

Chapter 16- LICENSES, PERMITS AND BUSINESS REGULATIONS

ARTICLE I. - IN GENERAL

Sec. 16-1. – Security information-Required.

All persons subject to the provisions of this chapter shall furnish to the police department, on a form supplied by the police department, any and all information necessary to indicate the security measures located at such person's business, trade or profession and the persons to be notified in the event of an emergency of the business, trade or profession.

Sec. 16-2. - Same-Furnished with license application.

All persons applying for a new or renewal license under the provisions of this chapter shall be required, at the time of application, to furnish the information required in section 16-1, and to keep the information current.

Sec. 16-3. - Emergency decal.

All persons subject to the provisions of this chapter shall be furnished by the police department with an emergency decal containing thereon a coded number; it shall be the responsibility of the owner, operator or manager of the business to affix the decal to the main entrance of the business. The decal shall be placed at approximate eye level on the main entrance, and if the decal cannot be placed on the main entrance, it shall be placed on the most conspicuous location as close as possible to the main entrance to the business.

Sec. 16-4. - Carnivals, sideshows, etc.; permit required prior to issuance of license.

No license shall be granted for the operation of a carnival, sideshow or similar exhibition on a vacant lot or in any open place where performances of any kind are given or where machinery of any kind or devices of any kind are operated for amusement unless a permit is obtained.

Applications for this permit, accompanied by a fee in the amount established by action of the city council, a copy of which is on file in the office of their clerk, shall be filed with the police department. The application shall contain such information as the police department requires.

Secs. 16-5-16-26. - Reserved.

ARTICLE II. - BUSINESS OCCUPATION TAXES

Sec. 16-27. - Payment of occupational tax.

- (a) Each person engaged in a business, trade, profession or occupation, whether with a location within the city, or, in the case of an out-of-state business with no location in the state exerting substantial efforts within the city pursuant to O.C.G.A. §48-13-7, shall pay an occupational tax for the business, trade, profession or occupation.
- (b) Occupation taxes shall be based upon gross receipts in combination with profitability ratio and number of employees. The profitability ratio for the type of business will be determined from nationwide averages derived from statistics, classifications or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service or successor agencies of the United States.
- (c) A schedule of specific business occupation taxes, as adopted from time to time by the city council is on file in the office of the clerk, and shall be levied and collected in the amount and manner specified by this article.

Sec. 16-28. - 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:

Administrative fee is a component of the occupational tax which approximates the cost of handling and processing the occupational tax.

Applicant or *holder* means the applicant for, or holder of, a business occupation tax certificate, and shall include the business and any legally or organizationally related entity to which the occupational tax certificate applies.

Business means any person, sole proprietor, partnership, corporation, trade, profession, occupation or other entity and the efforts or activities associated thereby for the purposes of raising revenue or producing income.

City means the incorporated areas within the municipal boundaries of the city.

Director means the director of finance or his designee.

Dominant line means the type of business within a multiple line business from which the greatest amount of income is derived.

Employee means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form IRS W-2 but not a form IRS 1099.

Gross receipts.

- (1) The term "gross receipts" means total revenue of the business or practitioner for the period, including without being limited to the following:
 - a. Total income without deduction for the cost of goods sold or expenses incurred;
 - b. Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
 - c. Proceeds from commissions on the sale of property, goods, or services;
 - d. Proceeds from fees charged for services rendered;
 - e. Proceeds from rent, interest, royalty, or dividend income; and
 - f. From all other income whatsoever arising from or growing out of the conduct of the business, trade, profession or occupation without any deduction whatsoever; except that

- (2) The term "gross receipts" shall not include the following:
 - a. Sales, use, or excise taxes;
 - b. Sales returns, allowances, and discounts;
 - c. Interorganizational sales or transfers between or among the units of a parent- subsidiary controlled group of corporations as defined by 26 USC 1563(a)(1), between or among the units of a brother-sister controlled group of corporations as defined by 26 USC 1563(a)(2), or between or among wholly owned partnerships or other wholly owned entities;
 - d. Payments made to a subcontractor or independent agent;
 - e. Governmental and foundation grants, charitable contributions or the interest income derived from such funds, received by a nonprofit organization which employs salaried practitioners otherwise covered by this article, if such funds constitute 80 percent or more of the organization's receipts; and
 - f. Proceeds from sales to customers outside the geographical boundaries of the state.

License means a permit or certificate issued by the city that allows an entity to operate lawfully in the city. A license does not create any rights to operate in violation of any provision of this Code and it may be denied, suspended or revoked by the city at any time pursuant to the procedures set forth herein. This definition applies to any license issued pursuant to this chapter.

Location or office includes any structure or any vehicle of a business or practitioner of a profession or occupation which has a location or office where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or delivery vehicles of a business or practitioner of a profession or occupation which has a location or office.

Occupation tax means a tax levied on persons, partnerships, corporations or other entities for engaging in an occupation, trade, profession or business for revenue raising or income producing purposes.

Person includes sole proprietors, corporations, partnerships, nonprofit or any other form of business organization.

Practitioner of professions and occupants means one who by state law requires state licensure regulating such profession or occupation. This definition shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

Regulatory fees means payments, whether designated as license fees, permit fees or by another name, which are required as an exercise of police power and as a part of or as an aid to regulation of an occupation, profession or business. Regulatory fees shall not include an administrative fee. Regulatory fees do not include development impact fees as defined by O.C.G.A. § 36-71-2(8) or other costs or conditions of zoning or land development.

Sec. 16-29. - Registration of name of business; payment of taxes required.

- (a) No person shall be engaged in, pursue or carry on any business within the city, in any manner without having registered the name of the business with the finance department and either paid the taxes as provided by this article or produced evidence of occupational tax payment to another jurisdiction in the state or proof of payment of a local business occupation tax in another state which purports to tax the business' or practitioner's sales or services in the state. The city shall not require an occupation tax on those receipts that were taxed by occupation tax in other states.
- (b) At the time of business registration, such person shall also identify to the finance department the line or lines of business that the business conducts. Classification of businesses for occupation tax purposes shall be based on the dominant line of business conducted.
- (c) Each separate business trade name shall be subject to the provisions of this article and shall fully comply with all city code requirements before engaging in, pursuing or carrying on any business within the city.
- (d) Failure or refusal to provide information requested by the city for the purpose of classification, assessment or levying of occupation taxes, regulatory fees or administrative costs or regarding the site of a location or office and taxes or fees paid to other local governments shall be punished as a under the general penalties and shall be subject to the provisions of this Code.

Sec. 16-30. - Estimation of gross receipts; filing of returns.

- (a) All occupation taxes levied by this article are levied on the amount of business transacted during the current calendar year and the number of employees to be employed in the business conducted. However, for convenience of both the city and the taxpayer, those businesses subject to the occupational tax shall on or before February 1 file with the finance department's business occupation tax section a return showing all gross receipts of that business during the preceding calendar year ending on December 31. This return showing preceding calendar year gross receipts shall be used as an estimate of gross receipts for making payments on the occupation tax for the current calendar year. The number of employees reported for the current year's business operations may be based upon the number of employees employed in the business conducted during the previous year. Applicants or owners engaged in the business shall be reported as employees of the business. Should a business not continue or terminate during the year, such business shall notify the finance department and file a final return reporting the actual number of employees and those gross receipts not previously reported.
- (b) Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in the return. Said return shall also show a figure putting the receipts for such part of a year on an annual basis with the part-year receipts bearing the same ratio to the whole-year gross receipts as the part year bears to the whole year. Said figure shall be used as the estimate of the gross receipts of the business for the

current calendar year in establishing the business tax liability.

- (c) If a business is to begin on or after January 1 of the occupation tax year, the tax on such business shall be due and payable on the date of the commencement of the business and shall be based upon estimated gross receipts of the business from the date of commencement until the end of the calendar year. The business shall also file the required registration form and shall pay the administrative fee required by this article. Notwithstanding the foregoing, if a lawyer begins business after January 1 of the occupation tax year, the tax and administrative fee on such business shall be due and payable on December 31 of the year in which the business begins. Any lawyer failing to pay the occupation tax and administrative fee within 120 days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten percent penalty of the amount of tax or fee due and interest as provided by state law. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the Georgia Bar. Certain general penalties applicable to most businesses for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the article will not result in the city closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.
- (d) The city shall not require the payment of more than one occupational tax for each location that a business or practitioner shall have nor shall the city require a business to pay an occupational tax for more than 100 percent of the business' gross receipts.
- (e) Real estate brokers shall pay an occupational tax for each principal office and each separate branch office located in the city based upon gross receipts derived from transactions with respect to property located within the city. Payment of the occupation tax shall permit the broker, the broker's affiliated associates and salespersons to engage in all of the brokerage activities described in O.C.G.A. § 43-40-1 without further licensing or taxing other than the state licenses issued pursuant to state law.
- (f) For out-of-state businesses with no location in the state, occupation taxes include the gross receipts of business as defined in section 16-34.
- (g) For purposes of this section, prima facie evidence of gross receipts generated during any period shall be a copy of the business' federal income tax return or an affidavit of the business' accounting firm.

Sec. 16-31. - Administrative and regulatory fees.

A regulatory fee shall be imposed on those applicable businesses listed under O.C.G.A. § 48-13- 9(b) that the city deems necessary to regulate.

Sec. 16-32. - Separate registration for separate locations or separate tradenames.

Where a person conducts business at more than one fixed location or has multiple business tradenames, each location or place and each tradename shall be considered to be separate for the purpose of the occupation tax and the gross receipts of each will be returned on a form furnished by the finance department in accordance with the provisions of this article.

Sec. 16-33. - Renewal returns and applications; due date; penalty for late payment.

- (a) Notwithstanding 2016 exception reporting date of gross receipts for implementation of this article, on or before February 1 of each subsequent year, businesses liable for occupation taxes levied under this article for the year shall file with the finance department, on a form furnished by the finance department, a signed return setting forth the actual amount of the gross receipts of such business during the preceding calendar year ending December 31.
- (b) Occupational taxes on businesses continuing from the preceding year shall be due and payable on January 1 of each subsequent year. Occupational tax due from businesses continuing operation in the current year from the preceding year shall be considered delinquent if not paid by April 15 of each year. Any business failing to pay the occupational taxes and administrative fees within 120 days after January 1 shall be subject to and shall pay a ten percent penalty of the amount of tax or fee due and interest of one percent per month as provided by state law. Such penalty shall be assessed in full on May 1 of the tax year in addition to interest on delinquent occupation taxes, regulatory fees and administrative fees.
- (c) If any person or business whose duty it is to obtain a registration in the city begins to transact or offers to transact any kind of business after the registration or occupation tax becomes delinquent, such offender shall be assessed interest according to the rate as provided by state law and penalties under the city Code.
- (d) On any new business begun in the city and not subject to payment of occupational taxes to the city, failure to register the name of the business and the line or lines of business that the business conducts will be subject to possible penalties or other violations of this Code. Registration under this section is required for ensuring business to be conducted complies with city codes or ordinances governing health, safety and other purposes.
- (e) Notwithstanding the foregoing, occupation taxes and administrative fees for lawyers shall be due and payable on December 31 of the year in which the tax is incurred. Any lawyer failing to pay the occupation tax and administrative fees within 120 days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten percent penalty of the amount of tax or fee due and interest of one percent per month as provided by state law. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the Georgia Bar. Certain general penalties applicable to most businesses for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the article will not result in the city closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.
- (f) In addition to the remedies set forth in this section, the finance department may issue an execution for failure to pay taxes against the person so delinquent and against such person's property for the amount of the occupational tax required to be paid for the purpose of carrying on any of the businesses enumerated in this article.

Sec. 16-34. - Paying occupation tax of business with no location in the state.

Registration and the assessment of an occupation tax is imposed on those businesses and

practitioners of professions and occupations with no location or office in the state if the business' largest dollar volume of business in the state is in the city, and the business or practitioner:

- (1) Has one or more employees or agents who exert substantial efforts within the jurisdiction of the city, for the purpose of soliciting business or serving customers or clients; or
- (2) Owns personal or real property which generates income and which is located within the city.

Sec. 16-35. - Professionals classified in O.C.G.A. § 48-13-9(c)(1) through (18).

Practitioners of professions as described in O.C.G.A. § 48-13-9(c)(1) through (18) shall elect as their entire occupation tax one of the following:

- (1) The occupation tax based-on number of employees and gross receipts combined with profitability ratios as set forth in this article;
- (2) An established fee described in O.C.G.A. § 48-13-9(c)(1) through (18). Such fee is per practitioner who is licensed by the state to provide the service, such tax to be paid at the practitioner's office or location. Practitioners paying according to this subsection shall pay the fee per practitioner and shall not be required to provide information relating to gross receipts or number of employees of the business or practitioner;
- (3) Any practitioner whose office is maintained by and who is employed in practice exclusively by instrumentalities of the United States, the state, a municipality or county of the state, shall not be required to register or pay an occupation tax for that practice.

Sec. 16-36. - Purpose and scope of tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any profession, trade or calling.

Sec. 16-37. - Evidence of state registration required if applicable; city and state registration to be displayed.

- (a) Each person who is licensed by the secretary of state pursuant to O.C.G.A. Title 43 shall provide evidence of proper and current state licensure before the city registration may be issued.
- (b) Each person who is licensed by the state shall post the state license next to the city registration in a conspicuous place in the licensee's place of business and shall keep both the state license and the city registration there at all times while valid.
- (c) Any transient or nonresident person doing business within the city shall carry their occupational tax receipt either upon such person or in any vehicle or other conveyance which is used in such business, and such person shall exhibit it to any authorized enforcement officer of the city when so requested.

Sec. 16-38. - Change of location.

Any person moving from one location to another shall notify the finance department of this move and the new address in writing on a form provided by the finance department prior to the day of the moving. A new receipt for the occupational tax will be issued for the new location if the new location conforms

to the zoning regulations of the city.

Sec. 16-39. - Transferability.

Occupational receipts shall not be transferable and a transfer of ownership shall be considered in the same light as the termination of the business and the establishment of a new business. Filing a new registration application and payment of applicable fees and taxes shall be required of the new owner of the business.

Sec. 16-40. - Evidence of qualification required if applicable.

Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of city registration, show evidence of such qualification.

Sec. 16-41. - Inspections of books and records; audits; confidential information.

- (a) The finance department shall have the right to inspect the books or records of any business for which returns have been made and upon demand of the finance department such books or records shall be submitted for inspection by a representative or agent of the city within 30 days. Independent auditors or bookkeepers employed by the city shall be classified as agents for the purposes of this article. Failure of submission of such books and records within 30 days shall be grounds for revocation of the occupation tax registration currently existing in the city. If it is determined that a deficiency exists as a result of under reporting, additional payment of occupation taxes required to be paid under this article shall be assessed the interest as provided by state law and penalties provided for by this Code. Notwithstanding the foregoing, no attorney shall be required to disclose any information that would violate the attorney/client privilege.
- (b) Except as provided in subsection (c) of this section, information provided by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner is confidential and exempt from disclosure under O.C.G.A. §§ 50-18-71 through 50-18-77.
- (c) Information provided to the city by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner may be disclosed to the city council of another local government for occupation tax purposes or pursuant to court order or for the purpose of collection of occupation tax or prosecution for failure or refusal to pay occupation tax.
- (d) Nothing herein shall be construed to prohibit the publication by the city of statistics, so classified as to prevent the identification of particular reports or returns and items thereof.

Sec. 16-42. - Business classifications for determining tax levy.

- (a) For the purpose of this article, every person engaged in business requiring the payment of occupational taxes is classified in accordance to the major line of business as defined by the North American Industrial Classification System (NAICS); and profitability classes are assigned in accordance with Statistics of Income, Business Income Tax Returns, United States Treasury Department, Internal Revenue Service. The finance department shall review assignment of businesses to profitability classes on a biannual basis and shall administratively reassign businesses as necessary to the then most accurate profitability class.

- (b) Classifications by business profitability have been established by the city council and are incorporated herein by reference and adopted for use in the application of this article. All separate businesses engaged in more than one business activity shall be classified on the basis of their dominant business activity at each location where business is done; except, that a person whose dominant business activity is legally exempt as defined by this article shall be classified according to such person's principal subsidiary business, if any, which is subject to the levy and assessment of occupation taxes.
- (c) The occupation tax shall be determined by applying the business' gross receipts and number of employees returned to the city to the business' profitability classification established for each business type.
- (d) A copy of business classifications shall be maintained in the office of the city clerk and shall be available for inspection by all interested persons.

Sec. 16-43. - Casual and isolated transactions.

Nothing in this article shall be interpreted to require any person who may engage in casual or isolated activity and commercial transactions, where they involve personal assets, are not the principal occupation of the individual to pay occupational tax therefor. Street vendor, transient vendor or flea market vendor activities shall not be considered to be casual and isolated business transactions and shall be required to comply with the provisions of this article.

Sec. 16-44. - Exemption for disabled veterans, disabled indigent persons, certain organizations.

- (a) Persons who qualify for a state veteran's or disabled indigent person's license shall be eligible for exemption from the city occupational tax fee. Any such person claiming an exemption shall secure evidence of qualification for the exemption from the proper authority and present it to the finance department.
- (b) Organizations which are exempt from federal income taxation under section 501(c)(3) or section 501(c)(4) of the United States Internal Revenue Code shall be eligible for exemption from the city occupational tax. Any such organization claiming an exemption shall provide to the finance department a federal tax exemption letter showing the code section under which an exemption is claimed. However, with respect to any activity for which an organization otherwise entitled to an exemption under this section shall be liable for federal income tax on unrelated business income or shall be deemed to be a feeder organization under the United States Internal Revenue Code, the exemption from payment of occupational taxes shall not be available.
- (c) Notwithstanding the exemption from payment of city occupation taxes, an exempt person or business shall comply with the same laws and regulations as are required of other registered businesses.

Sec. 16-45. - Exclusions from article; special classifications.

- (a) Wholesale dealers in liquor, wine, beer, and malt beverages are not required to pay the business occupation taxes provided for in this article.
- (b) Registration and occupational tax payment is required from any satellite subscription television

system. The term "satellite subscription television system" means services provided to subscribers for sale where the provider of the services utilizes a master antenna type system or earth dish system designed to receive and distribute satellite television signals; particularly, a system to provide service to one or more multiple unit dwellings under common ownership wherein any wiring necessary to operate the system does not cross adjacent non-owned property lines and does not cross city right-of-way in the city. The provisions of this subsection shall not apply to any person that is subject to the city's franchise fee for the holders of a cable or video service provider state franchise.

- (c) Registration and occupational tax payment is required from any broadcast subscription television system. The term "broadcast subscription television system" means services provided to subscribers for sale where the provider of the services transmits premium programming from one or multiple sources by transmitting or retransmitting programs to the public.
- (d) Any vendor or exhibitor who is a member of a group or collection of vendors or exhibitors that has come together at one location for the purpose of selling arts, crafts, antiques, or other goods for a period not to exceed ten consecutive days may be registered individually, or the group or collection may be registered as a "special event." Any applicant for a special event shall be considered as the promoter of the special event and shall be responsible for registration of the special event and paying the occupational taxes. Any special event group or collection of vendors or exhibitors shall comply with the same laws and regulations as required of other registered businesses, where applicable.
- (e) As part of the city's economic development incentives and only to the extent as described in O.C.G.A. § 48-13-10, the city council may by ordinance or resolution provide for an exemption or reduction in occupation tax or a credit against occupation tax owed to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting, encouraging, or maintaining selected types of businesses or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious. Exemptions under this subsection shall not exceed ten percent of the business' total annual gross receipts.

Sec. 16-46. - Denial, revocation or suspension of business occupation tax certificate.

- (a) *Grounds for denial, revocation, or suspension of business occupation tax certificate.* A business occupation tax certificate issued pursuant to any provision of this article shall be denied, revoked or suspended, and considered void, upon one or more of the following grounds:
 - (1) The original application or renewal thereof contains false or misleading information, or the applicant omitted material facts in the application;
 - (2) The premises covered by the certificate are found to be in violation of any codes or ordinances of the city;
 - (3) The applicant for, or holder of, the certificate is engaged in the business or occupation under a false or assumed name, or is impersonating another practitioner of a like or different name;
 - (4) The applicant for, or holder of, the certificate is engaging in false, misleading, or deceptive advertising or practices;
 - (5) The holder of the certificate is operating under a business or trade name not listed on the current application on file with the city;
 - (6) The holder of the certificate fails to maintain the initial requirements for obtaining the certificate;
 - (7) The applicant for, or holder of, a certificate is classified as, or becomes classified as, a

habitual violator under O.C.G.A. § 40-5-1 et seq., or is found to be operating the business under the influence of alcohol or of illegal drugs or substances;

- (8) The applicant for, or holder of, the certificate has been convicted of or has pled guilty or nolo contendere to any sexual offense, the offense of false swearing, the offense of operating an adult entertainment establishment in violation of the distance requirements of O.C.G.A. § 36-60-1 et seq., or to any offense involving illegal sale of narcotics or possession or receipt of stolen property, for a period of five years prior to the filing of the application. If after having been granted a certificate, the applicant is convicted, pleads guilty or enters a plea of nolo contendere to any of the above offenses, the certificate shall be subject to suspension and/or revocation;
- (9) The applicant for, or holder of, the certificate fails to pay occupation taxes and administrative fees when due;
- (10) The establishment has been declared a public or private nuisance or has created a threat or nuisance to public health, safety or welfare; or
- (11) Any other violation of this article.

(b) *False or misleading information.* No business occupation tax certificate shall be issued or renewed pursuant to any provisions of this article to any applicant, business or legally or organizationally related entity if within the 12 months immediately preceding the filing of any application under this article the same applicant, business or legally or organizationally related entity has been denied a certificate or had a certificate revoked for any location based in whole or in part upon having furnished false or misleading information in any application or having omitted material facts in any application.

(c) *Notice of denial, revocation or suspension of certificate.* Upon denial of an application seeking issuance or renewal of a business occupation tax certificate, or revocation or suspension of a business occupation tax certificate, written notification shall be provided of such decision to the applicant or holder of the certificate within five calendar days. The written notification shall state the grounds for the denial, revocation or suspension, and shall be served via hand delivery to the applicant or holder at the business location and sending a copy of such notice via registered mail, return receipt requested, to the address listed by the applicant or holder on the application for a certificate.

Sec. 16-47. - Grievances regarding occupation tax assessment or classification.

For grievances regarding the occupation tax assessed or the major line of business classification, the aggrieved person or entity shall first submit in writing a complaint to the city clerk which shall set forth in reasonable detail the matters complained of. The complaint may take letter form, and it shall be the duty of the city to review the complaint and issue a written reply to the taxpayer within 30 calendar days from the date the complaint is received. The written reply shall state in reasonable detail the basis for the decision regarding the initial assessment and classification. Should the aggrieved person or entity desire to seek review of such a decision, or if the city fails to issue a written opinion to the taxpayer within the 30 calendar day time period, the taxpayer shall be entitled to appeal to the certificate review hearing officer pursuant to the procedure set forth in section 16-48.

Sec. 16-48. - Administration; procedure for grievances and appeals.

The director of finance shall administer and enforce the provisions of this article. Should an aggrieved person or entity desire to appeal a decision under this article, the following procedure shall apply:

- (1) A notice of appeal must be filed within 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 complained of. The notice of appeal shall also contain an address for receipt of future notices and decisions of the Hearing Officer. 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, appellant shall be notified, in writing, of the date, time and place where a hearing will be held. The hearing shall be held before the Hearing Officer within 45 calendar days of the date the notice of appeal is filed, but no sooner than ten calendar days after appellant receives notice of the hearing. The director shall transmit to the Hearing Officer all documents or materials constituting the record of the action or proceedings below.
- (3) If the finance director deems it necessary that an audit of the financial books/records of appellant be conducted, the city 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 finance director may hire outside auditors for this purpose. The expense of hiring outside auditors shall be borne by the city 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 stay all legal proceedings with regard to collection of the occupation tax from an appellant; however, such appeal shall not preclude the city from pursuing legal proceedings to enjoin any violation of this article or of any other article of this Code.
- (5) Certificate review. In all hearings pursuant to this section, the following procedures shall prevail, and the proceeding shall be as informal as compatible with justice:
 - a. The Hearing Officer shall convene the hearing. The Hearing Officer shall be appointed by the mayor and approved by the city council. The Hearing Officer shall have the following duties:
 1. To hear appeals from decisions of the finance department denying the issuance or renewal of any license pertaining to this chapter;
 2. To hear appeals from the decisions of the finance department revoking or suspending any license pertaining to this chapter;
 3. To hear appeals from the decisions of the police department denying the issuance of permits pertaining to this chapter;
 4. To hear appeals from the decisions of the police department revoking or suspending an employee permit to this chapter.
 - b. The proceeding before the Hearing Officer shall be recorded, and all documents and other materials considered by the Hearing Officer shall be preserved as the record of the proceedings. The record of the proceedings shall be preserved for not less than 150 calendar days after the hearing.
 - c. Any alleged violations or misconduct levied against the appellant and scheduled for a hearing before the Hearing Officer shall be read completely to appellant at the commencement of the hearing, unless waived by appellant.

- d. The Hearing Officer may receive evidence in support of the alleged violations or misconduct as filed against appellant. Decisions of the Hearing Officer are to be supported by the evidence accepted and admitted during the hearing.
- e. The city 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 city 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 city may be represented by counsel, may present evidence, and may examine and cross examine witnesses. Additionally, the Hearing Officer are permitted to question witnesses. A party is permitted no more than 15 minutes to present that party's case-in-chief; a case-in-rebuttal is permitted no more than ten 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 Hearing Officer nor considered by the Hearing Officer.
- h. Following the presentation of evidence, the Hearing Officer shall issue a written decision within 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 Hearing Officer fail to issue a timely decision, on the 31st 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 Hearing Officer shall be final unless a party files a petition for writ of certiorari to the superior court of the county within 30 calendar days of the decision of the License Review Board.

Sec. 16-49. - Promulgation of rules, regulations.

The finance department shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the city and the state, or the constitution of the state or the constitution of the United States, for the administration and enforcement of the provisions of this article and the collection of the occupational tax.

Sec. 16-50. - Requirement for public 'bearings.

The city shall conduct at least one public hearing before adopting any ordinance or resolution regarding the levying of an occupation tax

Sec. 16-51. – Positions not established.

During the period of transition and start-up of the city, any duties required by this Chapter to be fulfilled by an employee or officer of the city who has not been appointed or such position or agency not yet established shall be fulfilled by the City Manager or the Mayor's designee.

ARTICLE III.

Sec. 16-52 through 16-90. Reserved.

ARTICLE IV. - GOING-OUT-OF-BUSINESS SALES

DIVISION 1. - GENERALLY

Sec. 16-91. - 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.

Sec. 16-92. - 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.

Sec. 16-93. - 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 non-inventoried 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.

Sec. 16-94. - 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.

Sec. 16-95. - 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.

Sec. 16-96. - 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 City of Tucker, 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.

Sec. 16-97. - 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 City of Tucker, 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.

DIVISION 2. - LICENSE

Sec. 16-116. - 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.

Sec. 16-117. - 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.

Sec. 16-118. - 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 City of Tucker, 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.

Sec. 16-119. - 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.

Sec. 16-120. - 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.

Sec. 16-121. - 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 City Council, a copy of which is on file in the office of the clerk.

Secs. 16-122—16-135. - Reserved.

ARTICLE V. - PAWNSHOPS

Sec. 16-136. - 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.

Sec. 16-137. - 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 City Council 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.

Sec. 16-138. - Responsibility for enforcement.

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

Sec. 16-139. - 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 City Council, a copy of which is on file in the office of the clerk, 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.

Sec. 16-140. - 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.

Sec. 16-141. - 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.

Sec. 16-142. - 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

Sec. 6-143. - 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 maintained by the pawnbroker as a permanent record.

Sec. 16-144. - 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.

Sec. 16-145. - 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.

Sec. 16-146. - Dealing with minors.

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

Secs. 6-147—16-165. - Reserved.

ARTICLE VI. - PRECIOUS METAL DEALERS

DIVISION 1. - GENERALLY

Sec. 16-166. - 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.

Sec. 16-167. - 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 City of Tucker. 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.

Sec. 6-168. - 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 City of Tucker and are in compliance with article V of this chapter.

Sec. 16-169. - 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.

Sec. 16-170. - Responsibility for enforcement.

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

Sec. 16-171. - 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.

Sec. 16-172. - 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 16-171 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.

Sec. 16-173. - 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 16-172. 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.

Sec. 16-174. - Hours of operation.

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

Sec. 16-175. - 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 City of Tucker during the above-described holding period.

Sec. 16-176. - Inspection of items held by dealer.

All items held by any dealer in accordance with the terms of section 16-175 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 16-175, the provisions of this section shall control.

Secs. 16-177—16-190. - Reserved.

DIVISION 2. - PERMIT

Sec. 16-191. - 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.

Sec. 165-192. - 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 16-194 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.

Sec. 16-193. - 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.

Sec. 16-194. - 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.

Sec. 16-195. - 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.

Sec. 16-196. - 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 City Council, a copy of which is on file in the office of the clerk.

Sec. 16-197. - 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.

Sec. 16-198. - 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 City 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.

Sec. 16-199. - 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 City Council according to the procedures set forth herein. The appeal shall be perfected by filing with the police department a notice of appeal to the City Council. The notice of appeal to the City Council 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, 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.

Secs. 16-200—16-215. - Reserved.

ARTICLE VII. - PEDDLERS, DOOR-TO-DOOR SALES AND SIMILAR OCCUPATIONS

DIVISION 1. - GENERALLY

Sec. 16-216. - 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.

Sec. 16-217. - 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 City of Tucker from which the sales representative transacts business or solicits orders on a continuing and ongoing basis within the City, 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.

Sec. 16-218. - 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 City 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).

Sec. 16-219. - 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 sunset and 9:00 a.m., according to the standard time in effect.

Sec. 16-220. - 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.

Sec. 16-221. - Persons with criminal records.

It is unlawful for any person with a criminal record as described in section 16-247, whether or not otherwise eligible for an exemption under section 16-217, to engage in any of the activities for which a permit is required by this article.

Sec. 16-222. - 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.

Sec. 16-223. - 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.

Sec. 16-224. - 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.

Sec. 16-225. - 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.

Sec. 16-226. - 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.

Secs. 16-227—16-240. - Reserved.

DIVISION 2. - PERMIT

Sec. 16-241. - 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 City of Tucker, 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.

Sec. 16-242. - 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."

Sec. 16-243. - 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 City Council, a copy of which is on file in the office of the clerk, 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.

Sec. 16-244. - 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.

Sec. 16-245. - Selling, renting, etc.

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

Sec. 16-246. - 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.

Sec. 16-247. - 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.

Sec. 16-248. - Surrender.

Each solicitor's permit shall remain the property of the City of Tucker. 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.

Sec. 16-249. - Appeals.

A person to whom the City of Tucker refuses to issue a solicitor's permit or whose solicitor's permit is suspended or revoked may appeal pursuant to section 16-47.

Secs. 16-250—16-265. - Reserved.

ARTICLE VIII. - MASSAGE THERAPY LICENSING

Sec. 16-266. - 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."

Sec. 16-267. - Licenses required.

- (a) *Massage therapist license.* It shall be unlawful for any natural person to administer massages without having obtained a State issued massage license.
- (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.

Sec. 16-268. - 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 City 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.

Sec. 16-269. - Application process.

- (a) *Application Requirements.* Any person desiring to obtain a massage establishment 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 the City of Tucker 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 Tucker Police Department and such fingerprint card and record shall be attached as an exhibit to the application. Payment of all fees charged by the Tucker Police Department in connection with this requirement shall be the responsibility of the applicant.
 - (11) Reserved.
 - (12) Reserved.
 - (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 Tucker, 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 Tucker City Council to defray the costs associated with issuance of said licenses. All fees associated with the background check required by section 16-269(a)(10) shall be the responsibility of the applicant and shall be in addition to the application fee.

Sec. 16-270. - Minimum standards.

- (a) *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 Tucker;
 - (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 Tucker City 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.

Sec. 16-271. - 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 Police Department. Upon the payment by the applicant of the required fees, the 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 16-270;
- (3) Any of the grounds for revocation specified in section 16-277 occurred at the location specified in the application during the past business license year; or
- (4) 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 City 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. The Hearing Officer established pursuant to Tucker City Code section 4-48, 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 Hearing Officer shall decide the appeal within a reasonable time. An appeal shall be sustained upon a finding by the Hearing Officer 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 Hearing Officer shall be final, unless appealed within thirty (30) days of the date of the findings by certiorari to the superior court of the county.

Sec. 16-272. - Transfers and sales prohibited.

All licenses issued pursuant to this article are nontransferable.

Sec. 16-273. - 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 Tucker City Council is first paid.

Sec. 16-274. - 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 Tucker City Council.

Sec. 16-275. - 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 conspicuous place on the premises that is clearly visible to the visiting public.
- (e) Tucker, 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 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 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 the City of Tucker 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.

Sec. 16-276. - 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 License 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 16-277 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 License 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 City 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 City of Tucker may be represented by counsel, and may present, examine and cross-examine witnesses. Additionally, the 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 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.

Sec. 16-277. - Grounds for revocation.

- (a) 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 City laws designated for the health, protection and safety of the occupants or general public;
 - (4) The premises are in violation of the City 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, keeping a place of 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, keeping a place of 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 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.
 - (d) Any location at which a license or permit for a massage establishment has been revoked shall be disqualified from receiving such a license or permit for a period of twelve (12) months immediately following the date of revocation.

Sec. 16-278. - 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 City of Tucker.

Sec. 16-279. - 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 City may, in addition, or in lieu of all other remedies, commence an action or actions, proceeding or proceedings for abatement, removal or injunction 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 Tucker and the State of Georgia.

Sec. 16-280. - 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, 2016 to comply with this article.

Sec. 16-281. - 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.

Secs. 16-282 —16-310. - Reserved.

ARTICLE IX. - ESCORT OR DATING SERVICES

Sec. 16-311. - 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.

Sec. 16-312. - 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.

Sec. 16-313. - 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 City Council, a copy of which is on file in the office of the clerk and providing the information in section 16-311 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.

Sec. 16-314. - 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.

Secs. 16-315—16-330. - Reserved.

ARTICLE X. - POOLROOMS

DIVISION 1. - GENERALLY

Sec. 16-331. - 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.

Sec. 16-332. - Applicability.

The provisions of this article govern the operation of poolrooms within the City of Tucker.

Sec. 16-333. - 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.

Sec. 16-334. - Gambling.

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

Sec. 16-335. - 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.

Secs. 16-336—16-350. - Reserved.

DIVISION 2. - LICENSE

Sec. 16-351. - Required.

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

- (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.

Sec. 16-353. - 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 City 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.

Sec. 16-354. - 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.

Sec. 16-355. - Fee.

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

Sec. 16-356. - Issuance.

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

Sec. 16-357. - 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.

Sec. 16-358. - 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 City may have a review thereof in accordance with the appeals procedures specified in section 16-47. 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.

Secs. 16-359—16-374. - Reserved.

ARTICLE XI. - VEHICLES FOR HIRE

Sec. 16-375. - 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 the City of Tucker, 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 the City of Tucker.

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.

Sec. 16-376. - Doing business defined.

Any person shall be deemed doing business in the City of Tucker under this article if such person is picking up passengers in City 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 City 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 City.

Sec. 16-377. - Compliance.

No person shall conduct the business of operating vehicles for hire in the City of Tucker without first meeting the requirements of this article. Notwithstanding any other provision to the contrary, any vehicle for hire that has a current valid DeKalb County permit is authorized to operate in the City of Tucker and is exempt from the requirements of this Article.

Sec. 16-378. - 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.

Sec. 16-379. - 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.

Sec. 16-380. - 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 City Manager. 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.

Sec. 16-381. - 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 City.

Sec. 16-382. - 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.

Sec. 16-383. - 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.

- (b) 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.

Sec. 16-384. - 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 City of Tucker 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.

Sec. 16-385. - 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 City Council. Fees required by this article are nonrefundable and are not prorated.

Sec. 16-386. - Transfer and term of permits and vehicle stickers.

- (a) No company permits, driver's permits, licenses or City 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 City inspection stickers required by the provisions of this article shall expire on the date the Georgia motor vehicle license tag expires.

Sec. 16-387. - 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 City without a City 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 Municipal Court of Tucker.
- (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.

Sec. 16-388. - 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 City of Tucker 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 City 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.

Sec. 16-389. - 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 City 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.

Sec. 16-390. - 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.

Sec. 16-391. - 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.

Sec. 16-392. - 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.

Sec. 16-393. - 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.

Sec. 16-394. - Age of vehicles for hire, taxicabs and limousines.

- (a) As of December 31, 2016, no vehicle having a vehicle age greater than eight (8) years may be operated as a taxicab, vehicle for hire or limousine in the City. For the purposes of this section, the term vehicle age shall be the vehicle's model year.

Sec. 16-395. - 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.

Sec. 16-396. - Temporary fuel surcharge.

- (a) The police chief or designee shall assess fuel prices in the City of Tucker 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 City 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 City 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 16-395 of the Code, 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 City and shall advise passengers of the amount of the fee as described in [sub]section (d).

Secs. 16-397—16-399. - Reserved.

ARTICLE XII. - ADULT ENTERTAINMENT ESTABLISHMENTS

Sec. 16-400. - Findings; public purpose.

(a) Purpose. It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

(b) Findings and rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the city council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and *Flanigan's Enters., Inc. v. Fulton City*, 596 F.3d 1265 (11th Cir. 2010); *Peek-a-Boo Lounge v. Manatee City*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *Artistic Entertainment, Inc. v. City of Warner Robins*, 331 F.3d 1196 (11th Cir. 2003); *Artistic Entertainment, Inc. v. City of Warner Robins*, 223 F.3d 1306 (11th Cir. 2000); *Williams v. Pryor*, 240 F.3d 944 (11th Cir. 2001); *Williams v. A.G. of Alabama*, 378 F.3d 1232 (11th Cir. 2004); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Gary v. City of Warner Robins*, 311 F.3d 1334 (11th Cir. 2002); *Ward v. City of Orange*, 217 F.3d 1350 (11th Cir. 2002); *Boss Capital, Inc. v. City of Casselberry*, 187 F.3d 1251 (11th Cir. 1999); *David Vincent, Inc. v. Broward City*, 200 F.3d 1325 (11th Cir. 2000); *Sammy's of Mobile, Ltd. v. City of Mobile*, 140 F.3d 993 (11th Cir. 1998); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *This That And The Other Gift and Tobacco, Inc. v. Cobb City*, 285 F.3d 1319 (11th Cir. 2002); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Grand Faloon Tavern, Inc. v. Wicker*, 670 F.2d 943 (11th Cir. 1982); *International Food & Beverage Systems v. Ft. Lauderdale*, 794 F.2d 1520 (11th Cir. 1986); *5634 E. Hillsborough Ave., Inc. v. Hillsborough City*, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), *aff'd*, 2008 WL 4276370 (11th Cir. Sept. 18, 2008) (per curiam); *Fairfax MK, Inc. v. City of Clarkston*, 274 Ga. 520 (2001); *Morrison v. State*, 272 Ga. 129 (2000); *Flippen Alliance for Community Empowerment, Inc. v. Brannan*, 601 S.E.2d 106 (Ga. Ct. App. 2004); *Oasis Goodtime Emporium I, Inc. v. DeKalb City*, 272 Ga. 887 (2000); *Chamblee Visuals, LLC v. City of Chamblee*, 270 Ga. 33 (1998); *World Famous Dudley's Food & Spirits, Inc. v. City of College Park*, 265 Ga. 618 (1995); *Airport Bookstore, Inc. v. Jackson*, 242 Ga. 214 (1978); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita City*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer City Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *East Brooks Books, Inc. v. Shelby City*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby City*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois*

One News, Inc. v. City of Marshall, 477 F.3d 461 (7th Cir. 2007); G.M. Enterprises, Inc. v. Town of St. Joseph, 350 F.3d 631 (7th Cir. 2003); Richland Bookmart, Inc. v. Knox City, 555 F.3d 512 (6th Cir. 2009); Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery City, 256 F. Supp. 2d 385 (D. Md. 2003); Richland Bookmart, Inc. v. Nichols, 137 F.3d 435 (6th Cir. 1998); Spokane Arcade, Inc. v. City of Spokane, 75 F.3d 663 (9th Cir. 1996); DCR, Inc. v. Pierce City, 964 P.2d 380 (Wash. Ct. App. 1998); City of New York v. Hommes, 724 N.E.2d 368 (N.Y. 1999); Taylor v. State, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); Fantasyland Video, Inc. v. City of San Diego, 505 F.3d 996 (9th Cir. 2007); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); Starship Enters. of Atlanta, Inc. v. Coweta City, No. 3:09-CV-123, R. 41 (N.D. Ga. Feb. 28, 2011); High Five Investments, LLC v. Floyd City, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008); 10950 Retail, LLC v. Fulton City, No. 1:06-CV-1923, R. 62 Order (N.D. Ga. Dec. 21, 2006); 10950 Retail, LLC v. Fulton City, No. 1:06-CV-1923, R. 84 Contempt Order (N.D. Ga. Jan. 4, 2007); Z.J. Gifts D-4, L.L.C. v. City of Littleton, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); People ex rel. Deters v. The Lion's Den, Inc., Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham City, July 13, 2005); Reliable Consultants, Inc. v. City of Kennedale, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); Goldrush II v. City of Marietta, 267 Ga. 683 (1997); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD, Journal of Urban Health: Bulletin of the New York Academy of Medicine (15 February 2011); Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analyses, Crime & Delinquency (29 November 2012) (Louisville, KY); Metropolis, Illinois, Investigator Affidavits Documenting Paid Sexual Conduct in Adult Entertainment Club, 2011-2012; Manatee County, Florida Investigator Affidavits and News Articles re: Secondary Effects of Sexually Oriented Businesses, 2007; Hillsborough County, Florida Investigator Affidavits re: Secondary Effects of Sexually Oriented Businesses, 2006; Clarksville, Indiana, Investigator Report re: Live Sexual Conduct in Adult Entertainment Establishment Booth Areas, 2009; El Paso, Texas, Affidavits re: Illicit Sex Acts and Unsanitary Conditions in Adult Cabarets and Adult Bookstores, 2008; Memphis Articles re: Crime at Strip Clubs and Strip Club Owner Guilty Plea, 2006; New Albany, Indiana, Investigator Report re: Illicit Sexual Conduct at Gentlemen's Club, 2009; Louisville, Kentucky Police Reports, Investigator Affidavits, and Citizen Affidavits re: Secondary Effects of Sexually Oriented Businesses, 2004; Report on Fulton County Adult Entertainment Businesses, July 2001, and minutes of public hearing; Chattanooga Police Records re: Public Masturbation and Public Nuisance Activities at Cinema One Theatre, 1999-2003; Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report to the Jackson County Legislature, May 9, 2008; Survey of Appraisers, Fort Worth & Dallas, Effects of Land Uses on Surrounding Property Values, September 2004; Report to the City Attorney on Crime-Related Secondary Effects, Kennedale, Texas, 2005; A Methodological Critique of the Linz-Yao Report: Report to the Greensboro City Attorney, December 15, 2003; An Analysis of the Effects of SOBs on the Surrounding Neighborhoods in Dallas, Texas, April 1997; Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston City Council, January 7, 1997; Legislative Report on an Ordinance Amending Section 28-73 of the Code of Ordinances of the City of Houston, Texas, November 1983; Adult Cabarets, Factual Record, Phoenix, Arizona, 1995-1998 Incall Escort Bureaus/Nude Modeling Studios (Private Room Nude Dancing) Factual Record, Phoenix, Arizona, 1995-1998; Tucson, Arizona Police Memorandum dated May 1, 1990; Declaration in Support of City of Spokane's Motion for Summary Judgment re: Secondary Effects Evidence Concerning Retail Adult Bookstores, July 24, 2002; and other Spokane, Washington documents; Summary of Review and Conclusions Regarding the City of St. Cloud's Regulation of Adult Use Businesses, December, 1994; Adult Business Study, Planning Department, City of Phoenix, May 25, 1979; Report on Adult Oriented Businesses in Austin, prepared by Office of Land Development Services, Austin, Texas, May 19, 1986; Adult Entertainment Businesses in Indianapolis, An Analysis, Department of Metropolitan Development, Division of Planning, February 1984; The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard, October 23, 1991; Study of the Effects of the Concentration of Adult

Entertainment Establishments in the City of Los Angeles, Department of City Planning, City of Los Angeles, June 1977; Staff Report, Amendment to Zoning Regulations, Adult Businesses in C-2 Zone with Conditional Use Permit, City of Whittier, California, January 9, 1978;. Adult Entertainment Businesses in Oklahoma City: A Survey of Real Estate Appraisers, March 3, 1986; Report on Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area, April 1994; Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, State of Minnesota, June 6, 1989; Expert Report in *Illusions-Dallas Private Club, Inc. v. Steen*, N.D. Tex. no. 3:04-CV-201, October 5, 2007; Rural Hotspots: The Case of Adult Businesses, 19 Criminal Justice Policy Review 153 (2008); Stripclubs According to Strippers: Exposing Workplace Sexual Violence, by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; David Sherman, Sexually Oriented Businesses: An Insider's View, Testimony before Michigan House Committee—Ethics and Constitutional Law, January 12, 2000;

the city council finds:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.

(2) Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this article, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the city's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city. The city finds that the cases and documentation relied on in this article are reasonably believed to be relevant to the secondary effects.

(c) Adoption of findings of secondary effects. The City of Tucker adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

Sec. 16-401. - 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.

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.

Sec. 16-402. - 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 City 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 City 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 that 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.

- (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, 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.

Sec. 16-403. - 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 other distance requirements imposed by this Code. 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, residence, park, library, school ground, or college campus and no closer than five hundred (500) feet from a church. 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."

Sec. 16-404. - 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 City 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 the City of Tucker. The license shall be conspicuously displayed at all times within the premises.

Sec. 16-405. - 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 City 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 police department.
- (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 herein, or of any other section of this article, the police department 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 City Council by filing with the City clerk. 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 City Council, and the name and address of the applicant. Said appeal shall be placed on the agenda of the next City Council meeting occurring not less than five (5) no more than thirty (45) days after receipt of said notice of appeal. The decision of the City Council 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 the decision.
- (g) Any permit for employment issued hereunder shall expire twelve (12) months from the date of issuance unless earlier revoked or suspended. The 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.

Sec. 16-406. - 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 City 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 City of Tucker."
- (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 the City 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 City 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 City 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.

Sec. 16-407- Notice of intent to engage in business.

- (a) All new applicants for licenses that were not operating at the time of the adoption of this ordinance, 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:

"City of Tucker 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.

Sec. 16-408. - License fees and penalty for late payment.

- (a) The annual license fee shall be set by the City Council 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 City 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 the City 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.

Sec. 16-409. - License application investigation.

- (a) Within five (5) days after receipt of a complete application that includes all of the information required in section 16-66 of this Code, the finance department shall transmit a copy to the police department and community development 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 City 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 City or any other City 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 16-401(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 16-63 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 City, 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 16-410 of this Code;
 - (12) The applicant is not overdue on payment to the City 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 the City or by any applicant with respect to any application until completion by the City of its investigation.

Sec. 16-410. - 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 City or municipal ordinance, or where there is a plea of nolo contendere, the City Council after hearing, may, after investigation, waive same as a disqualification. Such a hearing shall be conducted in the manner provided herein.

Sec. 16-411. - 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.

Sec. 16-412. - 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 City Council.

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.

Sec. 16-413. - 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 16-69(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 zoning board of appeals. 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 zoning board of appeals 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 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 City 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 City 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 City from pursuing legal proceedings to enjoin any violation of this article or of any other article of the City Code.
 - (5) Zoning Board of Appeals. In all hearings pursuant to this section, the following procedures shall prevail, and the proceeding shall be as informal as compatible with justice:
 - a. The proceeding before the board shall be recorded, and all documents and other materials considered by the 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.
 - b. Any alleged violations or misconduct levied against the appellant and scheduled for a hearing before the board shall be read completely to appellant at the commencement of the hearing, unless waived by appellant.
 - d. The board may receive evidence in support of the alleged violations or misconduct as filed against appellant. Decisions of the board are to be supported by the evidence accepted and admitted during the hearing.

- e. The City 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 City 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 City may be represented by counsel, may present evidence, and may examine and cross-examine witnesses. Additionally, members of the 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 arguments 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 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 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 zoning board of appeals shall be final unless either party files an appeal. The decision of the board 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 zoning board of appeals 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.

Sec. 16-414. - 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 City 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.

Sec. 16-415. - 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.

Sec. 16-416. - 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 the City and laws and regulations of the state or federal government.

Sec. 16-417. - 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 City.
- (b) An application for renewal shall meet and qualify under all requirements of this article for the granting of a new license.

Sec. 16-418. - 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 16-73(b).

Sec. 16-419. - 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 City 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.

Sec. 16-420. - Inspection and enforcement.

- (a) An applicant or licensee shall permit City representatives from the police department, finance department, 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 City 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 16-78, for the suspension or revocation of the license issued hereunder.
- (c) Any violation of the provisions of this article may be abated by the City 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 City.

Sec. 16-421. - 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 the City and meets all the requirements of the Zoning Ordinance for adult entertainment establishments.

Sec. 16-422. - 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 City 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 the City and the State of Georgia.

Sec. 16-433. - 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.

Sec. 16-434. - 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.

Secs. 16-435—16-499. - Reserved.

ARTICLE XIII. - MULTIFAMILY RENTAL DWELLINGS

Sec. 16-500. - 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 City Manager 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.

Sec. 16-501. - Certification process, requirements, forms and appeals.

- (a) *Process.* The City Manager 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. When applicable, a nonrefundable administrative fee set by the City Council 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 City Manager 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 City Manager 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 City 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: commercial building inspector, residential building inspector, or building plan examiner.
- (2) *Denial of certification.* Upon receipt of a complete application to be a certified building inspector, the City Manager or his/her designee shall have forty-five (45) days to grant or deny the application. If denied, the City Manager 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 16-503(c) of this article, or if a certified building inspector no longer meets the minimum requirements set forth in this article, the City Manager or his/her designee shall revoke the authority of that individual to act as a certified building inspector. The City Manager 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.

** This section was amended by Ordinance 2018-06-25, dated June 27, 2018.*

Sec. 16-502. - 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, 2019, all owners of multifamily rental dwellings and/or multifamily rental units within the City 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 City 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 City.
 - (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 City Council 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 City, 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.

** This section was amended by Ordinance 2018-06-25, dated June 27, 2018.*

Sec. 16-503. - Violations.

- (a) No business occupation tax certificate shall be issued to any owner until the owner provides the City 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 City 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 City as shown by the inspection report shall be guilty of a violation of this article.