor, transferee, designee, or assignee thereof.

“**Gross Revenues**” means all revenues received from Subscribers for the provision of Cable Service or Video Service, including franchise fees for Cable Service Providers and Video Service Providers and advertising and home shopping services, and shall be determined in accordance with Generally Accepted Accounting Principles (“GAAP”). Gross Revenues shall not include:

(A) amounts billed and collected as a line item on the Subscriber’s bill to recover any taxes, surcharges, or governmental fees that are imposed on or with respect to the services provided or measured by the charges, receipts, or payments therefore; provided, however, that for purposes of this definition of “Gross Revenue,” such tax, surcharge, or governmental fee shall not include any ad valorem taxes, net income taxes, or generally applicable business or occupation taxes not measured exclusively as a percentage of the charges, receipts, or payments for services to the extent such charges are passed through as a separate line item on Subscriber’s bills;

(B) any revenue not actually received, even if billed, such as bad debt;

(C) any revenue received by any affiliate or any other person in exchange for supplying goods or services used by the provider to provide Cable or Video Programming;

(D) any amounts attributable to refunds, rebates, or discounts;

(E) any revenue from services provided over the network that are associated with or classified as non-Cable or non-Video Services under federal law, including, without limitation, revenues received from telecommunications services, information services other than Cable or Video Services, Internet access services,

directory or Internet advertising revenue including, without limitation, yellow pages, white pages, banner advertisements, and electronic publishing advertising. Where the sale of any such non-Cable or non-Video Service is bundled with the sale of one or more Cable or Video Services and sold for a single non-itemized price, the term “Gross Revenues” shall include only those revenues that are attributable to Cable or Video Services based on the provider’s books and records, such revenues to be allocated in a manner consistent with generally accepted accounting principles;

(F) any revenue from late fees not initially booked as revenues, returned check fees or interest;

(G) any revenue from sales or rental of property, except such property as the Subscriber is required to buy or rent exclusively from the Cable or Video Service Provider to receive Cable or Video Service;

(H) any revenue received from providing or maintaining inside wiring;

(I) any revenue from sales for resale with respect to which the purchaser is required to pay a franchise fee, provided the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect thereto; or

(J) any amounts attributable to a reimbursement of costs including, but not limited to, the reimbursements by programmers of marketing costs incurred for the promotion or introduction of Video Programming.

“**Person**” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the Franchising Authority.

“**Signal**” means any transmission of radio frequency energy or of optical information.

“**Streets**” means the surface of, and the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, public grounds, and public places or waters within and belonging to the Franchising Authority and any other property within the Franchise Area to the extent to which there exist public easements or public rights-of-way.

“**Subscriber**” means any Person lawfully receiving Video Service from a Video Service Provider or Cable Service from a Cable Service Provider.

“**Video Programming**” means programming provided by or generally considered comparable to programming provided by a television broadcast station, as set forth in 47 U.S.C. § 522(20).

“**Video Service**” means the provision of Video Programming through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any Video

Programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d) or Video Programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

“Video Service Provider” or **“VSP”** means an entity providing Video Service as defined herein, but does not include a Cable Service Provider.

APPENDIX B
CUSTOMER SERVICE STANDARDS

Code of Federal Regulations

Title 47, Volume 4, Parts 70 to 79

Revised as of October 1, 1998

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47 C.F.R. § 76.309

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TITLE 47—TELECOMMUNICATION
CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION
PART 76—CABLE TELEVISION SERVICE
Subpart H—General Operating Requirements

§ 76.309 Customer service obligations.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

- (1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;
- (2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;
- (3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or
- (4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability—

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers—

(i) Notifications to subscribers—

(A) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions programming carried on the system; and,
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(B) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by paragraph (c)(3)(i)(A) of this section. Notwithstanding any other provision of Part 76, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

(ii) Billing—

(A) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(B) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(iii) Refunds—Refund checks will be issued promptly, but no later than either—

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(iv) Credits—Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions—

(i) Normal business hours—The term “normal business hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

(ii) Normal operating conditions—The term “normal operating conditions” means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) Service interruption—The term “service interruption” means the loss of picture or sound on one or more cable channels.

[58 FR 21109, Apr. 19, 1993, as amended at 61 FR 18977, Apr. 30, 1996]