CITY OF MABLETON, GEORGIA

Cobb Works
5656 Mableton Parkway, GA 30126
July 15, 2025 at 6:30 PM

Commissioner Cheryl Davis
Commissioner Jeanette Hardee
Commissioner Robin Meyer
Commissioner Undriss Miller
Commissioner Donte Philpot
Commissioner Carl Valenzano
Commissioner Vinis Walker

PLANNING COMMISSION REGULAR MEETING AGENDA

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF MINUTES**
4. **UNFINISHED BUSINESS**
5. **NEW BUSINESS**
   a. **An Ordinance Creating Article 5, Subdivisions, under Chapter 8, Buildings and Construction, of the City of Mableton Code of Ordinances.**
   b. **An Ordinance Updating Chapter 11, Environment and Natural Resources, of the City of Mableton Code of Ordinances**
   c. **An Ordinance Updating Chapter 7. Taxes, Fees and Assessments of The City Code of Ordinances: Regulation Occupation Taxation and Business Licensure and For Other Lawful Purposes, Of Mableton Code of Ordinance.**
6. **ADJOURNMENT**

Persons with special needs relating to handicapped accessibility, disability, or foreign language may contact the City Clerk at (404) 927-9502 or susan.hiott@mableton.gov at least three days prior to the meeting. The clerk can be located at the City of Mableton Offices, Riverside EpiCenter, 135 Riverside Pkwy, Austell, Georgia 30168 during regular office hours.

STATE OF GEORGIA

COBB COUNTY

CITY OF MABLETON

AN ORDINANCE CREATING ARTICLE 5, SUBDIVISIONS, UNDER CHAPTER 8, BUILDINGS AND CONSTRUCTION, OF THE CITY OF MABLETON CODE OF ORDINANCES AND FOR OTHER LAWFUL PURPOSES

WHEREAS, the City of Mableton ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia;

WHEREAS, the duly elected governing authority of the City is the Mayor and Council ("City Council") thereof;

WHEREAS, Sec. 1.13(23) of the City Charter authorizes the City "[t]o to provide subdivision regulation and the like as the city council deems necessary and reasonable to ensure a safe, healthy, and aesthetically pleasing community";

WHEREAS, the City Council desires through this Ordinance to exercise its powers and authority under the City Charter and other applicable laws to promotion the health and general welfare of the City; and

WHEREAS, the City Council finds this Ordinance to be in the best interests of the health, safety, and general welfare of the City.

IT IS HEREBY ORDAINED by the governing authority of the City of Mableton, as follows:

Section 1: The City Code of Ordinances is hereby amended to create Creating Article 5, Subdivisions, under Chapter 8, Buildings and Construction, to read as follows:

CHAPTER 8 - BUILDINGS AND CONSTRUCTION

ARTICLE 5 - SUBDIVISIONS

DIVISION 1 - GENERALLY

Sec. 8.5.1.1 - Definitions.

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

Block means a piece or parcel of land entirely surrounded by public highways or streets other than alleys. In cases where the plotting is incomplete or disconnected, the subdivider may determine the outline of the block.

Building line means the minimum horizontal distance between the street right-of-way line, or the street centerline where appropriate, and the building or any projection thereof, except any of the following:

(1) Steps, terraces and open fire escapes.

(2) Balconies, canopies or cornices projecting no more than three feet beyond the main building wall.

(3) Offset or overlapping portions of the floor of the main building that do not extend more than three feet beyond the main building wall.

Condominium means a development providing individual ownership of units within a multifamily zone, together with the joint ownership of common areas of the buildings and grounds.

Controlling financial interest means 51 percent or more, legal or equitable ownership interest of the total assets or capital stock of a business entity.

Controlling property interest means any ownership of real property, direct or indirect, and includes any percentage of ownership less than total ownership.

Crosswalk means a right-of-way within a block dedicated to public use, ten feet or more in width, intended primarily for pedestrians and from which motor-propelled vehicles are excluded. It is designed to improve or provide access to adjacent roads and lots.

Department means the city community development department and/or any entity designated by the city to perform duties of the city community development department.

Department of transportation means the city and/or county's department of transportation.

Director means the director of the community development department or his designee.

Director, department of transportation means the director of the department of transportation.

Engineer means the city engineer and/or the city manager’s designee.

Final plat means a plat of a tract of land which meets the requirements of this chapter and Georgia

Law for recording in the office of the clerk of the superior court of the county.

Frontage. See *Lot width*.

Lot means a portion of a subdivision intended as a unit for transfer of ownership or for development or both. In determining the area and dimensions of a lot, no part of the right-of-way of a road or crosswalk may be included.

Lot width means the distance between the side lot lines measured as a tangent to the front building line as described by the city zoning code.

Major thoroughfare plan means an engineered or designed comprehensive plan or program of arterial, collector and minor streets and roads for all or a portion of the city.

Master plan means a comprehensive plan which may consist of several maps, data and other descriptive matter for the physical development of the city or any portion thereof. This includes any amendments, extensions or additions thereof recommended by the planning commission indicating the general location for major roads, parks or other public open spaces, public building sites, routes for public utilities, zoning districts or other similar information.

Person means any business entity, subdivider, developer, corporation, partnership, limited partnership, joint venture, firm, enterprise, franchise, association, trust or other entity of any kind.

Sediment control regulations means city code chapter 11, article I, and/or any other applicable regulation dealing with sediment control during construction.

Standard design specifications means standards and specifications in use by the city which shall apply to the physical improvements required to be provided and installed by a subdivider in a subdivision.

Streets and alleys means as defined according to the major thoroughfare plan.

Subdivider means any person who undertakes the subdivision of land as defined in this section.

Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, legacy or building development, and includes all division of land involving a new street or a change in existing streets, and includes re-subdivision and, where appropriate to the context, relates to the process of subdividing or to the land or area subdivided. Provided, however, that the following are not included within this definition:

(1) The combination or recombination of portions of previously platted lots where the total

number of lots is not increased and the resultant lots are equal to the standards of the city.

(2) Any subdivision of land, provided that all such lots are within the boundaries of a preexisting platted subdivision or no lots hereby produced contain less than 80,000 square feet each and has a minimum frontage of 200 feet. Also, where no new streets, roads, or other rights-of-way are involved and provided further that such subdivision shall be platted and recorded. For lots of 80,000 square feet or more the property shall be zoned for R-80 purposes as defined in the city's zoning code.

(3) A division or sale of land by judicial decree.

(4) The sale or exchange of a parcel of land between owners of adjoining properties; provided, that additional lots are not thereby created.

(5) In those instances where the Board of Zoning Appeals grants a variance for a subdivision of property lacking the minimum public road frontage and an easement is necessary for ingress and egress to the property, there shall be a maximum of three lots permitted, a minimum of 80,000 square feet per lot, a minimum of 25 feet width easement, and the easement and the subdivided lots shall be platted and required to be recorded as restrictive covenants running with the land in the clerk's office of the Cobb County superior court. The Board of Zoning Appeals shall be authorized and directed to consider any variance application to this provision so long as the lots shall be a minimum of 40,000 square feet in size (as recommended to the city council), a minimum of 20 feet width easement, and a maximum of three lots. Cobb County Fire and Emergency Services shall review and approve all one- and two-family residential dwelling units accessing private easements with respect to applicable codes including but not limited to emergency vehicle access and hydrant placement. In the event that these applicable codes cannot be met, Cobb County Fire and Emergency Services may require indemnification in a form approved by the County or city.

Subdivision administrator means any person in the department to whom the duties of subdivision administrator are assigned, or successor to his duties, by whatever title designated.

Traffic engineer means the city engineer to whom the duties of traffic engineer are assigned, or successors to his duties, by whatever title designated.

Variance means a change in the general design of a subdivision but which shall in no way make null the standard design specifications of the Director or the city zoning regulations.

Water and sewer system means the Cobb County Water and Sewer System.

Sec. 8.5.1.2 - Jurisdiction; compliance; violations and penalties; enforcement; appeals.

(a) This chapter shall govern all subdivisions of land within the city limits, and shall govern

all undeveloped units of existing subdivisions. No plat of subdivision of land within the city shall be submitted or approved excepting in full compliance with the provisions of this chapter.

(b) Until acceptance of the subdivision or development by the city, it shall be the duty of the

existing owner of real property subject to this chapter to notify the director of any change in address or ownership. Any notice required by the city to the owner pursuant to this chapter shall not be deemed invalid or defective due to the failure of the owner to notify the director of the change of address or ownership.

(c) Full compliance with all rules, regulations and requirements authorized by or made in pursuance of this chapter shall be a prerequisite to the issuance of any permit. The city is authorized to withhold the issuance of all permits or to refuse inspection to any subdivider or person on the property or subdivision in dispute or any other property or subdivision in the city in which the subdivider or person may have a controlling financial interest or controlling property interest, who violates or fails to comply with this chapter.

(d) Any subdivider or person or combination of both, or their agent, servant, employee, officer, contractor, or combination of both, who fails to comply or violates any provision of this chapter or any restriction or condition imposed by the authority of this chapter or violates any restriction of any city authority made in pursuance of this chapter shall be subject to the following:

(1) Whenever the director determines that a subdivider or person has failed to comply with or violates any provision of this chapter or any restriction or condition imposed by the authority of this chapter or violates any restriction or any city authority made in pursuance of this chapter, the director shall order all work stopped in writing by notifying the subdivider or persons and proper city authorities. All work shall stop when ordered by the director, except corrective work as directed by the director, and shall be suspended until compliance with this chapter or correction of the violation is made and the director lifts the stop work order and authorizes continuance of the work.

(2) The director shall be authorized to assess a civil penalty of up to $1,000.00 per day for each offense which may be continuing until the offense is remedied; provided, however, that before any such fine is imposed the following procedures must take place:

a. The director shall notify the party in writing of any violation or failure to comply with the terms of this chapter; b. The party shall have five days from receipt of such written notice from the director to respond and be heard on the failure to comply or violation;

c. Immediately upon hearing the matter the director shall issue a written order of his or her decision which shall be delivered by US first class mail regarding the matter heard. Each day of such violation shall constitute a separate offense.

(3) Violations of this chapter are punishable as allowed by law.

(e) Any person or subdivider severally or jointly aggrieved by any decision of an administrative officer of the city with regard to this chapter may take an appeal to the city council by notifying the clerk of the city council in writing stating the reasons for the appeal, except, however, that such appeal must be filed within ten days from the date of the decision being appealed. A hearing before the city council shall be scheduled within 30 days after filing of the appeal. Upon failure to file such appeal within ten days of the decision being appealed, the decision shall be binding and final upon the parties.

Sec. 8.5.1.3 - Purpose, objective and intent.

The city council hereby finds and determines the following:

(1) Many interests are affected when new homes are built, therefore, a reasonable regulation and control of development is necessary to protect these interests.

(2) The first interest to consider is that of the subdivision owner or developer. This chapter requires the developer to meet certain standards in designing his subdivision that will provide him with desirable, saleable lots. This, in turn, will give his investors a certain guarantee of return.

(3) A carefully planned development can install certain neighborhood pride even before the first individual homeowner moves in. The homeowner's interests were protected before he purchased the home by ensuring the installation of proper facilities and recreational areas. Further, if the natural beauty has been retained and protective covenants established on the development, the homeowner's property value should increase rather than decline as has been the case in too many neighborhoods in the past.

(4) Probably the greatest error in the past has been the lack of recognition of the long-term responsibilities involved in subdividing land. This error has proven to be costly and affects a

third interest, the city government, which, in turn, affects the city taxpayer. Therefore, as representatives of the taxpayer and his family, the city government intends to protect the taxpayer's interests and other interests involved by the adoption and enforcement of this chapter.

(5) A development must first fit into a master plan which is adopted by and recommended by the planning commission after a comprehensive study of the city. The director then studies the design and facilities, which are eventually left in the hands of the city for maintenance, to ensure that they are suitable and will require a minimum of maintenance in the future. Past experiences have pointed to the dire need for a regulation of this content to serve the best interest of the public while providing all developers with a minimum standard policy and procedure outline.

(6) The intent of this chapter is to provide for the harmonious development of the city and to ensure a coordinated layout with adequate provisions for traffic, recreation, drainage, sewers and other technical elements of land subdivision. This control is necessary to assure the maximum return on the local and government investments and at the same time to assure the homeowner protection and the subdivider full consideration of his interests and responsibilities.

DIVISION 2 - PLATS AND PLAT APPROVAL PROCEDURE

Sec. 8.5.2.1 - Procedure for plat approval for subdivisions.

Any owner of land lying within the area of jurisdiction of these subdivision regulations wishing to divide such land into two or more lots, sites or divisions for the purpose, either immediate or future, of sale or building development, or wishing to re-subdivide for this purpose, shall submit a plan of such proposed subdivision to the subdivision administrator and, if using septic tanks, to the county health department for its consideration. The following requirements shall govern the procedure for plat approval for subdivisions:

(1) Prepare a complete set of construction plans which shall include at a minimum:

a. Preliminary site plan.

b. Site grading plans.

c. Roadway development plans (see city development standards).

d. Stormwater management plan (see city development standards).

e. Fire safety standards.

f. Water and sanitary sewer plans (see city development standards).

g. Erosion and sediment control plans (see chapter 11, article 1).

h. Tree protection and replacement plan (see city development standards).

i. Additional site-specific information as may be necessary.

(2) Submit two sets of the construction plans, to the subdivision administrator for consideration by the development review committee. The action and/or recommendations shall be noted on the plans and returned to the submitter. Upon resubmittal of revised plans, and verification that all staff comments have been properly addressed, the project will be made eligible for permitting Upon receiving construction plan approval as outlined in the city development standards, a land disturbance permit shall be issued.

(3) Upon completion of site grading, paving, utility and infrastructure installation, prepare a final plat. No building permits shall be issued before approval of the final plat.

(4) Submit final plat for health department approval if septic tanks are to be used for sewerage disposal.

(5) Submit final plat and the platting fee to the subdivision administrator for approval on the

basis of the approved construction plans. Note: Approval of the final plat does not constitute final acceptance of the improvements.

(6) The applicant shall have the final plat recorded after the necessary signatures have been placed upon it.

(7) The subdivider may begin to sell lots.

(8) Ensure that all inspections have been made at proper phases of road construction, so that, after the provision of a warranty bond or proper maintenance warranty security is secured, the one year maintenance period may begin promptly.

Sec. 8.5.2.2 - Construction plans.

Construction plans shall contain the information as specified in the requirements for plan review

in the city available through appropriate city and county departments.

Sec. 8.5.2.3 - Platting fee and recording plat.

(a) A platting fee in the amount established by the city council shall be required when the final plat is submitted for approval.

(b) The subdivision administrator shall record the final plat when approved and shall have copies reproduced for the various utilities and government departments.

(c) The final plat original shall be returned to the developer or his engineer, surveyor or authorized representative.

(d) Approval of the final plat before the improvements are completed shall require an amount of money sufficient to cover the cost of improvements be placed in an escrow account to be released only upon written acceptance by the community development department. This amount is to be based on actual estimate of improvements or $20.00 per running foot of street.

State law reference(s)—Approval by planning commission or governing authority on plat of subdivision required for filing or recording in superior court clerk's office, O.C.G.A. § 15-6-67(d).

Sec. 8.5.2.4 - Final plat specifications.

(a) The final plat shall be clearly and legibly drawn on permanent reproducible material. The scale of the final plat shall be no more than 100 feet to one inch. Sheet size shall not exceed 48 inches by 36 inches. If the complete plat cannot be shown on one sheet, several sheets with an index map indicated on each sheet shall be used. In no case shall sheet size be less than 8½ inches by 11 inches.

(b) The final plat shall conform to the approved construction plans and it may constitute only that portion of the approved construction plans which the subdivider proposes to record and develop at any time, provided that such portion conforms to the staging established in approved construction plans and to the requirements of this chapter.

(c) The final plat shall contain the following information:

(1) Name of the subdivision and street names.

(2) Property address numbers, as furnished by the community development department and coordinated with the Cobb County Fire and Emergency Services Department.

(3) Reference to record subdivision plats of adjoining land by record name.

(4) Date of plat drawing, graphic scale, and north arrow.

(5) Location of tract, by land lot and district.

(6) Name of former subdivision if any or all of the final plat has been previously subdivided.

(7) Location sketch at a scale of one-inch equals 2,000 feet.

(8) Index map on each sheet when more than one sheet is required.

(9) Courses and distances to the nearest existing street, intersections, or other recognized

permanent monuments or benchmarks.

(10) Exact boundary lines of the tract, to be indicated by a heavy line, giving distances to the nearest one-tenth foot and angles to the nearest second, which shall be balanced and closed. The error of closure shall be stated, and further the error of closure shall exceed 1' in 10,000'. Tract boundaries shall be determined by accurate survey in the field.

(11) Reserved.

(12) Exact locations, width and names of all streets and alleys within and immediately adjoining the plat and the exact location and widths of all crosswalks.

(13) Street centerlines showing angles of deflection and standard curve data of intersection, radii, length of tangents and arcs, and degree of curvature with basis of curve data.

(14) Lot lines with dimensions to the nearest one-tenth foot, necessary internal angles, arcs and chords and tangents or radii of rounded corners.

(15) Building setback lines with dimension.

(16) Lots or sites numbered in numerical order and clockwise lettered alphabetically.

(17) Location, dimensions, drainage area and purpose of all drainage structures and of any

easements, including slope easements, flood hazard areas, public service utility right-of-way lines, and any areas to be reserved, donated or dedicated to public use or sites for other than residential use with notes, stating their purpose and limitations; and of any areas to be reserved by deed covenant for common uses of all property owners.

(18) A statement of the private covenants, if they are brief enough to be put directly on the plat; otherwise a statement as follows: "This plat is subject to the covenants set forth in the separate document(s) attached hereto dated ________, which hereby becomes a part of this plat, recorded ________" and signed by the owner.

(19) Accurate location, material and description of monuments and markers. Monuments to be placed after final street improvements shall be designated as future.

(20) Seal of surveyor or engineer responsible for work.

(21) Variances, if any, and date approved by the Board of Zoning Appeals.

(d) Certificates for the final plat shall be provided as follows:

(1) *Owner's acknowledgment:*

For use when a public dedication is involved:

Expand

OWNER'S CERTIFICATE AND DEDICATION
I hereby certify that I am the owner of the land shown on this plat (or a duly authorized agent thereof) whose name is subscribed hereto. I acknowledge that this plat was made from an actual survey, and for value received the sufficiency of which is hereby acknowledged, I do hereby convey to Cobb County, Georgia all water mains, water lines, sanitary sewer lines and the like to function as part of the Cobb County Water System and further convey all streets and rights-of-way and major stormwater easements indicated as stormwater structures located in the right-of-way to the first junction box or where water combines with a private system, shown hereon in fee simple to the City of Mableton and further dedicate to the use of the public forever all alleys, parks, watercourses, drains, easements, and public places hereon shown for the purposes and considerations herein expressed. Drainage easements and stormwater ponds are dedicated to allow water to flow and are to be maintained by the owner of the property. In consideration of the approval of this final plat and other valuable considerations, I further release and hold harmless the City of Mableton and Cobb County from any and all claims, damages, or demands arising: on account of the design, construction, and maintenance of the property shown hereon; on account of the roads, fills, embankments, ditches, cross drains, culverts, water mains, sewer liens, and bridges within the proposed rights-of-way and easements shown; and on account of backwater, the collection and discharge of surface water, or the changing of courses of streams.
And further, I warrant that I own fee simple title to the property shown hereon and agree that the City of Mableton and Cobb County shall not be liable to me, my heirs, successors, or assigns for any claims or damages resulting from the construction or maintenance of cross drain extensions, drives, structures, streets, culverts, curbs, or sidewalks, the changing of courses of streams and rivers, flooding from natural creeks and rivers, surface waters, and any other matter whatsoever. I further warrant that I have the right to sell and

convey the land according to this plat and do hereby bind owners and myself subsequent in title to defend by virtue of these presents.
Owner's name: ________
Owner's address: ___________
Date: ___________

For use when for public dedication and private streets are involved:

Expand

OWNER'S CERTIFICATE AND DEDICATION
I hereby certify that I am the owner of the land shown on this plat (or a duly authorized agent thereof) whose name is subscribed hereto. I acknowledge that this plat was made from an actual survey, and for value received the sufficiency of which is hereby acknowledged, with the express exception of the streets which are shown to remain private, I do hereby convey to Cobb County, Georgia all water mains, water lines, sanitary sewer lines, and the like to function as part of the Cobb County Water System and further dedicate to the use of the City of Mableton and the public forever, with the express exception of any detention or retention pond or ponds, all alleys, parks, watercourses, drains, easements, and public places hereon shown for the purposes and considerations herein expressed. Drainage easements are dedicated to allow water to flow and are to be maintained by the owner of the property. In consideration of the approval of this final plat and other valuable considerations, I further release and hold harmless the City of Mableton and Cobb County from any and all claims, damages, or demands arising: on account of the design, construction, and maintenance of the property shown hereon; on account of the roads, fills, embankments, ditches, cross drains, culverts, water mains, sewer liens, and bridges within the proposed rights-of-way and easements shown; and on account of backwater, the collection and discharge of surface water, or the changing of courses of streams.

For use when no public dedication is involved:

OWNER'S CERTIFICATE AND DEDICATION

I hereby certify that I own fee simple title to the property shown on this plat (or a duly authorized agent thereof) whose name is subscribed hereto. I acknowledge that this plat was made from an actual survey, In consideration of the approval of this final plat and other valuable considerations, I release and hold harmless the City of Mableton from any and all claims, damages, or demands arising: on account of the design, construction, and maintenance of the property shown hereon. I further warrant that I have the right to sell and convey the land according to this plat and do hereby bind owners and myself subsequent in title to defend by virtue of these presents.
Owner's name: ________
Owner's address: ___________
Date: ___________

For use for minor lot combinations

I HEREBY CERTIFY THAT I AM THE OWNER OF THE LAND SHOWN ON THIS PLAT (OR A DULY AUTHORIZED AGENT THEREOF) WHOSE NAME IS SUBSCRIBED HERETO. I ACKNOWLEDGE THAT THIS PLAT WAS MADE FROM AN ACTUAL SURVEY. I UNDERSTAND THAT THE APPROVAL OF THIS PLAT BY CITY OF MABLETON IS ONLY FOR THE SUBDIVISION OR COMBINATION OF THIS PROPERTY, AND IS NOT MEANT TO SERVE AS APPROVAL OF ANY NON-CONFORMING CONDITIONS THAT CURRENTLY EXIST ON THIS PROPERTY OR WILL BE CREATED BY THE SUBDIVISION OR COMBINATION OF THIS PROPERTY. AND FURTHER I WARRANT THAT I OWN FREE SIMPLE TITLE TO THE PROPERTY SHOWN HEREON AND AGREE THAT THE CITY OF MABLETON SHALL NOT BE LIABLE TO ME, MY HEIRS, SUCCESSORS, OR ASSIGNS FOR ANY CLAIMS OR DAMAGES RESULTING FROM THE RECORDING OF SAID PLAT, AND ANY OTHER MATTER WHATSOEVER. I FURTHER WARRANT THAT I HAVE THE RIGHT TO SELL AND CONVEY THE LAND ACCORDING TO THIS PLAT AND DO HEREBY

BIND OWNERS AND MYSELF SUBSEQUENT IN THE TITLE TO DEFEND BY

VIRTUE OF THESE PRESENTS.

(2) *Surveyor's acknowledgment:*

I hereby certify that the plan shown and described hereon is a true and correct survey made on the ground under my supervision, that the monuments have been placed as shown hereon, and is to the accuracy and specifications required by the city of Mableton, Georgia, development standards.

____

Signature Printed Name Date

Registered Ga. Land Surveyor

(3) *City development certification:*

This plat, having been submitted to the city of Mableton, Georgia and having been found to comply with city of Mableton, Georgia, development standards and the city of Mableton, Georgia zoning ordinance, is approved subject to the installation and dedication of all streets, utilities, easements and other improvements in accordance with applicable standard design specifications and the posting of a one-year maintenance security and filing of limited warranty deeds for any property to be dedicated to the city .

____

Community Development Department Date

____

City Engineer Date

____

City Engineer Date

Mayor

If Public dedication

(4) *Certification of Cobb County Public Health (only on plats to be served by septic tanks):*

This plat or survey has been approved for development utilizing onsite sewage management systems except as noted. Unauthorized excavation or filling of lots may render their approval void.

____

Environmental Health District

Director for Cobb County

Public Health Date

Note on Individual Septic Systems

Out: Currently unsuitable for on-site sewage management systems.

SP: Approval of individual site plan required prior to issuance of on-site sewage management system permit. SPA: Approval of individual site plan utilizing an alternative on-site sewage management system required prior to permit issuance.

(5) Cobb County Water and Sewer System sign off

This plat, having been submitted to Cobb County Water System and having been found to comply with Cobb County Development Standards, is approved for recording.

(6) *Surveyor's certification:*

(a) Provide the appropriate surveyor's certification as set forth in OCGA § 15-6-67.

(7) Cobb County Fire & Rescue

Sec. 8.5.2.5 - Revisions.

(a) Revisions to the record plat shall be approved by the director. All changes shall be noted on the record plat with a statement of what revisions were made.

Sample: "This plat supersedes the plat recorded in Plat Book ___, page ___. The revisions made

are: ___

APPROVED BY:

city community development department

Date

(b) Revision of an approved plat shall be submitted to the planning and zoning administrator with a fee in the amount established by the city council per plat for approval and recording.

DIVISION 3 - SUBDIVISION DESIGN STANDARDS AND REQUIRED

IMPROVEMENTS

Sec. 8.5.3.1 - Existing subdivisions.

The provisions of this chapter shall remain in effect, even if inconsistent with the amendments effective upon adoption, as to those subdivisions existing and as to any subdivider or person who has initiated the approval procedure for subdivisions delineated in the zoning regulations on or before June 1, 2025 for that subdivision phase, unit or like entity only. The applicable provisions of this chapter and the terms of this chapter existing on June 1, 2025 are specifically incorporated by this reference; provided however, that all other subdivision phases, units, or like entities initiated after June 1, 2025, including subdividers or persons who may have been previously grandfathered, shall be subject to this article, as amended, upon adoption of these amendments.

Sec. 8.5.3.2 - Variances.

Where the subdivider can show that a provision of this article would cause unnecessary hardship if strictly adhered to, and/or where, because of topographical or other conditions peculiar to the site, and/or where, in the opinion of the Board of Zoning Appeals , a departure may be made without otherwise nullifying the standard design specifications of the director and the intent of this article or the city zoning regulations, the appeals board may authorize a variance per the standards set forth herein for variances. Any variance thus authorized shall be noted on the final plat before approval of the plat.

Sec. 8.5.3.3 - Conformance with zoning and other regulations.

No final plat affected by an existing zoning ordinance shall be approved unless it conforms with such ordinance. Whenever there is a discrepancy between minimum standards of dimensions noted in this chapter and those contained in the zoning regulations, building code or any other official regulation of the city, the more stringent standard shall apply.

Sec. 8.5.3.4 - Maintenance bond.

A maintenance bond, cash bond, or other equivalent form of security as approved by the city Attorney, running in favor of the city , in a minimum amount of $5,000.00 or any amount equal to at least ten percent of the actual construction improvement total cost, whichever is greater, shall be posted with the Community Development Department by all subdividers or persons where street or other improvements are made and offered to the city for acceptance and maintenance except as noted in this section. Twenty-five percent of the actual construction improvement total cost or $5,000.00, whichever is greater, shall be posted with the city by all subdividers or persons where street or other improvements are made requiring bridges, box culverts, or pipes with diameters equal to or exceeding 48 inches, and offered to the county for acceptance and maintenance. The maintenance bond, cash bond or other equivalent form of security shall guarantee all improvements against defects in design, material and workmanship and further guarantee that all such improvements shall be maintained in first class condition for the required period and faithful performance by the subdivider or other person of all provisions of this chapter.

(1) Any bond, except cash bond or other equivalent form of approved security shall be on forms supplied by the city and shall not be terminated or otherwise allowed to expire without at least 30 days' prior written notice to that effect to both the city and the subdivider or person. Such bond, cash bond or other equivalent form of approved security along with evidence of payment of the required premiums shall be filed with the city.

(2) Such bond, cash bond or other equivalent form of security shall be posted prior to commencement of the maintenance period and following installation of the improvements and inspection and approval by the city of the method of installation. No final plat shall be approved or recorded by the city and no lots shall be sold by the subdivider until and unless a satisfactory bond is posted.

(3) Separate bonds required by this section shall be required for each subdivision unit, phase or like entity approved by the city pursuant to this chapter.

Sec. 8.5.3.5 - Maintenance.

The subdivider or person shall maintain all improvements in the subdivision to be dedicated to the city for a minimum of one year from the date of written notification by the city commencing the one-year maintenance period of such improvements and inspection and approval by the city of the method of installation, whichever is longer. No dedication of improvements shall be accepted by the city until the expiration of one year from such date and inspection and determination by the city at the expiration of such time that all the improvements are in first class condition and meet all city specifications and requirements under this chapter.

(1) At the end of the maintenance period, the city may inspect the development, and shall inspect at the written request, submitted at the end of the tenth month of the maintenance period or thereafter prior to expiration of the maintenance period, by the subdivider or

person. If the improvements to be dedicated are free from defects and comply with city specifications and requirements under this chapter, dedication of the improvements shall be accepted by the city for permanent maintenance by the city. The subdivider or person shall be notified in writing of the acceptance and any security shall be released.

(2) If upon inspection as provided in subsection (1) of this section, the city determines that work or repairs are needed in order for the improvements to meet city specifications or requirements under this chapter, the subdivider or person shall be notified in writing by the department of the deficiencies, failure to comply or violations. Thereafter, the subdivider shall have 60 days from receipt of such notification to correct such deficiencies, noncompliance or violations. If the deficiencies, noncompliance or violations are not corrected within such time, then the maintenance bond, cash bond, letter of credit or equivalent form of approved security posted by the subdivider shall be forfeited and called upon up to the cost of the repairs or the total amount of the bond. Should the amount of the bond be inadequate to pay for the cost of correcting the deficiencies, noncompliance or violations, then the subdivider shall pay any and all costs beyond bond coverage.

(3) The subdivider shall pay to the city for each inspection, subsequent to the initial inspection provided under subsection (1) of this section, a reinspection fee in an amount set from time to time by resolution of the city council to defray the cost of reinspection. A copy of the schedule of reinspection fees shall be maintained in the offices of the community development agency.

(4) If a period of 18 months elapses from the commencement of the maintenance period for any subdivision and defects, noncompliance or violations still exist to the extent that the subdivision has not been accepted by the city, the city is authorized to withhold the issuance of any and all permits or to refuse inspection to any subdivider or person on the project in dispute or any other project in which the subdivider or person may have a financial interest, or both, who violates or fails to comply with this chapter.

Sec. 8.5.3.6 - Guarantee of installation and performance.

(a) Each subdivider or person shall guarantee installation of improvements and faithful

performance of all provisions of city specifications and this chapter. The subdivider shall maintain a performance bond, letter of credit or other equivalent form of security in an amount that is 110 percent of the construction cost of all improvements, including landfill, as established by the subdivider's professional engineer and verified by the director. Such bond, letter of credit or other equivalent form of security shall be on forms supplied by the city. In lieu of installation of improvements, surety bond, letter of credit or other equivalent form of security, the subdivider or person may provide a first mortgage to the city on its property to satisfy the subdivider's or person's guarantee.

(b) Separate bonds as required by subsection (a) of this section shall be required for each subdivision unit, phase or like entity approved by the city pursuant to this chapter.

Sec. 8.5.3.7 - Blocks.

(a) *Maximum length.* Blocks shall not be more than 1,200 feet in length except where the director considers it necessary to secure efficient use of land or desired features of street pattern.

(b) *Minimum width.* Blocks shall be wide enough to allow two tiers of lots of minimum depth except where prevented by topographical conditions or size of the property, in which case the city council may approve a single tier of lots of minimum depth.

Sec. 8.5.3.8 - Large tracts or parcels.

When land is subdivided into larger parcels than ordinary building lots (larger than two acres), such parcels shall be arranged so as not to land-lock any adjacent property. 16

Sec. 8.5.3.9 - Lots.

Lots in subdivisions shall comply with the following:

(1) *Arrangement.* Side lot lines should be at right angles (90 degrees) to straight street lines or radial to curved street lines. Side lot lines should be radial to the radius points of all culs-de-sac. Each lot shall front upon a dedicated public street having a right-of-way of not less than 50 feet.

(2) *Building lines.* Building lines shall conform with the city zoning regulations.

(3) *Corner lots.* All corner lots, regardless of zoning, shall have no less than 100 feet of road

frontage on each street and shall meet the requirements in the city zoning regulations. The street side yard shall not be less than 25 feet as measured from the street right-of-way. Driveways shall be located according to city development standards.

(4) *Double frontage lots.* Access to double frontage lots shall be restricted to the interior street.

(5) *Septic tanks and sewage disposal systems*.

Sec. 8.5.3.10 - Monuments.

(a) Permanent benchmarks shall be placed at all land lot corners on the boundary of the property being developed. These benchmarks shall be concrete with brass marking. Placement, to be verified by visual inspections, shall extend no less than six inches above the finished grade.

(b) All other corners shall be marked with an iron pin, one-half inch in diameter and 24 inches long and driven so as to extend no less than one inch above the finished grade.

Sec. 8.5.3.11 - Easements.

(a) Easements shall be cleared and opened at the time of development to control surface water runoffs. Runoffs slope and side slopes shall be specified by the developer's engineer, according to good engineering practices. Drainage ditches shall conform to standard swale ditch, as specified in the standard design specifications.

(b) Permanent sanitary sewer easements of 20 feet in width shall be provided for necessary

lines.

(c) No permanent structures shall be constructed within ten feet of the edge of a permanent water or sanitary sewer easement on front and rear setbacks, or within two feet on side setbacks.

The water system director may grant a variance to this requirement provided that it can be demonstrated to his or her reasonable satisfaction that such structure will not impede future installation or maintenance within said easement.

(d) Easements for sanitary sewers and drainage purposes shall not overlap unless approved by the county water system.

(e) Drainage easements shall be provided where a subdivision is traversed by a watercourse, drainageway, natural stream or channel. It shall conform substantially to the limits of such watercourse plus any additional width as is necessary to accommodate future construction as recommended by the director.

(f) Drainage easements off the street right-of-way shall be clearly defined on the plat and deed of the individual property owner, and property owner will be required to keep such easements free of obstructions and will maintain the easements in such a way as to assure free and maximum flow at all times.

(g) All easements shall be cleared of debris, excess dirt and other materials. The ground shall be smoothed down and grassed within ten days of completing construction work. The use of sediment control measures may be required to protect the area until a vegetative cover is obtained.

Sec. 8.5.3.12 - Suitability of land.

Land deemed unsuitable for residential purposes may be set aside for such uses that shall not be harmed by the existing condition of the land.

Sec. 8.5.3.13 - Utilities.

The design and construction specifications for all public utilities shall conform to the city's standard design specifications.

DIVISION 4 - STREETS

Sec. 8.5.4.1 - Width requirements for right-of-way.

(a) Additional right-of-way on existing streets shall be provided to meet the minimum street width requirements.

(b) When the subdivision is located on only one side of an existing street, one-half of the required right-of-way as measured from the centerline of the existing right-of-way shall be provided.

Sec. 8.5.4.2 - Alleys.

Alleys shall be provided to the rear of all lots used for business purposes and shall not be provided in residential blocks except where the subdivider produces evidence satisfactory to the director of community development or his designee of the need for such alleys.

Sec. 8.5.4.3 - Conformity to major thoroughfare plan.

The location and width of all streets and roads shall conform to the official major thoroughfare plan. Street plans and profiles shall be approved by the traffic engineer of the city.

(1) Lot access for property fronting on arterial, major collector, and minor collector streets shall be restricted to interior streets.

(2) Developers or persons constructing or causing to be constructed subdivisions on existing public streets and roads shall be required to convey to the city property for use as right-of-way or future right-of-way for public streets and roads as provided in the existing thoroughfare plan of record in the community development department.

Sec. 8.5.4.4 - Curves.

(a) *Super-elevated curves.* Super-elevated curves shall be provided in accordance with state highway design for arterial and collector type streets.

(b) *Horizontal curves.* See standard engineering (AASHTO) design specifications for horizontal curves.

Sec. 8.5.4.5 - Cul-de-sac streets.

Dead-end streets designed to have one end permanently closed shall be no more than 800 feet in length unless necessitated by topography.

Sec. 8.5.4.6 - Half streets.

Half streets shall not be allowed.

Sec. 8.5.4.7 - Intersections.

(a) Street intersections shall be as nearly at right angles as is possible.

(b) No intersection shall be at an angle of less than 60 degrees.

(c) Wherever necessary to permit the construction of a curb having a desirable radius without curtailing the sidewalk at a street corner to less than normal width, the property line at such street corners shall include a miter to permit such construction.

(d) Sight distance at intersections shall meet the requirements of standard city DOT design

specifications for the number of lanes and posted speed limit of the roadway.

(e) Islands at intersections shall be subject to standard GDOT and city DOT design

specifications and approval by the city engineer.

(f) Adjoining street intersections shall meet or exceed a minimum spacing per standard city

design specifications for the classification of the roadway.

Sec. 8.5.4.8 - Jogs.

Street jogs shall have centerline offsets as detailed in standard city development specifications.

Sec. 8.5.4.9 - Names.

(a) The county is divided into four street number quadrants designated NE, NW, SE and SW. All streets shall bear the proper quadrant suffix.

(b) Proposed streets that are obviously in alignment with other already existing and named streets shall bear the names of such existing streets.

(c) No proposed street name shall duplicate an existing street name within the city regardless of the use of the suffix street, avenue, boulevard, drive, place, way, court, or however otherwise designated.

(d) All street names are subject to the approval of the community development department.

(e) New street names shall follow the guidelines established in the city Addressing Manual.

Sec. 8.5.4.10 - Address numbers.

Property address numbers shall be provided by the community development department.

Sec. 8.5.4.11 - Private streets.

(a) *Private streets in new developments.*

(1) Every subdivided property shall be served from a dedicated public street which shall have been constructed to city specifications and/or shall be maintained by city forces.

(2) Any private street that is platted in a subdivision or other residential project, as approved by the city council, must be noted as such on the plat.

(3) All private streets shall be indicated with a blue, post mounted street sign consistent with city street sign standards.

(4) Private streets must be surfaced with the same type of materials that are used by the city for the surfacing and resurfacing of public streets or with materials that are as protective as those used by the city to surface and resurface public streets so long as such alternative materials are approved by the city engineer.

(5) All private streets must comply with the city requirements for public streets regarding roadway/lane widths, superelevation and run-off, intersection design, street grades and design speed, vertical alignment, horizontal alignment, curbs and gutters, sub-grade preparation, signing and striping.

(6) In the case of private streets, maintenance of all stormwater infrastructure shall be the responsibility of a property owners association.

(7) Access to all private streets by emergency and law enforcement vehicles shall be provided and all private streets shall be constructed to allow access to all emergency vehicles.

(8) Any development that includes private streets, whether residential, commercial, institutional, industrial, or office development, must organize and establish a property owners' association or homeowners' association, as appropriate. Such association shall be formed prior to the sale of any properties within the development. Membership in the appropriate association must be mandatory for each original and successive purchaser of a lot, building or unit within the development. The declaration of covenants must be recorded with the clerk of the county superior court, again prior to the sale of any properties within the development, and the recorded declaration of covenants must provide that all private streets and associated improvements are owned by the association or are held in common by the property owners within the development. The declaration of covenants shall show clear legal authority to maintain and exercise control over the private streets and required improvements associated with private streets, including, but not limited to, sidewalks, bikeways, curbs and gutters, traffic signs and markings, associated landscaping and lighting, entry signs, monuments, perimeter walls and fences, entry gates and gatehouses. As well, the declaration shall set forth the right of the association to collect sums from the members for such maintenance of the private streets and related improvements. The streets must be properly maintained and insured with no liability or maintenance responsibilities accruing to the city. The recorded declaration of covenants must specifically require the appropriate association to repair and maintain each private street in the same manner as similar public streets are maintained by the city and such maintenance and repair must be performed in compliance with all city standards and all applicable provisions of law.

(9) Within nine months following approval of the final plat, the city's community development director or their designee must inspect the private streets to ensure compliance with all city standards and all applicable provisions of this Code including, but not limited to, the requirements set forth in law for public streets, curbs, sidewalks, signage and street lighting. The developer must be notified of any deficiencies in writing and such deficiencies must be corrected within 60 days of the written notice of deficiencies unless the city agrees to an extension of that period in writing.

(10) Failure to correct the complete list of deficiencies constitutes a violation of this section and will subject the developer to prosecution for a code violation in the magistrate court. Any person found to have violated this section is subject to a fine of not less than $500.00 for each violation. Each day that the violation exists is a separate and distinct offense.

(11) The community development director or their designee shall deny issuance of certificates of

occupancy until all deficiencies have been corrected.

(12) This section shall be effective June 1, 2025, for new requests for private streets.

(b) *Hazardous private streets*.

(1) Hazardous private streets shall mean any private street which is open for access for vehicular traffic and which the director of the department of transportation or their designee has determined to contain any or all of the following defects:

a. A roadway, the surface material of which has loosened, buckled, split, crumbled, eroded or in any other way deteriorated so as to make it unsafe for vehicular traffic or so as to constitute a roadway obstruction to the adequate access by emergency vehicles or public utility vehicles.

b. A roadway, the surface of which has become blocked in whole or in part by the deposit of earth or other materials thereon, or by reason of any other cause.

c. A roadway, all or any portion of which is likely to collapse due to deterioration, decay, faulty construction, or by reason of the removal or movement of any portion of the ground necessary for the support thereof.

(2) It is found and declared that hazardous private streets on properties within the city limits are an endangerment to the public safety as a result of unsafe conditions to those persons residing or working in the vicinity and constitutes a public nuisance.

(3) When the director of the department of transportation or their designee determines that any private street is a hazardous private street, as defined above, they shall serve a mandate requiring the correction of the hazardous condition. One copy of the mandate shall be served on each owner of record of the land constituting the private street and upon the owner of each contiguous or adjacent parcel having access on the private street, as shown on county tax records. Such mandate shall be served either personally or by certified mail. Notice shall be deemed complete and sufficient when personally delivered or mailed. The mandate shall include:

a. The street address and legal description, sufficient for identification of the parcel or parcels constituting the private street;

b. The defects causing the street to be a hazardous private street and their location;

c. A statement of work required to be done in order to correct said defects and place the streets in a state of repair that is consistent with city standards;

d. That all repairs shall commence within 60 days following the issuance of the mandate and shall specify a reasonable time in which the work shall be completed. The director of the department of transportation may extend the time for completion for good cause upon written request for such an extension;

e. A statement that if the work is not completed within the time stated, the city may elect to remedy the condition and a lien shall be placed on the property for the cost of such repairs;

f. A statement that the record owner of the property may, at any time prior to the date specified in the mandate for the work to commence, make a written appeal to the city council for the purpose of showing that the cited conditions do not constitute a violation.

(4) In addition to requiring the repair of a hazardous private street, the director of the department of transportation may order the immediate closing thereof until the repair work has been satisfactorily completed if the director determines that the hazard presents immediate threat to life, limb, health, property safety and general welfare.

(5) Any person served with a mandate to repair may, at any time prior to the date specified in the mandate for the work to commence, file a written appeal to the city council, upon such form as the board shall prescribe, for review of any requirements of said mandate. The filing of such an appeal shall stay all requirements for the mandate until a determination of the matter is rendered by the board. The board shall promptly set a date for the hearing of the appeal and shall at least ten days prior thereto, give public notice thereof, as well as due notice to the parties in interest. The board shall make such investigations as it deems necessary and shall upon the date set for hearing of the appeal from the order to repair, hear and consider evidence offered by any interested person. Thereafter, but in no event later than 60 days from receipt of the appeal, the board shall make a determination as to whether or not the private street is a hazardous private street within the terms of this chapter, and may affirm, change, or modify any requirements of the repair mandate.

(6) Failure to repair any private street as required by the city within the time set by the director of the department of transportation, or within any additional time the director extends for good cause, may cause the private street to be repaired by any means deemed advisable by the city council.

(7) In the event the city repairs the hazardous private street, the costs of repair shall be certified to the director of finance. All certified costs incurred by the city plus an administrative charge to repair a hazardous private street will be a special assessment lien and charge shall be attached to the property upon which the private street is located. Said

lien shall be payable with interest at the rate of eight percent per annum from the date of certification until paid. Such lien shall be in favor of the city and may be satisfied at any time by payment thereof, including accrued interest. Notice of such lien shall be filed in the office of the Clerk of the Superior Court and recorded among the public records of Cobb County, Georgia. The city reserves the right to pursue these costs as a personal obligation against the owner of the real property, recoverable by the city in an action before any court of competent jurisdiction.

(8) It shall be unlawful for any person to obstruct, impede or interfere with any representative of the city whenever such representative is engaged in the repair of such private street pursuant to the provisions of this chapter or is performing any necessary act preliminary to or incidental to such work.

Sec. 8.5.4.12 - Relation to adjoining street system.

The proposed street system shall extend existing streets or projects at the same or greater width, but in no case less than the required minimum width.

Sec. 8.5.4.13 - Restriction of access.

When a subdivision fronts on an arterial street or highway, the director or the zoning department may require any double frontage lots to be provided with frontage on an interior street with no access to the arterial street.

Sec. 8.5.4.14 - Minimum pavement widths.

The minimum width of right-of-way, as measured from the lot line, shall be as shown on the major thoroughfare plan, and/or as described for the roadway classification within the city development standards.

Sec. 8.5.4.15 - Curbs and gutters.

(a) Developers of subdivisions abutting and located on existing city streets and roads shall be required to provide curbing and guttering along the public road frontage of the property provided, that the rear of the structure erected on the lots face the existing street or road and that there are no points of egress or ingress other than as provided for in this section. Further provided that no other portions of the existing street or road have existing curb and gutter to which to coordinate with.

(b) This section shall apply only to subdivisions to be constructed on existing public streets or roads in the city. "Existing public streets or public roads" as used in this section means those that are of record on the official public street or road registry in the community department and other appropriate city departments as of the date of the enactment of this section, or public streets or roads which are hereafter constructed and maintained by the city after

dedication and acceptance as provided by law.

DIVISION 5. CONDOMINIUMS

Sec. 8.5.5.1 - Applicability.

This article applies to condominium projects.

Sec. 8.5.5.2 - Variances.

Where the subdivider can show that a provision of this article would cause unnecessary hardship if strictly adhered to and/or where, because of topographical or other conditions peculiar to the site, and/or where, in the opinion of the appeals board, a departure may be made without otherwise nullifying the standard design specifications of the director and the intent of this chapter or the city zoning regulations, the appeals board may authorize a variance. Any variance thus authorized shall be noted on the final plat before approval of the plat.

Sec. 8.5.5.3 - Conformance with zoning and other regulations.

No final plat affected by an existing zoning ordinance shall be approved unless it conforms with such ordinance. Whenever there is a discrepancy between minimum standards of dimensions noted in this article and those contained in the zoning regulations, building code or any other official regulation of the city, the highest standard shall apply.

Sec. 8.5.5.4 - Procedure for plan review.

Review and approval of all plans and final plats of condominiums shall be in accordance with the requirements for plan review in the city, which is available through appropriate city departments.

Sec. 8.5.5.5 - Final plat specifications.

(a) The final plat shall be clearly and legibly drawn on permanent reproducible material. The scale of the final plat shall be 100 feet to one inch. Sheet size shall not exceed 48 inches by 36 inches. If complete plat cannot be shown on one sheet, several sheets with an index map indicated on each sheet shall be used. In no case shall the sheet size be less than 8½ inches by 11 inches.

(b) The final plat shall contain the following information:

(1) Name of the project and street names.

(2) Property address numbers (furnished by the community development department).

(3) Reference to record subdivision plats of adjoining land by record name.

(4) Date of plat drawing, graphic scale and north point.

(5) Location of tract by land lot and district.

(6) Location sketch at a scale of one-inch equals 2000 feet (see note following subsection (b)(9) of this section).

(7) Index map on each sheet when more than one sheet is required.

(8) Courses and distances to the nearest existing street, intersections, or other recognized permanent monuments or benchmarks.

(9) Exact boundary lines of the tract, to be indicated by a heavy line, giving distances to the nearest one-tenth foot and angles to the nearest minute, shall be balanced and closed. The error of closure shall be stated, and further the error of closure shall exceed one to 10,000. Tract boundaries shall be determined by accurate survey in the field.

Note: Unit plats shall provide a location sketch for location within the master plat.

(10) Land lot lines shall be accurately tied to boundary lines of the subdivision by angles and distances when such lines traverse the subdivision; when the subdivision does not intersect a land lot line, then the lines of a major controlling street shall be projected and tied to a land lot line by angles and distances. In both cases, the measured distance from land lot tie to a respective land lot corner shall be shown with the magnetic bearing of the land lot line. No approximate land lot lines

shall be shown on the subdivision plat.

(11) Exact locations, width and names of all streets and alleys within and immediately adjoining the plat and the exact location and widths of all crosswalks.

(12) Street centerlines showing angles of deflection and standard curb data of intersection, radii, length of tangents and arcs, and degree of curvature with basis of curve data.

(13) Lot lines with dimensions to the nearest one-tenth foot, necessary internal angles, arcs and chords and tangent or radii or rounded corners.

(14) Building setback lines with dimensions.

(15) Legal description of individual condominium units shall be provided as follows:

a. The individual condominium unit shall be referenced as a lot by numeric data only, limited

to 999 units.

b. Each building shall be referenced as a unit by numeric data only, limited to 99 units.

c. Each development phase shall be referenced as a block by alpha data.

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d. Parcel numbers shall be assigned by the tax office.

e. Plats of the development shall be separated into different development phases when

individual units or buildings reach the limits set in this subsection (b)(15)a and (b)(15)b.

(16) Location, dimensions, drainage area and purpose of all drainage structures and of any

easements, including slope easements, flood hazard areas, public service utility right-of-way lines, and any areas to be reserved, donated or dedicated to public use or sites for other than residential

use with notes stating their purpose and limitations; and of any areas to be reserved by deed

covenant for common uses of all property owners.

(17) Accurate location, material and description of monuments and markers.

(18) A statement referencing the protective covenants by record book and page number.

(19) Registered land surveyor's certification and stamp required for master plat.

(20) Registered professional engineer certification and stamp accepted for as-built condition on unit plats only.

(21) Registered architect certification and stamp may be used to certify the acceptability of the structural work.

(22) Variances, if any, and date approved by the appeals board.

(c) Certification for the final plat shall be provided as follows:

(1) *Registered professional engineer's certification:*

The undersigned Registered Professional Engineer hereby certifies that the plan to which this certification is affixed fully and accurately depicts the layout, location, number/letter identification and dimension of the buildings resident shown thereon as built.

Stamp

Signature P.E. Number

(2) *Registered professional architect:*

The undersigned Registered Professional Architect hereby certifies that the building and residence units shown on this location plat are, within reasonable construction tolerances, constructed in

accordance with the approved set of construction plans on file in the city. Signature Register Number

(3) *Registered land surveyor's certification:*

The undersigned Registered Land Surveyor hereby certifies that the plan shown and described

hereon is a true and correct survey made on the ground under my supervision, that the monuments

have been placed as shown hereon, and is to the accuracy and specification required by city

subdivision regulations.

Signature Register

Number

Sec. 8.5.5.6 - Platting fee and recording of plat.

(a) A platting fee in the amount established by the city council shall be required when the final

plat is submitted for approval.

(b) The applicant shall record the final plat when approved and shall have

copies reproduced for the various utilities and government departments.

(c) Projects with multiple plats shall reference the master plat.

(d) Protective covenants shall be recorded by the developer and a copy supplied to the community development department.

(e) Existing apartment projects which are converted to condominium projects shall meet the

final plat requirements set forth in this article.

Sec. 8.5.5.7 - Design standards.

The design of the project shall conform to the requirements of the city zoning regulations and to

the standard design specifications.

Sec. 8.5.5.8 - Monuments.

(a) Permanent benchmarks shall be placed at all land lot corners on the boundary of the property being developed. These benchmarks shall be concrete with brass marking. Placement, to be verified by visual inspections, shall extend no less than six inches above the finished grade.

(b) All corners other than as provided in subsection (a) of this section shall be marked with an iron pin, one-half in diameter, 24 inches long and driven so as to extend no less than one inch above the finished grade.

Sec. 8.5.5.9 - Easements.

(a) Easements shall be cleaned and opened at the time of development to control surface water runoffs. Runoff slope and side slopes shall be specified by the developer's engineer, according to good engineering practice.

(b) Permanent sanitary sewer easements of 20 feet in width shall be provided for necessary lines.

(c) No permanent structures shall be constructed within ten feet of the edge of a permanent water or sanitary sewer easement on front and rear setbacks, or within two feet on side setbacks.

The water system director may grant a variance to this requirement provided that it can be demonstrated to his or her reasonable satisfaction that such structure will not impede future installation or maintenance within said easement.

(d) Easements for sanitary sewers and drainage purposes shall not overlap unless approved by the Cobb County water & Sewer System.

(e) Drainage easements shall be provided where the project is traversed by a watercourse, drainageway, natural stream or channel. It shall conform substantially to the limits of such watercourse plus any additional width as is necessary to accommodate future construction as recommended by the director.

(f) Drainage easements within the project and off the dedicated street right-of-way shall be

clearly defined on the final plat of the project. The owners of the property shall be required to keep the easement open and free of undue obstructions at all times.

(g) All easements shall be cleared of debris, excess dirt and other materials. The ground shall be smoothed down and grassed within ten days of completing construction work. The use of sediment control measures may be required to protect the area until a vegetative cover is obtained.

Sec. 8.5.5.10 - Street names.

(a) The county is divided into four street number quadrants designated NE, NW, SE and SW. All streets shall bear the names of such existing streets.

(b) Except within the same project, no proposed street name shall duplicate an existing street name within the city, regardless of the use of the suffix street, avenue, boulevard, drive, place, way, court, or however otherwise designated.

(c) All street names are subject to the approval of the community development department.

Sec. 8.5.5.11 - Address numbers.

Property address numbers shall be provided by the community development department.

Sec. 8.5.5.12 - Suitability of land.

Land deemed unsuitable for residential purposes may be set aside for such uses that shall not be harmed by the existing condition of the land.

Sec. 8.5.5.13 - Utilities.

The design and construction specifications for all public utilities shall conform to the city's standard design specifications.

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Section 2. It is hereby declared to be the intention of the City Council that:

(a) All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed.

(b) All sections, paragraphs, sentences and phrases of this Ordinance are or were, upon their enactment, believed by the City Council to be fully valid, enforceable and constitutional.

(c) To the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. No section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(d) In the event any portion of this Ordinance shall be declared or adjudged invalid or

unconstitutional, it is the intention of the City Council of the City that such adjudication

shall in no manner affect the other sections, sentences, clauses or phrases of this Ordinance

which shall remain in full force and effect, as if the invalid or unconstitutional section,

sentence, clause or phrase were not originally a part of the Ordinance.

Section 5. The City Attorney and City Clerk are authorized to make non-substantive editing

and renumbering revisions to this Ordinance for proofing and renumbering purposes.

Section 6. The effective date of this Ordinance shall be June 1, 2025, unless required otherwise

by the City Charter, state and/or federal law. In the event that any effective date herein is

determined by a Court of law to be invalid, said effective date shall instead be the earliest date

allowed by law.

SO ORDAINED this ______ day of _________________, 2025.

ATTEST: CITY OF MABLETON, GEORGIA:

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_________________________________ _______________________________

Susan D. Hiott, City Clerk Dr. Michael Owens, Mayor

APPROVAL AS TO FORM:

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Emilia Walker-Ashby, Interim City Attorney

Hearing of the appeal from the order to repair, hear and consider evidence offered by any interested person. Thereafter, but in no event later than 60 days from receipt of the appeal, the board shall make a determination as to whether or not the private street is a hazardous private street within the terms of this chapter, and may affirm, change, or modify any requirements of the repair mandate. (6) Failure to repair any private street as required by the city within the time set by the director of the department of transportation, or within any additional time the director extends for good cause, may cause the private street to be repaired by any means deemed advisable by the city council. (7) In the event the city repairs the hazardous private street, the costs of repair shall be certified to the director of finance. All certified costs incurred by the city plus an administrative charge to repair a hazardous private street will be a special assessment lien and charge attached to the property upon which the private street is located. Said lien shall be payable with interest at the rate of eight percent per annum from the date of certification until paid. Such lien shall be in favor of the city and may be satisfied at any time by payment thereof, including accrued interest. Notice of such lien shall be filed in the office of the Clerk of the Superior Court and recorded among the public records of Cobb County, Georgia. The city reserves the right to pursue these costs as a personal obligation against the owner of the real property, recoverable by the city in an action before any court of competent jurisdiction. (8) It shall be unlawful for any person to obstruct, impede, or interfere with any representative of the city whenever such representative is engaged in the repair of such private street pursuant to the provisions of this chapter or is performing any necessary act preliminary to or incidental to such work.

Sec. 8.5.4.12 - Relation to adjoining street system. The proposed street system shall extend existing streets or projects at the same or greater width, but in no case less than the required minimum width.

Sec. 8.5.4.13 - Restriction of access. When a subdivision fronts on an arterial street or highway, the director or the zoning department may require any double frontage lots to be provided with frontage on an interior street with no access to the arterial street.

Sec. 8.5.4.14 - Minimum pavement widths. The minimum width of right-of-way, as measured from the lot line, shall be as shown on the major thoroughfare plan, and/or as described for the roadway classification within the city development standards.

Sec. 8.5.4.15 - Curbs and gutters. (a) Developers of subdivisions abutting and located on existing city streets and roads shall be required to provide curbing and guttering along the public road frontage of the property provided, that the rear of the structure erected on the lots face the existing street or road and that there are no points of egress or ingress other than as provided for in this section. Further provided that no other portions of the existing street or road have existing curb and gutter to which to coordinate with. (b) This section shall apply only to subdivisions to be constructed on existing public streets or roads in the city. "Existing public streets or public roads" as used in this section means those that are of record on the official public street or road registry in the community development department and other appropriate city departments as of the date of the enactment of this section, or public streets or roads which are hereafter constructed and maintained by the city after dedication and acceptance as provided by law.

Sec. 8.5.5.5 - Final plat specifications. (a) The final plat shall be clearly and legibly drawn on permanent reproducible material. The scale of the final plat shall be 100 feet to one inch. Sheet size shall not exceed 48 inches by 36 inches. If the complete plat cannot be shown on one sheet, several sheets with an index map indicated on each sheet shall be used. In no case shall the sheet size be less than 8½ inches by 11 inches.

(b) The final plat shall contain the following information: (1) Name of the project and street names. (2) Property address numbers (furnished by the community development department). (3) Reference to record subdivision plats of adjoining land by record name. (4) Date of plat drawing, graphic scale and north point. (5) Location of tract by land lot and district. (6) Location sketch at a scale of one inch equals 2000 feet (see note following subsection (b)(9)). (7) Index map on each sheet when more than one sheet is required. (8) Courses and distances to the nearest existing street, intersections, or other recognized permanent monuments or benchmarks. (9) Exact boundary lines of the tract, to be indicated by a heavy line, giving distances to the nearest one-tenth foot and angles to the nearest minute, shall be balanced and closed. The error of closure shall be stated, and further the error of closure shall exceed one to 10,000. Tract boundaries shall be determined by accurate survey in the field. *Note: Unit plats shall provide a location sketch for location within the master plat.* (10) Land lot lines shall be accurately tied to boundary lines of the subdivision by angles and distances when such lines traverse the subdivision; when the subdivision does not intersect a land lot line, then the lines of a major controlling street shall be projected and tied to a land lot line by angles and distances. In both cases, the measured distance from land lot tie to a respective land lot corner shall be shown with the magnetic bearing of the land lot line. No approximate land lot lines shall be shown on the subdivision plat. (11) Exact locations, width and names of all streets and alleys within and immediately adjoining the plat and the exact location and widths of all crosswalks. (12)

Street centerlines showing angles of deflection and standard curb data of intersection, radii, length of tangents and arcs, and degree of curvature with basis of curve data. (13) Lot lines with dimensions to the nearest one-tenth foot, necessary internal angles, arcs and chords and tangent or radii or rounded corners. (14) Building setback lines with dimensions. (15) Legal description of individual condominium units shall be provided as follows: a. The individual condominium unit shall be referenced as a lot by numeric data only, limited to 999 units. b. Each building shall be referenced as a unit by numeric data only, limited to 99 units. c. Each development phase shall be referenced as a block by alpha data. d. Parcel numbers shall be assigned by the tax office. e. Plats of the development shall be separated into different development phases when individual units or buildings reach the limits set. (16) Location, dimensions, drainage area and purpose of all drainage structures and of any easements, including slope easements, flood hazard areas, public service utility right-of-way lines, and any areas to be reserved, donated or dedicated to public use or sites for other than residential use with notes stating their purpose and limitations; and of any areas to be reserved by deed covenant for common uses of all property owners. (17) Accurate location, material and description of monuments and markers. (18) A statement referencing the protective covenants by record book and page number. (19) Registered land surveyor's certification and stamp required for master plat. (20) Registered professional engineer certification and stamp accepted for as-built condition on unit plats only. (21) Registered architect certification and stamp may be used to certify the acceptability of the structural work. (22) Variances, if any, and date approved by the appeals board.

(c) Certification for the final plat shall be provided as follows: (1) Registered professional engineer's certification: "The undersigned Registered Professional Engineer hereby certifies that the plan to which this certification is affixed fully and accurately depicts the layout, location, number/letter identification and dimension of the buildings resident shown thereon as built." Stamp Signature P.E. Number

(2) Registered professional architect: "The undersigned Registered Professional Architect hereby certifies that the building and residence units shown on this location plat are, within reasonable construction tolerances, constructed in accordance with the approved set of construction plans on file in the city." Signature Register Number

(3) Registered land surveyor's certification: "The undersigned Registered Land Surveyor hereby certifies that the plan shown and described hereon is a true and correct survey made on the ground under my supervision, that the monuments have been placed as shown hereon, and is to the accuracy and specification required by city subdivision regulations." Signature Register Number

Sec. 8.5.5.6 - Platting fee and recording of plat. (a) A platting fee in the amount established by the city council shall be required when the final plat is submitted for approval. (b) The subdivision administrator shall record the final plat when approved and shall have copies reproduced for the various utilities and government departments. (c) Projects with multiple plats shall reference the master plat. (d) Protective covenants shall be recorded by the developer and a copy supplied to the community development department. (e) Existing apartment projects which are converted to condominium projects shall meet the final plat requirements set forth in this article.

Sec. 8.5.5.7 - Design standards. The design of the project shall conform to the requirements of the city zoning regulations and to the standard design specifications.

Sec. 8.5.5.8 - Monuments. (a) Permanent benchmarks shall be placed at all land lot corners on the boundary of the property being developed. These benchmarks shall be concrete with brass marking. Placement, to be verified by visual inspections, shall extend no less than six inches above the finished grade. (b) All corners other than as provided in subsection (a) shall be marked with an iron pin, one-half inch in diameter, 24 inches long and driven so as to extend no less than one inch above the finished grade.

~~Model~~ Soil Erosion, Sedimentation And Pollution Control and Stream Buffer Ordinance

Whereas, the Mayor and Council of the City of Mableton finds that buffers adjacent to streams provide numerous benefits including:

(1) Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources
(2) Removing pollutants delivered in urban stormwater
(3) Reducing erosion and controlling sedimentation
(4) Protecting and stabilizing stream banks
(5) Providing for infiltration of stormwater runoff
(6) Maintaining base flow of streams
(7) Contributing organic matter that is a source of food and energy for the aquatic ecosystem
(8) Providing tree canopy to shade streams and promote desirable aquatic habitat
(9) Providing riparian wildlife habitat
(10) Furnishing scenic value and recreational opportunity
(11) Providing opportunities for the protection and restoration of greenspace

Whereas, the City of Mableton desires to adopt the language of the model ordinances prepared by the Metroploitan North Georgia Water Planning District.

Whereas, the City desires to amend Chapter 11 as demonstrated by the mark up in Exhibit A.

NOW, THEREFORE, BE IT ORDAINED, BY

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Exhibit A

SECTION I
TITLE

This ordinance will be known as **" City Of Mableton**
Soil Erosion, Sedimentation and Pollution Control and Stream Buffer Protection Ordinance."

SECTION II
DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this ordinance, unless otherwise specifically stated:

Agency means Director, City of Mableton Community Development Agency and his/her designee.

Applicant means a person submitting a land disturbing application for approval.

Best Management Practices (BMPs):
These include sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the 'Manual for Erosion and Sediment Control in Georgia' published by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.

BMP landscaping plan means a design for vegetation and landscaping that is critical to the performance and function of the BMP including how the BMP will be stabilized and established with vegetation. It shall include a layout of plants and plant names (local and scientific).

Board: The Board of Georgia State Department of Natural Resources.

Buffer: The area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.

Certified Personnel: A person who has successfully completed the appropriate certification course approved by the Georgia Soil and Water Conservation Commission.

Channel means a natural or artificial watercourse with a definite bed and banks that conveys continuously or periodically flowing water.

Coastal Marshlands: Shall have the same meaning as in O.C.G.A. 12-5-282.

Commission: The Georgia Soil and Water Conservation Commission (GSWCC).

CPESC: Certified Professional in Erosion and Sediment Control with current certification by EnviroCert, Inc., which is also referred to as CPESC or CPESC, Inc.

Cut: A portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface. Also known as excavation.

Department: The Georgia Department of Natural Resources (DNR).

Design Professional: A professional licensed by the State of Georgia in the field of: engineering, architecture, landscape architecture, forestry, geology, or land surveying; or a person that is a Certified Professional in Erosion and Sediment Control (CPESC) with a current certification by EnviroCert, Inc. Design Professionals shall practice in a manner that complies with applicable Georgia law governing professional licensure.

Detention means the temporary storage of stormwater runoff in a stormwater detention facility for the purpose of controlling the peak discharge.

Detention facility means a structure designed for the storage and gradual release of stormwater runoff at controlled rates.

Development or land development means, to the extent permitted by law, any of the following actions undertaken by a public or private individual or entity: any land change, including, without limitation, clearing, grubbing, stripping, dredging, grading, excavating, transporting and filling of land.

Director: The Director of the Environmental Protection Division or an authorized representative.

District: The Cobb County Soil and Water Conservation District.

Division: The Environmental Protection Division (EPD) of the Department of Natural Resources.

Drainage easement means an easement appurtenant or attached to a tract or parcel of land allowing the owner of adjacent tracts or other persons to discharge stormwater runoff onto the tract or parcel of land subject to the drainage easement.

Drainage Structure: A device composed of a virtually nonerodible material such as concrete, steel, plastic or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for storm water management, drainage control, or flood control purposes.

Easement means a grant or reservation by the owner of land for the use of such land by others for a specific purpose, and which must be included in the conveyance of land affected by such easement.

Ephemeral stream means a stream that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the groundwater table year-round; for which groundwater is not a source of water; and for which runoff from precipitation is the primary source of water flow.

Erosion: The process by which land surface is worn away by the action of wind, water, ice or gravity.

Erosion, Sedimentation and Pollution Control Plan: A plan required by the Erosion and Sedimentation Act, O.C.G.A. Chapter 12-7, that includes, as a minimum protections at least as stringent as the State General Permit, best management practices, and requirements in section IV.C. of this ordinance.

Extended detention means the storage of stormwater runoff for an extended period of time.

Extreme flood protection means measures taken to prevent adverse impacts from large low-frequency storm events with a return frequency of 100 years or more.

Fill: A portion of land surface to which soil or other solid material has been added; the depth above the original ground surface or an excavation.

Final Stabilization: All soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, 100% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater, or landscaped according to the Plan (uniformly covered with landscaping materials in planned landscape areas), or equivalent permanent stabilization measures as defined in the Manual (excluding a crop of annual vegetation and seeding of target crop perennials appropriate for the region). Final stabilization applies to each phase of construction.

Finished Grade: The final elevation and contour of the ground after cutting or filling and conforming to the proposed design.

Flooding means a volume of surface water that exceeds the banks or walls of a BMP, or channel, escapes its normal confines, and overflows onto adjacent lands.

Georgia Stormwater Management Manual (GSMM) means the latest edition of the Georgia Stormwater Management Manual, Volume 2: Technical Handbook, and its appendices.

Floodplain means any land area susceptible to flooding, which would have at least a one percent probability of flooding occurrence in any calendar year based on the basin being fully developed as shown on the current land use plan; i.e., the regulatory flood.

Grading: Altering the shape of ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled condition.

Greenspace* or *"open space" means permanently protected areas of the site that are preserved in a natural state, except for necessary utility crossings.

Ground Elevation: The original elevation of the ground surface prior to cutting or filling

Hotspot means a land use or activity on a site that has the potential to produce higher than normally found levels of pollutants in stormwater runoff. As defined by the administrator, hotspot land use may include gasoline stations, vehicle service and maintenance areas, industrial facilities (both permitted under the industrial stormwater general permit and others), material storage sites, garbage transfer facilities, and commercial parking lots with high-intensity use.

Hydrologic soil group (HSG) means a natural resource conservation service classification system in which soils are categorized into four runoff potential groups. The groups range from group A soils, with high permeability and little runoff produced, to group D soils, which have low permeability rates and produce much more runoff.

Impervious cover or surface means a surface composed of any material that significantly impedes or prevents the natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, rooftops, buildings, streets and roads, and any concrete or asphalt surface.

Industrial stormwater general permit means the National Pollutant Discharge Elimination System (NPDES) permit issued by Georgia Environmental Protection Division to an industry or group of industries for stormwater discharges associated with industrial activity. The permit regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies based on Standard Industrial Classification (SIC) Code.

Infiltration means the process of percolating stormwater runoff into the subsoil.

Inspection and maintenance agreement means a written agreement providing for the long-term inspection, operation, and maintenance of stormwater management systems and its components on a site or with respect to a land development project, which when properly recorded in the deed records constitutes a restriction on the title to a site or other land involved in a land development project.

Issuing authority means the Cobb County Community Development Agency or its assigned or designated representative, which shall be responsible for administering this article and has been certified by the director of the Environmental Protection Division of the Department of Natural Resources as the issuing authority, pursuant to O.C.G.A. § 12-7-8(a).

Lake means a body of water one acre or more in surface area, created either by a manmade or natural dam or other means of water impoundment.

Land Development means any land change, including but not limited to clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving and any other installation of impervious cover.

Land development application means the application for a land development permit on a form provided by the county along with supporting documentation as required.

Land disturbance permit means the authorization necessary to begin construction related land disturbing activity.

Land-Disturbing Activity: Any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in ~~Section III, Paragraph 5~~ O.C.G.A. 12-7-17(5) or silvicultural land management activities as described in O.C.G.A. § 12-7-17(6) within areas zoned for these activities..

Larger Common Plan of Development or Sale: A contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For the purposes of this paragraph, "plan" means an announcement; piece of documentation such as a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, or computer design; or physical demarcation such as boundary signs, lot stakes, or surveyor markings, indicating that construction activities may occur on a specific plot.

Linear feasibility program means a feasibility program developed by Cobb County and submitted to the Georgia Environmental Protection Division, which sets reasonable criteria for determining when implementation of stormwater management standards for linear transportation projects being constructed by Cobb County is infeasible.

Linear transportation projects means construction projects on traveled ways including but not limited to roads, sidewalks, multi-use paths and trails, and airport runways and taxiways.

Local Issuing Authority: The governing authority of any county or municipality which is certified pursuant to subsection (a) O.C.G.A. 12-7-8.

Maintenance means any action necessary to preserve stormwater management facilities in proper working condition, in order to serve the intended purposes, set forth in this article and to prevent structural failure of such facilities.

Manager is the director of the City of Mableton Community Development or his/her designee.

Metropolitan North Georgia Water Planning District or MNGWPD means the organization created by the Georgia General Assembly in 2001 to develop comprehensive regional management plans for water, wastewater and watershed protection and to oversee the implementation of such plans.

Metropolitan River Protection Act (MRPA): A state law referenced as O.C.G.A. 12-5-440 et.seq. which addresses environmental and developmental matters in certain metropolitan river corridors and their drainage basins.
MS4 permit means the NPDES permit issued by Georgia Environmental Protection Division for discharges from the Cobb County municipal separate storm sewer system.

Natural Ground Surface: The ground surface in its original state before any grading, excavation or filling.

Nephelometric Turbidity Units (NTU): Numerical units of measure based upon photometric analytical techniques for measuring the light scattered by finely divided particles of a substance in suspension. This technique is used to estimate the extent of turbidity in water in which colloidally dispersed or suspended particles are present.

New development means land development activities, structural development (construction, installation or expansion of a building or structure), and/or creation of impervious surfaces on a previously undeveloped site.

NOI: A Notice of Intent form provided by EPD for coverage under the State General Permit.

Nonpoint source pollution means a form of water pollution that does not originate from a discrete point such as a wastewater treatment facility or industrial discharge, but involves the transport of pollutants such as sediment, fertilizers, pesticides, heavy metals, oil, grease, bacteria, organic materials and other contaminants from land to surface water and groundwater via mechanisms such as precipitation, stormwater runoff, and leaching. Nonpoint source pollution is a by-product of land use practices such as agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

Nonstructural stormwater management practice or nonstructural practice means any natural or planted vegetation or other nonstructural component of the stormwater management plan that provides for or enhances stormwater quantity and/or quality control or other stormwater management benefits, and includes, but is not limited to, riparian buffers, open and greenspace areas, overland flow filtration areas, natural depressions, and vegetated channels.

NOT: A Notice of Termination form provided by EPD to terminate coverage under the State General Permit.

Operator: The party or parties that have: (A) operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or (B) day-to-day operational control of those activities that are necessary to ensure compliance with an erosion, sedimentation and pollution control plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the erosion, sedimentation and pollution control plan or to comply with other permit conditions.

Outfall: The location where storm water in a discernible, confined and discrete conveyance, leaves a facility or site or, if there is a receiving water on site, becomes a point source discharging into that receiving water.

Overbank flood protection means measures taken to prevent an increase in the frequency and magnitude of out-of-bank flooding (i.e. flow events that exceed the capacity of the channel and enter the floodplain), and that are intended to protect downstream properties from flooding for the two-year through 25-year frequency storm events.

Owner means the legal or beneficial owner of a site, including but not limited to, a mortgage or vendee in possession, receiver, executor, trustee, lessee or other person, firm or corporation in control of the site.

Parcel means any plot, lot or acreage shown as a unit on the latest county tax assessment records.

Permanently protected means be protected from development in perpetuity (per O.C.G.A. § 44-5-60(c)) by the mandatory covenants or conservation easements in favor of the county for conservation uses.

Permit: The authorization necessary to conduct a land-disturbing activity under the provisions of this ordinance.

Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of the State of Georgia, any interstate body or any other legal entity.

Phase or Phased: Sub-parts or segments of construction projects where the sub-part or segment is constructed and stabilized prior to completing construction activities on the entire construction site.

Pond means a body of standing water less than one acre in surface area, created either by a natural dam, or other means of water impoundment.

Post-construction stormwater management means stormwater best management practices that are used on a permanent basis to control and treat runoff once construction has been completed in accordance with a stormwater management plan.

Post-development means the conditions anticipated to exist on site immediately, after completion of the proposed development.

Practicability policy means the latest edition of the Metropolitan North Georgia Water Planning District's Policy on Practicability Analysis for Runoff Reduction.

Pre-development means the conditions that exist on a site immediately before the implementation of the proposed development. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time before the first item being approved or permitted shall establish pre-development conditions.

Pre-development hydrology means (a) for new development, the runoff curve number determined using natural conditions hydrologic analysis based on the natural, undisturbed condition of the site immediately before implementation of the proposed development, and (b) for redevelopment, the runoff curve number shall be determined by natural conditions for all disturbed areas and the existing conditions for those portions of the site that remain undisturbed, unless the existing development causes a negative impact on downstream property and/or county infrastructure.

Previously developed site means a site that has been altered by paving, construction, and/or land disturbing activity.

Preexisting stormwater management facility means any stormwater facility which may or may not have been physically installed but was required by this article or any prior ordinance.

Project: The entire proposed development project regardless of the size of the area of land to be disturbed.

Protection Area, or Stream Protection Area means, with respect to a stream, the combined areas of all required buffers and setbacks applicable to such stream.

Properly Designed: Designed in accordance with the design requirements and specifications contained in the "Manual for Erosion and Sediment Control in Georgia" (Manual) published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted and amendments to the Manual as approved by the Commission up until the date of NOI submittal.

Qualified personnel means any person who meets or exceeds the education and training requirements of O.C.G.A. § 12-7-19.

Quality Control Act, O.C.G.A. § 12-5-20 et seq., in the rules and regulations for Water Quality Control, Chapter 391-3-6 at www.epd.georgia.gov. Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but which are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.

Record survey means a final field survey which locates the visible surface features of a constructed stormwater facility on the ground but without locating nonvisible or subsurface features such as the actual route and elevation of buried pipe. Such nonvisible or subsurface features which are known to exist shall be located on the record survey in their reasonable respective locations.

Redevelopment means structural development (construction, installation, or expansion of a building or other structure), creation or addition of impervious surfaces, replacement of impervious surfaces not as part of routine maintenance, and land disturbing activities associated with structural or impervious development on a previously developed site. Redevelopment does not include such activities as exterior remodeling.

Regional stormwater management means the design and construction of a facility necessary to control stormwater runoff within or without a development and for one or more developments.

Riparian means belonging or related to the bank of a river, stream, lake, pond or impoundment.

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Roadway Drainage Structure: A device such as a bridge, culvert, or ditch, composed of a virtually nonerodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled roadway consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.

Routine maintenance means activities to keep an impervious surface as near as possible to its constructed condition. This includes ordinary maintenance activities, resurfacing paved areas, and exterior building changes or improvements which do not materially increase or concentrate stormwater runoff, or cause additional nonpoint source pollution.

Runoff means stormwater runoff.

Sediment: Solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, ice, or gravity as a product of erosion.

Sedimentation: The process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.

Setback means, with respect to a stream, the area established by Section 5.1.2 extending beyond any buffer applicable to the stream.

Soil and Water Conservation District Approved Plan: An erosion, sedimentation and pollution control plan approved in writing by the __Soil and Water Conservation District.

Stabilization: The process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.

State General Permit: The National Pollution Discharge Elimination System (NPDES) general permit or permits for storm water runoff from construction activities as is now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., and subsection (f) of Code Section 12-5-30 and O.C.G.A. § 12-5-30(f)..

State Waters: Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of Georgia which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

Stream means any stream, beginning at: 1. The location of a spring, seep, or groundwater outflow that sustains streamflow; or 2. 3. A point in the stream channel with a drainage area of 25 acres or more; or Where evidence indicates the presence of a stream in a drainage area of other than 25 acres, the (local permitting authority) may require field studies to verify the existence of a stream.

Stream Bank means the sloping land that contains the stream channel and the normal flows of the stream.

Stream Channel means the portion of a watercourse that contains the base flow of the stream.

Watershed means the land area that drains into a particular stream.

Stormwater better site design means nonstructural site design approaches and techniques that can reduce a site's impact on the watershed and can provide for nonstructural stormwater management. Stormwater better site design includes conserving and protecting natural areas and greenspace, reducing impervious cover and using natural features for stormwater management.

Stormwater concept plan means an initial plan for post-construction stormwater management at the site that provides the groundwork for the stormwater management plan including the natural resources inventory, site layout concept, initial runoff characterization, and first round stormwater management system design.

Stormwater management plan means the set of drawings and other documents that comprise all of the information and specifications for the systems, structures, concepts and techniques that will be used to control stormwater as required by the Georgia Stormwater Management Manual and the Cobb County Development Standards and Specifications and as part of the land development application.

Stormwater management means the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to prevent accelerated channel erosion, increased flood damage and/or degradation of water quality, and in a manner to enhance and ensure the public health, safety and general welfare.

Stormwater management assessment districts means any districts established by the board of commissioners where there are special assessments of property owners for the purpose of management and maintenance of stormwater.

Stormwater management facilities means those structures and facilities that are designed and constructed for the conveyance, collection, storage, transport, storage, treatment and disposal of stormwater runoff into and through the stormwater management system.

Stormwater management standards means those standards set forth in section 50-106.

Stormwater management system means the entire set of non-structural site design features and structural BMPs for collection, conveyance, storage, infiltration, treatment, and disposal of stormwater runoff in a manner designed to prevent increased flood damage, streambank channel erosion, habitat degradation and water quality degradation, and to enhance and promote the public health, safety and general welfare.

Stormwater runoff means flow on the surface of the ground, resulting from precipitation.

Stormwater retrofit means a stormwater management practice designed for a currently developed site that previously had either no stormwater management practice in place or a practice inadequate to meet the stormwater management requirements of the site.

Stream means any stream, beginning at:

1) The location of a spring, seep, or groundwater outflow that sustains streamflow: or
2) A point in the stream channel with a drainage area of 25 acres or more; or
3) Where evidence indicated the presence of a stream in a drainage area of other than 25 acres, the county may require field studies to verify the existence or non-existence of a stream.

Structural stormwater control means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow of such runoff.

Structural Erosion, Sedimentation and Pollution Control Practices: Practices for the stabilization of erodible or sediment-producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of structural erosion and sediment control practices are riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures and sediment traps, etc. Such practices can be found in the publication *Manual for Erosion and Sediment Control in Georgia.*

Subdivision *means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, legacy or building development, and includes all division of land involving a new street or a change in existing streets, and includes re-subdivision and, where appropriate to the context, relates to the process of subdividing or to the land or area subdivided. Provided, however, that the following are not included within this definition:*

(1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of the county.
(2) Any subdivision of land for agricultural purposes, provided that no lots thereby produced contain less than ten acres each and have average widths of 400 feet or more. Also, where no new streets, roads or other rights-of-way are involved and where no residential, commercial or industrial development will follow.
(3) A division or sale of land by judicial decree.
(4) The sale or exchange of a parcel of land between owners of adjoining properties, provided that additional lots are not thereby created.
(5) In those instances where the board of appeals grants a variance for a subdivision of property lacking the minimum public road frontage and an easement is necessary for ingress and egress to the property, there shall be a maximum of three lots permitted, a minimum of 80,000 square feet per lot, a minimum of 25 feet width easement, and the easement and the subdivided lots shall be platted and required to be recorded as restrictive covenants running with the land in the clerk's office, county superior court. The board of appeals shall not be authorized to grant a variance to this subsection.

Trout Streams: All streams or portions of streams within the watershed as designated by the Wildlife Resources Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. 12-5-20, in the rules and regulations for Water Quality Control, Chapter 391-3-6 at www.epd.georgia.gov . Streams designated as primary trout waters are defined as water supporting a self- sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.

Undeveloped condition refers to the characteristics of the land surface prior to any development.

Vegetative Erosion and Sedimentation Control Measures: Measures for the stabilization of erodible or sediment-producing areas by covering the soil with:

a. Permanent seeding, sprigging or planting, producing long-term vegetative cover, or

b. Temporary seeding, producing short-term vegetative cover; or
c. Sodding, covering areas with a turf of perennial sod-forming grass.

Such measures can be found in the publication *Manual for Erosion and Sediment Control in Georgia.*

Watercourse: Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a definite channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Wetlands: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Section II
Purpose and intent.

It is found that soil erosion and sediment deposition onto lands and into waters within the watersheds of this state are occurring as a result of widespread failure to apply proper soil erosion and sedimentation control practices in land clearing, soil movement, and construction activities and that such erosion and sediment deposition result in pollution of state waters and damage to domestic, agricultural, recreational, fish and wildlife, and other resource uses. It is therefore declared to be the policy of this state and the intent of this chapter to strengthen and extend the present erosion and sediment control activities and programs of this state and to provide for the establishment and implementation of a state-wide comprehensive soil erosion and sediment control program to conserve and protect the land, water, air, and other resources of this state.

It is the purpose of this Ordinance is to protect the public health, safety, environment and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream water quality by provisions designed to: (1) (2) Create buffer zones along the streams of (local jurisdiction) for the protection of water resources; and, Minimize land development within such buffers by establishing buffer zone requirements and by requiring authorization for any such activities.

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NEED ## Administration and enforcement.

The administration and enforcement of this article shall be by the City of Mableton Community Development Department in accordance with the Erosion and Sedimentation Control Act of 1975, O.C.G.A. § 12-7-1 et seq.

SECTION III
EXEMPTIONS

This ordinance shall apply to any land-disturbing activity undertaken by any person on any land except for the following

1) Surface mining, as the same is defined in O.C.G.A. 12-4-72, "The Georgia Surface Mining Act of 1968".
~~2)~~

~~Granite quarrying and land clearing for such quarrying;~~ Granite and other quarrying in areas that do not generate runoff (i.e. the quarry pit area).

~~3)~~2) Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which result in minor soil erosion;

~~4)~~3) The construction of single-family residences, when such construction disturbs less than one (1) acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one (1) acre and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in O.C.G.A. 12-7-6 and this paragraph. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of the Georgia Water Quality Control Act. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the Director of EPD may grant variances to no less than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of subsection (b) of O.C.G.A. 12-7-6 and the buffer zones provided by this paragraph shall be enforced by the ~~Local Issuing Authority~~the City of Mableton;

~~5)~~4) Agricultural operations as defined in O.C.G.A. 1-3-3, "definitions", to include raising, harvesting or storing of products of the field or orchard; feeding, breeding or managing livestock or poultry; producing or storing feed for use in the production of livestock, including but not limited to cattle, calves, swine, hogs, goats, sheep, and rabbits or for use in the production of poultry, including but not limited to chickens, hens and turkeys; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; farm buildings and farm ponds;

~~6)~~5) Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in paragraphs (15) and (16) of Section IV C. of this ordinance, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three (3) years after completion of such forestry practices;

~~7)~~6) Any project carried out under the technical supervision of the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture;

~~8)~~7) Any project involving less than one (1) acre of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one (1) acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, “State Waters” excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which involves less than one (1) acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the Local Issuing Authority from regulating any such project which is not specifically exempted by paragraphs 1, 2, 3, 4, 5, 6, 7, 9 or 10 of this section;

~~9)~~8) Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of the Department of Transportation or the State Road and Tollway Authority which disturb one or more contiguous acres of land shall be subject to provisions of O.C.G.A. 12-7-7.1; except where the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case a copy of a notice of intent under the state general permit shall be submitted to the Local Issuing Authority, the Local Issuing Authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders;

~~10)~~9) Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United states engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case the Local Issuing Authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders; and

~~11)~~10) Any public water system reservoir.

SECTION IV
MINIMUM REQUIREMENTS FOR EROSION, SEDIMENTATION AND POLLUTION CONTROL USING BEST MANAGEMENT PRACTICES

A. GENERAL PROVISIONS

Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of the ordinance and the NPDES General Permit are not met. Therefore, plans for those land-disturbing activities which are not exempted by this ordinance shall contain provisions for application of soil erosion, sedimentation and pollution control measures and practices. The provisions shall be incorporated into the erosion, sedimentation and pollution control plans. Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of Section IV B. & C. of this ordinance. The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion, sedimentation and pollution during all stages of any land-disturbing activity in accordance with requirements of this ordinance and the NPDES General Permit.

With respect to development on properties with stream buffers (refer to subsections ####. and ###., below) any permit applications shall be required to include the following information:

(1) A site plan showing:

a. The location of all streams on the property;

b. Limits of required stream buffers and setbacks on the property;

c. Buffer zone topography with contour lines at no greater than five-foot contour intervals;

d. Delineation of forested and open areas in the buffer zone; and,

e. Detailed plans of all proposed land development in the buffer and of all proposed impervious cover within the setback;

(2) A description of all proposed land development within the buffer and setback; and

(3) Any other documentation that the Cobb County Community Development Agency may reasonably deem necessary for review of the application and to insure that the buffer zone ordinance is addressed in the approval process.

B. MINIMUM REQUIREMENTS/ BMPs

1. Best management practices as set forth in ~~Section IV B. & C. of~~ this ~~ordinance~~ article shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the Director or to any other allegation of noncompliance with paragraph (2) of this subsection or any substantially similar terms contained in a permit for the discharge of storm water issued pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act". As used in this subsection the terms "proper design" and "properly designed" mean designed in accordance with the hydraulic design specifications contained in the "Manual for Erosion and Sediment Control in Georgia" specified in O.C.G.A. 12-7-6 subsection (b).
2. A discharge of storm water runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing permit issued by a local Issuing Authority or of any state general permit

issued by the Division pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act", for each day on which such discharge results in the turbidity of receiving waters being increased by more than twenty-five (25) nephelometric turbidity units for waters supporting warm water fisheries or by more than ten (10) nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the Director. This paragraph shall not apply to any land disturbance associated with the construction of single family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five (5) acres.

3. Failure to properly design, install, or maintain best management practices shall constitute a violation of any land- disturbing permit issued by a Local Issuing Authority or of any state general permit issued by the Division pursuant to subsection (f) of Code Section 12-5-30, the "Georgia Water Quality Control Act", for each day on which such failure occurs.
4. The Director of EPD may require, in accordance with regulations adopted by the Board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land disturbing activities occur.
5. ~~The LIA~~The city of Mableton may set more stringent buffer requirements than stated in C.15,16 and 17, in light of O.C.G.A. § 12-7-6 (c).

C. The rules and regulations, ordinances, or resolutions adopted pursuant to O.C.G.A. 12-7-1 et. seq. for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the *Manual for Erosion and Sediment Control in Georgia* published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:

1. Stripping of vegetation, regrading and other development activities shall be conducted in a manner so as to minimize erosion;
2. Cut-fill operations must be kept to a minimum;
3. Development plans must conform to topography and soil type so as to create the lowest practicable erosion potential;
4. Whenever feasible, natural vegetation shall be retained, protected and supplemented;
5. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;
6. Disturbed soil shall be stabilized as quickly as practicable;
7. Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;
8. Permanent vegetation and structural erosion control practices shall be installed as soon as practicable;
9. To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. 12-7-1 et. seq.;
10. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping of fills;

11. Cuts and fills may not endanger adjoining property;
12. Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;
13. Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible, provided, in any case, that such crossings are kept to a minimum;
14. Land-disturbing activity plans for erosion, sedimentation and pollution control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in Section IV B. 2. of this ~~ordinance~~article;
15. Land disturbing activities in unincorporated Cobb County shall not be conducted within:
    a. Except as provided in paragraph (16) and (17) of this subsection, there is established a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the Director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the Director pursuant to O.C.G.A. 12-2-8, where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; or where bulkheads and sea walls are installed to prevent shoreline erosion on Lake Oconee and Lake Sinclair; or along any ephemeral stream. As used in this provision, the term 'ephemeral stream' means a stream: that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the ground-water table year round; for which ground water is not a source of water; and for which runoff from precipitation is the primary source of water flow, Unless exempted as along an ephemeral stream, the buffers of at least 25 feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the Director as provided in this paragraph. The following requirements shall apply to any such buffer:

        i.

~~b.~~ No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and

        ii. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines; and

b. Fifty feet of the banks of any stream in the county, as defined on the current county stream buffer map, and as measured from the point where vegetation has been wrested by normal stream flow or wave action where total watershed area (on site and off site area) intercepted is less than or equal to five square miles; except where the Cobb County Community Development Agency determines to allow a variance that is at least as protective of natural resources and the environment. For the purposes of this section, at least as protective shall mean that there is no net decrease in the square footage of the county-mandated 50-foot buffer. Any request to allow a variance that would result in a net decrease in the square footage of the county-mandated 50-foot buffer must be approved by the Cobb County Board of Zoning Appeals in accordance with sections 134-34 and 134-94. An additional impervious setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffers, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback. Ephemeral streams do not require any type of undisturbed buffer.

c. Seventy-five feet of the banks of any stream in the county, as defined on the current county stream buffer map, and as measured from the point where vegetation has been wrested by normal stream flow or wave action where total watershed area (on site and off site area) intercepted is equal to five square miles and less than or equal to ten square miles; except where the Cobb County Community Development Agency determines to allow a variance that is at least as protective of natural resources and the environment. For the purposes of this section, at least as protective shall mean that there is no net decrease in the square footage of the county-mandated 75-foot buffer. Any request to allow a variance that would result in a net decrease in the square footage of the county-mandated 75-foot buffer must be approved by the Cobb County Board of Zoning Appeals in accordance with sections 134-34 and 134-94. Ephemeral streams do not require any type of undisturbed buffer.

d. One hundred feet of the banks of any stream in the county, as defined on the current county stream buffer map, and as measured from the point where vegetation has been wrested by normal stream flow or wave action where total watershed area (on site and off site area) intercepted is greater than ten square miles; except where the Cobb County Community Development Agency determines to allow a variance that is at least as protective of natural resources and the environment. For the purposes of this section, at least as protective shall mean that there is no net decrease in the square footage of the county-mandated 100-foot buffer. Any request to allow a variance that would result in a net decrease in the square footage of the county-mandated 100-foot buffer must be approved by the Cobb County Board of Zoning Appeals in accordance with sections 134-34 and 134-94. Ephemeral streams do not require any type of undisturbed buffer.

e. Two hundred feet of the banks of Nickajack Creek, as defined on the current county stream buffer map, and as measured from the point where vegetation has been wrested by normal stream flow or wave action, from Church Road downstream to its confluence with Mill Creek No. 2 (Cross-Section AA according to effective Cobb County Flood Insurance Study dated August 18, 1992) and from Buckner Road downstream to its confluence with the Chattahoochee River except where the Cobb County Community Development Agency determines to allow a variance that is at least as protective of natural resources and the environment. For the purposes of this section, at least as protective shall mean that there is no net decrease in the square footage of the county-mandated 200-foot buffer. Any request to allow a variance that would result in a net decrease in the square footage of the county-mandated 200-foot buffer must be approved by the Cobb County Board of Zoning Appeals in accordance with sections 134-34 and 134-94. Ephemeral streams do not require any type of undisturbed buffer.

f. Per DNR Rule 391-3-16.01:

i. For perennial streams tributary to Lake Allatoona and within a 7-mile radius of the Lake Allatoona reservoir boundary:

ii. •A buffer shall be maintained for a distance of 100 feet on both sides of the stream as measured from the stream banks.

iii. No impervious surface shall be constructed within a 150-foot setback area on both sides of the stream as measured from the stream banks.

• Septic tanks and septic tank drain fields are prohibited in the setback area of 2, above.

2. For perennial streams tributary to the Chattahoochee River (including the Chattahoochee River upstream of the water supply intake at Johnson Ferry Road, or tributaries which enter the Chattahoochee River upstream of the water supply intake at Johnson Ferry Road) and which are within a seven-mile radius of the water supply intake at Johnson Ferry Road:

a. A buffer shall be maintained for a distance of 100 feet on both sides of the stream as measured from the stream banks.

b. No impervious surface shall be constructed within a 150-foot setback area on both sides of the stream as measured from the stream banks.

c. Septic tanks and septic tank drain fields are prohibited in the setback area of 2, above.

~~c.~~g. Once established, a permanent natural undisturbed buffer, shall be recorded on all plats and revisions and/or property deeds which encumbers this property as undisturbed buffer area to all future property owners. Said buffer will also contain a restrictive covenant in favor of the county for conservation uses. The buffer shall be subject to exceptions set forth below and the county retains the right on a per case basis to grant variances.

~~d.~~h. Exceptions to these buffers are as follows:

1. Where a sewerline easement exists or must be constructed to serve the general public (this exception is not applicable to the state-mandated 25-foot buffer).

2. Where the 100-year floodplain constricts within the buffer and "buffer averaging" is permitted such that the net buffer area is not reduced or the average buffer width conforms to the widths as outlined above (this exception is not applicable to the state-mandated 25-foot buffer).

3. Where a roadway crossing occurs and the buffer must be constricted to allow construction of a bridge or a culvert. The state-mandated 25-foot buffer will apply in these areas for a distance of 50 feet upstream and downstream of the face of the bridge or culvert headwall.

4. Where the Director of the City of Mableton Community Development Department, or his assign(s) determine to allow a variance to the requirements greater than the state-mandated 25-foot buffer that is at least protective of natural resources and the environment, or where otherwise allowed pursuant to O.C.G.A. § 12-2-8. For the purposes of this section, at least as protective shall mean that there is no net decrease in the square footage of the required buffer that is greater than the state-mandated 25-foot buffer. Any request to allow a variance that would result in a net decrease in the square footage of the required buffer that is greater than the state-mandated 25-foot buffer must be approved by the City of Mableton Board of Zoning Appeals in accordance with sections 134-34 and 134-94.

5. Where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specification and are implemented; provided that buffers established pursuant to part 6 of article 5 of chapter 5 of the Metropolitan River Protection Act (O.C.G.A. § 12-5-440 et seq.) shall remain in force.

6. The state-mandated 25-foot buffer shall not apply to the following land disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:

(i) Stream crossings for water lines; or

(ii) Stream crossings for sewer lines.

i. The developer or property owner shall maintain ownership of the buffer areas. In instances of conflict between the buffers mandated by the Metropolitan River Protection Act and the buffers required by this article, the wider of the two required buffers shall apply.

16. j. The donation (or dedication) of land for stream buffers, outside any floodplain area, may be compensated for by allocating the density of the donated (or dedicated) land to the owner's remaining property, if so requested by the owner. The owner shall make the request to the director of Cobb County Community Development and the request shall be processed in accordance with section 134-35.

(16) Unless a larger buffer is specified on the current county stream buffer map, there is established a 50-foot buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to article 2 of chapter 5 of title 12, the "Georgia Water Quality Control Act," except where a roadway drainage structure must be constructed; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a 25-foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the board of natural resources, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the buffer requirement for any adjacent trout streams. The director of EPD may grant a variance from such buffer to allow land disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented.

a. No land disturbing activities shall be conducted within a buffer described in this paragraph (16) and a buffer shall remain in its natural, undisturbed, state of vegetation until all land disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation beyond the first 50 feet as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer beyond the first 50 feet at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; trimming and thinning of vegetation within the first 50 feet of a stream buffer is allowed with the approval of the director or the director's designee.

b. This 50-foot buffer shall not apply to the following land disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:

i. Stream crossings for water lines; or

ii. Stream crossings for sewer lines.

(17) Reserved.

(18) Lakes, either new or existing, incorporated into a development shall not be used for sediment control and will be classified and used as adjacent property; hence, and therefore, siltation thereof will be treated as a violation of this article.

(19) Hazardous conditions at sediment basins and floodwater retention structures shall be fenced and posted to avoid danger to life or property.

(20) All erosion and sedimentation control measures, whether temporary or permanent, shall be maintained by the permittee or exempt person until the areas affected by such measures are permanently stabilized.

~~e.~~

b~~16. There is established a 50 foot buffer~~

~~as measured horizontally from the~~

~~point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to Article 2 of Chapter 5 of Title 12, the "Georgia Water Quality Control Act", except where a roadway drainage structure must be constructed ; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a 25 foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the Board, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the buffer requirement for any adjacent trout streams. The Director may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures~~

~~are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to such buffer:~~

~~a. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed: provided, however, that any person constructing a single–family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and~~

~~b. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines; and~~

~~17. There is established a 25 foot buffer along coastal marshlands, as measured horizontally from the coastal marshland-upland interface, as determined in accordance with Chapter 5 of Title 12 of this title, the "Coastal Marshlands Protection Act of 1970." And the rules and regulations promulgated thereunder, except where the director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the director pursuant to Code Section 12-2-8, where an alteration within the buffer area has been authorized pursuant to Code Section 12-5-286, for maintenance of any currently serviceable structure, landscaping, or hardscaping, including bridges, roads, parking lots, golf courses, golf cart paths, retaining walls, bulkheads, and patios; provided, however, that if such maintenance requires any land-disturbing activity, adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented, where a drainage structure or roadway drainage structure is constructed or maintained; provided, however, that if such maintenance requires any land-disturbing activity, adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented, on the landward side of any currently serviceable shoreline stabilization structure, or for the maintenance of any manmade storm-water detention basin, golf course pond, or impoundment that is located entirely within the property of a single individual, partnership, or corporation; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented. For the purposes of this paragraph maintenance shall be defined as actions necessary or appropriate for retaining or restoring a currently serviceable improvement to the specified operable condition to achieve its maximum useful life. Maintenance includes emergency reconstruction of recently damaged parts of a currently serviceable structure so long as it occurs within a reasonable period of time after damage occurs. Maintenance does not include any modification that changes the character, scope or size of the original design and serviceable shall be defined as usable in its current state or with minor maintenance but not so degraded as to essentially require reconstruction.~~

~~a. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat; provided, however, that any person constructing a single–family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat; and~~

~~b. The buffer shall not apply to crossings for utility lines that cause a width of disturbance of not more than 50 feet within the buffer, provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented.~~

~~c. The buffer shall not apply to any land-disturbing activity conducted pursuant to and in compliance with a valid and effective land-disturbing permit issued subsequent to April 22, 2014, and prior to December 31, 2015; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented or any lot for which the preliminary plat has been approved prior to December 31, 2015 if roadways, bridges, or water and sewer lines have been extended to such lot prior to the effective date of this Act and if the requirement to maintain a 25 foot buffer would consume at least 18 percent of the high ground of the platted lot otherwise available for development; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented.~~

~~d. Activities where the area within the buffer is not more than 500 square feet or that have a “Minor Buffer Impact” as defined in 391-3-7-.01(r), provided that the total area of buffer impacts is less than 5,000 square feet are deemed to have an approved buffer variance by rule. Bank stabilization structures are not eligible for coverage under the variance by rule and notification shall be made to the Division at least 14 days prior to the commencement of land disturbing activities.~~

~~D. Nothing contained in O.C.G.A. 12-7-1 et. seq. shall prevent any Local Issuing Authority from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in Section IV B. & C. of this ordinance.~~

~~E. The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this ordinance or the terms of the permit.~~

SECTION V
APPLICATION/PERMIT PROCESS

A. GENERAL The property owner, developer and designated planners and engineers shall design and review before submittal the general development plans. The Local Issuing Authority shall review the tract to be developed and the area surrounding it. They shall consult the zoning ordinance, storm water management ordinance, subdivision ordinance, flood damage prevention ordinance, this ordinance, and any other ordinances, rules, regulations or permits, which regulate the development of land within the jurisdictional boundaries of the Local Issuing Authority. However, the owner and/or operator are the only parties who may obtain a permit.

B. APPLICATION REQUIREMENTS

~~1. No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the City of Mableton without first obtaining a permit from the Land Disturbance Permit to perform such activity and providing a copy of Notice of Intent submitted to EPD if applicable.~~

~~2. The application for a permit shall be submitted to the Community Development Department and must include the applicant's erosion, sedimentation and pollution control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in Section V C. of this ordinance. Erosion, sedimentation and pollution control plans, together with supporting data, must demonstrate affirmatively that the land disturbing activity proposed will be carried out in such a manner that the provisions of Section IV B. & C. of this ordinance will be met. Applications for a permit will not be accepted unless accompanied by three (3) copies of the applicant's erosion, sedimentation and pollution control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD Rule 391-3-7-.10.~~

1. No person shall conduct any land disturbing activity within the confines of City of Mableton without first obtaining a permit, where required, from the Mableton Community Development Department to perform such activity and providing a copy of the notice of intent submitted to the Georgia EPD, if applicable. A land disturbance permit for clearing and grading projects may only be obtained if such projects are part of a complete site/project plan review and approval (allowing for clearing and grading only phases, including a time table for final completion). Any clearing and grading activities permitted under this section shall comply with the provisions found in article ####### of this chapter. In no event shall any portion of this article be interpreted in any manner to reduce or diminish the use or density of any project where the county board of commissioners has approved such use or density.

2. The application for a land disturbance permit shall be submitted to the Mableton Community Development Department and must include the applicant's erosion, sedimentation and pollution control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in subsection (c) of this section. Erosion, sedimentation and pollution control plans, together with supporting data, must demonstrate affirmatively that the land disturbing activity proposed will be carried out in such a manner that the provisions of section ###### of this article will be met. Applications for a permit will not be accepted unless accompanied by a copy of the applicant's erosion, sedimentation and pollution control plans and by such supportive data as will affirmatively demonstrate that the land-disturbing activity proposed will be carried out in such a manner that the minimum requirements shall be met. Maps, drawings and supportive computations shall bear the signature and seal of the certified design professional. All applications shall contain a certification stating that the plan

preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD Rule 391-3-7-.10.

3. In addition to the local permitting fees, fees will also be assessed pursuant to paragraph (5) subsection (a) of O.C.G.A. 12-5-23, provided that such fees shall not exceed $80.00 per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit. In a jurisdiction that is certified pursuant to subsection (a) of O.C.G.A. 12-7-8 half of such fees levied shall be submitted to the Division; except that any and all fees due from an entity which is required to give notice pursuant to paragraph (9) or (10) of O.C.G.A. 12-7-17 shall be submitted in full to the Division, regardless of the existence of a Local Issuing Authority in the jurisdiction.
4. Immediately upon receipt of an application and plan for a permit, the Local Issuing Authority shall refer the application and plan to the District for its review and approval or disapproval concerning the adequacy of the erosion, sedimentation and pollution control plan. The District shall approve or disapprove a plan within 35 days of receipt. Failure of the District to act within 35 days shall be considered an approval of the pending plan. The results of the District review shall be forwarded to the Local Issuing Authority. No permit will be issued unless the plan has been approved by the District, and any variances required by Section IV C. 15, 16 and 17 have been obtained, all fees have been paid, and bonding, if required as per Section V B.6., have been obtained. Such review will not be required if the Local Issuing Authority and the District have entered into an agreement which allows the Local Issuing Authority to conduct such review and approval of the plan without referring the application and plan to the District. The Local Issuing Authority with plan review authority shall approve or disapprove a revised Plan submittal within 35 days of receipt. Failure of the Local Issuing Authority with plan review authority to act within 35 days shall be considered an approval of the revised Plan submittal.
5. If a permit applicant has had two or more violations of previous permits, this ordinance section, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing the application under consideration, the Local Issuing Authority may deny the permit application.

~~6.~~ The ~~Local Issuing Authority~~City of Mableton may require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, $3,000.00 per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this section or with the conditions of the permit after issuance, the ~~Local Issuing Authority~~City of Mableton may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance. ~~These provisions shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the Local Issuing Authority with respect to alleged permit violations.~~

~~7.~~6.

C. PLAN REQUIREMENTS

1. Plans must be prepared to meet the minimum requirements as contained in Section IV B. & C. of this ordinance, or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The *Manual for Erosion and Sediment Control*

in Georgia is hereby incorporated by reference into this ordinance. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and storm water management facilities, local ordinances and State laws. Maps, drawings and supportive computations shall bear the signature and seal of the certified design professional. Persons involved in land development design, review, permitting, construction, monitoring, or inspections or any land disturbing activity shall meet the education and training certification requirements, dependent on his or her level of involvement with the process, as developed by the Commission and in consultation with the Division and the Stakeholder Advisory Board created pursuant to O.C.G.A. 12-7-20.

2. Data Required for Site Plan shall include all the information required from the appropriate Erosion, Sedimentation and Pollution Control Plan Review Checklist established by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.

3. *Maintenance.*

a. Maintenance of all soil erosion and sedimentation control practices, whether temporary or permanent, shall be at all times the responsibility of the owner. It shall be the responsibility of the owner or his/her designee to post a maintenance log on site at all times. Said log will be posted on site with the land disturbance permit from the issuing authority. Said log must also be initialed on a weekly basis by the owner or his/her designee to indicate compliance with best management practices and the approved maintenance schedule.

b. All plans must contain the following maintenance statement: "Erosion control measures will be maintained at all times. If full implementation of the approved plan does not provide for effective erosion and sediment control, additional erosion and sedimentation control measures will be installed if deemed necessary by on-site inspection. On-site inspectors may add items to plans as necessary. On-site inspectors may delete items from plans subject to approval by the director of Mableton Community Development or his/her designee."

D. PERMITS

1. Permits shall be issued or denied as soon as practicable but in any event not later than forty-five (45) days after receipt by the Local Issuing Authority of a completed application, providing variances and bonding are obtained, where necessary and all applicable fees have been paid prior to permit issuance. The permit shall include conditions under which the activity may be undertaken.
2. No permit shall be issued by the ~~Local Issuing Authority~~City of Mableton unless the erosion, sedimentation and pollution control plan has been approved by the District and the ~~Local Issuing Authority~~City of Mableton has affirmatively determined that the plan is in compliance with this ordinance, any variances required by Section IV C. 15, 16 and 17 are obtained, bonding requirements, if necessary, as per Section V B. 6. are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the ~~Local Issuing Authority~~City of Mableton are met. If the permit is denied, the reason for denial shall be furnished to the applicant.

3. Any land-disturbing activities by a local issuing authority shall be subject to the same requirements of this ordinance, and any other ordinances relating to land development, as are applied to private persons and the division shall enforce such requirements upon the local issuing authority.
4. If the tract is to be developed in phases, then a separate permit shall be required for each phase.
5. Responsibility. Neither the issuance of the permit nor compliance with the conditions thereof, nor with the provisions of this article, shall relieve any person of any responsibility otherwise imposed by law for damage of persons or property; nor shall the issuance of any permit pursuant to this article serve to impose any liability upon the county, its officers, board members or employees, for injury or damage to persons or property. The permit issued pursuant to this article does not relieve the applicant of the responsibility of complying with any other county ordinance or state law.
6. Special conditions. A permit issued by Cobb County shall specify any special conditions under which the land disturbing permit may be undertaken.

~~4.~~7. The permit may be suspended, revoked, or modified by the Local Issuing Authority, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion and sedimentation control plan or that the holder or his successor in title is in violation of this ordinance. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.

~~5.~~8. The LIA may reject a permit application if the applicant has had two or more violations of previous permits or the Erosion and Sedimentation Act permit requirements within three years prior to the date of the application, in light of O.C.G.A. 12-7-7 (f) (1).

SECTION VI
INSPECTION AND ENFORCEMENT

A. The City of Mableton will periodically inspect the sites of land-disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effective in controlling erosion and sedimentation. Also, the Local Issuing Authority shall regulate primary, secondary and tertiary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. Tertiary permittees shall be responsible for installation and maintenance where the tertiary permittee is conducting land-disturbing activities. If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this ordinance, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this ordinance.

B. The ~~Local Issuing Authority~~City of Mableton must amend its ordinances to the extent appropriate within twelve (12) months of any amendments to the Erosion and Sedimentation Act of 1975.

C. The City of Mableton Community Development Department shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.

D. No person shall refuse entry or access to any authorized representative or agent of the Local Issuing Authority, the Commission, the District, or Division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

E. The District or the Commission or both shall semi-annually review the actions of ~~counties and municipalities~~the City of Mableton which ha~~ve~~s been certified as Local Issuing Authorities pursuant to O.C.G.A. 12-7-8 (a). The District or the Commission or both may provide technical assistance to the City of Mableton~~any county or municipality~~ for the purpose of improving the effectiveness of the ~~county's or municipality's~~city's erosion, sedimentation and pollution control program. The District or the Commission shall notify the Division and request investigation by the Division if any deficient or ineffective local program is found.

F. The Division may periodically review the actions of ~~counties and municipalities~~the City of Mableton which ~~have~~ has been certified as Local Issuing Authorities pursuant to Code Section 12-7-8 (a). Such review may include, but shall not be limited to, review of the administration and enforcement of a governing authority's ordinance and review of conformance with an agreement, if any, between the district and the governing authority. If such review indicates that the governing authority of any county or municipality certified pursuant to O.C.G.A. 12-7-8 (a) has not administered or enforced its ordinances or has not conducted the program in accordance with any agreement entered into pursuant to O.C.G.A. 12-7-7 (e), the Division shall notify the governing authority of the county or municipality in writing. The ~~governing authority of any county or municipality~~City of Mableton so notified shall have 90 days within which to take the necessary corrective action to retain certification as a Local Issuing Authority. If the ~~county or municipality~~City of Mableton does not take necessary corrective action within 90 days after notification by the division, the division shall revoke the certification of the ~~county or municipality~~city as a Local Issuing Authority.

SECTION VII
PENALTIES AND INCENTIVES

A. FAILURE TO OBTAIN A PERMIT FOR LAND-DISTURBING ACTIVITY
If any person commences any land-disturbing activity requiring a land-disturbing permit as prescribed in this ordinance without first obtaining said permit, the person shall be subject to revocation of his business license, work permit or other authorization for the conduct of a business and associated work activities within the jurisdictional boundaries of the ~~Local Issuing Authority~~City of Mableton.

B. STOP-WORK ORDERS

1. For the first and second violations of the provisions of this ordinance, the Director or the ~~Local Issuing Authority~~City of Mableton shall issue a written warning to the violator. The violator shall have five days to correct the violation. If the violation is not corrected within five days, the Director or the ~~Local Issuing Authority~~City of Mableton shall issue a stop-work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided, however, that, if the violation presents an imminent threat to public health or waters of the state or if the land-disturbing activities are conducted without obtaining the necessary permit, the Director or the ~~Local Issuing Authority~~City of Mableton shall issue an immediate stop-work order in lieu of a warning;
2. For a third and each subsequent violation, the Director or the ~~Local Issuing Authority~~City of Mableton shall issue an immediate stop-work order; and;
3. All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.
4. When a violation in the form of taking action without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the ~~Local Issuing Authority~~City of Mableton or by the Director or his or her Designee, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a stop work order shall be issued by the ~~Local Issuing Authority~~City of Mableton or by the Director or his or her Designee. All such stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.

C. Notice of Noncompliance/ BOND FORFEITURE If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this ordinance and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of Section V B. 6. The Local Issuing Authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.

D. *Withhold certificate of occupancy.* The City of Mableton Community Development Department may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of noncompliance or has otherwise cured the aspects of noncompliance described therein.

E. (e) *Suspension, revocation or modification of permit.* The City of Mableton Community Development Department may suspend, revoke or modify the permit authorizing the land development project upon a finding that the holder is not in compliance with the approved erosion and sediment control plan. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of noncompliance or has otherwise cured the aspects of noncompliance described therein, provided such permit may be reinstated (upon such conditions as the City of Mableton Community Development Department may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such aspects of noncompliance.

~~C.~~F. Civil MONETARY PENALTIES

~~1. Any person who violates any provisions of this ordinance, or any permit condition or limitation established pursuant to this ordinance, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the Director issued as provided in this ordinance shall be liable for a civil penalty not to exceed $2,500.00 per day. For the purpose of enforcing the provisions of this ordinance, notwithstanding any provisions in any City charter to the contrary, municipal courts shall be authorized to impose penalty not to exceed $2,500.00 for each violation. Notwithstanding any limitation of law as to penalties which can be assessed for violations of county ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this ordinance under county ordinances approved under this ordinance shall be authorized to impose penalties for such violations not to exceed $2,500.00 for each violation. Each day during which violation or failure or refusal to comply continues shall be a separate violation.~~

1. Any person who violates any provisions of this article, the rules and regulations adopted pursuant hereto, or any permit condition or limitation established pursuant to this article or who negligently or intentionally fails or refuses to comply with any final or emergency order of the Cobb County Community Development Agency shall be liable for a civil penalty not to exceed $2,500.00 per day, but in no event less than $300.00. There shall be a minimum penalty of $300.00 per day for each violation involving the construction of a single-family dwelling by or under contract with the owner for his or her own occupancy; and there shall be a minimum penalty of $1,000.00 per day for each day for each violation involving land disturbing activities other than as provided above. Each day the violation continues shall constitute a separate offense. Any civil penalties imposed pursuant to this article shall be payable to the county, shall commence on the date of issuance of any stop work order or other notice of noncompliance and shall not be affected by the filing of any appeal. No inspections, certificate of occupancies, building permits or soil erosion permits will be granted to any person who has an outstanding fine for violating this article.

SECTION VIII
EDUCATION AND CERTIFICATION

A. Persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements, dependent on their level of involvement with the process, as developed by the commission in consultation with the division and the stakeholder advisory board created pursuant to O.C.G.A. 12-7-20.

B. For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have as a minimum one person who is in responsible charge of erosion and sedimentation control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the Commission present on site whenever land-disturbing activities are conducted on that site. A project site shall herein be defined as any land-disturbance site or multiple sites within a larger common plan of development or sale permitted by an owner or operator for compliance with the state general permit.

C. Persons or entities involved in projects not requiring a state general permit but otherwise requiring certified personnel on site may contract with certified persons to meet the requirements of this ordinance.

D. If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of paragraph (1) of subsection (b) of O.C.G.A. 12-7-19, then any person or entity involved in land-disturbing activity at that site and operating in a subcontractor capacity for such permittee shall meet those educational requirements specified in paragraph (4) of subsection (b) of O.C.G.A 12-7-19 and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

SECTION IX

~~ADMINISTRATIVE APPEAL~~

~~JUDICIAL REVIEW~~

~~A. ADMINISTRATIVE REMEDIES~~

~~The suspension, revocation, modification or grant with condition of a permit by the Local Issuing Authority upon finding that the holder is not in compliance with the approved erosion, sediment and pollution control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of any ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the Board of Zoning Appeals within 45 days after receipt by the Local Issuing Authority of written notice of appeal.~~

~~B. JUDICIAL REVIEW~~

~~Any person, aggrieved by a decision or order of the Local Issuing Authority, after exhausting his administrative remedies, shall have the right to appeal denovo to the Superior Court of Cobb County.~~

Appeal of administrative decision; judicial review.

(a)After having complied with the application requirements of City of Mableton Community Development Department, should the applicant dispute a decision of City of Mableton Community Development Department, the applicant may appeal to the City of Mableton Mayor and Council by filing a notice of appeal with City of Mableton Community Development Department; however, such appeal must be filed within ten days from the date of the administrative decision. Upon failure to file such appeal within ten days of the decision being appealed, the decision shall be binding and final upon all parties.

(b)The notice of appeal shall address the reasons why the applicant's request, if granted, would not impair the quality, vitality or stability of the area affected by the application and would not destroy more than minimum amount of natural ground surface, vegetation or cover within such area.

(c)City of Mableton Community Development Department shall review the notice of appeal and transmit to the board of commissioners a written report of its findings and recommendations, which shall become a part of the official record.
(d)The Mayor and Council, having received the report of City of Mableton Community Development Department, making it a part of the official record, is authorized to hear and shall hear and decide appeals where it is alleged there is any error in any order, requirement, decision or determination made by City of Mableton Community Development Department in the administration or enforcement of this article, the decision of the Mayor and Council shall not result in a violation or circumvention of any applicable condition of zoning, provision of the county zoning laws, subdivision regulations or any other regulation or ordinance.
(e)A written copy of the findings and decision of the Mayor and Council, after hearing and having considered the written and oral statements of the applicant and any other evidence, shall be transmitted to the applicant, and to the City of Mableton Community Development Department Director.
(f)An applicant aggrieved by a decision of the Mayor and Council pursuant to this article shall have the right of appeal de novo to the Superior Court of Cobb County.

Section X
Stream Buffer Applicability

This ordinance shall apply to all land development activity on property containing a stream protection area as defined in Section 3 of this ordinance. These requirements are in addition to, and do not replace or supersede, any other applicable buffer requirements established under state law and approval or exemption from these requirements do not constitute approval or exemption from buffer requirements established under state law or from other applicable local, state or federal regulations.

10.1 Grandfather Provisions This ordinance shall not apply to the following activities:

1) Work consisting of the repair or maintenance of any lawful use of land that is zoned and approved for such use on or before the effective date of this ordinance.
2) Existing development and on-going land disturbance activities including but not limited to existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land disturbance activities on such properties will be subject to all applicable buffer requirements.
3) Any land development activity that is under construction, fully approved for development, scheduled for permit approval or has been submitted for approval as of the effective date of this ordinance.
4) Land development activity that has not been submitted for approval, but that is part of a larger master development plan, such as for an office park or other phased development that has been previously approved within two years of the effective date of this ordinance.

10.2 Exemptions The following specific activities are exempt from this ordinance. Exemption of these activities does not constitute an exemption for any other activity proposed on a property.

(1) Activities for the purpose of building one of the following: - - - - - -

- a stream crossing by a driveway, transportation route or utility line;
- public water supply intake or public wastewater outfall structures;
- intrusions necessary to provide access to a property;
- public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks; unpaved foot trails and paths;
- activities to restore and enhance stream bank stability, vegetation, water quality and/or aquatic habitat, so long as native vegetation and bioengineering techniques are used.

2) Public sewer line easements paralleling the creek, except that all easements (permanent and construction) and land disturbance should be at least 25 feet from the top of the bank. This includes such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures. This exemption shall not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of paving material, except for access for the uses specifically cited in Item 4.2.(1), above.

(3) Land development activities within a right-of-way existing at the time this ordinance takes effect or approved under the terms of this ordinance.

4)Within an easement of any utility existing at the time this ordinance takes effect or approved under the terms of this ordinance, land disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures.

5) Emergency work necessary to preserve life or property. However, when emergency work is performed under this section, the person performing it shall report such work to the (review and permitting authority) on the next business day after commencement of the work. Within 10 days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the (review and permitting authority) to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area.

6) Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land disturbance in the buffer that would otherwise be prohibited, then no other land disturbing activity other than normal forest management practices will be allowed on the entire property for three years after the end of the activities that intruded on the buffer.

After the effective date of this ordinance, it shall apply to new subdividing and platting activities. Any land development activity within a buffer established hereunder or any impervious cover within a setback established hereunder is prohibited unless a variance is granted pursuant to Section 5.2 below.

SECTION XI VARIANCE PROCEDURES

Variances from the above buffer and setback requirements may be granted in accordance with the following provisions:

1) Where a parcel was platted prior to the effective date of this ordinance, and its shape, topography or other existing physical condition prevents land development consistent with this ordinance, and the (review and permitting authority) finds and determines that the requirements of this ordinance prohibit the otherwise lawful use of the property by the owner, the (appeals board) of (local jurisdiction) may grant a variance from the buffer and setback requirements hereunder, provided such variance require mitigation measures to offset the effects of any proposed land development on the parcel.
2) Except as provided above, the (appeals board) of (local jurisdiction) shall grant no variance from any provision of this ordinance without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the (appeals board). The (local jurisdiction) shall give public notice of each such public hearing in a newspaper of general circulation within (local jurisdiction). The (local jurisdiction) shall require that the applicant post a sign giving notice of the proposed variance and the public hearing. The sign shall be of a size and posted in such a location on the property as to be clearly visible from the primary adjacent road right-of-way. Variances will be considered only in the following cases:

   (a) When a property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance prevents land development unless a buffer variance is granted.

   (b) Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.

Variances will not be considered when, following adoption of this ordinance, actions of any property owner of a given property have created conditions of a hardship on that property.

At a minimum, a variance request shall include the following information:
(a) A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;
(b) A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
c) A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance, both inside and outside the buffer and setback.
d) The exact area of the buffer to be affected shall be accurately and clearly indicated; Documentation of unusual hardship should the buffer be maintained;
e) At least one alternative plan, which does not include a buffer or setback intrusion, or an explanation of why such a site plan is not possible;
f) A calculation of the total area and length of the proposed intrusion;

g) A stormwater management site plan, if applicable; and,
h) Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.

The following factors will be considered in determining whether to issue a variance:
(a) The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
(b)The locations of all streams on the property, including along property boundaries;
c) The location and extent of the proposed buffer or setback intrusion; and,
(d) Whether alternative designs are possible which require less intrusion or no intrusion;
(e)The long-term and construction water-quality impacts of the proposed variance;
(f) Whether issuance of the variance is at least as protective of natural resources and the environment.

SECTION XII
EFFECTIVITY, VALIDITY
AND LIABILITY

A. EFFECTIVITY
This ordinance shall become effective on the __________day of ________, 20__.

B. VALIDITY
If any section, paragraph, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, such decisions shall not affect the remaining portions of this ordinance.

C. LIABILITY
1. Neither the approval of a plan under the provisions of this ordinance, nor the compliance with provisions of this ordinance shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the Local Issuing Authority or District for damage to any person or property.
2. The fact that a land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this ordinance or the terms of the permit.
3. No provision of this ordinance shall permit any persons to violate the Georgia Erosion and Sedimentation Act of 1975, the Georgia Water Quality Control Act or the rules and regulations promulgated and approved thereunder or pollute any Waters of the State as defined thereby.

ATTEST:

____
Signature

____
Signature

STATE OF GEORGIA **ORD**
COBB COUNTY
CITY OF MABLETON

AN ORDINANCE UPDATING CHAPTER 7, TAXES, FEES AND ASSESSMENTS OF THE CITY CODE OF ORDINANCES; REGULATING SPECIAL LICENSE AND REGULATORY FEES AND FOR OTHER LAWFUL PURPOSES

WHEREAS, the City of Mableton ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia;

WHEREAS, the duly elected governing authority of the City is the Mayor and Council ("City Council") thereof;

WHEREAS, the City Council is empowered by Sec. 6.14 of the City Charter to "to levy any other tax or fee allowed now or hereafter by law, and the specific mention of any right, power, or authority in this article shall not be construed as limiting in any way the general powers of this city to govern its local affairs;"

WHEREAS, the City Council desires through this Ordinance to adopt reasonable code provisions relating to special licensing and regulatory fees; and

WHEREAS, the City Council finds this Ordinance to be in the bests interest of the health, safety and welfare of the City.

IT IS HEREBY ORDAINED, by the governing authority of the City of Mableton as follows:

Section 1. Division 2, Special License and Regulatory Fees, of Chapter 7, Taxes, Fees and Assessments, of the City of Mableton Code of Ordinances is hereby deleted in its entirety.

Section 2. A new Article 7, Special License and Regulatory Fees, is hereby created under Chapter 7, Taxes, Fees and Assessments, of the City of Mableton Code of Ordinances, to read as follows:

CHAPTER 7 - TAXES, FEES AND ASSESSMENTS

…

ARTICLE 7 - SPECIAL LICENSE AND REGULATORY FEES

DIVISION 1 – GENERALLY

Sec. 7.7.1.1. Purpose of article; statutory authority; applicability of general regulations.

(a) **Purpose**. This division is enacted in accordance with the plan designed for the purposes, among others, of promoting the health and general welfare of the community, to establish reasonable and ascertainable standards for the regulation and control of astrologists, contractors, detective agencies, door-to-door salespersons, escort services, fortunetellers, handwriting analysts, health spas, hypnotists, weekend vendors, wrecker operators, taxicabs, security agencies and guards, modeling services, psychics, peddlers, amusement activities and rides, pawnshops, billiard parlors or rooms, flea markets and vendors therein, precious metals dealers or shops, adult entertainment establishments and any other business activities that from time to time may require additional police protection and regulation in order to ensure the health and safety of the community.

(b) **Special business activities requiring prior approval**. It shall be unlawful for any person and/or business to engage in the business, trade, profession or practice of a sexually oriented business, precious metals dealer, amusement activity, peddler, door-to-door sales person, mobile food vendor, firework retail stand, pawnshop, vendor, ticket broker, special event parking, flea market, seller and/or distributor of alcohol, pool room and/or health spa, before obtaining approval for a special regulatory license and/or permit from the City.

(c) **Occupation tax certificate pre-condition to special regulatory license/permit.** The provisions of this chapter enumerated in divisions I and II regarding the administration and enforcement of business licenses apply to all special licenses in addition to the provisions enumerated in this division. No person and/or business shall obtain and/or qualify for a special regulatory license and/or permit under this division, without having first obtained an occupation tax certificate from the city in accordance with this article, for the calendar year in which any new and/or special regulatory license/permit is sought.

(d) **Local, state and federal compliance required**. All persons and/or businesses required to obtain a special regulatory license under this article, shall be subject to all applicable local, state and federal regulatory requirements.

Sec. 7.7.1.2. Registration.

All persons, businesses and organizations of all types who transact or engage in any business in the city shall be required to register with the business license bureau and shall pay a fee for such registration pursuant to schedule R. The registration shall include providing the name of such business, the name of the proprietor, the business address and the mailing address of the proprietor, telephone numbers, date of birth of the owner or proprietors, the social security number or employee identification number of such registrant and a description of the business activities of the registrant. If the registrant is other than a natural person, the registrant shall provide the names, addresses and telephone numbers of the principal officers, partners or associates which are part of the business. In addition to the other remedies available to the city for the collection of occupation taxes and regulatory fees due the city from persons subject to the tax or fee who fail or refuse to pay a tax or fee, the supervisor of the business license division or his designee may issue executions against delinquent taxpayers for the amount of the taxes or fees due when the taxes or fees become due plus and any authorized interest imposed. The municipal court of the city, after notice to the taxpayer and hearing, may impose a civil fine for failure to pay the occupation tax or regulatory fee. Such a civil fine shall not exceed $500.00 and may be enforced by the contempt power of the court.

Sec. 7.7.1.3. Regulatory fees.

The regulatory fees levied and charged for all persons and businesses subject thereto are set forth on the "City of Mableton Special License and Regulatory Fee Schedule," which shall also be known as "schedule R." A copy of Schedule R is on file in the city clerk's office and the business license office. Regulatory fees are levied and assessed in addition to any business or occupational taxes assessed and levied under this chapter. All businesses located outside of the city but operating within the city are required to register and pay the regulatory fee specified in schedule R.

Sec. 7.7.1.4. Proper zoning required.

No regulated business activity or enterprise regulated, permitted, allowed or licensed under this chapter shall be allowed in an area or location of the city for which such activity or enterprise is not a permitted use under the Mableton Zoning Code and/or other applicable ordinances and laws.

Sec. 7.7.1.5. Amusement machines.

Business owners and business operators who offer public play on bona fide Class B coin operated amusement machines as defined by O.C.G.A. § 48-17-1(2.3) are authorized to exceed the limitation of nine such machines as otherwise provided in O.C.G.A. § 48-17-15(b)(2).

Sec. 7.7.1.6. Temporary consumer fireworks retail stands.

(a) Temporary consumer fireworks retail stands must obtain a temporary business license and shall post conspicuously in the place of business a notice stating the times during which the ignition of consumer fireworks is permitted under state law.

(b) Temporary consumer fireworks retail stands in compliance with state law will not be considered "peddlers," as defined in division 4 of this article.

DIVISION 2 - PEDDLERS, DOOR-TO-DOOR SALESPERSONS, AND MOBILE FOOD VENDORS

Sec. 7.7.2.1. Definitions.

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

Charitable organization. Any benevolent, philanthropic, patriotic, or eleemosynary (of, relating to, or supported by charity or alms) corporation, partnership, limited liability company, association, joint-stock company, trust, unincorporated organization or individual who solicits or obtains contributions solicited from the general public, any part of which contributions is used for charitable purposes.

Charitable purpose. Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose for religion, health, education, social welfare, arts and humanities, environment, civic or public interest.

Door-to-door salesperson. Any person who shall solicit orders on behalf of a firm, corporation, company, association, partnership or individual of any goods, wares or merchandise, or other things of value from house to house shall be deemed a door-to-door salesperson. Any person who obtains orders for merchandise or other things of value shall be deemed a door-to-door salesperson. Excluded from this definition are persons who solicit orders for goods, wares or merchandise, or other things of value from house to house for charitable organizations or purposes or on behalf of religious organizations, political organizations and political candidates.

Peddler. Any person who sells or solicits for sale in city any new or used goods, wares, merchandise, produce, service or other things of value from any location within the city that does not possess a certificate of occupancy, selling or offering for sale any of such things to either merchants or customers shall be deemed a peddler. Excluded from this definition are persons who sell or solicit for sale goods, wares or merchandise, or other things of value from house to house for charitable organizations or purposes or on behalf of religious organizations, political organizations and political candidates. Temporary consumer fireworks retail stands in compliance with state law will not be considered peddlers, but must obtain a temporary business license.

Vehicle. Motorized conveyance fully functioning and moving under its own power with valid vehicle tag, and registered in the name of the owner of the business. A vehicle shall not include a trailer or anything pulled by the vehicle. Vehicles shall not be in excess of 20 feet in length, ten feet in width, and eight feet in height.

Sec. 7.7.2.2. Peddler's license.

Every peddler shall be required to obtain a license. All licenses to peddle shall be paid for at the price fixed in the fee schedule as provided for in this chapter, or otherwise.

Sec. 7.7.2.3. Conduct of business by peddlers.

(a) *Permit required.* No trader or peddler shall offer for sale any goods, wares or merchandise in the unincorporated areas of the city without first obtaining a permit from the license bureau of the city.

(b) *Location.* Peddlers shall park the vehicle associated with the business on asphalt or concrete out of the right-of-way and conduct business only in locations zoned general commercial and in accordance with the city code.

(c) *Merchandise to be kept on vehicle; business license and permission from property owner required.* Peddlers shall maintain all merchandise on a vehicle, and the peddler's business license shall be void if the peddler does not have in his possession at the location a business license and written notarized affidavit from the property owner authorizing the peddler to be engaged in business at the property owner's location.

(d) All vehicles must be removed from the peddler's location each day.

(e) No tents, tables, boxes, chairs, or any accessory to the business shall be allowed. Anything associated with the business, with exception of personnel, that is not on the vehicle shall be in violation of this division.

(f) Only one sign permitted by the code enforcement division is allowed and shall meet the limits provided in the zoning ordinance and sign ordinance, and shall be on the vehicle.

(g) Any violation of this division by any owner, licensee of the peddler business or any employee of the peddler within the past 12 months shall be cause for denial of the peddler's permit.

(h) All vehicles shall be brought to the city business license division and approved by the business license supervisor or his designee prior to the approval of the permit. Only an approved vehicle may be used and in the event the peddler desires to use a substitute vehicle, the substitute vehicle must be approved by the business license division.

(i) Only one vehicle is allowed for each location.

(j) *Violations.* Any violations of the provisions in this section pertaining to peddlers shall subject the license to revocation.

Sec. 7.7.2.4. Door-to-door salespersons—Conduct generally; rights of occupants.

(a) The supervisor of the license office shall provide to each door-to-door salesperson an information card, and the door-to-door salesperson shall present this card to each household he visits. It is the responsibility of the door-to-door salesperson to make sufficient copies of the information card to furnish to each household he visits. Such card shall contain information as required by the business license supervisor.

(b) The door-to-door salesperson is not to enter a home except at the express invitation of the occupant.

(c) The occupant has the right to refuse entry or to ask the door-to-door salesperson to leave the premises, and, if the salesperson should fail to leave the premises after such instructions, he shall be in violation of the laws of this state and ordinances of the city.

(d) Any discourteous conduct should be reported to the business license office of the city.

(e) If a person purchases the product of the door-to-door salesperson, the person has the right to cancel a home solicitation service agreement any time until midnight on the business day after the day on which he signs the agreement, provided he gives notice of the cancellation to the seller at the place of business as set forth in the agreement or by certified mail, return receipt requested, which shall be posted not later than midnight on the day following execution of the agreement.

(f) A door-to-door salesperson shall place his name and permit number in the blank provided on the card and shall present it to the occupant of each home that he visits.

Sec. 7.7.2.5. Same—Failure to present information card to occupant.

It shall be unlawful for a door-to-door salesperson to fail to present the card described in section 7.7.2.5 to the resident or occupant of a home at which the door-to-door salesperson solicits business.

Sec. 7.7.2.6. Same—Announcement to occupant.

At each house, the door-to-door salesperson shall announce to the owner or occupant of the home his name and that he has been issued a permit by or has registered with the city license bureau as a home door-to-door salesperson, and shall announce the purpose of his call and present the card provided for by this division and shall allow time for the occupant or owner to read the card.

Sec. 7.7.2.7. Same—Invitation required to enter home; compliance with sign.

No door-to-door salesperson shall enter a home without the express invitation of the occupant or owner. If a "no soliciting" sign is posted, no soliciting shall be made.

Sec. 7.7.2.8. Same—Courtesy; leaving premises upon instruction.

A door-to-door salesperson shall at all times maintain a courteous decorum and shall not use opprobrious words to any homeowner or occupant. No door-to-door salesperson shall remain upon the premises of an occupant or owner after such occupant or owner has requested the door-to-door salesperson to leave or indicated that he is not interested in purchasing the door-to-door salesperson's product.

Sec. 7.7.2.9. Same—Misrepresentation of effect of permit issuance.

It shall be unlawful for any door-to-door salesperson to represent by word, action or deed that the issuance of a permit or registration by the city license bureau in any way represents approval or condonation of either the action of the door-to-door salesperson or his product or organization.

Sec. 7.7.2.10. Same—Duty to inform occupant of rights.

If a door-to-door salesperson shall secure an order from an owner or occupant, such door-to-door salesperson shall inform the owner or occupant as to his rights under the Home Solicitation Act of the state. This may be done by the door-to-door salesperson leaving a written card or document specifying the rights of a homeowner or occupant under the Retail Installment and Home Solicitation Sales Act (O.C.G.A. § 10-1-1 et seq.).

Sec. 7.7.2.11. Same—Records of license office; complaints.

(a) The business license bureau shall maintain true and accurate records of the name and identification number of each door-to-door salesperson, together with other requirements of this division, and shall maintain a log of all complaints for each door-to-door salesperson or organization represented by such person. If the license office shall receive any ordinance violation complaints concerning a particular door-to-door salesperson, or three violation complaints concerning an organization, the business license office shall notify the door-to-door salesperson and organization such person represents of the complaints, and the business license supervisor may suspend the permit until such time as the door-to-door salesperson or organization can show cause that he or it is in compliance with the rules and regulations of this division.

(b) The license office shall maintain a true and accurate log of each complaint showing the name of the complainant, the address of the complainant, and the substance of the complaint. Such records shall be available to the door-to-door salesperson, or his company or organization, and shall be deemed a public record. A hearing shall be set before the supervisor of the license office within five business days after notification of the door-to-door salesperson, at which time the license office shall investigate the nature of the complaints and the door-to-door salesperson may use witnesses or other evidence to show his compliance with this chapter. If the supervisor of the license office shall determine a violation on the part of the door-to-door salesperson of the ordinances of the city, he shall revoke the permit of the door-to-door salesperson.

Sec. 7.7.2.12. Same—Appeals to city business license division.

A door-to-door salesperson shall have the right to file an appeal from the ruling of the business license supervisor to the city council.

Sec. 7.7.2.13. Same—Appeals to court.

If any door-to-door salesperson or his company shall be dissatisfied with the decision of the city business license division, he shall have his right to appeal as provided by the laws of the state.

DIVISION 3 - MOBILE FOOD VENDORS

Sec. 7.7.3.1. Definitions.

Mobile food vendor shall mean a retail food establishment that is readily moveable, is a motorized wheeled vehicle, or is a towed wheeled vehicle and that is designed and equipped to prepare and serve food as defined by state law and in accordance with the rules and regulations for food service of the Cobb County Board of Health ("BOH").

Mobile food vendor event shall mean an assembly or congregation of two or more mobile food vendors in specified locations pursuant to the requirements of this subdivision II who have each complied in all respects with the requirements of this subdivision II.

Sec. 7.7.3.2. Business license and food service permit required.

(a) It shall be unlawful for any person to sell, or offer for sale, food of any type from a commissary or mobile retail food establishment without a business license first having been granted under this section by the business license division manager or his/her designee, and without a valid food service permit first having been obtained from the Cobb Public Health Department ("health department").

(b) Prior to the issuance of a business license under this subdivision II, an application for a food service permit(s) by a mobile food vendor, setting forth all required information, shall be submitted to the health department in accordance with its mobile/extended service units permit applications and the BOH food services rules and regulations.

(c) The business license division manager shall require proof (a copy) of the food service permit from the health department prior to the issuance of a business license to a mobile food vendor.

(d) A mobile food vendor(s) operating on city or other public property at the invitation or request of one or several of the authorized individuals specified in section 7.7.3.3(d) shall not be required to obtain a business license hereunder for such city or public entity sponsored event but must comply with all other requirements of this subdivision II.

Sec. 7.7.3.3. Conduct and requirements.

(a) No mobile food vendor shall conduct business or operate in the public right-of-way unless otherwise invited or permitted pursuant to subsection (d) below.

(b) Mobile food vendor(s) shall only be permitted to operate at mobile food vendor events or at private events not accessible or open to the general public and solely for guests or other designated individuals. For events involving mobile food vendors on other than public property, the owner of the private property in question, or his or her designee, must provide written consent to the community development agency director or his/her designee to include the dates and times and specific location for such temporary use.

(c) When operating on public property, a mobile food vendor shall maintain and demonstrate to an individual specified in subsection (d) below, proof of a $1,000,000.00 liability insurance policy issued by an insurance company licensed to do business in Georgia, protecting the mobile food vendor, the public, the health department, and the city, or such other public entity with control or ownership of the subject property, from all claims for damage to property and bodily injury, including death, which may arise from operation under or in connection with the license. Such insurance shall name the city or other public entity as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advanced written notice to the individual in subsection (d) responsible for the operation of the mobile food vendor on the subject property. The provisions of this paragraph shall not be construed as a waiver of any immunity available to the health department, the city or such other public entity at law.

(d) Any operation(s) on city or other public property must be at the request or invitation or with the permission of an authorized official, department head, director, manager or employee of such public entity with oversight or control of the property in question ("authorized individuals"). The authorized individuals shall obtain the indemnification required in subsection (e) below, verify proof of the insurance required in subsection (c) above and provide to the community development agency director or his/her designee written verification of the same. The authorized individuals shall also provide to the community development agency director or his/her designee written consent for the mobile food vendor to operate on the subject property including the date(s), time(s) and specific location(s) for such temporary operation on the public property in question.

(e) Any mobile food vendor with authorization, permission or an invitation to operate on city or other public property or at a city-sponsored event shall execute an indemnity agreement, in a form acceptable to the city attorney or his/her designee, indemnifying and releasing the city or such other public entity with control and oversight of the property in question, its agents, employees, volunteers, officials, and elected officials from any and all liability for any and all claims, actions and suits of any type whatsoever. This provision shall not be construed to waive any immunity available to the city or any other public entity.

(f) A mobile food vendor shall not create sounds, play music or make announcements to call attention to the mobile food vehicle either while traveling on the public rights-of-way or when the vehicle is stationary. At all times the mobile food vendor shall comply with the Cobb County noise ordinances.

(g) Mobile food vending units shall not be left unattended or stored at any time on an open vending site when vending is not taking place or during restricted hours of operation.

(h) The mobile food vendor shall comply with all state, federal and local health and safety regulations and requirements, shall comply with all provisions of this Code of Ordinances, and shall obtain and maintain any and all licenses required by any other health, or governmental organization or entity having jurisdiction over this subject matter.

(i) The mobile food vendor may sell food and non-alcoholic beverage items only.

Sec. 7.7.3.4. Revocation and suspension.

The city shall have the right to revoke or suspend any business license granted hereunder for violations of any city ordinance or state law. Any revocation or suspension of a food service permit issued by the health department shall be in accordance with the BOH food service rules and regulations.

Sec. 7.7.3.5. Fee.

The fee for the business license required by this "Subdivision II. Mobile Food Vendors," shall be set by fee schedule adopted/approved by the city council. The fee for the food service permit issued and regulated by the BOH shall be as set and determined from time to time by the BOH.

DIVISION 5 - DOOR-TO-DOOR SALESPERSON'S PERMIT

Sec. 7.7.4.1. Scope of requirements.

(a) A resident door-to-door salesperson shall obtain a door-to-door salesperson's permit and be subject to all rules and regulations of this division.

(b) A resident door-to-door salesperson who solicits orders as described in this division and whose employer does not maintain a place for doing business in the city so as to be subject to the government rules and regulations of this chapter shall be deemed a nonresident door-to-door salesperson and shall comply with the regulations of this division.

Sec. 7.7.4.2. Application; registration; investigation and report; grounds for denial.

(a) No door-to-door salesperson shall be authorized to solicit orders until he files an application from the license bureau and obtains a permit and registers as a door-to-door salesperson. The license bureau shall make an investigation, including but not limited to an investigation of the police record and moral character of the applicant. The license bureau shall furnish the police department a duplicate of the application for the door-to-door salesperson's permit. The police department, within ten days, shall furnish a report to the license bureau of the police record, if any, of the applicant. No permit shall be given to any applicant who shall have either a pending charge or a conviction for a felony crime or an offense involving the elements of assault and battery, or any civil judgments involving unethical and improper business actions, including but not limited to actions which would constitute fraud and deceit under the laws of the state.

(b) No application for a permit under this section shall be received or acted upon if the applicant has submitted the same or a similar application for a permit within the preceding 12 months, which prior application has been dismissed, denied or abandoned. No license shall be granted if the applicant is in violation of this division or has within 12 months preceding the application been in violation of this division or any other law or ordinance regulating the activities for which such permit is sought.

Sec. 7.7.4.3. Fee.

The applicant for the permit of door-to-door salesperson shall pay a fee set in the schedule of fees as cost for the investigation and regulation under this division. This fee shall be used for the cost of such registration, investigations and regulation of persons subject to this division.

Sec. 7.7.4.4. Duration; renewal.

A permit under this division shall be valid for 90 days from the date the license is issued. However, the permit may be renewed by filing a renewal application with the business license office upon forms prescribed by the office, and paying a renewal fee set in the schedule of fees to cover the expense of updating the investigative report.

Sec. 7.7.4.5. Solicitation permit.

All door-to-door salespersons, both nonresident and resident, who shall solicit orders from house to house shall first obtain from the supervisor of the license office a permit for such solicitation.

Sec. 7.7.4.6. Badge.

All door-to-door salespersons shall wear a badge, the design of which shall be in the discretion of the license office, but which shall be uniform as to all door-to-door salespersons, which badge shall provide the following information: the name of the door-to-door salesperson, the name of the company, and an identification number, in large enough type to be read and seen by persons with normal vision at a distance of ten feet. At all times, the door-to-door salesperson shall wear on either the left or right shoulder of his garment the badge prescribed by the license office so that such badge can be readily seen by the owner or occupant of the premises.

DIVISION 5 - Vending

Sec. 7.7.5.1. 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:

Food truck means a retail food establishment that is readily moveable, is a motorized wheeled vehicle, or a towed wheeled vehicle designed and equipped to prepare and serve food as defined by state law.

Private property vending means vending activity, permitted by the city on privately owned property in the unincorporated area of the city, with the consent or approval of the property owner(s).

Public property and *public space* both mean any property owned by city and any street rights-of-way within the unincorporated area of the city, including any roadways and sidewalks.

Public property vending means vending activity authorized by city permit on publicly owned property under the jurisdiction of the city for a special event.

Special event means a temporary event or gathering using either private or public property that draws an estimated number of participants and spectators exceeding 250 present on any day of the event and that involves one or more of the following activities:

(1) Closing of a public street;

(2) Blocking or restricting streets, sidewalks, alleys, or other public places, in whole or in part;

(3) Sale or distribution of food or beverages on streets, sidewalks, alleys, or other public property, or on private property where otherwise prohibited by ordinance;

(4) Erection or placement of a tent, utility pole, or other temporary structure on a street, sidewalk, alley, or other public place;

(5) Erection or placement of a stage, bandshell, trailer, van, portable building, grandstand, bleachers, or other apparatus used for entertainment purposes on public property, or on private property where otherwise prohibited by ordinance; or

(6) Erection or placement of temporary signage, banners, or displays of any kind in or over a public right-of-way, or on private property where otherwise prohibited by ordinance.

This term shall not include any event or function held on private property entirely within the existing structure or appurtenances thereto of an establishment that has been operating continuously for 30 days or more prior to the start of a special event.

Vending activities mean the selling or distribution of retail or food items through a cart, kiosk, or temporary or non-permanent structure to the public.

Vending cart means a cart, kiosk, or temporary structure designated for food or retail vending activity.

Vendor means any person who is undertaking vending activities.

Sec. 7.7.5.2. Purpose and intent.

The city council, pursuant to its authority to regulate the conduct of business upon public property and public space and to promote the safety and welfare of its residents and visitors determines it necessary and proper to prohibit vending activities on public property to serve and protect the health, safety and welfare of the general public.

Sec. 7.7.5.3. Applicability.

(a) Vending activities in the unincorporated area of the city on public property without a license for public property vending is unlawful.

(b) Vending activities in the unincorporated area of the city on private property is regulated by article 4 of this chapter.

(c) Private property alcoholic beverages vending is not subject to the regulations contained in this chapter.

(d) Food trucks are not subject to the regulations contained in this subdivision, but are regulated by division 5 of this chapter.

Sec. 7.7.5.4. Violation.

(a) Penalties for violations of this division shall be punished as set out by Georgia law under O.C.G.A. § 15-10-60.

(c) *Suspension or revocation.* In addition to other remedies allowed by law, violations of the provisions in this subdivision pertaining to vendors shall subject the license to suspension or revocation. Violations of this division shall be considered due cause for suspension or revocation of any license issued under this division.

Sec. 7.7.5.5. Special provisions and exemptions within mixed-use development districts.

(a) For the purposes of this article only, a mixed-use development district is defined as a development that is zoned RRC with a public event venue with permanent seating in excess of 20,000 seats (and to include attendant parking facilities) and may include a mixture of retail, restaurants, entertainment, office space, and hotel units.

(b) Vending activity within mixed-use development districts is permitted in areas designated for vending activity as depicted on a plan that shall be approved by both the mixed-use development district management and the city council. The plan shall include locations where vendors may sell merchandise within the designated area, as well as specifics on the size and materials for signage and vending carts.

(c) Every vendor shall be required to obtain a city license and/or any other appropriate state or local license.

(d) All applicable sales taxes resulting from vending activity shall be remitted to the state per applicable law.

(e) Food trucks are required to follow regulations contained in article 5 of this chapter.

DIVISION 6 - LICENSES REQUIRING PRIOR APPROVAL AND REGULATION

Sec. 7.7.6.1. Definitions.

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

Alcoholic beverages includes, but is not limited to, malt beverages, vinous liquors and spirituous liquors.

Amusement activity includes any fair, concert, carnival or sideshow and those activities, rides and games normally associated with such amusements wherein the general public is allowed to view or participate for a price.

Billiard room means any public place with two or more tables on which the game of billiards is permitted to be played.

Billiards means any of the several games played on a table surrounded by an elastic ledge of cushions, with balls which are impelled by a cue, and shall include all forms of the game known as carom billiards, pocket billiards and English billiards. The term shall apply to all tables, both coin-operated and non-coin-operated.

Health spa means a business establishment that derives its primary source of income from massage therapy as defined in state law, or any other hands-on therapy including foot massage and the practice of reiki, to help customers, reduce stress, provide therapy, enhance appearance, enhance or restore health and well-being, or experience sensory pleasure. This term shall not include professional healthcare establishments or fitness centers utilizing equipment only and having two or fewer massage tables or other equipment for massage.

Licensee means any person holding a license issued under this division who is full time employee responsible for the management of the establishment.

Manager means a full time employee who is responsible for the management and operation of the establishment. A manager or manager's designee must be on the premises at all times the business is in operation.

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

Pawnshop means any business wherein a well-defined part thereof 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.

Pool room. See *Billiard room*.

Spa. See *Health spa.*

Sec. 7.7.6.2. Special licenses generally.

(a) It shall be unlawful for any person to engage in the business, trade or profession or practice the business, trade or profession of an amusement activity, pawnshop, pool room, or health spa before obtaining approval for a license by the supervisor of the business license office.

(b) All licenses specified in subsection (a) of this section 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 any other ordinance, resolution or law of the city, state or United States relating to such business.

(c) All applicants for licenses specified in subsection (a) of this section shall be required to sign an acknowledgment that they have received, read and understood the provisions of this article prior to issuance of the license.

Sec. 7.7.6.3. Application; appeals; renewal.

(a) Applications for any of the licenses detailed in section 7.7.6.2(a) shall be filed with the supervisor of the business license office on forms as prescribed by the city, and shall also meet the standards and specifications as enumerated in this chapter.

(b) In the event of any adverse decision or ruling by the supervisor of the business license office, the applicant or aggrieved party shall have the right of appeal to the business city business license division as provided in section 6-90.

(c) The decision of the business license supervisor shall be final unless appealed to the city council.

(d) All licenses for pawnshops, pool rooms, and health spas shall be renewed with the business license office prior to December 31. All pawnshops, pool rooms, and health spas that currently possess a business license at the time of the adoption of the ordinance from which this section is derived shall renew their business license on or before the expiration date of their current license and those businesses shall renew their license prior to December 31.

Sec. 7.7.6.4. Standards for issuance.

(a) No application for any license for amusement activities, pawnshops, pool rooms and health spas shall be granted where the application or other evidence shows any of the following conditions to exist:

  (1) The applicant has had any license issued under the police powers of any city or other governmental subdivision previously suspended or revoked.

  (2) The applicant, as a previous holder of a license for the business or business activity for which he now seeks a license, has violated any law, regulation or ordinance pertaining to such business within a five-year period immediately preceding the date of application.

  (3) The applicant or any employee of the applicant has committed any of the acts enumerated in this division which constitute due cause for denial of a license.

(b) In addition to the conditions set out in subsection (a) of this section, in determining whether or not any license applied for shall be granted, the following shall be considered in the public interest and welfare:

  (1) If the applicant is a previous holder of a license, the manner in which he conducted the business thereunder as to the necessity for unusual police observation and inspection in order to prevent the violation of any law, regulation or ordinance relating to such business.

(2) The location for which the license is sought as to traffic congestion, general character of the neighborhood and the effect the business that is applied for would have on the adjacent and surrounding property values.

(3) The number of licenses already granted for similar businesses in the trading area of and the place for which the license is sought.

(4) If the applicant's spouse shall not be able to meet the qualifications of an applicant, particularly if it appears that the applicant's spouse or another person is using the applicant as a guise or "dummy" to obtain a license.

Sec. 7.7.6.5. Fees.

The fees for licenses for amusement activities, pawnshops, pool rooms, and health spas shall be as established by the city council, and shall be available as part of the schedule of fees in the business license office. The city council may amend or revise these fees from time to time.

DIVISION 7. AMUSEMENT ACTIVITIES[1]

Sec. 7.7.7.1. Condition of premises; orderly operation.

All premises of an amusement activity shall be kept clean and in proper sanitary condition, and, when food is served in connection with the amusement activity, full compliance shall be maintained with the provisions and regulations governing the conditions of premises used for the storage and sale of food for human consumption. It shall be unlawful to permit any disturbance of the peace or obscenity. No person including but not limited to, an operator, owner, employee, manager, vendor or invitee of the amusement activity shall be allowed to camp or reside overnight with or without a recreational vehicle, tent, sleeping bag, vehicle or other structure at an amusement activity unless authorized to do so via a land use permit, except that the owner may allow a reasonable number of overnight security personnel, who may be either the owner, contracted agents or employees of the owner. The operator or owner shall not employ any person with a felony conviction within five years of application for an amusement activity permit/license.

Sec. 7.7.7.2. License Required.

It shall be unlawful for any person to hold, maintain, conduct or sponsor any amusement activity within the meaning of this article without having first obtained a license and having complied with the provisions of division 7 of this chapter.

[1]State law reference(s)—Amusement Ride Safety Act, O.C.G.A. § 34-12-1 et seq.

Sec. 7.7.7.3. Application.

All persons desiring a license to conduct an amusement activity shall make written application for such privilege upon forms available in the business license office. Such application shall state the name and address of the applicant; the place where the proposed activity is to be located; the nature and character of the activity to be carried on; if a partnership, the names of the partners; and, if a corporation, the names of the officers. The application shall further include the general plan and layout of how the area concerned is to be used, to include parking facilities, proof that all rides operated are in a safe and proper working condition, proof that first aid facilities are available to adequately meet the needs of those attending the amusement activity, and proof that the amusement activity has obtained approval from the state fire marshal's office.

Sec. 7.7.7.4. Qualifications of applicant.

No person shall be granted a license to conduct an amusement activity unless it shall appear to the satisfaction of the supervisor of the business license office that such person, or the officers and directors of any corporation, shall be of good moral character. In no event shall any such license be granted to any person or to any corporation where the person or the officers, stockholders and directors of any corporation have been convicted or have pled guilty or entered a plea of nolo contendere to any felony crime within a period of five years immediately prior to the date of application for such license.

Sec. 7.7.7.5. Additional standards for approval.

In the issuance of licenses for the purpose of conducting an amusement activity, the supervisor of the business license office may, in his discretion, consider the information required under section 7.7.7.4, as well as the standards enumerated in the provisions of division 8 of this chapter.

Sec. 7.7.7.6. Issuance; fee.

If the supervisor of the business license office approves the application for a license under this division, the license shall be issued for the designated location after payment of the established fee, which shall be a weekly fee according to the current schedules.

Sec. 7.7.7.7. Duration.

No license issued under this division shall be valid beyond a period of 21 days from the date of issuance where no expiration date is stated on the license. Otherwise, the expiration date is as stated on the license.

Sec. 7.7.7.8 Permitted zoning districts.

No license shall be issued for the purpose of conducting an amusement activity except where the amusement activity is to be located in the area of the city which has been, or may be, zoned for business purposes.

DIVISION 8. PAWNSHOPS[2]

Sec. 7.7.8.1. Records and information to be maintained; identification; digital photographs; fingerprints; records storage; electronic automated reporting system use required.

(a) All pawnbrokers shall maintain records documenting accurate descriptions of all property pledged, traded, pawned, exchanged, or sold to the pawnbroker. Such description shall include, if reasonably available, the manufacturer, model, serial number, style, material, kind, color, design, number of stones if jewelry, and all other identifying names, marks, and numbers. The pawnbroker shall assign a unique pawnshop transaction number documenting each transaction.

(b) Each item received, excluding audio and video recordings, shall be tagged with the pawnshop transaction number. The tag bearing the pawnshop transaction number must remain attached to the item until the property is disposed of by sale, trade, or other lawful means.

(c) The pawnbroker shall require all persons pledging, trading, pawning, exchanging, or selling property to show proper identification prior to conducting a pawnshop transaction. Proper identification is defined as a government issued photo identification card such as a driver's license, military identification card, state identification card, or passport.

(d) The pawnbroker shall document the name, address, telephone number, race, sex, height, weight, drivers license number, and date of birth of the person pledging, trading, pawning, exchanging, or selling the property, along with the date and time of transaction, the price paid or amount loaned, and the maturity date of the transaction. This documentation shall be made at the time of the transaction.

(e) The pawnbroker shall photograph, with a digital camera, at the time of each transaction, the person pledging, trading, pawning, exchanging, or selling the property. The photograph shall clearly show a frontal view of the subject's face along with the pawnbroker's ticket transaction number. The pawnbroker shall also clearly photograph the property being pledged, traded, pawned, exchanged, or sold. Digital images shall be labeled and stored in such a manner that they are safe from corruption, readily identifiable, and readily available for review.

(f) The pawnbroker shall obtain from each person pledging, trading, pawning, exchanging, or selling any property, the fingerprint of the right hand index finger, unless such finger is missing, in which event the print of the next finger in existence on the right hand shall be obtained with a notation as to the exact finger printed. The electronic digital fingerprint scanner will be the primary method of entry required. The fingerprint shall be imprinted onto the pawn transaction form in the designated area along with the signature of the person pawning, trading, pledging, exchanging, or selling the property. The fingerprint must be clear and legible. In the event that more than one pawn transaction form is required, a fingerprint and signature should be obtained for each form. Fingerprints and the information required

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[2]State law reference(s)—Pawnbrokers, O.C.G.A. § 44-12-130 et seq.

herein shall be obtained each time such person pledges, trades, pawns, exchanges, or sells any property.

(g) Items of property, that appear to be new, unused, and in their original packaging cannot be accepted by the pawnbroker unless the customer can supply a copy of the original sales receipt, or other proof of purchase from the place of purchase, to the pawnbroker who shall retain the receipt or proof of purchase on file.

(h) The pawnbroker shall store the above records, digital images, and fingerprints for a period of four years and make them available to law enforcement personnel upon request.

(i) Every pawnbroker shall enter each transaction, including all information, digital images and fingerprints required in subsections (a), (d), (e), and (f) above, as it occurs into the electronic automated reporting system via the internet, or upload electronically, via the internet, a batch file of all transactions for each business day, to the administrator of the electronic automated reporting system, immediately at the conclusion of each business day. The administrator of the electronic automated reporting system will electronically transmit all transactions to the Cobb County police department.

Sec. 7.7.8.2. Daily report to police; required format; vendor selection and fees; motor vehicle title pawn records.

(a) Every pawnbroker shall make a daily report, including all information required in subsections 7.7.8.1(a), (d), (e), and (f), in such form as prescribed by the chief of police or his designee, of all pawnshop transactions that occurred during 24 hours ending at 8:00 p.m. on the date of the report. The requirements of subsection 7.7.8.1(i) shall satisfy the pawnbroker's daily reporting requirements.

(b) Pawnshops that incur electronic system failures or other events that would cause partial or complete loss of electronic reporting should notify the Cobb County police department immediately with the reason for the failure. In either event, the pawnbrokers will be required to make records of transactions on paper forms. The records will include all of the information required in section 7.7.8.1. Pawnbrokers shall maintain a minimum three-day supply of these paper forms.

(c) The city shall select the required automated reporting system. A fee for each transaction reported to the electronic automated reporting system will be assessed to each reporting business, by the system administrator. The amount of the fee will not be greater than that listed in the contract between the city and the system administrator, which is in effect at the time of the transaction for which the fee is assessed.

(d) Every pawnbroker dealing exclusively with motor vehicle title pawns shall be excluded from the requirements of subsections 7.7.8.1(b) property tags; 7.7.8.1(e) photographs; 7.7.8.1(g) purchase receipts; 7.7.8.1(i) reporting to the electronic automated reporting system; and subsection 7.7.8.2(a) daily reports.

Sec. 7.7.8.3. Employee permit; qualifications of employees.

(a) No person shall be employed by a pawnshop in any capacity who is not at least 18 years of age, a citizen of the United States or an alien admitted for permanent residence or a person who has otherwise been granted employment authorization by the United States Immigration and Naturalization Service and until such person has been issued a permit by the Cobb County police permit unit, authorizing such person to be employed by a pawnshop. Such permit shall not be issued to any person who has been convicted of a felony, unless ten years have expired from the date of completion of the felony sentence. No permit shall be issued to anyone who has been convicted within five years immediately prior to the filing of the application for employment, of any misdemeanor involving theft, burglary, crimes against property, or controlled substances. For purposes of this section, the term "conviction" shall mean any adjudication of guilt, or plea of guilty or nolo contendere. No permit shall be issued so long as there are outstanding criminal warrants, criminal charges, accusations or indictments for any of the crimes enumerated in this section on which there has been no final disposition or adjudication, and any application involving such pending charges shall be held for final decision until final disposition or adjudication of the charges. No permit for employment in a pawnshop that deals in firearms shall be issued to any convicted felon, unless the applicant's right to possess firearms has been verifiably reinstated in the jurisdiction where the conviction occurred.

(b) For whom required. It is the responsibility of the business licensee and/or designee as stated in subsection 7.7.8.1(b) to ensure that the employees required under this Code section obtain and possess the required work permit prior to working. Failure of an employee to possess a work permit shall be unlawful and will subject the employee and licensee and/or designee to prosecution as provided in this chapter.

(c) Application, issuance, denial. Except as otherwise provided, no person requiring a work permit may be employed by an establishment holding a license under this chapter until such person has been issued a work permit from the Cobb County police department indicating the person is eligible for employment. The work permit is valid for employment at one business only. The permit may be transferred to another business location, without approval, provided that the ownership of the business is the same as the previous location. If the ownership of the business is different, the person with the work permit must apply and be approved by the Cobb County police department in order for the work permit to be valid. All applications required by this section shall be investigated by the police department to include, among other things, an investigation of the criminal record, if any, of the applicant. Any applicant who is denied a work permit shall have the right to appeal such decision to the city business license division. Appeals to the city business license division regarding the denial of a work permit must be filed with the city business license division within 30 days of the denial. In addition, after the hearing, the city business license division may recommend to the city council approval of a work permit to an employee whose application was originally denied upon any conditions deemed appropriate by the city business license division. Denied applicants that fail to file a timely appeal shall not be authorized to reapply for a work permit for 12 months from the date of the denial.

(d) Time limit. All persons subject to the provisions of this section shall, prior to the date of their first work in a licensed establishment, make application for a work permit to the Cobb County police department.

(e) Permit term; prescribing fee. Any permit for employment issued under this section shall expire 12 months from the date of issuance unless earlier suspended or revoked as provided in this section. The police department may prescribe regulations for certifying the eligibility for continued employment without the necessity of the employee's being fingerprinted and may prescribe reasonable fees for certifying the eligibility for employment.

(f) Possession of permits by employees. Employees holding permits issued pursuant to this section shall at all times during their working hours have the permits available for inspection at the premises.

(g) Grounds for suspension, revocation, probation. No permit which has been issued or which may hereafter be issued under this section shall be suspended, revoked or placed on probation except for due cause as defined in this subsection, and after a hearing and upon written notice to the holder of such permit of the time, place and purpose of such hearing and a statement of the charge or charges upon which such hearing shall be held. A minimum of three days' notice shall be provided to the applicant or permit holder. "Due cause" for the suspension or revocation of the permit shall consist of the omission or falsification of any material in any application; or for any reason which would authorize the refusal of the issuance of a permit; or any violation of this chapter. All hearings shall be before the city business license division. After the hearing if the city business license division determines due cause exists, the city business license division may recommend to the city council to suspend, revoke or place on probation for a maximum of 12 months, with or without conditions, the permit. The city council shall, within 60 days of the city business license division's recommendation, review a summary of the appeal or show cause hearing before the city business license division wherein the work permit was considered for issuance, suspension or revocation (the summary shall be prepared by the business license division manager) and the city council after such review will either concur with recommendations of the city business license division or choose to place the matter down for a hearing. Should the city council place the matter down for hearing the city council, after such hearing, may issue or deny the work permit, suspend or revoke the work permit or place the employee on probation. After the city council meeting, the representative of the business license office will notify the Cobb County police department permits unit of the decision. If the permit was approved for issuance by the city council, the Cobb County police department permits unit will notify the applicant that the permit has been approved. The employee whose work permit was not issued or whose work permit was denied, probated, suspended or revoked may appeal the city council. The decision of the city council may be appealed by filing a petition for writ of certiorari to the Superior Court of Cobb County within 30 days of the decision of the city council.

(h) Notwithstanding any of the provisions in this section, any permits issued through administrative error or an error in the completion of a background investigation may be terminated by the director of public safety or his/her designee.

Sec. 7.7.8.4. Hours of operation.

No licensee under this division shall operate his place of business except during the hours of 7:00 a.m. and 8:00 p.m.

Sec. 7.7.8.5. Dealing with minors.

It shall be unlawful for any pawnbroker or his agents or employees to receive in pawn, pledge or sale goods of any character or description from a minor. For the purposes of this section a minor is any individual 17 years of age or under.

Sec. 7.7.8.6. Sale of knives, blackjacks or other weapons.

It shall be unlawful for any licensee under this division to sell, offer for sale or expose for sale any kind of metal knacks, dirks, sword-in-canes, spears, Bowie knives or switchblade knives, or any blackjacks or similar weapons. Any licensee or employee thereof violating this section shall be deemed guilty of an offense.

All personal property acquired by the licensee, whether by pawn, purchase, barter, trade or otherwise, shall be held and maintained by the licensee at the licensed location, or at such other impound location as may have been previously approved by the Cobb County police department in writing, for a minimum of 30 days prior to disposal of same by the licensee, except in instances where the property is redeemed as per a pawn transaction contract. The Cobb County police department has the authority to place property that is the subject of police investigation on "police hold." In that event, the Cobb County police department shall notify the licensee of the need for a police hold and identify all property subject to the police hold. Upon notification, it shall be the responsibility of the licensee to maintain the subject property until such time as the property is released from police hold status, confiscated as evidence or returned to its rightful owner.

Sec. 7.7.8.7. Violations; exemptions.

The failure of any licensee or employee thereof to comply with the provisions of this chapter shall constitute an offense, punishable as allowed by law. Transactions involving the purchase of property from licensed wholesale or distributor businesses, manufacturers, manufacturers' representatives, or other pawnbrokers are exempt from the requirements of this section.

Sec. 7.7.8.8. License Application.

(a) *Required.* All persons, before beginning the business of operating a pawnshop, shall first file an application with the director of the business license office to obtain a license to conduct such a business.

(b) *Contents.* All persons 25 years of age or older desiring to obtain a license required under this division shall make written application to the business license office for such privilege, and shall supply such information as may be required by the supervisor of the business license office or the police department, and such application shall be sworn to by the applicant or agent thereof.

(c) *Failure to furnish required information.* All applicants shall furnish all data, information and records requested of them, and failure to furnish such data, information and records within 30 days from the date of such request shall automatically serve to dismiss, with prejudice, the application. An applicant, by filing an application, agrees to produce for oral interrogation any persons who are considered as being important in the ascertainment of the facts relative to such license, as may be requested by the supervisor of the business license office or his duly authorized representative, such as the police department or the city attorney. The failure to produce such persons within 30 days after being requested to do so shall result in the automatic dismissal of such application.

(d) *Operation in conjunction with establishment dealing in secondhand goods.* No pawnshop shall be operated at the same location or in the same premises with the sale, dealing in, exchange or handling of other than new goods, wares or merchandise. No license for the sale, dealing in, exchange or handling of other than new goods, wares or merchandise shall be issued for a location licensed for a pawnshop.

(e) *Notification of change in information.* Licensees shall immediately notify the city in writing through the supervisor of the business license division of any change in any information, material or data furnished in connection with an application for a license, or of any material change in the type of business, ownership or qualifications of the applicant or employees subsequent to license issuance.

Sec. 7.7.8.9. Citizenship, residence requirements.

(a) No license shall be granted pursuant to this division to any applicant who is not a United States citizen or legal permanent resident, or a qualified alien or non-immigrant under the Federal Immigration and Nationalization Act, and who is lawfully present in the United States.

(b) Where the applicant is a corporation, the majority stockholder must meet the residence requirements set out in subsection (a) of this section, and the license shall be issued to the corporation and the majority stockholder.

(c) If the applicant is a partnership, the same requirements pertaining to corporations set out in subsection (b) of this section shall apply.

Sec. 7.7.8.10. Disqualification of applicants with prior convictions.

(a) No license shall be issued under this division to any person, partnership or corporation for pecuniary gain where any individual having an interest either as owner, partner, principal stockholder, or licensee, such interest being direct or indirect, beneficial or absolute, or his spouse, shall have been convicted of a felony of any state or of the United States, unless ten years have expired from the date of completion of the felony sentence. No license shall be issued to anyone who has been convicted within five years immediately prior to the filing of the application, of any misdemeanor of any state or of the United States or any municipal or city ordinance which would have any effect on the applicant's ability to properly conduct such a business, except traffic offenses. For purposes of this section, the term "conviction" shall include an adjudication of guilt or plea of guilty, plea of nolo contendere or forfeiture of a bond when charged with a crime. Where the violation is for a misdemeanor, forfeiture of bond, or violation of a municipal or city ordinance, or where there is a plea of nolo contendere, the city business license division may, after investigation, waive such violation as a disqualification. No license shall be issued so long as there are outstanding criminal warrants, criminal charges, accusations or indictments for any of the crimes enumerated in this section on which there has been no final disposition or adjudication, and any application involving such pending charges shall be held for final decision until final disposition or adjudication of the charges. No license to operate a pawnshop that deals in firearms shall be issued to any convicted felon, unless the applicant's right to possess firearms has been verifiably reinstated in the jurisdiction where the conviction occurred.

(b) The city council, on appeal, may waive any conviction as a disqualification, if it finds that it would have no material affect upon the applicant's ability to properly conduct its business if such license were granted.

Sec. 7.7.8.11. Investigation and report.

All applications for a license for a pawnshop shall be investigated, and the police department shall report its recommendations to the supervisor of the business license office, who shall keep a copy thereof on file.

Sec. 7.7.8.12. Time limit for obtaining license after approval; issuance.

(a) All pawnshop licenses must be obtained and fees paid not later than two weeks from the date of the approval of the application by the supervisor of the business license office, and, if not so obtained, the approval granted by the supervisor of the business license office shall be void.

(b) When a license has been approved and the applicant has deposited with the business license office the required fee, the license shall be issued.

Sec. 7.7.8.13. Display of license number.

Each pawnshop licensee shall have printed on the front window of the licensed premises the inscription "Mableton Pawnshop License Number _____," in uniform letters not less than three inches in height.

Sec. 7.7.8.14. Time limit for commencement of business; forfeiture for nonuse.

(a) All holders of licenses under this division must, within three months after the issuance of the license, open for business the establishment referred to in the license, unless such period is extended by the supervisor of the business license office. Failure to open the licensed establishment as referred to in this subsection within the three-month period shall serve as an automatic forfeiture and cancellation of the unused license, and no refund of license fees shall be made to the license holder.

(b) Any holder of a license under this division who shall begin the operation of the business as authorized in the license, but who shall for a period of three consecutive months thereafter cease to operate the business as authorized in the license, shall upon completion of the three-month period automatically forfeit his license, which license shall, by virtue of such failure to operate, be canceled without the necessity for any further action of the supervisor of the business license office.

Sec. 7.7.8.15. Transfer.

No license granted to a pawnshop shall be transferable except upon application to the supervisor of the business license office in the same form, manner and subject to the same requirements with respect to the transferee as are applicable in an original application; provided, however, any such license may be transferred only to another person, firm, partnership or corporation doing the same business and at the same place as the person, firm, partnership or corporation to whom the license was originally issued. When permission for transfer has been granted, the original licensee or transferee shall cause the license to be delivered to the supervisor of the business license office, who shall record such transfer, and the transferee shall pay a fee therefor as a condition precedent to engaging in operations under the license. The fee for such transfer shall be kept on file as part of the schedule of fees in the business license office.

DIVISION 9. POOL ROOMS[3]

Sec. 7.7.9.1. Applicability of division.

The rules and regulations set forth in this division shall govern the operation of all pool rooms and billiard halls in the unincorporated area of the city.

Sec. 7.7.9.2. Exemptions from division.

This division shall not apply to billiard tables or billiard rooms operated by private industrial concerns, Young Men's Christian Associations, religious orders, charitable institutions, state, city or city institutions, fraternal orders or bona fide clubs using such tables for members or employees only.

Sec. 7.7.9.3. Enforcement of division.

It shall be the duty of the sheriff, police or other constituted authorities to inspect all public billiard rooms in the city for the purpose of ascertaining whether or not the provisions of this division are being observed; and it shall be his and their duty to report all violations promptly to the appropriate prosecuting attorney of the city and furnish him with such information and assistance as is necessary for the prosecution of such violations. Whenever the state shall revoke any permit or license held by the licensee, the license shall thereupon be automatically revoked without any action of the city council.

Sec. 7.7.9.4. Sanitary and toilet facilities.

The place of business of a billiard room shall have restrooms for males and females. Such restrooms must be kept clean, and the premises shall be in compliance with all applicable rules and regulations of the health department or other departments of the city.

Sec. 7.7.9.5. Health certificate required for establishments serving food.

If food is served at a billiard room, the applicant shall have a valid health certificate issued by the city health department before any license can be issued.

Sec. 7.7.9.6. Hours of operation.

Licensees for the operation of a billiard room shall be permitted to engage in such activities between the hours of 6:00 a.m. and 2:00 a.m.

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[3]State law reference(s)—Authority to license, tax and regulate billiard rooms, O.C.G.A. § 43-8-2.

Sec. 7.7.9.7. License Application.

All persons 18 years of age or older desiring to obtain a license required for the operation of a pool room shall make written application at the business license office. Such application shall state the name and address of the applicant; the place where the proposed business is to be located; the 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 stockholders; and such other information as may be required by the director of the business license office or the police department, and be sworn to by the applicant or agent thereof.

Sec. 7.7.9.8. Investigation and report.

(a) Any applicants for a license under this division who intends to sell alcoholic beverages for consumption on the premises, sell alcoholic beverages by the package, or allows alcoholic beverages to be consumed on the premises, shall be investigated by the Cobb County police department, and a report made to the business license office. This requirement shall be waived if a current investigation report is on file. For purposes of this section; the term "current" is defined as being within the past six months.

(b) The police reports shall be sent to the business license office to be placed in the applicant's file.

Sec. 7.7.9.9. Grounds for denial.

(a) *Disqualification of applicants with prior convictions.* In the event the applicant for a license intends to sell alcoholic beverages for consumption on the premises, sell alcoholic beverages by the package, or allows alcoholic beverages to be consumed on the premises, no license shall be issued to any person, partnership or corporation, or any individual having an interest, directly or indirectly, either as owner, partner or principal stockholder, who shall have been convicted or shall have taken a plea or nolo contendere, within the past five years immediately prior to filing of the application, for any felony of any state, or of the United States. For purposes of this subsection, the term "conviction" shall include an adjudication of guilt or plea of guilty or nolo contendere, or the forfeiture of a bond when charged with a crime.

(b) *Other grounds.* No license shall be issued where there is evidence that the granting of such license will have an adverse effect on the community.

Sec. 7.7.9.10. Revocation of license for certain violations.

(a) Any licensee who intends to sell alcoholic beverages for consumption on the premises, sell alcoholic beverages by the package, or allows alcoholic beverages to be consumed on the premises shall be subject to this section. Commission of any of the following acts by a licensee, agent or employee of a billiard room shall be a violation of law and shall be grounds for revocation or suspension of a billiard license:

   (1) Permitting the use of any drug in any form in or around a place of business.

   (2) Permitting any gambling or betting in the place of business or on the premises.

(3) Permitting illegal conduct, including, but not limited to, public drunkenness or disorderly conduct among patrons or employees after warning by police or city official.

(4) If the licensee receives notice from police or city officials of any violations of any ordinance regulating its business without correction thereof.

(5) In the event of a conviction for violating any federal, state, or local laws by the licensee or his agents or servants on the premises.

(b) It shall be unlawful for any person under the age of 18 years to pay billiards in, or for any other purpose to enter or remain in, a billiard room during hours and times when alcoholic beverages are sold, consumed or dispensed therein. This subsection shall not apply to persons under 18 years of age who are accompanied by a parent or guardian or who possess a written permit from a parent or guardian, which permit is witnessed by a notary public with seal. Any person desiring admission thereto during hours and times when alcoholic beverages are sold, consumed or dispensed, who is or appears to be under the age of 21 years, shall produce satisfactory identification and age verification or certify his age in writing or produce a written permit before he shall be allowed entry.

Sec. 7.7.9.11. Transfer.

A license for the operation of a pool room shall not be transferable except by application to the business license office in the same form and manner as an original application.

DIVISION 10. HEALTH SPAS

Sec. 7.7.10.1. Enforcement of division; penalty.

(a) *Penalty.* Any person violating any of the provisions of this division governing health spas shall be punished as allowed by law.

(b) *Revocation or suspension of license.* Any person violating any of the provisions of this division governing health spas subjects any license under this division to revocation or suspension as provided in this division.

(c) *Abatement of violations as nuisance.* Every violation of the terms of this division governing health spas shall be termed a nuisance and a continuing nuisance so long as such violation may be continued, and such violation may be subject to abatement as a nuisance as provided by laws of this state.

(d) *Injunction.* The violation of any provisions of this division as they pertain to health spas may be enjoined by proceedings in courts of competent jurisdiction in this state. Such actions may be maintained notwithstanding that other adequate remedies at law exist.

(e) *Remedies cumulative.* Each of the remedies set out in subsections (a) through (d) of this section is cumulative and is not to be construed as curtailing the right of any resident, property owner or other person from bringing any proper action for enforcement of this division as it pertains to health spas.

Sec. 7.7.10.2. Inspections.

The city, through its employees and agents of the city business license office, shall have the right to inspect the place of business and records of any licensee under this division during the hours authorized under this division for conduct of business to ensure compliance with this division.

Sec. 7.7.10.3. List of employees to be filed with city.

It shall be the duty of all licensees under this division to file with the city, through its business license division and/or police department, the names of all employees required to have a work permit and designated managers, their home addresses, home telephone numbers, places of employment, date of birth, their duties and services performed, a copy of their Georgia State Massage Therapy License (when applicable), and any other descriptive information that the business license division or police department may require in its investigation of the establishment and its employees, within 72 hours of employment. All changes in information shall be filed in writing, via email or via online portal within 72 hours of the change.

Sec. 7.7.10.4. Record of treatments.

It shall be the duty of any person granted a license under this division to maintain correct and accurate records at the place of business of the names and addresses of the persons receiving treatment at such establishment, the type of treatment administered, and the name of the person of the establishment administering such treatment. Records shall also be maintained as required under section 7.7.10.5. Such records shall be subject to inspection at any time by any member of the business license office.

Sec. 7.7.10.5. Hours and place of operation.

The owner of the health spa shall provide in writing to the city Business License Division the hours of operation of the health spa. No licensee under this division shall operate a health spa except during the hours of 6:00 a.m. and 10:00 p.m. The licensee or a designated manager shall be on the premises at all hours that the establishment is engaged in or open for business. No employee shall remain in the establishment between the hours of midnight and 5:00 a.m.

Sec. 7.7.10.6. Prohibited contact.

No independent contractor or any employees, apprentices or trainees of the health spa business, shall manipulate, fondle or handle the sexual organs or anus of any person.

Sec. 7.7.10.7. License Application.

No person shall engage in the business, trade, or profession or practice the business, trade or profession of a health spa unless such person shall, before engaging in such business, trade or profession, file an application for a license with the city as set forth in this division 8 of this chapter. Such application shall set forth or show compliance with the following:

(1) Name and address of the applicant.

(2) Name and address of any person having previously employed the applicant for a period of two years or longer in a health spa or business.

(3) Qualifications, plainly stated, with all documentary exhibits annexed.

Sec. 7.7.10.8. Qualifications and investigation of applicant(s), licensee, and employees.

(a) The applicant and licensee must be a U.S. citizen or a legal resident alien prior to making application.

(b) The licensee is required to be a resident of the State of Georgia and a Georgia State Licensed Massage Therapist.

(c) Where the applicant for a license under this chapter is a corporation, any license for the operation of a health spa shall be applied for by and shall be issued to the corporation and either the majority shareholder thereof, or a person deemed the licensee by the corporation.

(d) Where the applicant for a license under this chapter is a partnership, any license for the operation of a health spa shall be applied for by and shall be issued to the partnership and either the managing general partner thereof, or a person deemed the licensee by the partnership.

(e) Where the applicant for a license under this chapter is a sole proprietor, license for the operation of a health spa shall be applied for by and shall be issued to the sole proprietor if he is working full-time in a managing capacity on the premises, and if not, then the sole proprietor and a person deemed the licensee by the sole proprietor.

(f) The Cobb County police department shall investigate the background of both the applicant(s) and the licensee, and their spouses, and employees and independent contractors, except for Georgia state licensed massage therapists, of the establishment and report its recommendation to the city business license division manager for a health spa license.

Sec. 7.7.10.9. Location and premises requirements.

(a) An applicant for a health spa license under this subdivision, prior to making application for a license, must have a location in the city where the health spa is a permitted use in the underlying zoning district.

(b) The establishment shall be subject to inspection at any time during business hours by the business license division manager or his or her designee and/or by the police department to ensure compliance with this article.

(c) All employees and other persons on the premises, with the exception of customers receiving a massage from a state licensed massage therapist, shall be completely clothed at all times when administering a massage. For the purposes of this article, the term "completely clothed" means 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 inches above the knee. All clothes worn in compliance with this article shall be entirely non-transparent.

(d) Ordinary beds or mattresses shall not be permitted in any health spa establishment.

(e) No licensee under this division shall operate a health spa except during the hours of 6:00 a.m. and 10:00 p.m.

(f) The licensee or a designated manager shall be on the premises at all hours that the establishment is engaged in or open for business.

(g) A sign or lettering shall be posted at the main entrance identifying the business as a health spa. Said sign shall have lettering a minimum of five inches in height and shall identify the premises as a health spa business. The sign and the front of the business shall not be illuminated by strobe or flashing lights.

(h) The hours of operation must be posted on the front door or window, clearly visible from the outside. Any massage or services begun before 10:00 p.m. must conclude at or before 10:00 p.m. Patrons of the health spa may not be permitted to remain on the premises outside these hours of operation.

(i) A list of services available and the cost of such services font size 12 or larger letters shall be posted in a conspicuous public place within the premises. Only those services listed may be performed. Nothing in this subsection shall preclude the operator from posting additional signs in other languages as long as at least one sign in English is posted pursuant to this subsection.

(j) No person shall enter, be in or remain in any part of the health spa while in possession of, consuming, using, or under the influence of any alcoholic beverage or controlled substance. The operators(s) and on-duty manager shall be responsible to ensure that no such person shall enter or remain upon the premises.

(k) All front, reception, hallway or front exterior doors (except back or exterior doors used solely for employee entrance to and exit from the massage business) shall be unlocked during business hours. No massage may be given within any cubicle, room, booth or any area within a massage business which is fitted with a lock of any kind (such as a locking door knob, padlock, dead bolt, sliding bar or similar device), unless the only door is an exterior door. Entry doors to any room shall not be obstructed by any means.

Sec. 7.7.10.10. Grounds for denial, suspension or revocation.

In addition to the causes for denial, suspension or revocation of a license specified in section 7.7.10.45(c), due cause for denial, suspension or revocation of a license for a massage practitioner or health spa shall include the following:

(1) The applicant or licensee is or has been guilty of fraud.

(2) The applicant or licensee is or has been engaged in business under a false or assumed name, or is impersonating another person of a like or different name.

(3) The applicant or licensee is addicted to the habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate such person to the extent that he is unable to perform his professional duties.

(4) No license for a health spa shall be issued to any person where any individual having an interest either as owner, partner, principal shareholder, or license, directly or indirectly,

beneficial or absolute, shall have been convicted within ten years immediately prior to the consideration of a health spa license of criminal attempt or conspiracy to violate any laws relating to racketeer-influenced and corrupt organizations as defined in the Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act (O.C.G.A. § 16-14-1 et seq.), crimes against the person as defined in O.C.G.A. tit. 16, ch. 5 (O.C.G.A. § 16-5-1 et seq.), sexual offenses as defined in O.C.G.A. tit. 16, ch. 6 (O.C.G.A. § 16-6-1 et seq.), gambling offenses as defined in O.C.G.A. tit. 16, ch. 12, art. 2 (O.C.G.A. § 16-12-20 et seq.), obscenity and related offenses as defined in O.C.G.A. tit. 16, ch. 12, art. 3 (O.C.G.A. § 16-12-80 et seq.), or contributing to the delinquency of a minor, all as defined by state law as it presently exists or may be hereafter amended, or has been convicted of any felony under the laws of this state or any other state or of the federal government.

(5) Failure of the applicant or licensee to have or maintain initial qualifications for obtaining the license.

(6) The applicant, licensee, shareholder, partner, agent, employee or independent contractor has employed any person who is not a licensed massage practitioner and allowing or permitting such person to administer massage in an establishment except as may be allowed by state law.

(7) The premises in which the business is located are in violation of any of the federal, state, city or municipal laws designed for the health, protection and safety of the occupants.

(8) Failure of the applicant or licensee to actively supervise and monitor the conduct of the employees, customers and others on the premises in order to protect the health, safety and well-being of the general public and the customers.

(9) The violation of any laws or ordinances regulating such businesses or for the violation of any state or federal law.

(10) Any change in the area where such business is located, which does not conform with the zoning existing at the new location.

(11) Any reason which would authorize the city council to refuse the issuance of a license.

(12) Any violation of this chapter.

Sec. 7.7.10.11. Reapplication after denial or revocation.

Any applicant or licensee under this division who has his license application denied or his license revoked shall be disqualified from reapplying for such a license for 12 months immediately following the revocation or denial.

Sec. 7.7.10.12. Change of location of business.

No licensee under this division shall change the location of the business without applying for and receiving a new license for such location from the business license office.

Sec. 7.7.10.13. Transfer.

No license issued under this division shall be transferable.

Sec. 7.7.10.14. Employment of persons with prior convictions.

(a) No licensee shall employ, for compensation or otherwise, in any health spa, any employee requiring a work permit as defined in section 7.7.10.299 who meet any of the following:

- Any person who is not a citizen of the United States; is not an alien admitted for permanent residence, or does not otherwise possess employment authorization from the United States Citizenship and Immigration Services;
- Any person who has been convicted within five years immediately prior to the application for employment of the following:
  - Criminal attempt or conspiracy to violate any laws relating to racketeer-influenced and corrupt organizations as defined in the Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act (O.C.G.A. § 16-14-1 et seq.), crimes against the person as defined in O.C.G.A. tit. 16, ch. 5 (O.C.G.A. § 16-5-1 et seq.), sexual offenses as defined in O.C.G.A. tit. 16, ch. 6 (O.C.G.A. § 16-6-1 et seq.), gambling offenses as defined in O.C.G.A. tit. 16, ch. 12, art. 2 (O.C.G.A. § 16-12-20 et seq.), obscenity and related offenses as defined in O.C.G.A. tit. 16, ch. 12, art. 3 (O.C.G.A. § 16-12-80 et seq.), or contributing to the delinquency of a minor, all as defined by state law as it presently exists or may be hereafter amended;
  - Any felony; or
  - Performs any immoral or indecent act to or in the presence of a person with the intent to arouse or satisfy the sexual desires of either the employee or another person on the premises.
- Any person on parole, probation, or convicted and released from incarceration, for any sexually related crimes, including but not limited to child molestation, aggravated child molestation, or child sexual abuse, as defined in O.C.G.A. 16-6-4 or individuals required to register as a sex offender pursuant to O.C.G.A. 42-1-12.

(b) The omission or falsification of any material information in an application for a health spa work permit shall be a violation of this chapter and grounds for the denial, suspension or revocation of any such work permit; however, any employees excluded from employment under the terms of the section shall have the right to appeal such exclusion to the city business license division.

Sec. 7.7.10.15. Work permits.

(a) *For whom required*. It is the responsibility of the licensee and designee to ensure that the employees required under this Code section obtain and possess the required work permit issued by Cobb County Police Department Regulatory Services Unit prior to working. Employees for the purpose of this section shall include independent contractors. Failure of an employee to possess a work permit as required by this section, shall be unlawful and will subject the employee and licensee to prosecution as provided in this chapter and shall be grounds for suspension or revocation of the license. A permit to work in any of the following establishments shall be required of the following:

(1) All employees of the health spa who are not State of Georgia Licensed Massage Therapists;

(2) All independent contractors of the health spa who do not hold a State License.

(b) *Permit term.* Any work permit issued under this section shall expire 12 months from the date of issuance unless suspended or revoked as provided in this section.

(c) *Possession of permit by employees.* Employees holding permits issued pursuant to this section shall at all times during their working hours have the permits available for inspection.

Sec. 7.7.10.16. Violations of this chapter.

The violation of any of the provisions of this chapter by the holder of a license under this chapter or the licensee's agents or employees, whether compensated or not, shall subject the holder of such license to revocation, suspension or probation of the license.

Sec. 7.7.10.17. Hearings and appeals.

(a) *Hearing.*

(1) *Due cause hearing*. The city business license division shall hear evidence of the circumstances of the possible due cause and after said hearing may recommend that the health spa license to be suspended for a maximum of 12 months or revoked. The city business license division, and the city council, if applicable, may consider mitigating and aggravating circumstances in considering sanctions, including but not limited to, implementation and components of written policies, that employees have or do not have health spa work permits, components of a training program, number of violations of business, number of violations of licensee, number of stores, length of time in business, compliance check was due to a complaint, identification was not checked, and any other facts deemed relative by the fact finder.

(2) *Affirmation by city council*. If the city business license division recommends suspension or revocation and the owner of the health spa license, the licensee or both should fail to appeal such suspension or revocation recommendation, then the suspension or revocation shall become effective upon affirmation by the city council of such suspension or revocation recommendation and the owner of the health spa license and the licensee shall be deemed to have acquiesced to such suspension or revocation. The city council shall, within 60 days of the city business license division action, review a summary of the hearing before the city business license division wherein the health spa license was considered for suspension or revocation (the summary shall be prepared by the business license division manager) and the city council after such review may place the matter down for a hearing or affirm or alter the decision of the city business license division. Should the city council place the matter down for hearing, the city council may suspend, for a maximum of 12 months, or revoke the health spa license.

(b) *Appeal.*

(1) In the event the city business license division recommends that the health spa license be suspended or revoked, the owner of the health spa license, the licensee or both may file an appeal with the business license division manager of such recommendation within ten

days to the city council. The city council shall conduct a de novo review and any additional evidence may be presented at the appeal hearing.

(2) If a hearing occurred before the city council, such decision is final unless appeal is made to the superior court of the city. Any aggrieved party may appeal a decision of the city council by filing a petition for writ of certiorari to the superior court within 30 days of the decision of the city council.

(3) In all hearings held pursuant to this section, the proceedings shall be as informal as compatible with justice, the hearing shall be expedited and normally shall not exceed 30 minutes in length, and the following procedures shall prevail:

a. The charges and specifications against the licensee and the response as filed by the licensee shall be read.

b. The city representative shall present evidence, and then the licensee shall present his evidence, with opportunity for each party to present rebuttal evidence, examination and cross examination of witnesses, and interrogation by the city council. No evidence shall be presented which is not relevant to the charges.

DIVISION 11. SEXUALLY ORIENTED BUSINESSES

Sec. 7.6.11.1. Purpose; findings and rationale.

(a) *Purpose.* It is the purpose of this division 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 division 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 division 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 division 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 publicly 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

(i) 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 (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" Crime & Delinquency (2012) (Louisville, KY); Metropolis, Illinois—2011-12; Manatee County, Florida—2007; Hillsborough County, Florida—2006; Clarksville, Indiana—2009, 2013-2019; El Paso, Texas—2008; Memphis, Tennessee—2006; New Albany, Indiana—2009; Louisville, Kentucky—2004; Fulton County, GA—2001; Chattanooga, Tennessee—1999-2003; Jackson County, Missouri—2008; Ft. Worth, Texas—2004; Kennedale, Texas—2005; Greensboro, North Carolina—2003; Dallas, Texas—1997; Houston, Texas—1997, 1983; Phoenix, Arizona—1995-98, 1979; Tucson, Arizona—1990; Spokane, Washington—2001; St. Cloud, Minnesota—1994; Austin, Texas—1986; Indianapolis, Indiana—1984; Garden Grove, California—1991; Los Angeles, California—1977; Whittier, California—1978; Oklahoma City, Oklahoma—1986; New York, New York Times Square—1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas—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; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; Indianapolis/Marion County Board of Zoning Appeals Documents; Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA); DeKalb County Testimony and Reports—2014; and Strip Club-Trafficking Documents, 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, human trafficking, 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) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

(3) Each of the foregoing negative secondary effects constitutes a harm which the county has a substantial government interest in preventing and/or abating. 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 chapter are reasonably believed to be relevant to said secondary effects.

(ii) Additionally:

(1) The City is becoming an increasingly attractive place for the location of commercial enterprises and of residences for families, and the council is committed to adopting ordinances designed to protect the quality of life for its constituents.

(2) The City Council desires to establish policies that provide the maximum protection of the general welfare, health, morals, and safety of the residents of the City.

(3) The governing authority of each municipal corporation is authorized to enact ordinances which have the effect of restricting the operation of adult bookstores and video stores to areas zoned for commercial or industrial purposes, provided in O.C.G.A. § 36-60-3.

(4) The state supreme court, in Chambers d/b/a Neon Cowboy v. Peach County, Georgia, 266 Ga. 318 (1996), held that local governments may adopt ordinances designed to combat the undesirable secondary effects of sexually explicit businesses, and further held that a governing authority seeking to regulate adult establishments must have evidence of a relationship between the proposed regulation and the undesirable secondary effects it seeks to control.

(5) The state supreme court further held in the same opinion that in passing its regulation, a local government may rely on the experience of other counties and municipalities to demonstrate such a relationship.

(6) The United States Supreme Court, in City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), held that a local government may rely on the experience of other cities in enacting legislation to regulate sexually oriented business.

(7) Among the undesirable community conditions identified with live nude entertainment at which alcohol is served or consumed are depression of property values in the surrounding neighborhood, increased expenditure for the allocation of law enforcement personnel to preserve law and order, increased burden on the judicial system as a consequence of the criminal behavior, and acceleration of community blight.

(8) The City Council further finds it has an important governmental interest in reducing crime and protecting surrounding properties from adverse impacts, which interest is unrelated to the suppression of speech.

(9) It is the intent of the City Council to enact an ordinance, narrowly tailored, sufficient to combat the undesirable secondary effects of sexually oriented businesses, including the serving and consumption of alcoholic beverages at sexually oriented businesses.

(10) The City Council desires to regulate the sexually oriented businesses within the City limits. Notwithstanding, this article is not to be construed as an endorsement from the City of these establishments. The City Council understands that sexually oriented businesses are actually protected under the free speech clause of the First Amendment of the Constitution of the United States for their role in communicating "erotic speech." The courts allow communities to regulate speech, not based on the content of the speech, but in time, place, and manner in which it is presented.

(11) It is well established and has been the experience of other communities in the state and throughout the United States that adult entertainment, which includes public nudity, has been associated with and may encourage disorderly conduct, prostitution and sexual assault. This section advances the substantial government interest in promoting and protecting public health, safety, and general welfare, maintaining law

and order and prohibiting public nudity. The section is narrowly constructed to protect the First Amendment rights of citizens of the City while furthering the substantial governmental interest of combating the secondary effects of public nudity and sexually oriented businesses from areas and uses of the community that are incompatible. Areas and uses that are to be protected from sexually oriented businesses include, but are not limited to, residential, churches, day care centers, libraries, recreational facilities, and schools.

(12) Based on the experiences of other counties and municipalities, the City Council takes note of the patent conditions and secondary effects attendant to the commercial exploitation of human sexuality, which do not vary greatly among the similar communities within our country.

(13) The City Council further finds that public nudity (either partial or total) under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages in establishments offering live nude entertainment or "adult entertainment," whether such alcoholic beverages are sold on the premises or not, begets criminal behavior and tends to create undesirable community conditions. In the same manner, establishments offering cinematographic or videographic adult entertainment have the same deleterious effects on the community. Among the acts of criminal behavior found to be associated with the commercial combination of live nudity and alcohol consumption or sale, live commercial nudity in general, and cinematographic or videographic adult entertainment are disorderly conduct, prostitution, public solicitation, public indecency, fighting, battery, assaults, drug use and drug trafficking. Daytona Grand, Inc. v. City of Daytona Beach, 490 F.3d 860 (11th Cir. 2007); 5634 East Hillsborough Ave., Inc. v. Hillsborough County, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), aff'd, 2008 WL 4276370 (11th Cir. Sept. 18, 2008) (per curiam). See also California v. LaRue, 409 U.S. 109 (1972); N.Y. State Liquor Authority v. Bellanca, 452 U.S. 714 (1981).

(14) Among the undesirable community conditions identified in other communities with the commercial combination of live nudity and alcohol consumption or sale, commercial nudity in general, and cinematographic or videographic adult entertainment are depression of property values and acceleration of community blight in the surrounding neighborhood, increased allocation of and expenditure for law enforcement personnel to preserve law and order, and increased burden on the judicial system as a consequence of the criminal behavior described in this article. The City Council finds it is reasonable to believe that some or all of these undesirable community conditions are occurring, and will continue to occur in the City.

(15) The City Council further finds that other forms of adult entertainment including, but not limited to, adult bookstores, adult novelty shops, adult video stores, peep shows, and adult theaters have an adverse effect upon the quality of life in surrounding communities.

(16) The City Council further finds that the negative secondary effects of adult establishments upon the City are similar whether the adult establishment features live nude dancing or sells books/videotapes depicting sexual activities. H & A Land Corp.

v. City of Kennedale, 480 F.3d 336 (5th Cir. 2007); High Five Investments, LLC v. Floyd County, No. 4:06-CV-0190-HLM (N.D. Ga. Mar. 14, 2008).

(17) Therefore, the City Council finds that it is in the best interests of the health, welfare, safety and morals of the community and the preservation of its businesses, neighborhoods, and of churches, schools, residential areas, public parks and children's day care facilities to prevent or reduce the adverse impacts of adult establishments by restricting hours of operation, prohibiting alcohol sale or consumption, and restricting the distance from other adult establishments and restricting the distance from residential areas, schools, public parks, churches, and children's day care facilities.

(18) The City Council finds that these regulations promote the public welfare by furthering legitimate public and governmental interests including, but not limited to, reducing criminal activity and protecting against or eliminating undesirable activities impacting adversely the community conditions and further finds that such will not infringe upon the protected Constitutional rights of freedom of speech or expression.

(c) The city hereby 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. 7.7.11.2. Definitions.

For purposes of this division, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

Adult arcade means a commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet, wherein image-producing devices are regularly maintained, and where a fee is charged to access the booths or rooms or to view the images displayed on the image-producing devices.

Adult bookstore means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

(1) At least 25 percent of the establishment's displayed merchandise consists of said items; or

(2) At least 25 percent of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items; or

(3) The establishment maintains at least 25 percent of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or

(4) The establishment maintains at least 500 square feet of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or

(5) The establishment regularly offers for sale or rental at least 500 of said items; or

(6) The establishment regularly makes said items available for sale or rental and holds itself out, in any medium, as an establishment that caters to adult sexual interests.

Adult cabaret means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly offers live semi-nude conduct. No establishment shall avoid classification as an adult cabaret by offering nude conduct.

Adult motion picture theater means a commercial establishment to which the public is permitted or invited that maintains viewing rooms that are 100 square feet or larger wherein films or videos characterized by their emphasis upon "specified sexual activities" or "specified anatomical areas" are regularly shown.

Characterized by means describing the essential character or quality of an item. As applied in this division, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Church means a place where persons regularly assemble for religious worship.

County means Cobb County, Georgia.

Director means the director of the city's Community Development department or his or her designee.

Employ, employee, and employment describe and pertain to any person who works or engages in activity for pay on the premises of a sexually oriented business, on a full time, part time, temporary, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Floor space means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

Hearing officer means an attorney, not an employee of the city, who is licensed to practice law in Georgia, and retained to serve as an independent tribunal to conduct hearings under this division.

Hospital means a building or portion thereof designed and used for therapeutic treatment of bed patients who are physically or mentally ill.

Influential interest means the actual power to control or influence the operation, management, or policies of the sexually oriented business or legal entity which operates the sexually oriented business. An individual is deemed to have an "influential interest" if he or she (1) is the on-site general manager of the sexually oriented business, (2) owns a financial interest of 30 percent or more of a business or of any class of voting securities of a business, or (3) holds an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an employee, it shall mean the person in whose name the sexually oriented business employee license has been issued.

Nudity or nude conduct means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this division, a "fully opaque covering" must be non-flesh colored, shall not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex), and shall not simulate the appearance of the anatomical area that it covers.

Operate means to cause to function or to put or keep in a state of doing business.

Operator means any person on the premises of a sexually oriented business who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

Package store means a business establishment whose primary business activity is the retail sale of alcoholic beverages by the package.

Park means any lands or facility owned, operated, controlled or managed by any city, city or federal government or any governmental entity in and upon which recreational activities or places are provided for the recreation and enjoyment of the general public.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Premises means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the sexually oriented business.

Regional shopping mall (enclosed) means a group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least 40 acres in size and flanked by two or more large "anchor" stores, such as department stores. The common walkway or "mall" is enclosed, climate-controlled and lighted, usually with an inward orientation of the stores facing the walkway.

Regularly means the consistent and repeated doing of an act on an ongoing basis.

Residence means a house, apartment, mobile home, boardinghouse or rooming house, duplex or other multifamily housing for human dwelling, or any property zoned therefor.

School means state, city, city, church or other schools, public or private, as teach the subjects commonly taught in the common schools of this state, and vocational schools, colleges, post-high-school learning centers, kindergartens and day care centers for persons of all ages.

Semi-nude or *semi-nudity* means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

Sexual device means any three-dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, nipple, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop means a commercial establishment:

(1) Where more than 100 sexual devices are regularly made available for sale or rental; or

(2) Where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, positioning sexual devices near cash registers or similar points of sale, hosting events focused on sexual devices, or holding itself out to the public as a place that focuses on sexual devices).

This definition shall not be construed to include any establishment located within an enclosed regional shopping mall, an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises, or an establishment primarily dedicated to providing durable medical equipment.

Sexually oriented business means an adult arcade, an adult bookstore, an adult cabaret, an adult motion picture theater, or a sexual device shop.

Specified anatomical areas means and includes:

(1) Less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified criminal activity means any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

(1) Rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;

(2) Prostitution, keeping a place of prostitution, pimping, or pandering;

(3) Obscenity, disseminating or displaying matter harmful to a minor, or use of minor in sexual performance;

(4) Any offense related to any sexually-oriented business, including controlled substance offenses, tax violations, racketeering, crimes involving sex, crimes involving prostitution, or crimes involving obscenity;

(5) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or

(6) Any offense in another jurisdiction that, had the predicate act(s) been committed in Georgia, would have constituted any of the foregoing offenses.

Specified sexual activity means any of the following:

(1) Intercourse, oral copulation, masturbation or sodomy; or

(2) Excretory functions as a part of or in connection with any of the activities described in subsection (1) of this definition.

Transfer of ownership or control of a sexually oriented business means any of the following:

(1) The sale, lease, or sublease of the business;

(2) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Viewing room means the room or booth where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

Sec. 7.7.11.3. License required.

(a) *Sexually oriented business license.* It shall be unlawful for any person to operate a sexually oriented business in the city without a valid sexually oriented business license.

(b) *Employee license.* It shall be unlawful for any person to be an employee, as defined in this division, of a sexually oriented business in the city without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license. It shall be unlawful for any person who operates a sexually oriented business to employ a person at the establishment who does not have a valid sexually oriented business employee license.

(c) *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the community development agency (or other office designated by the director) a completed application made on a form provided by the director. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (d) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate license fee:

(1) The applicant's full legal name and any other names used by the applicant in the preceding five years.

(2) Current business address or another mailing address for the applicant.

(3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

(4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

(5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

(6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this division, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

(7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years, and at a time during which the applicant had the influential interest:

a. Been found by a court of law to have been operating unlawfully;

b. Been enjoined from engaging in conduct prohibited by law;

c. Been held in contempt of court for operating contrary to a court order;

d. Been declared by a court of law to be a nuisance; or

e. Been subject to an order of closure.

(8) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this division shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. See sections 7.7.11.3 and 7.7.11.3. The director may waive the requirements of this subsection (8) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(9) A signed and sworn affidavit verifying the applicant's lawful presence in the United States as required by O.C.G.A. § 50-36-1. If the applicant is a partnership, limited liability company, corporation, or other legal entity, a signed and sworn affidavit verifying the lawful presence of each individual that executes the application on behalf of the applicant. With regard to a renewal application, if an individual has previously complied with the requirements of this subsection (9), the director may waive the requirements of this subsection for that individual.

(10) If the application is for a sexually oriented business license, a signed and sworn affidavit attesting that the establishment either uses the federal work authorization program in accordance with federal regulations or that the applicant employs fewer than 11 people or otherwise does not fall within the requirements of O.C.G.A. § 36-60-6.

(11) If the application is for a sexually oriented business employee license, the name and address of the establishment where the applicant intends to use the employee license.

The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the director within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) *Signature.* A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this division and each applicant shall be considered a licensee if a license is granted.

(e) The information provided by an applicant in connection with an application for a license under this division shall be maintained by the office of the director on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

Sec. 7.7.11.4. Issuance of license.

(a) *Sexually oriented business license.* Upon the filing of a completed application for a sexually oriented business license, the applicant shall be considered to hold a temporary license if the completed application is from a sexually oriented business that was lawfully commenced, and is lawfully operating, in the city and the completed application indicates that the applicant is entitled to an annual sexually oriented business license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within 30 days of the filing of a completed sexually oriented business license application, the director shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The director shall issue a license unless:

(1) An applicant is less than 18 years of age.

(2) An applicant has failed to provide information required by this division for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license fee required by this division has not been paid.

(4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this division.

(5) The sexually oriented business, as defined herein, is not in compliance with this division or the location requirements of the city code.

(6) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years, and at a time during which the applicant had the influential interest:

a. Been found by a court of law to have been operating unlawfully;

b. Been enjoined from engaging in conduct prohibited by law;

c. Been held in contempt of court for operating contrary to a court order;

d. Been declared by a court of law to be a nuisance; or

e. Been subject to an order of closure.

(7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this division.

(8) An applicant has, in the previous five years, engaged in any misrepresentation of fact, or omission of material fact, concerning the nature of the business for which the license is sought.

(b) *Employee license.* Upon the filing of a completed application for a sexually oriented business employee license, the applicant shall be considered to hold a temporary license if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application indicates that the applicant is entitled to an annual sexually oriented business employee license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within 30 days of the filing of a completed sexually oriented business employee license application, the director shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The director shall issue a license unless:

(1) The applicant is less than 18 years of age.

(2) The applicant has failed to provide information as required by this division for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license fee required by this division has not been paid.

(4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five years, and at a time during which the applicant had the influential interest:

a. Been found by a court of law to have been operating unlawfully;

b. Been enjoined from engaging in conduct prohibited by law;

c. Been held in contempt of court for operating contrary to a court order;

d. Been declared by a court of law to be a nuisance; or

e. Been subject to an order of closure.

(5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this division.

(6) The applicant has expressed the intent to use the sexually oriented business employee license at an establishment that is not licensed by the city to operate a sexually oriented business.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the issued license number and its expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working.

(d) No license under this division shall be considered valid if the applicant submitted false information to obtain the license.

Sec. 7.7.11.5. Fees.

The fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as set forth in the schedule of fees as adopted by the city council.

Sec. 7.7.11.6. Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the director and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this division, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed to authorize only reasonable inspections of the licensed premises pursuant to this division.

Sec. 7.7.11.7. Expiration and renewal of license.

(a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this division. When a renewal license is issued, it shall become effective the day after the previous license expires and shall remain valid for a period of one calendar year from its effective date unless otherwise suspended or revoked.

(b) Application for renewal of an annual license should be made at least 90 days before the expiration date of the current annual license, and when made less than 90 days before the expiration date, the expiration of the current license will not be affected.

Sec. 7.7.11.8. Suspension.

(a) The director shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed 30 days if the sexually oriented business licensee has knowingly or recklessly violated this division or has knowingly or recklessly allowed an employee or any other person to violate this division.

(b) The director shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed 30 days if the employee licensee has knowingly or recklessly violated this division.

Sec. 7.7.11.9. Revocation.

(a) The director shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly or recklessly violates this division or has knowingly or recklessly allowed an employee or any other person to violate this division and a suspension of the licensee's license has become effective within the previous 12-month period.

(b) The director shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

(1) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;

(2) The licensee has failed to meet or maintain the qualifications to be issued or to hold the license;

(3) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;

(4) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;

(5) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;

(6) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business;

(7) The licensee has knowingly or recklessly allowed a person under the age of 21 years to consume alcohol on the premises of the sexually oriented business;

(8) The licensee has knowingly or recklessly allowed a person under the age of 18 years to appear in a semi-nude condition or in a state of nudity on the premises of the sexually oriented business; or

(9) The licensee has knowingly or recklessly allowed three or more violations of this division within a 12-month period.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the notice and hearing procedure described in this division, the city revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one year from the date revocation becomes effective.

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Sec. 7.7.11.10. Hearing; license denial, suspension, revocation; appeal.

(a) When the director issues a written notice of intent to deny, suspend, or revoke a license, the director shall immediately send such notice, which shall state the grounds under this division for such action, to the applicant or licensee by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the director for the applicant or licensee. The notice shall also set forth the following: the applicant or licensee shall have ten days after the delivery of the written notice to submit, at the office of the director, a written request for a hearing. If the applicant or licensee does not request a hearing within said ten days, the director's written notice shall become a final denial, suspension, or revocation, as the case may be, on the 15th day after it is delivered to the applicant or licensee.

(b) If the applicant or licensee (hereafter, "petitioner") does make a written request for a hearing within said ten days, then the director shall, within ten days after the submission of the request, send a notice to the petitioner indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten days nor more than 20 days after the date that the hearing notice is issued. The hearing may be transcribed by either party.

(c) At the hearing, the petitioner shall have the opportunity to present all relevant arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the director's witnesses. The director may also be represented by counsel, present evidence and witnesses, and cross-examine any of the petitioner's witnesses. The hearing shall take no longer than one day, unless extended at the request of the petitioner to meet the requirements of due process and proper administration of justice. The hearing officer shall affirm the director's licensing decision if any substantial evidence in the record at the hearing supports any of the grounds set forth in the written notice of intent to deny, suspend, or revoke. The hearing officer shall issue a final written decision, including specific reasons for the decision pursuant to this division, to the petitioner within five days after the hearing.

(d) If the decision is to deny, suspend, or revoke the license, the decision shall advise the petitioner of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the tenth day after it is rendered. If the hearing officer's decision finds that there is no substantial evidence to support the director's licensing decision, the hearing officer shall, contemporaneously with the issuance of the decision, order the director to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the petitioner in writing by certified mail of such action. If the petitioner is not yet licensed, the director shall contemporaneously therewith issue the license to the applicant.

(e) If any court action challenging a licensing decision is initiated, the city shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the director: upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of any denial, suspension, or revocation of a license, the director shall immediately issue the petitioner a provisional license. The provisional license shall allow the petitioner to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the petitioner's appeal or other action to restrain or otherwise enjoin the city's enforcement. While a provisional license is in effect, the provisional licensee shall comply with the regulations set forth in this division.

Sec. 7.7.11.11. Transfer of license.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

Sec. 7.7.11.12. Hours of operation.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

Sec. 7.7.11.13. Regulations pertaining to operation of adult arcade or adult motion picture theater.

(a) A person who operates or causes to be operated an adult arcade or adult motion picture theater shall comply with the following requirements:

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

a. That the occupancy of viewing rooms less than 100 square feet is limited to one person.

b. That specified sexual activity on the premises is prohibited.

c. That the making of openings between viewing rooms is prohibited.

d. That violators will be required to leave the premises.

e. That violations of these regulations are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in this chapter.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed 32 square feet of floor area. If the premises has two or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

(b) It shall be unlawful for a person having a duty under subsections (a)(1) through (a)(8) to knowingly or recklessly fail to fulfill that duty.

(c) No patron shall knowingly or recklessly enter or remain in a viewing room less than 100 square feet in area that is occupied by any other patron.

(d) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 100 square feet or larger in area.

(e) No person shall knowingly or recklessly make any hole or opening between viewing rooms.

Sec. 7.7.11.14. Loitering, exterior lighting and monitoring, and interior lighting requirements.

(a) It shall be the duty of the operator of a sexually oriented business to:

(1) Ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises;

(2) Designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every 90 minutes or inspecting the premises by use of video cameras and monitors; and

(3) Provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

(c) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right-of-way.

(d) It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

Sec. 7.7.11.15. Penalties and enforcement.

(a) A person who violates any of the provisions of this division shall be guilty of a violation and, upon conviction, shall be punishable by fines not to exceed $1,000.00 per violation, or by imprisonment for a period not to exceed 60 days, or by both such fine and imprisonment. For violations of this division that are continuous with respect to time, each day that the violation continues is a separate offense. For violations of this division that are not continuous with respect to time, each violation is a separate offense.

(b) Any premises, building, dwelling, or other structure in which a sexually oriented business is repeatedly operated or maintained in violation of this division shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.

(c) The city's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this division to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the city, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this division, or any of the laws in force in the city or to exempt anyone violating this Code or any part of the said laws from any penalty which may be incurred.

Sec. 7.7.11.16. Applicability of division to existing businesses.

(a) *Licensing requirements.* All sexually oriented businesses lawfully operating in the city in compliance with all state and local laws prior to the effective date of this division, and all sexually oriented business employees working in the city prior to the effective date of this division, are hereby granted a de facto temporary license to continue operation or employment for a period of 90 days following the effective date of this division. Within 60 days following the effective date of this division, all sexually oriented businesses and sexually oriented business employees must apply for a license under this division.

(b) *Interior configuration requirements.* Any sexually oriented business that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of section 7.7.11.332 and subsection 7.7.11.3(b) shall have 90 days from the effective date of this division to conform its premises to said requirements. During said 90 days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six feet from all patrons.

(c) *Other requirements.* Except as provided for in subsections (a) and (b) above, sexually oriented businesses shall comply with this division on the date that it takes effect.

Sec. 7.7.11.17. Prohibited conduct.

(a) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.

(b) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six feet from all patrons and on a stage at least 18 inches from the floor in a room of at least 600 square feet.

(c) No employee who appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of a sexually oriented business.

(d) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(e) No person shall knowingly or recklessly allow a person under the age of 18 years to be or remain on the premises of a sexually oriented business.

(f) No operator of a sexually oriented business shall knowingly or recklessly allow a room in the sexually oriented business to be simultaneously occupied by any patron and any other employee who is semi-nude or who appears semi-nude on the premises of the sexually oriented business, unless an operator of the sexually oriented business is present in the same room.

(g) No operator or licensee of a sexually oriented business shall violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section.

(h) A sign in a form to be prescribed by the director, and summarizing the provisions of subsections (a), (b), (c), (d), and (e) of this section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

Sec. 7.7.11.18. Scienter required to prove violation or business licensee liability.

This division does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state is necessary to establish a violation of a provision of this division. Notwithstanding anything to the contrary, for the purposes of this division, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this division, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

Sec. 7.7.11.19. Location of sexually oriented businesses.

(a) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city that is:

  (1) Within 750 feet of a residence or residential zoning district;

  (2) Within 1,500 feet of a church, school, governmentally owned or operated building, library, civic center, public park, hospital, community club, or prison;

  (3) Within 1,000 feet of another sexually oriented business; or

  (4) Within 500 feet of an establishment licensed to sell alcoholic beverages for consumption on the premises or to sell alcoholic beverages as a package store.

(b) For the purpose of this section, measurements shall be made in a straight line from the closest part of any structure occupied by the sexually oriented business to the closest property line of the zoned property and uses identified in subsection (a), above. Where a use identified in subsection (a) is located in a multi-tenant development, the distance shall be measured to the closest part of the tenant space occupied by that use rather than the property line of the entire development, so as to maximize the number of locations available to sexually oriented businesses.

(c) Notwithstanding any provision in the Official Code of Mableton, Georgia to the contrary, a sexually oriented business in a location that satisfies the standards in this section shall not be deemed noncompliant with this section by virtue of the subsequent establishment or expansion of a land use or zoning district identified in subsection (a).

DIVISION 12. PRECIOUS METALS DEALERS[4]

[4]State law reference(s)—Dealers in precious metals and gems, O.C.G.A. § 43-37-1 et seq.

Sec. 7.7.12.1. Definitions.

For purposes of this division, the term:

Gems means any precious or semiprecious stone which is cut and polished.

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

Precious metals dealer means any person who under state law is defined as a dealer in precious metals, to include any partnership, sole proprietorship, corporation, association, or other entity engaged in the business of purchasing any precious metals or gems from persons or sources other than licensed wholesale or distributor businesses, manufacturers, manufacturers' representatives, or other dealers in precious metals.

Sec. 7.7.12.2. Registration and license required.

Any person, who under state law is defined as a dealer in precious metals, before engaging in business in the city, shall:

(1) Register with the city business license office and provide all information as required under state law; and

(2) Obtain a city business license.

Sec. 7.7.12.3. Records and information to be maintained; identification; digital photographs; fingerprints; records storage.

(a) All precious metals dealers shall maintain records documenting accurate descriptions of all precious metals or gems or goods made from precious metals or gems purchased. Such description shall include, if reasonably available, the manufacturer, model, serial number, style, material, kind, color, design, number of stones if jewelry, and all other identifying names, marks, and numbers. The precious metals dealer shall assign a unique transaction number documenting each transaction, and ensure that each item received is tagged with the transaction number. The tag bearing the transaction number must remain attached to the item until the property is disposed of by sale, trade, or other lawful means.

(b) The precious metals dealer shall require all persons selling precious metals or gems to show proper identification prior to conducting a transaction. Proper identification is defined as a government issued photo identification card such as a driver's license, military identification card, state identification card, or passport.

(c) The precious metals dealer shall document the name, address, telephone number, race, sex, height, weight, drivers license number, and date of birth of the persons selling precious metals or gems, along with the date and time of transaction and the price paid for items sold. This documentation shall be made at the time of the transaction.

(d) The precious metals dealer shall photograph the persons selling precious metals or gems, with a digital camera, at the time of each transaction. The photograph shall clearly show a frontal view of the subject's face along with the transaction number. The precious metals dealer shall also clearly photograph the property being sold. Digital images shall be labeled and stored in such a manner that they are safe from corruption, readily identifiable, and readily available for review.

(e) The precious metals dealer shall obtain from each person selling precious metals or gems, the fingerprint of the right hand index finger, unless such finger is missing, in which event the print of the next finger in existence on the right hand shall be obtained with a notation as to the exact finger printed. The electronic digital fingerprint scanner will be the primary method of entry required. The fingerprint shall be imprinted onto the transaction form in the designated area along with the signature of the person selling the property. The fingerprint must be clear and legible. In the event that more than one transaction form is required, a fingerprint and signature should be obtained for each form. Fingerprints and the information required herein shall be obtained each time such person sells any property.

(f) Items of property that appear to be new, unused, and in their original packaging cannot be accepted by the precious metals dealer unless the customer can supply a copy of the original sales receipt, or other proof of purchase from the place of purchase, to the precious metals dealer who shall retain the receipt or proof of purchase on file.

(g) The precious metals dealer shall store the above records, digital images, and fingerprints for a period of four years and make them available to law enforcement personnel upon request.

(h) Every precious metals dealer shall enter each transaction, including all information, digital images and fingerprints required in subsections (a), (c), (d), and (e) above, as it occurs into the electronic automated reporting system via the internet, or upload electronically, via the internet, a batch file of all transactions for each business day, to the administrator of the electronic automated reporting system, immediately at the conclusion of each business day, The administrator of the electronic automated reporting system will electronically transmit all transactions to the Cobb County police department.

Sec. 7.7.12.4. Daily report to police; required format; vendor selection and fees.

(a) Every precious metals dealer shall make a daily report in such form as prescribed by the chief of police or his designee, of all purchase transactions that occurred during 24 hours ending at 8:00 p.m. on the date of the report. The requirements of subsection 7.7.12.3(h) shall satisfy the precious metals dealer's daily reporting requirements.

(b) In the event that the electronic automated reporting system becomes temporarily or permanently disabled, precious metals dealers will be notified as soon as possible by the Cobb County police department. Dealers that incur electronic system failures or other events that would cause partial or complete loss of electronic reporting should notify the Cobb County police department immediately with the reason for the failure. In either event, the precious metals dealers will be required to make records of transactions on paper forms. The records will include all of the information required in this division. Precious metals dealers shall maintain a minimum three-day supply of these paper forms.

(c) The city shall select the required automated reporting system. A fee for each transaction reported to the electronic automated reporting system will be assessed to each reporting business, by the system administrator. The amount of the fee will not be greater than that listed in the contract between the city and the system administrator, which is in effect at the time of the transaction for which the fee is assessed.

Sec. 7.7.12.5. Employee permit; qualifications of employees.

(a) No person shall be employed by a precious metals dealer in any capacity who is not at least 18 years of age, a citizen of the United States or an alien admitted for permanent residence or a person who has otherwise been granted employment authorization by the United States Immigration and Naturalization Service and until such person has been issued a permit by the Cobb County police permit unit, authorizing such person to be employed by a precious metals dealer. Such permit shall not be issued to any person who does not meet the requirements of O.C.G.A. § 43-37-2(d), or who has been convicted within five years immediately prior to the filing of the application for employment, of any misdemeanor involving theft, burglary, crimes against property, controlled substances, or any other felony. For purposes of this section, the term "conviction" shall mean any adjudication of guilt, or plea of guilty or nolo contendere. No permit shall be issued so long as there are outstanding criminal warrants, criminal charges, accusations or indictments for any of the crimes enumerated in this section on which there has been no final disposition or adjudication, and any application involving such pending charges shall be held for final decision until final disposition or adjudication of the charges.

(b) *For whom required.* It is the responsibility of the business licensee and/or designee as stated in subsection 7.7.12.3(b) to ensure that the employees required under this Code section obtain and possess the required work permit prior to working. Failure of an employee to possess a work permit shall be unlawful and will subject the employee and licensee and/or designee to prosecution as provided in this chapter.

(c) *Application, issuance, denial.* Except as otherwise provided, no person requiring a work permit may be employed by an establishment holding a license under this chapter until such person has been issued a work permit from the Cobb County police department indicating the person is eligible for employment. The work permit is valid for employment at one business only. The permit may be transferred to another business location, without approval, provided that the ownership of the business is the same as the previous location. If the ownership of the business is different, the person with the work permit must apply and be approved by the Cobb County police department in order for the work permit to be valid. All applications required by this section shall be investigated by the police department to include, among other things, an investigation of the criminal record, if any, of the applicant. Any applicant who is denied a work permit shall have the right to appeal such decision to the city business license division. Appeals to the city business license division regarding the denial of a work permit must be filed with the city business license division within 30 days of the denial. In addition, after the hearing, the city business license division may recommend to the city council approval of a work permit to an employee whose application was originally denied upon any conditions deemed appropriate by the city business license division. Denied applicants that fail to file a timely appeal shall not be authorized to reapply for a work permit for 12 months from the date of the denial.

(d) *Time limit.* All persons subject to the provisions of this section shall, prior to the date of their first work in a licensed establishment, make application for a work permit to the Cobb County police department.

(e) *Permit term; prescribing fee.* Any permit for employment issued under this section shall expire 12 months from the date of issuance unless earlier suspended or revoked as provided in this section. The police department may prescribe regulations for certifying the eligibility for continued employment without the necessity of the employee's being fingerprinted and may prescribe reasonable fees for certifying the eligibility for employment.

(f) *Possession of permits by employees.* Employees holding permits issued pursuant to this section shall at all times during their working hours have the permits available for inspection at the premises.

(g) *Grounds for suspension, revocation, probation.* No permit which has been issued or which may hereafter be issued under this section shall be suspended, revoked or placed on probation except for due cause as defined in this subsection, and after a hearing and upon written notice to the holder of such permit of the time, place and purpose of such hearing and a statement of the charge or charges upon which such hearing shall be held. A minimum of three days' notice shall be provided to the applicant or permit holder. "Due cause" for the suspension or revocation of the permit shall consist of the omission or falsification of any material in any application; or for any reason which would authorize the refusal of the issuance of a permit; or any violation of this chapter. All hearings shall be before the city business license division. After the hearing if the city business license division determines due cause exists, the city business license division may recommend to the city council to suspend, revoke or place on probation for a maximum of 12 months, with or without conditions, the permit. The city council shall, within 60 days of the city business license division's recommendation, review a summary of the appeal or show cause hearing before the city business license division wherein the work permit was considered for issuance, suspension or revocation (the summary shall be prepared by the business license division manager) and the city council after such review will either concur with recommendations of the city business license division or choose to place the matter down for a hearing. Should the city council place the matter down for hearing the city council, after such hearing, may issue or deny the work permit, suspend or revoke the work permit or place the employee on probation. After the city council meeting, the representative of the business license office will notify the Cobb County police department permits unit of the decision. If the permit was approved for issuance by the city council, the Cobb County police department permits unit will notify the applicant that the permit has been approved. The employee whose work permit was not issued or whose work permit was denied, probated, suspended or revoked may appeal the city council. The decision of the city council may be appealed by filing a petition for writ of certiorari to the Superior Court of Cobb County within 30 days of the decision of the city council.

(h) Notwithstanding any of the provisions in this section, any permits issued through administrative error or an error in the completion of a background investigation may be terminated by the director of public safety or his/her designee.

Sec. 7.7.12.6. Holding period of purchased articles; police holds.

All property acquired by the licensee through any precious metals dealer transaction shall be held and maintained by the licensee at the licensed location, or at such other impound location as may have been previously approved by the county police department in writing, for a minimum of 30 days prior to disposal of same by the licensee. The county police department has the authority to place property that is the subject of police investigation on "police hold." In that event, the Cobb County police department shall notify the licensee of the need for a police hold and identify all property subject to the police hold. Upon notification, it shall be the responsibility of the licensee to maintain the subject property until such time as the property is released from police hold status, confiscated as evidence or returned to its rightful owner.

Sec. 7.7.12.7. Dealing with minors.

It shall be unlawful for any precious metals dealer, his or her agents or employees, to purchase any precious metals or gems from any person under 18 years of age.

Sec. 7.7.12.8. Violations; exemptions.

The failure of any licensee or employee thereof to comply with the provisions of this chapter shall constitute an offense, punishable as allowed by law. Transactions involving the purchase of precious metals from licensed wholesale or distributor businesses, manufacturers, manufacturers' representatives, or other dealers are exempt from the requirements of this chapter.

Sec. 7.7.12.9. Application.

(a) *Required.* All persons, before beginning the business as a precious metals dealer, shall first file an application with the director of the business license office to obtain a license to conduct such a business.

(b) *Contents.* All persons 25 years of age or older desiring to obtain a license required under this division shall make written application to the business license office for such privilege, and shall supply such information as may be required by the supervisor of the business license office or the police department, and such application shall be sworn to by the applicant or agent thereof.

(c) *Failure to furnish required information.* All applicants shall furnish all data, information and records requested of them, and failure to furnish such data, information and records within 30 days from the date of such request shall automatically serve to dismiss, with prejudice, the application. An applicant, by filing an application, agrees to produce for oral interrogation any persons who are considered as being important in the ascertainment of the facts relative to such license, as may be requested by the supervisor of the business license office or his duly authorized representative, such as the police department or the city attorney. The failure to produce such persons within 30 days after being requested to do so shall result in the automatic dismissal of such application.

(d) *Notification of change in information.* Licensees shall immediately notify the city in writing through the supervisor of the business license division of any change in any information, material or data furnished in connection with an application for a license, or of any material change in the type of business, ownership or qualifications of the applicant or employees subsequent to license issuance.

Sec. 7.7.12.10. Citizenship, residence requirements.

(a) No license shall be granted pursuant to this division to any applicant who is not a United States citizen or legal permanent resident, or a qualified alien or non-immigrant under the Federal Immigration and Nationalization Act, and who is lawfully present in the United States.

(b) Where the applicant is a corporation, the majority stockholder must meet the residence requirements set out in subsection (a) of this section, and the license shall be issued to the corporation and the majority stockholder.

(c) If the applicant is a partnership, the same requirements pertaining to corporations set out in subsection (b) of this section shall apply.

Sec. 7.7.12.11. Disqualification of applicants with prior convictions.

(a) No license shall be issued under this division to any person, partnership or corporation for pecuniary gain where any individual having an interest either as owner, partner, principal stockholder, or licensee, such interest being direct or indirect, beneficial or absolute, or his spouse, does not meet the requirements of O.C.G.A. § 43-37-2(d), or shall have been convicted within five years immediately prior to the filing of the application, of any misdemeanor of any state or of the United States or any municipal or city ordinance which would have any effect on the applicant's ability to properly conduct such a business, except traffic offenses. For purposes of this section, the term "conviction" shall include an adjudication of guilt or plea of guilty, plea of nolo contendere or forfeiture of a bond when charged with a crime. Where the violation is for a misdemeanor, forfeiture of bond, or violation of a municipal or city ordinance, or where there is a plea of nolo contendere, the city business license division may, after investigation, waive such violation as a disqualification. No license shall be issued so long as there are outstanding criminal warrants, criminal charges, accusations or indictments for any of the crimes enumerated in this section on which there has been no final disposition or adjudication, and any application involving such pending charges shall be held for final decision until final disposition or adjudication of the charges.

(b) The city council, on appeal, may waive any conviction as a disqualification, if it finds that it would have no material affect upon the applicant's ability to properly conduct its business if such license were granted.

Sec. 7.7.12.12. Investigation and report.

All applications for a license for a precious metals dealer shall be investigated, and the police department shall report its recommendations to the supervisor of the business license office, who shall keep a copy thereof on file.

Sec. 7.7.12.13. Time limit for obtaining license after approval; issuance.

(a) All precious metals dealer licenses must be obtained and fees paid not later than two weeks from the date of the approval of the application by the supervisor of the business license office, and, if not so obtained, the approval granted by the supervisor of the business license office shall be void.

(b) When a license has been approved and the applicant has deposited with the business license office the required fee, the license shall be issued.

Sec. 7.7.12.14. Time limit for commencement of business; forfeiture for nonuse.

(a) All holders of licenses under this division must, within three months after the issuance of the license, open for business the establishment referred to in the license, unless such period is extended by the supervisor of the business license office. Failure to open the licensed establishment as referred to in this subsection within the three-month period shall serve as an automatic forfeiture and cancellation of the unused license, and no refund of license fees shall be made to the license holder.

(b) Any holder of a license under this division who shall begin the operation of the business as authorized in the license, but who shall for a period of three consecutive months thereafter cease to operate the business as authorized in the license, shall upon completion of the three-month period automatically forfeit his license, which license shall, by virtue of such failure to operate, be canceled without the necessity for any further action of the supervisor of the business license office.

Sec. 7.7.12.15. Transfer.

No license granted to a precious metals dealer shall be transferable except upon application to the supervisor of the business license office in the same form, manner and subject to the same requirements with respect to the transferee as are applicable in an original application; provided, however, any such license may be transferred only to another person, firm, partnership or corporation doing the same business and at the same place as the person, firm, partnership or corporation to whom the license was originally issued. When permission for transfer has been granted, the original licensee or transferee shall cause the license to be delivered to the supervisor of the business license office, who shall record such transfer, and the transferee shall pay a fee therefor as a condition precedent to engaging in operations under the license. The fee for such transfer shall be kept on file as part of the schedule of fees in the business license office.

DIVISION 13. SPECIAL EVENT PARKING

Sec. 7.7.13.1. Special event parking.

The following division sets forth provisions for the registration of special event parking.

Sec. 7.7.13.2. Purpose.

The purpose of this division is to promote the health, safety, and welfare of the city's citizens and visitors and to preserve neighborhood integrity by addressing issues of traffic flow and pedestrian safety that may occur when paid parking is offered by private property owners to supplement parking provided for special events at major tourist attractions. These provisions are intended to promote the safety of area visitors, residents, and businesses, and to provide a systematic approach to parking and traffic management for such special events. Appropriate signage and barricades on public rights-of-way, and other safety-related measures during special events, are intended to reduce neighborhood impacts, improve traffic conditions, increase pedestrian safety in the areas of the highest pedestrian volumes, and increase the ability of residents and public safety officials to obtain safe neighborhood access and parking. The establishment of special event parking registration is specifically intended to address problems anticipated in areas of high concentration that were not originally designed for special events; the safety of persons and property; traffic congestion arising from paid parking; motorized vehicle and pedestrian traffic management; emergency vehicle and public safety access; and/or operation/maintenance/safety by a lot owner/operator to ensure properly administered lots and adjacent areas. This article is not intended to create new or to expand existing legal obligations of the city, including specifically the Cobb County Police Department or Cobb County Sheriff's Office, or to establish a special duty or special relationship between those agencies and owners/operators of special event parking, invitees to special events or special event parking facilities, and/or pedestrians or operators of motor vehicles present at or in the vicinity of special event parking.

Sec. 7.7.13.3. Definitions.

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

Major tourist attraction means a site of 12 acres or more devoted to a single use as an amusement theme attraction, park, convention center, performing arts center, amphitheater, stadium, or other like attraction that promotes tourism in the city.

Special event means an event or gathering using private or public property, that:

(a) Will draw an estimated 2,000 participants and spectators to a major tourist attraction, or

(b) Will draw participants and spectators to a major tourist attraction with seating capacity of at least 2,000 people present on any day of the event, and/or

(c) Will require or involve one or more of the following activities:

  (1) Closing of a public street;

  (2) Blocking or restricting streets, sidewalks, alleys, or other public places, in whole or in part;

  (3) Sale or distribution of food or beverages on streets, sidewalks, alleys, or other public places or public property, or on private property where otherwise prohibited by ordinance;

  (4) Erection or placement of a tent, utility pole, or other temporary structure on a street, sidewalk, alley, or other public place;

  (5) Erection or placement of a stage, bandshell, trailer, van, portable building, grandstand, bleachers, or other apparatus used for entertainment purposes on public property, or on private property where otherwise prohibited by ordinance; or

  (6) Erection or placement of temporary signage, banners, or displays of any kind in or over a public right of way or on private property where otherwise prohibited by ordinance.

Special event parking means the provision of special event parking to the public for a fee in a parking area that normally provides required or excess parking for a particular nonresidential establishment other than the project site of a major tourist attraction or where parking is the primary use.

Special event parking area means the designated area(s) to be used for special event parking as shown on the parking plan submitted by an applicant pursuant to section 7.7.12.5(f)(6).

Special event parking registration means the submission of required documents to the business license manager demonstrating the intent of the owner/operator to provide special event parking for the term of the registration, subject to the provisions of this division and any additional conditions; and/or the document issued by the business license manager as proof of registration.

Traffic and pedestrian safety management plan (TPSMP) means a plan for the control and flow of vehicular and traffic in the areas of a special event, as developed and devised by Cobb city officials.

Sec. 7.7.13.4. Traffic and pedestrian safety management plan responsibilities.

(a) *County responsibilities.* Public safety officials shall be responsible for developing a traffic and pedestrian safety management plan(s) for a special event or series of events. In the performance of these duties, public safety, community development, and transportation officials shall work cooperatively to address traffic management, pedestrian safety and public safety generally relevant to special events and special event parking.

(b) *Registrant responsibilities.* In addition to all other requirements set forth in this division, registrants must cooperate and comply with any measures required by city officials to effect the traffic and pedestrian safety management plan, including the following:

  (1) Altering the flow of traffic on registrant's property to coincide with the public safety traffic and pedestrian management plan;

  (2) Erecting signage, placing cones, and taking other measures to direct the flow of traffic on the property and/or to limit ingress/egress as directed by city officials;

  (3) Responding or causing a representative or other responsible party to respond to the special event parking site upon request of city officials;

  (4) Implementing other identified life-safety requirements of city officials;

  (5) Obtaining a new registration or updating registration information if there is a change in address, contact information or transfer of possession of property; and

  (6) Complying with all requirements of this division.

Sec. 7.7.13.5. Registration requirements for special event parking owners/operators.

(a) *Registration required.* No person shall provide special event parking for a fee, including within the four-hour period before the scheduled start time of the special event, and the two-hour period after the completion of the special event, without having registered to operate special event parking. Once registered, the operator may provide special event parking during the term of the registration regardless of the type of special event occurring.

(b) *Exemptions.* Governmentally-owned or controlled properties; and onsite parking lots that satisfy zoning requirements for major tourist attractions are not required to register.

(c) *Multiple properties.* A separate registration is required for each property to be used for special event parking to ensure that parking impacts may be analyzed and addressed by city officials.

(d) *Non-transferability; new registration required upon transfer of property.* Special event parking registration is not transferable. Upon transfer of the possession of the premises used for special event parking, the new owner/operator shall obtain registration for special event parking no later than seven days after acquisition of the property.

(e) *Application contents and filing.* Each applicants for registration for special event parking shall submit a completed application, available through the community development agency, at least 30 days prior to the initial special event and any subsequent special events. The application must contain the following:

(1) The applicant's name, address, phone number, email address, and proof of identity;

(2) A description of the primary use of the property, copies of valid occupational tax certificates for all businesses located on the property, and an affidavit that the primary use, as set forth in the certificate of occupancy and occupational tax certificates for the property, is an active use at the property;

(3) The name of the property owner, address, phone number, e-mail, and evidence of payment of property taxes;

(4) Written, notarized statement of consent from property owner for use of the property for special event parking, if the applicant is not the owner;

(5) The name, address, phone number, email, and proof of identity of the person responsible for the operation of the special event parking area, if not the owner or the applicant. The applicant shall be responsible for providing to the community development director updated contact information for the person responsible for operations during special events. This contact needs to be available before and during the special event for consultation with public safety, as needed;

(6) A parking plan in compliance with the Cobb County Code and development standards indicating the address and name of the primary use on the property, as shown on the signage for the primary use, boundaries of the parking area, preservation of parking for the primary use, ingress and egress locations, the parking layout (no stacking is permitted, parking must be in existing striped parking spaces), parking sign locations, and the area on the property where payment will be received;

(7) If the parking plan includes spaces that have otherwise been leased to any other business, individual or entity, and such spaces will be utilized for special event parking, the applicant must present written approval from the other business, individual or entity leasing such spaces.

(8) An impact statement detailing how the applicant's operation will mitigate potential impact on roadway operations, incorporate safety features for pedestrians and address crime prevention or any other public safety concerns relevant to this property; and

(9) A registration fee in an amount as approved by the city council.

(f) *Completed applications required.* Only completed applications will be considered. In the event an incomplete application package is received, community development shall notify the applicant who shall forward the missing information within three business days. Registration is not complete and the application will not be processed until the completed application package is received by community development.

(g) The community development agency shall be responsible for coordinating activities with the appropriate public safety office, department or agency based on the venue.

(h) *Expiration.* Special event parking registration is valid for one year from the date of issuance and may be renewed only by subsequent application.

Sec. 7.7.13.6. Additional operational requirements for special event parking.

To effectuate the purposes of this division, owners/operators of special event parking must comply with the following operational requirements any time special event parking is provided for the public:

(a) Operators of special event parking shall comply with all traffic and pedestrian safety management plans, as may be amended from time to time, as dictated by public safety officials. Public safety shall communicate changes as known to the person responsible as designated in section 7.7.12.406.4(f)(5);

(b) On the day of a special event, a temporary sandwich-board sign must be displayed in the special event parking area near each entrance to the parking area in the location(s) shown on the parking site plan. The sign copy area must be at least 18 inches high and 24 inches wide (but no larger than 24 inches by 36 inches) with a maximum height from grade to the top of the sign of four feet, including a parking symbol, at least ten inches in height designated by the city, and include the following wording with the blanks filled in appropriately: "Special Event Parking Lot, Parking Fee $_____, Registration # ___, Operator Phone # ___-___-___." The parking fee must be in a font that is at least six inches in height. When the lot is full, a "lot full" sign must be displayed that is visible from the street. The sign is a traffic management device and a display of registration, so no other wording is permitted on the front of the sign. The sign must be of a durable material, such as plastic, metal, wood, or like material, and must be professionally fabricated and maintained in good repair. A sign permit is not required for this sign, which may be displayed four hours prior to the event and must be removed two hours after completion of the special event. The parking symbol, the wording, and the fee must be visible from the adjacent street. The parking fee must remain the same throughout the day of the special event unless decreased, and the amount charged for parking must not exceed the amount stated on the sign. The sign must be visible on the special event parking area from the time cars are admitted for the special event parking until the property has been cleaned of litter at the end of the special event.

(c) The special event parking registration and parking plan must be available for immediate on-site inspection by city staff or public safety officials.

(d) The special event parking area must be paved, striped, and lit in compliance with standards prescribed by city ordinances and development standards for parking areas. Vehicles must be parked on approved surfaces and in compliance with the parking plan.

(e) The special event parking area must be staffed by at least one attendants, representative, or other responsible party capable who shall remain on the lot from the time the operator begins accepting payment for parking until one hour after the end of the event. Said attendant/representative shall be capable of acting on behalf of the owner/operator in interactions with city officials. Attendants must be easily identifiable by uniform clothing indicating that they are employed to provide special event parking. During night time hours, reflective vests shall also be required to be worn by all attendants. Attendants shall guide vehicles in and out of the parking area and monitor the special event parking area.

(f) The owner/operator must provide clean up service to remove litter, trash, junk, or other debris found throughout the special event parking area. Clean up service shall be completed within two hours of the end of the special event.

(g) Operators of accessory special event parking shall comply with all traffic management plans for the major tourist attraction.

(h) Special event parking must be operated in compliance with this division and any conditions set forth on the special event parking registration or in the traffic and pedestrian safety management plan.

(i) Where a public safety issue occurs during the operation of the special event parking lot, the attendant(s) shall cooperate fully with the public safety agency which shall require such actions as are in the best interests of the public. Owners/operators shall take reasonable steps necessary to maintain a safe lot and assist in preventing crime.

Sec. 7.7.13.7. Offenses; official right to block access; prosecution.

(a) *Prohibited acts.* It shall be unlawful to:

(1) Submit false documents, or otherwise make false statements of a material fact on an application for registration submitted under this division;

(2) Provide special event parking for any vehicle during a special event in violation of this division;

(3) Violate any other provision of this division.

(b) *Failure to obtain a registration; right to block access.* Special event parking shall not be permitted unless the owner/operator first registers with the city. Public safety officials may block access from the public right-of-way to any special event parking area that has not obtained the necessary registration or may block access to any registered special event parking area that poses an immediate public safety threat or hazard or if attendants are not available on-site to resolve issues, in the sole discretion of the public safety official for the best interests of the public.

(c) In the prosecution of an offense under this division, it is presumed that the property owner and applicant for the special event parking registration, and the responsible person named on the application for the operation of the special event parking area, are jointly and severally responsible for violations of and compliance with this division in the operation of the special event parking area.

Sec. 7.7.13.8. Penalties.

A violation of this division shall be punishable as allowed by law.

DIVISION 14. SHORT-TERM RENTALS

Sec. 7.7.14.1. Short-term rentals.

(a) *Purpose.*

(1) The purpose of this section is to protect the public health, safety and general welfare of individuals and the community at large; to establish standards for short-term rentals of privately owned residential structures rented to transient occupants, minimize adverse effects of short-term rental uses on surrounding residential neighborhoods, and preserve the character of neighborhoods in which short-term rentals occurs.

(2) This section is not intended to regulate hotels, motels, inns, boardinghouses, lodging houses, or rooming houses.

(b) *Applicability.*

(1) It shall be unlawful for any owner of any property within the city to rent or operate a short-term rental of residential property contrary to the procedures and regulations established in this section, other provisions of this Code, or any applicable state law.

(2) The restrictions and obligations contained in this section shall apply to short-term rental units at all times during which they are marketed and/or used as short-term rental units.

(3) The allowance of short-term rental properties pursuant to this section shall not prevent private enforcement of additional restrictions that may be contained in restrictive covenants or other private contractual agreements or arrangements.

(4) This division shall be effective January 1, 2024.

(c) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Noise ordinance: Those regulations contained in the official Code of Cobb County, Georgia, chapter 50, article VII.

Owner: A person or entity that holds legal and/or equitable title to private property, as shown on Cobb County tax records.

Private: Intended for or restricted to the occupants and/or guests of his or her short-term rental property; not for public use.

Property: A residential lot of record on which a short-term rental property is located.

Rental term: The period of time a responsible person rents or leases a short-term rental.

Short-term rental occupant means guests, tourists, lessees, vacationers or any other person or persons who, in exchange for compensation, occupy a dwelling unit for lodging for a period of time not to exceed 30 consecutive days.

Short-term rental property means an accommodation for transient guests where, in exchange for compensation, a residential dwelling unit is provided for lodging for a period of time not to exceed 30 consecutive days.

Short-term rental agent means a person or agency designated by the owner of a short-term rental property on the short-term rental certificate application. Such person or agency shall be available for and responsive to contact at all times and someone who is customarily present at a location within the city for purposes of transacting business.

Short-term rental certificate means a certificate issued by the business license division to owners or the designated rental agent of short-term rental properties who have submitted the required documentation and met the requirements set forth in this chapter for operation of a short-term rental.

(d) *Short-term rental certificate required.*

(1) A short-term rental certificate is required to be obtained from the business license division for each short-term rental property.

(2) No person shall rent, lease or otherwise exchange for compensation all or any portion of a property as short-term rental without first obtaining a short-term rental certificate from the city.

(3) A separate short-term rental certificate shall be required for each short-term rental property.

(4) The short-term rental certificate may not be transferred, assigned, or used, for any location other than the one for which it is issued.

(5) When a change of ownership occurs, the new owners shall notify the business license division and apply for and obtain a new short-term rental certificate.

(e) *Application for short-term rental certificate.*

(1) Applicants for short-term rental certificate shall submit, on an annual basis, an application for a short-term rental certificate to the business license division. The application shall be accompanied by a non-refundable application fee in the amount of $55.00. Such application shall include:

a. The name, address, telephone and email address of the owner(s) of record of the property for which a certificate is sought. If such owner is a corporate entity or similar legal entity, the application shall identify all partners, members, officers and/or directors of any such entity, including personal contact information, unless the entity operates a leasing office on the property where the short-term rental agent is customarily present for purposes of conducting business.

b. The address of the property to be used as a short-term rental property;

c. The name, address, telephone number and email address of the short-term rental agent, which shall constitute his or her 24-hour contact information;

d. The short-term rental agent's sworn acknowledgement that he or she has received a copy of this section, has reviewed it, and understands its requirements;

e. The number and location of parking spaces allotted to the premises; and

f. Any other information that this section requires the owner to provide to the city as part of an application for a short-term rental certificate. The community development agency director, or his or her designee, shall have the authority to request and obtain additional information from the applicant as necessary to achieve the objectives of this section.

(2) Attached to and concurrent with the short-term rental certificate application, the owner or short-term rental agent shall provide:

a. Proof of the owner's current ownership of the short-term rental property;

b. A written certification from the short-term rental agent that he or she agrees to perform the duties subscribed as specified in section;

c. A sworn statement from the applicant that any applicable homeowners association or property owners association has been notified of the application; and

d. Adjoining property owners, as shown on the most current tax records, shall be notified of the application in writing, and proof of notification shall be submitted to the business license division.

(3) If the short-term rental agent changes, the property owner shall notify the city within five business days.

(f) *Short-term rental agent.*

(1) The owner of a short-term rental property shall designate a short-term rental agent on his or her application for a short-term rental certificate. An owner may serve as the short-term rental agent. Alternatively, the owner may designate a person or agency as his or her agent.

(2) The duties of the short-term rental agent are to:

a. Serve as the 24-hour contact and be available to handle any problems arising from use of the short-term rental property;

b. Keep his or her name and emergency contact phone number posted in a readily visible place in the short-term rental property;

c. Receive and accept service of any notice of violation related to the use or occupancy of the short-term rental property;

d. Monitor the short-term rental property for compliance with this section; and

e. List the short-term rental certificate number on each online listing.

(3) An owner may change his or her designation of a short-term rental agent temporarily or permanently; however, there shall only be one such agent for a short-term rental property at any given time. To change the designated agent, the owner shall notify the business license division in writing of the new agent's identity, a new written certification from the short-term rental agent that he or she agrees to perform the duties subscribed to her or her as specified in section, and proof that the name and contact information for the new rental agent has been posted in the short-term rental property.

(g) *Grant or denial of application.* Review of an application shall be conducted in accordance with due process principles and shall be issued within 30 days of all required information being received. Any false statements or information provided in the application are grounds for denial of the application, citations and/or imposition of penalties.

(h) *Standard conditions.* All short-term rental properties established pursuant to this section are subject to the following standard conditions:

(1) Short-term rental properties are permitted in all Residential (R) zoning districts. No more than one short-term rental certificate shall be issued per dwelling unit.

(2) Short-term rental properties shall only be permitted in residential structures with a valid certificate of occupancy.

(3) Occupancy and parking for single-family dwelling units shall be in accordance with the city code.

(4) Parked vehicles. Off-street automobile parking shall be provided in accordance with the city code.

(5) Life safety and sanitation.

a. Short-term rental properties shall meet all applicable building regulations, as required by chapter 18.

b. Short-term rental properties shall meet all applicable fire prevention and protection regulations, as required by chapter 54.

c. Short-term rental properties shall meet applicable health and sanitation regulations, as required by chapter 62.

(6) The short-term rental property must be properly maintained and regularly inspected by the owner or short-term rental agent to ensure continued compliance with applicable zoning, building, health and life safety code provisions.

(7) Any advertising of the short-term rental property shall include short-term rental unit certificate number, notification of the maximum occupancy, maximum number of vehicles allowed, and provisions regulating noise. This information shall also be posted at the rental property.

(8) A legible copy of the short-term rental certificate shall be posted within the unit and include all of the following information:

a. The name, address, telephone number and email address of the short-term rental agent;

b. The short-term rental unit certificate number;

c. The maximum occupancy of the unit;

d. The maximum number of vehicles that may be parked at the unit; and

e. Provisions regulating noise.

(i) *Enforcement.*

(1) Complaints regarding a short-term rental property may be provided in writing, by email, through the online code enforcement system, or by telephone to the code enforcement division, which shall include a description of the complaint and the property address.

(2) Complaints shall result in a notice of the complaint being directed to the short-term rental agent and owner. The short-term rental agent shall be responsible for contacting the short-term rental occupant to correct the problem.

(3) If non-compliance with provisions of this section occurs, the code enforcement division shall conduct an investigation whenever there is reason to believe that an owner and/or short-term rental agent has failed to comply with the provisions of this section. Should the investigation support a finding that a violation occurred, the code enforcement division shall issue a written notice of the violation and intention to impose a penalty to the owner and/or short-term rental agent. The written notice may be served either by first class mail, by commercial overnight delivery, by personal service on the owner and/or short-term rental agent, or by any other reasonable means of delivery, including email, and shall specify the facts which, in the opinion of the code enforcement division, constitute grounds for imposition of the penalties.

(4) To ensure the continued application of the intent and purpose of this section, the community development agency shall notify the owner of a short-term rental property of all instances in which nuisance behavior of the rental guest or the conduct of his or her short-term rental agent results in a citation for a code violation or other legal infraction.

(5) The community development agency shall maintain, in each short-term rental property file, a record of all code violation charges, founded accusations, and convictions occurring at or relating to a short-term rental property.

(6) The code enforcement division is also hereby authorized and directed to establish such procedures for issuing citations for violations of this section. The Cobb County Police Department shall also have authority to enforce this section and issue citations.

(j) *Penalties.*

(1) The penalties for violations specified in this section shall be as follows:

a. For the first violation within any 12-month period, the penalty shall be a fine of $500.00;

b. For a second violation within any 12-month period of the first violation, the penalty shall be a fine of $750.00;

c. When a short-term rental agent has accumulated three violations for a particular property within a 12-month period of the first violation, the city shall revoke any pending certificates, the existing certificate for the subject property, and reject all applications for the subject premises for a period of 12 consecutive months.

d. For any violation that occurs when more than a 12-month period has transpired, it shall start again as a first violation.

(2) A short-term rental property that is determined to be operating without the necessary short-term rental certificate shall subject the owner to a penalty of $500.00. Each day the short-term rental is rented for overnight accommodation without a certificate is a separate violation.

(k) *Taxes.* The short-term rental property owner shall be responsible for collection of all required hotel/motel taxes, tourism fees, or other state and local fees/taxes relating to the lodging of individuals. These payments shall be paid to the state and city as prescribed by state law and city Code. The city may seek to enforce payment of all applicable taxes to the extent provided by law, including injunctive relief.

DIVISION 15. FLEA MARKETS

Sec. 7.7.15.1. 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:

Flea market means any business whereby there is operated a center for shopping among collected flea market vendors marketing merchandise and/or services to the public from booths, stalls, tables, benches, individual rooms or display areas, and similar display and marketing configurations and arrangements for the sale of merchandise and/or services. Flea markets shall not include shopping centers or regional shopping centers, antique stores, jewelry stores, coin shops, salvage operations, clothing stores or special sales events as accessory uses not to exceed 14 days, or other businesses of merchandise in common with flea markets where the vendor therein is not operating among a collection of vendors or renting or securing individual space within an overall operation.

Flea market promoter, operator or owner means all persons, firms, corporations, partnerships or other forms of business entities operating, maintaining, managing and promoting flea markets.

Vendor and *flea market vendor* mean all persons, individuals, firms, corporations, partnerships or other forms of business entities of every type and character operating among collections of other flea market vendors for sales to the public of merchandise and/or services in collected marketing centers for sales from stalls, booths, tables, benches, rooms and other similar displays or marketing configurations and arrangements.

Sec. 7.7.15.2. Penalty.

Violations of this article are punishable as allowed by law.

Sec. 7.7.15.3. Findings.

(a) The number of flea markets in the unincorporated area of the city has increased in recent years, the operation of which has become unduly distracting to motorists and has created traffic hazards and other problems in connection with their operation.

(b) The general appearance of the city, and specifically areas surrounding flea market locations, is marred when operations are unsightly, inappropriate and poorly maintained, and when, in some instances, unsafe structures, sheds and sales areas exist and debris and refuse accumulate. Failure to properly construct and maintain improvements upon the premises further detracts from the general appearance of the area and presents safety hazards.

(c) The aesthetic quality and economic value of both commercial and residential areas surrounding the flea markets as well as the economy of the city are adversely affected by the unregulated operation of flea markets.

(d) Lives and property are endangered by traffic created by the flea markets which have been unregulated and uncontrolled and by vehicles for which no provisions for parking and safe ingress and egress have been made by flea market operators.

(e) Flea markets create difficulty in police supervision because of lack of any controls over the number, identification and types of vendors and merchandise sold, and may become targets for sale or dealing in stolen merchandise.

(f) Most flea markets fail to provide even minimum facilities for the protection of the health or comfort of persons on the premises in the nature of plumbing, electrical and bathroom facilities.

(g) The public health, safety and welfare and property values in the city are detrimentally and adversely affected by the unregulated operation of flea markets.

(h) Unless steps are taken to ensure more satisfactory present and future operation, the present appalling situation will become worse and more extensive through an increase in numbers or further deterioration in those establishments already existing.

(i) In most instances presently existing, the flea market operations are incompatible with surrounding land uses.

(j) Many problems have been experienced, particularly, but not limited to, temporary sheds or structures not intended to be permanent which are constructed in an unsafe and unsightly manner; electrical, plumbing and other construction not complying with minimum codes or built or improved without permits or inspections; failure to provide adequate parking; ingress and egress creating traffic hazards; lack of bathrooms, plumbing or sanitary facilities; failure to comply with commercial design standards; failure of vendors to obtain business licenses or to maintain records; failure to provide for minimum fire safety; failure to protect against wind uplift; difficulty of police supervision; and deterioration of property values.

(k) There is a necessity for the adoption of provisions to regulate the location and operation of flea markets in the city in order to protect the health, safety and general welfare of its citizens and of the general public.

Sec. 7.7.15.4. Purpose of article.

The purpose of this article is to cure the existing ills and those foreseen to occur in the future through reasonable regulation, it being determined that the regulations contained in this article are minimum requirements needed to attempt to rectify identified problems.

Sec. 7.7.15.5. Applicability of article.

This article shall apply to all businesses and locations in the unincorporated area of the city which meet the definition of flea market and all flea market vendors, promoters, owners and operators as defined in this article. This article shall not apply to developed and operating shopping centers, antique shops, jewelry stores, coin shops, salvage operations, clothing stores or special sales events not to exceed 14 days or other businesses dealing in merchandise common to that dealt in by flea markets, where vendors therein are not operating among a collection of vendors renting or securing individual spaces within an overall operation.

Sec. 7.7.15.6. General regulations.

(a) *Parking.* There shall be no on-street parking at any flea market. Each flea market shall provide on-site parking as provided in chapter 134. No parking or parking spaces shall be located on or within any road right-of-way. It shall be the responsibility of the promoter, operator or owner to ensure at all times that no vehicle of any vendor, customer, patron, visitor, guest, invitee or other person frequenting the flea market is parked on any street or road or street or road right-of-way or off the site of the flea market, but is parked in a space acceptable under the city parking regulations and this section.

(b) *Ingress and egress.* The flea market owner or operator shall do whatever is necessary, based upon the circumstances of his individual property, to ensure ingress and egress only at curb cuts and locations approved by the city department of transportation.

(c) *Outside storage or sales.* There shall be no outside storage of any kind whatsoever. There shall be no outside sales of any kind whatsoever from any space, stall, shed or area which is not permanently covered by a roof and completely floored by a concrete floor of a minimum thickness of four inches except at locations designated as such and approved at the time of the granting of the use permit. However, no sales or displays shall occur within required parking areas or interfere with general traffic flow.

(d) *Compliance with building regulations.* No sales of any kind whatsoever shall be made from any shed, structure or building of any kind unless the structure meets or exceeds the minimum requirements of all city codes (for example, the building code, fire code, plumbing code, electrical code, etc.). Structures shall require building permits and inspections by the city the same as for other construction. Flea markets shall be classified as group M, mercantile occupancy, under the city building code and shall meet all such requirements except that applications for permits for all open structures shall require plans to be submitted which are signed and sealed by an architect or engineer along with design calculations to substantiate compliance with code wind uplift requirements.

(e) *Plumbing and toilet facilities.* All plumbing shall meet minimum code requirements, except that each flea market shall provide, at a minimum, for use by the public, facilities based on occupant loads as follows:

  (1) For flea markets located within enclosed structures, the occupant load shall be determined the same as mercantile occupancy and exit capacity.

  (2) For a flea market located in the open air, the occupant load shall be determined as two people for each table, counter or booth of no more than 20 square feet.

  (3) After the occupant load is identified, toilet facilities will be provided the same as for commercial buildings of multiple tenants.

(4) No temporary bathroom facilities shall be permitted.

(f) *Overnight camping.* Notwithstanding the provisions of any other ordinances, no person, including, but not limited to, a flea market promoter, operator, owner, employee, manager, or vendor or invitee, shall be allowed to camp or reside overnight with or without a recreational vehicle, tent, sleeping bag, vehicle or other structure at a flea market, except that the owner may allow a reasonable number of overnight security personnel, who may be either the owner or agents or employees of the owner.

(g) *Sale or keeping of animals.* No animal, fish, fowl or insect of any kind shall be sold, traded, housed, caged, bartered, swapped or given away at any flea market.

Sec. 7.7.15.7. Records.

(a) Each flea market promoter, operator or owner shall maintain accurate records for each day of the flea market's operation, of each vendor conducting business from the flea market, which shall include, at a minimum, the name, address, telephone number, business license number, general type of merchandise, and the dates during which the vendor conducted business at the flea market. Such records shall also be maintained on the flea market promoter, operator or owner if he is also a vendor.

(b) Each flea market vendor shall maintain accurate records in such form that annual sales can be determined for business license fee calculation purposes.

(c) Any records required under this section shall be open for inspection by the city or any of its agents or employees at any reasonable time from 11:00 a.m. until 5:00 p.m. weekdays or at any other time the flea market or a vendor is open for business.

Sec. 7.7.15.8. License Generally.

(a) *License required.* It shall be unlawful for any person to conduct a flea market business or for any flea market promoter, operator or owner to operate or allow to be operated such a business, or for any flea market vendor to display or sell wares of any kind at a flea market without a business license from the city. Business licenses issued for a flea market or any flea market promoter, operator or owner shall be valid only for the licensed location.

(b) *Application.* All persons desiring to obtain a business license for a flea market or as a flea market promoter, operator or owner shall make written application to the city through the business license division on forms to be prepared and approved by the city. Applicants shall supply such reasonable information as may be required by the city. Such information shall include, but not be limited to:

(1) A list of vendors, including name, address, picture identification and telephone number;

(2) Dates when the vendor is on the premises; and

(3) A description of the items and services sold or provided by such vendors.

Upon the receipt by the business license division of such information, the vendors so listed will be entitled to transact business upon the licensed premises. If the license is for a flea market operation, the information shall include the square footage of sales area within the flea market. An application fee, which is nonrefundable if a permit is not issued, shall be submitted with each application to operate a flea market.

(c) *Failure to furnish required information.* All applicants shall furnish all data, information and records reasonably related to evaluation of an application, as may be requested by the city or any interested city department. An applicant, by filing an application, agrees to produce for oral interrogatories any person under the applicant's supervision or control who might have information pertinent to the application, upon the request of the city to do so. Failure to furnish such information or produce persons within 30 days of the request shall automatically serve to dismiss the application.

(d) *Criteria for issuance.*

(1) No application for any license under this division shall be granted where the application or investigation shows any of the following to exist:

a. The applicant is of bad moral character or has a bad reputation in the community or does not have sufficient mental capacity to conduct the business for which application is made.

b. The applicant has had any license issued under the police powers of any city or other governmental entity previously suspended or revoked.

c. The location, if applicable, is not properly zoned.

d. The applicant, as a previous holder of a license as a flea market promoter, operator, owner or vendor, has violated any law, including this article, relating to such business, within a ten-year period immediately preceding the date of application.

e. No flea market use permit is in effect for the location, if applicable.

f. The applicant has supplied false information either upon his application or in any communication with any official of the city relative to his application.

g. The applicant has failed to pay any fee required under this article or has otherwise failed to comply with the provisions of this article.

h. The application, during the 12-month period next preceding the filing of his application, has engaged in any deceptive business practice.

(2) No original license under this division shall be issued to any person, partnership or corporation for pecuniary gain where any individual having an interest either as owner, partner, stockholder owning at least 25 percent of the stock of the corporation, such interest being direct or indirect, beneficial or absolute, or his spouse or manager of the operation, shall have been convicted or shall have taken a plea of nolo contendere within ten years immediately prior to the filing of the application for any felony or misdemeanor of any state or of the United States or any municipal or city ordinance except traffic violations. For purposes of this subsection, the term "conviction" shall include an adjudication or guilt or plea of guilty or nolo contendere, or the forfeiture of a bond when charged with a crime. Where the violation is for a misdemeanor, forfeiture of bond, or violation or a municipal or city ordinance or where there is a plea of nolo contendere, the city council may, after investigation, if appealed by the applicant, waive such violation as a disqualification.

(3) In addition to the standards set out in subsections (1) and (2) of this subsection, in determining whether or not any license applied for shall be granted, the following shall be considered in the public interest and welfare:

a. If the applicant is a previous holder of a license, the manner in which he conducted the business thereunder, and particularly as to the necessity for unusual police observation and inspection in order to prevent the violation of any law, regulation or ordinance relating to such business.

b. The location for which the license is sought, if applicable, as to traffic congestion, general character of the neighborhood and the effect such an establishment would have on the adjacent and surrounding property values.

c. If it appears that the applicant's spouse or another person is using the applicant as a guise or "dummy" to obtain a license.

(e) *Investigation and report.* All applications for business licenses for a flea market owner or operator required by this article shall be investigated by the Cobb County police department. The police department shall report its recommendations to the business license division. The applicant for a license to operate a flea market shall be fingerprinted and shall supply such other information as the Cobb County police department deems necessary to complete its investigation.

(f) *Fees.* License fees for flea market owners, promoters or operators shall be as established by the city.

(g) *Display of license.* Any license issued under this division shall be posted conspicuously at the place of doing business of the licensee.

(h) *Transfer.* No license issued under this division shall be transferable.

(i) *Separate license required for each place of business.* Each license for a flea market or flea market promoter, operator or owner shall be for one location only. Flea markets or flea market promoters, operators or owners shall obtain a separate license, paying a separate fee, for each place of business.

(j) *Temporary license.* Those vendors operating in the city a maximum of three consecutive days selling merchandise as a part of a show, festival, fair or promotion shall be required to obtain a business license that shall be valid only for the period of time that special show, fair or promotion is being held. This temporary license shall not apply to flea market vendors, special tent sales, peddlers or any business not connected with a show, festival, fair or promotion. The fee for this license shall be as set out in the schedule of fees.

Sec. 7.7.15.9. Appeal of denial.

An applicant for a license under this division whose application is denied may make appeal to the business city business license division according to the provisions of section 6-90.

Sec. 7.7.15.10. Revocation, suspension or probation.

(a) *Procedure.* No license or permit issued under this division shall be suspended, revoked or placed on probation with or without conditions, except for due cause as defined in this section, and only after a hearing before the city council upon a prior written notice to the licensee or permittee of the time, place and purpose for such hearing and a statement of the charges upon which the license or permit may be revoked, suspended or placed on probation. Three days' notice shall be deemed reasonable, but shorter or longer periods of notice may be authorized by the city council as the circumstances may justify.

(b) *Grounds.* Due cause for the suspension or revocation of such license shall consist of any of the following:

(1) Violation of any of the provisions of this article or any other city ordinance.

(2) Violation of any laws, ordinances or resolutions regulating such business, or violation of regulations made pursuant to authority granted for the purpose of regulating such business.

(3) If a licensee or permittee has supplied false information to the city either during or following application for a permit or license, regardless of when the city shall have become aware of such false information.

(4) If a licensee or permittee makes any misrepresentation of fact, whether through advertisement or through any form of direct communication, oral or written, which is intended to mislead the public or to mislead any party with whom the licensee or permittee deals in pursuance of the licensed or permitted business. The term "misrepresentation of fact" as used in this subsection shall embrace not only express misrepresentations but also misrepresentations arising by virtue of the licensee's or permittee's conduct, including acts and omissions.

(5) If any reason exists which would have been grounds for denial of the original or renewal license or permit.

Sec. 7.7.15.11. Use permit.

(a) No flea market shall be operated upon any realty or in or upon any personalty located on any realty unless and until a special use permit for a flea market is granted by the city council. This special use permit for a flea market, called "flea market use permit" or "permit" in this section, shall be in addition to all other requirements of the city.

(b) Applications for flea market use permits shall be applied for and advertised in the same manner as applications for rezoning, and public hearings will be held thereon in the same manner as applications for rezoning are conducted, as the same may be amended from time to time. Fees for filing and processing of applications shall be in an amount determined from time to time by resolutions of the city council. A schedule of the fees shall be maintained on file in the community development department.

(c) Permits may be issued for such period of time as the city council deems appropriate under the circumstances of each application.

(d) Flea market use permits shall be granted only if the city council determines that there will be no significant adverse effect on the surrounding neighborhood or area in which the proposed use will be located; that no nuisance as defined by state law would result to the general area; that the quiet enjoyment of surrounding property would not be adversely affected; and that property values of surrounding property would not be adversely affected. No permit shall be issued where the application or any investigations shows the existence of any of the conditions enumerated in subsection 7.7.15.1(d).

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Section 3. It is hereby declared to be the intention of the City Council that:

(a) All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed.

(b) All sections, paragraphs, sentences and phrases of this Ordinance are or were, upon their enactment, believed by the City Council to be fully valid, enforceable and constitutional.

(c) To the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. No section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(d) In the event any portion of this Ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the City Council of the City that such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this Ordinance which shall remain in full force and effect, as if the invalid or unconstitutional section, sentence, clause or phrase were not originally a part of the Ordinance.

Section 4. The City hereby formally transitions from the County to the City the services, assessments, license, permitting regulated under Chapter 78, Article III of the Official Code of Cobb County, Georgia.

Section 5. Fees and other costs applicable under this Ordinance are hereby adopted and attached as the "City of Mableton Special License and Regulatory Fee Schedule" and shall be alternatively known as "Schedule R."

Section 6. The provisions pertaining to sexually oriented businesses under this Ordinance are designed 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 Ordinance 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 Ordinance 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 Ordinance to condone or legitimize the distribution of obscene material.

(a) *Findings and rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports publicly 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

(b) 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 (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" Crime & Delinquency (2012) (Louisville, KY); Metropolis, Illinois—2011-12; Manatee County, Florida—2007; Hillsborough County, Florida—2006; Clarksville, Indiana—2009, 2013-2019; El Paso, Texas—2008; Memphis, Tennessee—2006; New Albany, Indiana—2009; Louisville, Kentucky—2004; Fulton County, GA—2001; Chattanooga, Tennessee—1999-2003; Jackson County, Missouri—2008; Ft. Worth, Texas—2004; Kennedale, Texas—2005; Greensboro, North Carolina—2003; Dallas, Texas—1997; Houston, Texas—1997, 1983; Phoenix, Arizona—1995-98, 1979; Tucson, Arizona—1990; Spokane, Washington—2001; St. Cloud, Minnesota—1994; Austin, Texas—1986; Indianapolis, Indiana—1984; Garden Grove, California—1991; Los Angeles, California—1977; Whittier, California—1978; Oklahoma City, Oklahoma—1986; New York, New York Times Square—1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas—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; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; Indianapolis/Marion County Board of Zoning Appeals Documents; Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA); DeKalb County Testimony and Reports—2014; and Strip Club-Trafficking Documents, 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, human trafficking, 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) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

(3) Each of the foregoing negative secondary effects constitutes a harm which the county has a substantial government interest in preventing and/or abating. 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 chapter are reasonably believed to be relevant to said secondary effects.

(c) Additionally:

(1) The City is becoming an increasingly attractive place for the location of commercial enterprises and of residences for families, and the council is committed to adopting ordinances designed to protect the quality of life for its constituents.

(2) The City Council desires to establish policies that provide the maximum protection of the general welfare, health, morals, and safety of the residents of the City.

(3) The governing authority of each municipal corporation is authorized to enact ordinances which have the effect of restricting the operation of adult bookstores and video stores to areas zoned for commercial or industrial purposes, provided in O.C.G.A. § 36-60-3.

(4) The state supreme court, in Chambers d/b/a Neon Cowboy v. Peach County, Georgia, 266 Ga. 318 (1996), held that local governments may adopt ordinances designed to combat the undesirable secondary effects of sexually explicit businesses, and further held that a governing authority seeking to regulate adult establishments must have evidence of a relationship between the proposed regulation and the undesirable secondary effects it seeks to control.

(5) The state supreme court further held in the same opinion that in passing its regulation, a local government may rely on the experience of other counties and municipalities to demonstrate such a relationship.

(6) The United States Supreme Court, in City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), held that a local government may rely on the experience of other cities in enacting legislation to regulate sexually oriented business.

(7) Among the undesirable community conditions identified with live nude entertainment at which alcohol is served or consumed are depression of property values in the surrounding neighborhood, increased expenditure for the allocation of law enforcement personnel to preserve law and order, increased burden on the judicial system as a consequence of the criminal behavior, and acceleration of community blight.

(8) The City Council further finds it has an important governmental interest in reducing crime and protecting surrounding properties from adverse impacts, which interest is unrelated to the suppression of speech.

(9) It is the intent of the City Council to enact an ordinance, narrowly tailored, sufficient to combat the undesirable secondary effects of sexually oriented businesses, including the serving and consumption of alcoholic beverages at sexually oriented businesses.

(10) The City Council desires to regulate the sexually oriented businesses within the City limits. Notwithstanding, this article is not to be construed as an endorsement from the City of these establishments. The City Council understands that sexually oriented businesses are actually protected under the free speech clause of the First Amendment of the Constitution of the United States for their role in communicating

"erotic speech." The courts allow communities to regulate speech, not based on the content of the speech, but in time, place, and manner in which it is presented.

(11) It is well established and has been the experience of other communities in the state and throughout the United States that adult entertainment, which includes public nudity, has been associated with and may encourage disorderly conduct, prostitution and sexual assault. This section advances the substantial government interest in promoting and protecting public health, safety, and general welfare, maintaining law and order and prohibiting public nudity. The section is narrowly constructed to protect the First Amendment rights of citizens of the City while furthering the substantial governmental interest of combating the secondary effects of public nudity and sexually oriented businesses from areas and uses of the community that are incompatible. Areas and uses that are to be protected from sexually oriented businesses include, but are not limited to, residential, churches, day care centers, libraries, recreational facilities, and schools.

(12) Based on the experiences of other counties and municipalities, the City Council takes note of the patent conditions and secondary effects attendant to the commercial exploitation of human sexuality, which do not vary greatly among the similar communities within our country.

(13) The City Council further finds that public nudity (either partial or total) under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages in establishments offering live nude entertainment or "adult entertainment," whether such alcoholic beverages are sold on the premises or not, begets criminal behavior and tends to create undesirable community conditions. In the same manner, establishments offering cinematographic or videographic adult entertainment have the same deleterious effects on the community. Among the acts of criminal behavior found to be associated with the commercial combination of live nudity and alcohol consumption or sale, live commercial nudity in general, and cinematographic or videographic adult entertainment are disorderly conduct, prostitution, public solicitation, public indecency, fighting, battery, assaults, drug use and drug trafficking. Daytona Grand, Inc. v. City of Daytona Beach, 490 F.3d 860 (11th Cir. 2007); 5634 East Hillsborough Ave., Inc. v. Hillsborough County, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), aff'd, 2008 WL 4276370 (11th Cir. Sept. 18, 2008) (per curiam). See also California v. LaRue, 409 U.S. 109 (1972); N.Y. State Liquor Authority v. Bellanca, 452 U.S. 714 (1981).

(14) Among the undesirable community conditions identified in other communities with the commercial combination of live nudity and alcohol consumption or sale, commercial nudity in general, and cinematographic or videographic adult entertainment are depression of property values and acceleration of community blight in the surrounding neighborhood, increased allocation of and expenditure for law enforcement personnel to preserve law and order, and increased burden on the judicial system as a consequence of the criminal behavior described in this article. The City Council finds it is reasonable to believe that some or all of these undesirable community conditions are occurring, and will continue to occur in the City.

(15) The City Council further finds that other forms of adult entertainment including, but not limited to, adult bookstores, adult novelty shops, adult video stores, peep shows, and adult theaters have an adverse effect upon the quality of life in surrounding communities.

(16) The City Council further finds that the negative secondary effects of adult establishments upon the City are similar whether the adult establishment features live nude dancing or sells books/videotapes depicting sexual activities. H & A Land Corp. v. City of Kennedale, 480 F.3d 336 (5th Cir. 2007); High Five Investments, LLC v. Floyd County, No. 4:06-CV-0190-HLM (N.D. Ga. Mar. 14, 2008).

(17) Therefore, the City Council finds that it is in the best interests of the health, welfare, safety and morals of the community and the preservation of its businesses, neighborhoods, and of churches, schools, residential areas, public parks and children's day care facilities to prevent or reduce the adverse impacts of adult establishments by restricting hours of operation, prohibiting alcohol sale or consumption, and restricting the distance from other adult establishments and restricting the distance from residential areas, schools, public parks, churches, and children's day care facilities.

(18) The City Council finds that these regulations promote the public welfare by furthering legitimate public and governmental interests including, but not limited to, reducing criminal activity and protecting against or eliminating undesirable activities impacting adversely the community conditions and further finds that such will not infringe upon the protected Constitutional rights of freedom of speech or expression.

Section 7. The City Attorney and City Clerk are authorized to make non-substantive editing and renumbering revisions to this Ordinance for proofing and renumbering purposes.

Section 8. The effective date of this Ordinance shall be June 1, 2025, unless ordained otherwise by the City, or required otherwise by the City Charter, state and/or federal law. In the event that any effective date herein is determined by a Court of law to be invalid, said effective date shall instead be the earliest date allowed by law.

SO ORDAINED this ______ day of __________________, 2025.

ATTEST: CITY OF MABLETON, GEORGIA:

___________________________________ ___________________________________

Susan D. Hiott, Interim City Clerk Michael Owens, Mayor

APPROVAL AS TO FORM:

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Emilia Walker-Ashby, Interim City Attorney